

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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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 MONDAY, 24TH JULY 2017 - DAY 15

15

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

GWEN MALONE STENOGRAPHY
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1 THE HEARING RESUMED ON MONDAY, 24TH DAY OF JULY, 2017
2 AS FOLLOWS:

3
4 **MR. MCGUINNESS:** Sir, the first witness we have this
5 morning is Inspector Pat O'Connell. 10:00

6
7 INSPECTOR PAT O'CONNELL, HAVING BEEN SWORN, WAS
8 EXAMINED BY MR. MCGUINNESS AS FOLLOWS:

9
10 **MR. MCGUINNESS:** For the benefit of my colleagues, 10:01
11 Inspector O'Connell's first statement is in volume 7,
12 page 1705, he has a second statement in volume 10 at
13 page 2887 and a third statement also in volume 10 at
14 page 3202.

15 1 Q. Inspector O'Connell, when did you join An Garda 10:01
16 Síochána?

17 A. I joined An Garda Síochána on 3rd of May 1994.

18 2 Q. And where have you been stationed since then?

19 A. During that time, since I was first attested to An
20 Garda Síochána, I was stationed in Fitzgibbon Street 10:01
21 Garda Station in Dublin City. I spent a number of
22 years there before transferring to Emyvale Garda
23 Station in 1998, on the border. I spent two years in
24 Emyvale before transferring to the Student Probationer
25 Training School in the Garda College as an instructor. 10:01
26 I spent -- I was promoted in 2005 in the Garda College
27 while I was attached to the Student Probationer
28 Training School and I returned to Cavan-Monaghan
29 division as a Divisional Training Sergeant in January

1 of 20047. I spent three years as the Divisional
2 Training Sergeant from 2007 until 2009, at which point
3 then I took up duty as the divisional clerk, which was
4 the sergeant in charge of the divisional office in
5 Monaghan, and I remained there from 2009 up until July 10:02
6 of 2014, where I transferred to Listowel Garda Station
7 in the Kerry division, following promotion to the rank
8 of inspector. I subsequently returned then to Monaghan
9 Garda Station on 15th of August -- or, in around 15th
10 of August 2015 following a vacancy. 10:02

11 3 Q. So from early December 2009 until July 2014 you were in
12 Monaghan?

13 A. I was, from 2007. That's correct.

14 4 Q. And from earlier, as training sergeant?

15 A. As training sergeant. 10:03

16 5 Q. And what knowledge had you got of any allegation
17 against Sergeant McCabe?

18 A. Well, I suppose I first got to know Sergeant McCabe in
19 my role as the divisional training sergeant in 2007. I
20 would have been briefed, Judge, by Sergeant Regina 10:03
21 McArdle, who was my work colleague, she was also the
22 other training sergeant attached to the division. She
23 would have briefed me on a number of key people who I
24 needed to become familiar with in my new role at that
25 time, one of whom in the Bailieboro district was 10:03
26 Sergeant Maurice McCabe. He was the sergeant in charge
27 of Bailieboro at that time. And I would have got to
28 know Maurice through my involvement monitoring the
29 probationaries in Bailieboro along with Sergeant

1 A. I wasn't aware of the specific details of the
2 allegation other than the fact that it was a minor
3 assault, was what was probably -- what was being
4 discussed within the divisional office or divisional
5 training office at that time. So that is as much as I 10:05
6 would have been aware.

7 12 Q. Were you aware that it involved apparently the daughter
8 of another member of An Garda Síochána?

9 A. Yes, I would have been aware that it would have
10 involved another member's daughter in Bailieboro, yes. 10:05

11 13 Q. And you weren't involved in the investigation in any
12 way?

13 A. No, that's correct.

14 14 Q. Did you ever come to read the investigation file?

15 A. No, I never actually read the investigation file. 10:05

16 15 Q. Do you know who did the investigation?

17 A. I do. It was Inspector Noel Cunningham, at the time,
18 now superintendent.

19 16 Q. Pardon?

20 A. It was Inspector Noel Cunningham at the time that did 10:05
21 the investigation.

22 17 Q. Yes. And did he transfer to Monaghan as superintendent
23 while you were there?

24 A. When I was in the divisional office he would have
25 transferred back to Monaghan at some particular point, 10:06
26 yes, while I was divisional clerk.

27 18 Q. Did you ever speak to him about his investigation or
28 about Sergeant McCabe?

29 A. No. I never spoke to him about his investigation.

1 19 Q. You knew obviously, therefore, that he had investigated
2 the allegation when he was inspector and that it
3 involved people that he knew. Had you any view about
4 the propriety of that or otherwise?
5 A. Well, in terms of my own view, I would have been of the 10:06
6 view that I thought it was unfair on Inspector
7 Cunningham to be investigating people that he was
8 familiar with. I think that was a common view that was
9 held at that particular time around the Cavan-Monaghan
10 division. 10:06
11 20 Q. A common view among sergeants or generally?
12 A. I think generally.
13 21 Q. You came to work when you started as divisional clerk
14 under Chief Superintendent Rooney?
15 A. That's correct. 10:06
16 22 Q. Were you aware that he had directed that Inspector
17 Cunningham do this investigation?
18 A. When I first took up in the divisional office that
19 wouldn't have been -- I wouldn't have been aware of
20 that particular -- that particular point, no, no. 10:07
21 23 Q. But did you become aware of it?
22 A. I subsequently would have become aware of it, yeah,
23 yeah.
24 24 Q. And when was that, can you recollect?
25 A. The exact timeframe, I couldn't be exactly sure. But 10:07
26 it would have been possibly during 2010, I would say.
27 25 Q. Certainly preceding the time in 2014 that we will come
28 to in a few minutes. So, you knew that for a few years
29 beforehand?

1 A. Yes.

2 26 Q. And, had you heard of that? Can you say who you had
3 heard that from?

4 A. No, I can't say who I heard it from. But, I mean, any
5 investigation whereby it's being dealt with at local 10:07
6 level it is the chief superintendent who appoints. So,
7 I mean, I would have known from that particular aspect
8 of it that if Inspector Cunningham was directed to do
9 an investigation it could only have been by the chief
10 superintendent. 10:08

11 27 Q. Well, did you know of any objections or representations
12 that Inspector Cunningham had made to anyone in
13 relation to that?

14 A. No, I wasn't aware of that.

15 28 Q. You succeeded obviously the previous divisional clerk? 10:08

16 A. That's correct.

17 29 Q. And did you have a hand-over briefing from him in
18 respect of any matter?

19 A. Not really, no.

20 30 Q. Did you ever learn, after you became divisional clerk, 10:08
21 that there had been some suggestion from Inspector
22 Cunningham that he would prefer not to be asked to do
23 that job?

24 A. Sorry?

25 31 Q. Did you ever hear after your appointment as divisional 10:08
26 clerk of any objections or views that Inspector
27 Cunningham had about not wanting to do that job?

28 A. I didn't hear any specific objections, other than the
29 fact that, I mean, a lot of people would have been

1 saying that he shouldn't have been appointed to do the
2 investigation. I think that is a view that he shared
3 himself.

4 32 Q. Yes. But, was it perceived that it was unfair on him
5 or he just mightn't be seen to be independent enough? 10:09

6 A. I think it was perceived to be fair -- to be fair on
7 all parties, I think that was certainly my perception
8 anyway.

9 33 Q. Well, was there a view that it had tainted the
10 investigation in some way? 10:09

11 A. You see, the investigation had been completed at that
12 stage. I mean, these were only perceptions that I
13 would have had my own views on it. I mean, I wasn't
14 looking back on the investigation. As I said, I didn't
15 read the investigation file. 10:09

16 34 Q. In any event, can I just ask you to explain your duties
17 as divisional clerk? Is it more or less a full-time
18 indoor job in the station, is it?

19 A. Yes. You are pretty much running the divisional office
20 and you are in charge of the administration within the 10:10
21 office on a wide range of a number of portfolios that
22 require input from chief superintendent level. I would
23 have been in charge of supervising the staff there.
24 There would have been two guards in the office at the
25 time, there would have been four, perhaps five members 10:10
26 of civilian staff at times, and I would have been
27 responsible for supervising their work as well and
28 their portfolios. So, it was indoor.

29 35 Q. Yes. And presumably you had access to all relevant

1 material, correspondence, files, registers?

2 A. That's correct.

3 36 Q. And just in terms of your office, is your office next
4 door to the chief superintendent's?

5 A. It adjoins -- our office is quite a large office. It's 10:10
6 a double office and then the chief superintendent's
7 office is adjoining that office. It's a separate
8 office.

9 37 Q. And where is the superintendent's office?

10 A. The superintendent's office is on the middle floor of 10:10
11 Monaghan Garda Station, which is the floor immediately
12 below that.

13 38 Q. Below?

14 A. Below divisional office level. The divisional office
15 is on the top floor, you have middle floor and ground 10:11
16 floor.

17 39 Q. I think in May of 2014 you became aware of confidential
18 correspondence which Superintendent McGinn has sent to
19 Chief Superintendent Sheridan?

20 A. That's correct. 10:11

21 40 Q. Had that come through your hands?

22 A. I had seen that shortly after coming into the office.
23 The process is: The post comes in and it's put into a
24 correspondence register, and then it would be given to
25 the attention of the chief. Some of the matters, a lot 10:11
26 of the matters would be broken up into different
27 sections or different areas. I would deal with a lot
28 of different correspondence. Certain matters then
29 would go directly to the chief. That would be one

1 matter that went directly to the chief.

2 41 Q. But did you open a correspondence file then in relation
3 to that?

4 A. There was a correspondence file opened in relation to
5 that. It would have been opened by the clerical 10:11
6 officer who takes in the post.

7 42 Q. Well, you have referred in your statement of the 8th of
8 May to a file number "MC 84/9/14". Is that the file
9 that would have been created in relation to that?

10 A. Yes, that would be the file number, yes. 10:12

11 43 Q. But had the correspondence clerk, had he opened the
12 correspondence or was it subsequently given to him to
13 open a file?

14 A. I can't recall. Like, once there is a date put on it,
15 it's taken in by the clerk or the correspondence clerk. 10:12

16 44 Q. Okay. Now, was it given to you then by the chief
17 superintendent or did you see it first?

18 A. No, from what I can recall, I can recall seeing it and
19 discussing it with Chief Superintendent Sheridan very
20 shortly after it had come into the office. 10:12

21 45 Q. Okay. But presumably he showed it to you and the
22 notification that came with it?

23 A. Yeah, I would have seen it, yeah.

24 46 Q. So, could I ask you to look at page 1716, which is the
25 notification forwarded by Superintendent McGinn. Is 10:13
26 that what you recall seeing?

27 A. That is what I recall seeing, yes.

28 47 Q. Perhaps you will just see at the top of that, it's from
29 Tusla, Child and Family Agency, First Floor, Support

1 Services Building, St. Davnet's Complex, Rooskey,
2 Monaghan, and it's to the Superintendent in Charge of
3 Bailieboro Garda Station. Is that something that would
4 normally be forwarded on to the chief superintendent?
5 A. The notification form, no. 10:13
6 48 Q. And then on the second page, did you see there that the
7 designated social worker dealing with this matter is
8 Eileen Argue, acting social work team leader, and it
9 gives her telephone number?
10 A. That's correct. 10:13
11 49 Q. And it's signed by Mr. Deeney, principal social worker,
12 dated 2nd of May?
13 A. Yes.
14 50 Q. You saw that at the time?
15 A. I saw that. 10:14
16 51 Q. Now, were you familiar with the system of notifications
17 as between the HSE/Tusla and the Gardaí, and vice
18 versa?
19 A. I was, yes.
20 52 Q. And you said in your statement that you discussed the 10:14
21 matter of this content of the correspondence with the
22 chief superintendent, is that correct?
23 A. That's correct.
24 53 Q. And what was the extent of the discussion?
25 A. Well, obviously the content was, I was very taken aback 10:14
26 by what was contained within the allegation that was
27 being made. It was an allegation of a most serious
28 nature. At the outset I can say that from my dealings
29 with Sergeant McCabe and from my knowledge of having

1 spoke -- worked with him, a close colleague of his, I
2 certainly didn't believe that he would have carried out
3 such an act. That was the very first thing that struck
4 my mind. The other thing was that it could only have
5 been a couple of possibilities: One, this was a grave 10:15
6 error; two, that it was either a new notification,
7 which certainly we didn't know anything about. That
8 was two the possibilities.

9 54 Q. You see, I am just wondering about your ability to have
10 formed a view if you didn't really know what the 10:15
11 original issue related to in terms of a complaint?

12 A. Well, to be perfectly fair, this was an allegation of
13 rape.

14 55 Q. Yes.

15 A. I mean, certainly when I came into the division in '07 10:15
16 if there had been an allegation of rape against any --
17 by any member, that would have been -- that would have
18 been known and I would have known that. I knew that,
19 from my knowledge of working in the divisional training
20 office I would have had regular enough liaisons in 10:15
21 Bailieboro Garda Station dealing with probationers and
22 I knew that there had been -- there had been issues in
23 Bailieboro, difficult issues in Bailieboro where --
24 which led to an investigation, but it certainly wasn't
25 an investigation into a rape offence. And I knew that. 10:16

26 56 Q. All right. So may the Tribunal take it from this, you
27 saw this for what it was - an allegation of rape?

28 A. That is what it was, yeah.

29 57 Q. And you hadn't heard of any such allegation having ever

1 been made against Sergeant Maurice McCabe before --

2 A. That's correct.

3 58 Q. -- is that your thinking?

4 A. That's correct.

5 59 Q. Well, did you understand from Superintendent McGinn's 10:16
6 report, he was suggesting a review of the investigation
7 and/or handing it over for an outside review, did you
8 discuss that with the Chief Superintendent Sheridan?

9 A. No. I didn't really discuss what the content of
10 Superintendent McGinn's report was with Chief 10:16
11 Superintendent Sheridan. No. I didn't, no.

12 60 Q. Well, you see, you do describe discussing the content
13 of the correspondence with the chief superintendent.
14 What was being talked about, as it were, and what was
15 the subject matter of the discussion as to where it 10:17
16 might go?

17 A. Well, the issue, the issue as far as -- I got the sense
18 from Chief Superintendent Sheridan that he believed it
19 was wrong, that it was a mistake. That's the sense I
20 got from him. The issues, as I said, for myself was 10:17
21 that I believed -- I didn't believe that it was an
22 accurate allegation. That was based on my knowledge of
23 the individual concerned. That was my own personal
24 view. But I suppose the correspondence had to be dealt
25 with and Chief Superintendent Sheridan had obviously 10:17
26 spoken to Superintendent McGinn and a decision was made
27 to report the matter to the assistant commissioner.

28 61 Q. Well, you see, you say in your third statement:
29

1 *"Chief Superintendent Sheridan believed the content was*
2 *wrong and I shared this view."*

3
4 Is that right? And did you express that to the chief
5 superintendent at the time of the receipt of that? 10:18

6 A. Yeah. Well, the general conversation was 'this must be
7 wrong'. That was -- you know, this must be a mistake,
8 this must be wrong. That was the feeling I got.
9 Certainly I thought that was expressed at that time.

10 62 Q. Well, I am just trying to be clear, was this a view 10:18
11 that the two of you discussed and arrived at?

12 A. Well, it was certainly the view that I suspected.
13 Like, I mean, the correspondence had been received and
14 obviously it had been generated somewhere and required
15 some level of clarification. 10:18

16 63 Q. Well, tell me about Chief Superintendent Sheridan's
17 conversation with Superintendent McGinn.

18 A. I don't know what conversation he had with
19 superintendent --

20 64 Q. Pardon? 10:19

21 A. I am not aware of what conversation he had with
22 Superintendent McGinn.

23 65 Q. Well --

24 A. I believe that he knew of the referral from possibly
25 having spoken to Superintendent McGinn. It would be -- 10:19
26 certainly, in a situation like that it wouldn't be
27 unusual for the superintendent to notify the chief in
28 advance of something like that, giving advance notice
29 that this was coming in.

1 66 Q. Well, you see, that is what I am wondering. What
2 caused you to believe, as you have stated in your
3 statement, that he had already spoken to Superintendent
4 McGinn?

5 A. Because he would have -- when we were discussing it he 10:19
6 would have expressed the view to me that he believed it
7 was wrong.

8 67 Q. That he, Superintendent McGinn, believed it to be
9 wrong?

10 A. No. That superintendent Sheridan believed it was 10:19
11 wrong.

12 68 Q. I am just trying to --

13 A. We didn't actually go into the fine detail of how he
14 came to that conclusion or that viewpoint, but that's
15 the sense that I got at the particular time when I was 10:20
16 speaking to him.

17 69 Q. But did you understand that Superintendent McGinn's
18 position was that he seemed to believe that this was
19 the allegation that had originally been investigated?

20 A. Well, on the basis of his report, he made certain 10:20
21 recommendations, which he has given in evidence
22 himself, and those were his recommendations which he
23 set out.

24 70 Q. But I am just trying to understand why you have said
25 this in your statement, that you believed Chief 10:20
26 Superintendent Sheridan was already aware of the issue
27 from having spoken to Superintendent McGinn. You see,
28 Superintendent McGinn, it would appear clear from the
29 letter and from his evidence that he believed that this

1 was the allegation that had already been investigated,
2 and did superintendent Sheridan share that view or did
3 you share that view?

4 A. Sorry, my screen has just gone down there.

5 71 Q. Did you have a view as to whether the original 10:21
6 allegation was the one which was now being notified or
7 not?

8 A. Well, I didn't know what the original allegation was, I
9 hadn't read the file. But in terms of what would have
10 been -- as I understood it or as I knew at the time, 10:21
11 was that there was an allegation made which had been
12 investigated, which had been investigated and that it
13 was of a minor nature. That is what I understood and
14 that was from my dealings in '07/'08 when I was up and
15 down to Bailieboro Garda Station. I didn't go into the 10:21
16 context, I didn't have to go into the context, the fine
17 detail of what the original allegation was, the DPP had
18 directed on it, no prosecution. It wasn't really a
19 concern to me, the original allegation.

20 72 Q. But you prepared a letter for the Chief Superintendent 10:21
21 on the 9th, isn't that right?

22 A. Yes. Can we bring that up?

23 73 Q. Yes. Page 1764.

24 A. It's not coming up here.

25 **CHAIRMAN:** I think you can take it out, it's there 10:22
26 beside you. Take volume 7 out, inspector, and if you
27 go to 1764, it's possibly a bit easier.

28 A. Yes, I have it here.

29 74 Q. **MR. MCGUINNESS:** Is that the letter that was sent off

1 then on 14th?

2 A. That was the letter that was sent off to the assistant
3 commissioner's office on 14th along with the
4 correspondence which had been received from
5 Superintendent McGinn. 10:23

6 75 Q. Now, the file that was opened by the other clerk,
7 9/14 --

8 A. Yeah.

9 76 Q. -- seems to have been created on the 9th of May, on the
10 date the letter was originally received. I don't know 10:23
11 if you can confirm that.

12 A. No, I think it was the 12th of May.

13 77 Q. You think it's the 12th?

14 A. I think so, yeah.

15 78 Q. And that letter doesn't appear to include any assertion 10:23
16 of anyone's belief that the referral was wrong, isn't
17 that right?

18 A. That would be correct, yes.

19 79 Q. why doesn't that letter reflect what you have recorded
20 as your shared view with Chief Superintendent Sheridan 10:23
21 that the notification was wrong?

22 A. well, this minute would have been specifically prepared
23 by Chief Superintendent Sheridan.

24 80 Q. By him?

25 A. Yes. 10:23

26 81 Q. well --

27 A. It wasn't unusual for Chief Superintendent Sheridan to
28 prepare his own minutes or indeed type some of his own
29 minutes.

1 82 Q. But, you see, you typed that on his behalf and you have
2 recorded in your statement that you had previously
3 shared his view that the content of the notification
4 was wrong.

5 A. Well, I suspected this was wrong, and I hadn't any 10:24
6 confirmation at that particular point in time that it
7 was wrong so -- but I did suspect at that particular
8 time that it was wrong.

9 83 Q. You see, this is what I am anxious to get out. Had you
10 expressed your view or not to the chief superintendent 10:24
11 that you didn't think this could be right or it wasn't
12 right in your view?

13 A. I think, from my recollection of it, it was a case of,
14 you know, this is a very serious allegation. There was
15 serious doubt over it. Serious doubt over it. 10:24

16 84 Q. Okay. Well, I think you subsequently saw a report from
17 Ms. Brophy that had been sent to Superintendent McGinn,
18 perhaps you could look at page 869 on the screen.

19 A. The screen is not working here again now. 869.

20 **CHAIRMAN:** Go back, you need to take out volume 3. 10:25

21 A. Yes, I have it here, Judge.

22 85 Q. **MR. MCGUINNESS:** It should be on the screen now,
23 perhaps.

24 A. Yes.

25 86 Q. Do you recall seeing that coming up from Superintendent 10:25
26 McGinn?

27 A. At some stage, yes, I would have seen that, yes.

28 87 Q. Yes. And I think she, Ms. Brophy, is making it clear
29 that *"Following our telephone conversation today I'm*

1 *writing to confirm that a report I made to Social work*
2 *Services in Cavan on 9th August 2013 contained an*
3 *administrative error which I wish to address."*

4 Did you have any discussion with Chief Superintendent
5 Sheridan about that? 10:26

6 A. No, I don't recall having any conversation with him
7 around that or discussing that with him.

8 88 Q. Well, did you prepare another report for Chief
9 Superintendent Sheridan?

10 A. There would have been another report, a handwritten 10:26
11 report I think of the -- after that, it was the 22nd of
12 May, was it? It's the next report up I sent to the
13 assistant commissioner's office, it was a handwritten
14 report by Chief Superintendent Sheridan, yes.

15 89 Q. Had you become aware of the further letter from 10:26
16 Ms. Ward to Chief Superintendent Sheridan, also dated
17 22nd of May 2014? Perhaps you would like at that at
18 page 881.

19 A. Yes. Yes.

20 90 Q. And you see, it says: 10:27

21
22 *"It has come to my attention that due to an*
23 *administrative error a report relating to allegations*
24 *of retrospective abuse which pertained to the*
25 *above-named containing incorrect information was sent* 10:27
26 *to your station by the Child and Family Social work*
27 *Services."*

28
29 You saw that?

1 A. Yes. That letter originally went directly to Chief
2 Superintendent Sheridan. He would have opened that
3 letter himself.

4 91 Q. Okay. And I think that you prepared a response?
5 A. I did. I prepared the response. 10:27

6 92 Q. Which issued on the 9th of June?
7 A. That's correct.

8 93 Q. And had you had any discussion on the telephone with
9 anyone at that stage?
10 A. No. Not at that stage, no. 10:28

11 94 Q. And I think the response you prepared for Chief
12 Superintendent Sheridan, that is at page 882.
13 A. Yes. That's correct, I would have typed that report,
14 yes.

15 95 Q. Okay. And did you have any discussion with Chief 10:28
16 Superintendent Sheridan?
17 A. No, the only -- it wasn't really a discussion. Chief
18 Superintendent Sheridan wanted clarification on the
19 original correspondence of Ms. Ward to establish how --
20 obviously the bullet-points there set out exactly what 10:28
21 he was trying to clarify.

22 96 Q. Okay. Well, were you not concerned now, because you
23 have told the Tribunal you didn't obviously believe
24 that Maurice McCabe could have been involved in this
25 rape offence -- 10:28
26 A. Correct.

27 97 Q. -- but now you have got two notifications relating to
28 an error and were you not concerned that the chief
29 superintendent hadn't sent on to the commissioner in

1 Sligo copies of the letters or details of the error?
2 A. Well, the previous correspondence which Chief
3 Superintendent Sheridan would have sent to the
4 assistant commissioner was on foot of Ms. Brophy's
5 confirmation that the error was wrong, or that she had 10:29
6 made a mistake and it was wrong. And he did at that
7 particular time send that correspondence directly up to
8 the assistant commissioner saying that it should be
9 withdrawn, and that confirmation had been received that
10 it was a mistake by -- that was on foot of Ms. Brophy's 10:29
11 letter. So he had, prior to that, prior to that letter
12 of the 9th of June, he had sent up correspondence to
13 the AC.

14 98 Q. Okay. We have seen, we have seen the form dated 2nd of
15 May 2014 marked "*withdrawn*"? 10:30

16 A. Yes.

17 99 Q. Was there any discussion about you sending that back to
18 Superintendent McGinn?

19 A. About sending that particular form back?

20 100 Q. Yes. 10:30

21 A. No, I don't believe so. No.

22 101 Q. Okay. But I mean, you understood what had happened?

23 A. Mm-hmm.

24 102 Q. Didn't you?

25 A. Yes. 10:30

26 103 Q. That the counsellor had sent an erroneous report to the
27 social work services in Cavan?

28 A. Mm-hmm.

29 104 Q. And the Gardaí hadn't received that, isn't that

1 correct?

2 A. The -- just say that --

3 105 Q. The Gardaí hadn't received the counsellor's erroneous
4 report?

5 A. The first one? 10:30

6 106 Q. Yes.

7 A. The original one, yeah. I understood that now, yeah.

8 107 Q. And did you understand that it was Tusla who had
9 included the error in their separate Garda notification
10 to Superintendent McGinn? 10:30

11 A. Yeah. Well, that was the only bit of correspondence,
12 Mr. Chairman, that had been received in the divisional
13 office. That was the only notification that I thought
14 existed. The report that Chief Superintendent Sheridan
15 sent to the assistant commissioner on, I think it was 10:31
16 the 22nd of May, with Laura Brophy's correspondence,
17 was copied, if I'm correct, to superintendent in
18 Bailieboro, saying that it should be withdrawn. So it
19 would have been copied to him.

20 108 Q. Yes. And that's "*cc superintendent Bailieboro*" is in 10:31
21 handwriting on the typewritten statement, did you put
22 that in?

23 A. I believe it's my writing, yes. I believe it's my
24 writing. Superintendent McGinn confirmed that he did
25 receive that. 10:31

26 109 Q. Yes. But you were certainly crystal clear in your mind
27 that the only notification that was received by the
28 Gardaí and sent on to you was the one from Tusla dated
29 2nd of May?

1 A. Yeah, that was the only notification, yes.

2 110 Q. All right. I think you subsequently saw or did you see
3 the letter of the 18th of June back from Ms. Ward?

4 A. At some stage I did, yes. Yes.

5 111 Q. That is at 883. 10:32

6 A. Yes, I did see that letter, yes.

7 112 Q. And did you send that on or did the chief
8 superintendent send that on, to your knowledge, to the
9 assistant commissioner?

10 A. I don't believe that was forwarded on. I don't 10:32
11 believe, now, that was forwarded on.

12 113 Q. All right. Do you know of any reason why it may not
13 have been or wasn't?

14 A. Well, he was communicating with Ms. Ward directly at
15 that time around the seeking clarification around how 10:32
16 the error occurred. I do recall that that was a
17 particular point that he -- that he was concerned with
18 how it could have happened. And it was in that context
19 that Ms. Ward's letter was returned, trying to address
20 those issues. 10:33

21 114 Q. Okay. It appears that a second notification was
22 received in to Bailieboro, and then forwarded to Chief
23 Superintendent --

24 A. Yes.

25 115 Q. -- Sheridan, isn't that correct? 10:33

26 A. With that amended notification, yes.

27 116 Q. Yes. And do you recall when you saw that?

28 A. I'd say it was probably around 30th June, I'd say --

29 117 Q. Okay.

1 A. -- it came into the office.

2 118 Q. Okay. Well, I think in the interim, you had been in
3 touch with Ms. Ward --

4 A. That's correct. I did. I did. I was requested by
5 Chief Superintendent Sheridan on, foot of that letter 10:33
6 dated, I think, it's 18th of June, by Ms. Ward to Chief
7 Sheridan, I was requested by him to make contact with
8 her. He wasn't -- he was actually dissatisfied with
9 the clarification which was provided, it didn't really
10 address what he had asked, and he asked me to make 10:34
11 contact with her. I did have difficulty initially
12 trying to make contact with her. I rang, I think,
13 their office number and she was out of the office, but
14 I eventually did make contact with her. I obtained her
15 mobile number off a member of the office staff and I do 10:34
16 recall making contact with her. My note of the contact
17 is on 30th of June and I believe that note is supplied
18 there on disclosure.

19 119 Q. Yes. Perhaps you'd look at page 884. Now, the top of
20 the page is dated 24th of June -- 10:34

21 A. That's correct.

22 120 Q. -- 2014. It seems to record, perhaps a message left by
23 you originally. Is it your recollection that you did
24 ring and couldn't get through?

25 A. That's correct. I did ring and couldn't get speaking 10:34
26 to Ms. Ward.

27 121 Q. Okay. It says "*Telephone call from Pat O'Connell*
28 *sergeant at Monaghan Garda Station*", and that is your
29 mobile number at the time, is that right?

1 A. My mobile number, yes.

2 122 Q. And it says: *"Regarding correspondence re*
3 *administrative error Ms. D."* The second bit then seems
4 to recount a conversation that you had with her, so
5 that must have been subsequent to that -- 10:35

6 A. Yes.

7 123 Q. -- time?

8 A. I believe it is, yes.

9 124 Q. All right. Just bear with me while I read it. It
10 says: 10:35
11
12 *"Sergeant O'Connell phoned on behalf of the chief*
13 *superintendent at Monaghan and to --"*

14

15 Is that: 10:35
16
17 *"-- request for return of incorrect file. Pat*
18 *O'Connell seeks clarification regarding the*
19 *administrative error. He sought to establish how the*
20 *error came about. Was it a typographical error - cut* 10:35
21 *and paste?"*

22

23 So was that your -- you hadn't understood how it had
24 come about, but that was your -- you were suggesting
25 that as the way in which it might have come about. 10:35

26 A. Well, my recollection of my conversation with Ms. Ward
27 at the time was that when I initially did get speaking
28 to her, that certainly she was -- I took it that she
29 was a bit alarmed by the fact that they were trying to

1 get this matter tidied up. I asked how the error
2 occurred, I wasn't really getting any straight answer
3 at the time. And because I worked in administration
4 myself I just asked the question, well, you know, you
5 are talking about an administrative error and I 10:36
6 probably suggested, well, are you talking about a cut
7 and paste type error.

8 125 Q. Yes. I mean, you were making the inquiry that you
9 thought it was appropriate, obviously?

10 A. Yes, yes. 10:36

11 126 Q. She records it as follows:
12
13 *"And I stated that --"*
14
15 I can't read that word. 10:36
16
17 *"-- the error was typographical - related to a cut and
18 paste of another report. Sergeant O'Connell stated
19 that the previous report was sent to the commissioner
20 in Sligo and that need to clarify the nature of the 10:36
21 error before a report could be returned and destroyed,
22 given the nature of the report."*

23 A. That's correct.

24 127 Q. And is that something that you had been instructed to
25 do - not to agree to it - by the chief superintendent? 10:37
26 A. No. I would have been informing Ms. Ward of where we
27 were at in terms of at our office; that the report had
28 gone to the commissioner's office in Sligo and that
29 Chief Superintendent Sheridan was trying to establish

1 and get it cleared as to how the error occurred, so
2 that obviously he could report that to the assistant
3 commissioner's office, and the view within our office
4 at that time was to get the correspondence back to deal
5 with Ms. Ward's request to return it to her. 10:37

6 128 Q. Okay. But had you received instruction or were you
7 aware of any instruction that it not be sent back or
8 was that still in doubt?

9 A. I think that was still in doubt at the time, 30th of
10 June. There was, correspondence came from the 10:38
11 assistant commissioner's office on foot of -- just if
12 you could bring up the dates of it, just to help me.
13 It could possibly be around the 10th of June, maybe.
14 10th of June, I think.

15 129 Q. Okay. 10:38

16 A. I think I have it in my statement there, anyway, on --
17 if I can refer to my statement.

18 130 Q. Yes, if you wish to.

19 **MR. DIGNAM:** Page 1793.

20 A. 1793, is it? Yes. Yes. Yes, that instruction had 10:38
21 come down from the assistant commissioner's office.

22 131 Q. **MR. MCGUINNESS:** Yes. The next line refers to your
23 inquiry as to whether it was the same allegation as
24 previously reported. She then records, it's difficult
25 to read, that the report was received by -- "*It was the* 10:39
26 *first report received by their service, but seems to*
27 *relate to a previous report made to Gardaí.*" So, was
28 there doubt in your mind as to -- or in Chief
29 Superintendent Sheridan's mind, even at this stage,

1 137 Q. It says "*cut and paste*", doesn't it, "*typographical*
2 *error*" and you have it dated the 30th?

3 A. My note states, Judge, that -- when I was taking this
4 note on the actual Post-It that I had Ms. Ward's mobile
5 number on, and during the conversation I wrote down 10:41
6 three words. Number one, that it was an error. She
7 clearly said to me that it was an error, so I wrote
8 down that word. She did also state that they operated
9 from a number of -- they worked from a number of
10 templates, and I wrote down the word "*template*" on the 10:41
11 note. And then she also stated that the information
12 related to a different client and I wrote down the word
13 "*different*". And my final line on it is that "*Fiona*
14 *said that she would send in a new letter clarifying the*
15 *matters*" and I believe that led to her correspondence 10:41
16 dated 1st of July, which was the following day.

17 138 Q. Well, your note is at 1709 if you need to look at that.

18 A. I am happy enough.

19 139 Q. But you have got "*error*" and then a line?

20 A. Yeah. 10:41

21 140 Q. An arrow?

22 A. Yes.

23 141 Q. And then "*template*" and an arrow to different ideas, is
24 that right?

25 A. No, that is just another arrow. 10:42

26 142 Q. Different to --

27 A. No, it's just a different arrow. It is a triangle at
28 the end of that arrow. As I was talking to her I would
29 have --

1 143 Q. That is an another arrow, is it?
2 A. Yeah, yeah.
3 144 Q. And she said she will send a follow-up letter?
4 A. That's correct.
5 145 Q. And then there is the letter dated 30th -- sorry, the 10:42
6 1st is 887?
7 A. Yes. That is 887, yes.
8 146 Q. And she puts it in writing there?
9 A. That's correct.
10 147 Q. There is nothing in that letter which deals with part 10:42
11 of the conversation that you appear to have had about
12 whether it was the same or related to a new matter.
13 Did that strike you when you saw the letter? I know
14 it's addressed to the chief superintendent but you
15 obviously saw it as well. 10:43
16 A. I did. I saw it as well, yes. No, it doesn't, no.
17 But to me, it's clarifying that it is a complete error,
18 like.
19 **CHAIRMAN:** what page is it?
20 A. 887, Judge. 10:43
21 148 Q. **MR. MCGUINNESS:** Now, you have told the Tribunal you
22 saw the second amended notification come in and perhaps
23 we would just look at that, at 1799. Again, it's from
24 the same agency, the same address there.
25 A. Yes. 10:44
26 149 Q. And did you read through that?
27 A. I didn't go through that in any great detail. I don't
28 have any recollection of going through that in any
29 great detail. It was around the 30th of June that

1 document came into the divisional office and Chief
2 Superintendent Sheridan was dealing with that.

3 150 Q. Yes. But you see on the second page there, it tells
4 you the designated social worker dealing with this
5 matter is Carmel McAulay and it gives her phone number 10:44
6 and signed by Mr. Deeney again, but dated the 20th of
7 June?

8 A. Yes.

9 151 Q. And presumably you saw that at the time?

10 A. Yeah. Now, I wouldn't have taken any great note of 10:44
11 that, Judge, at the time. But that's what is there,
12 yeah.

13 152 Q. But these are put on the file then, isn't that right?

14 A. Yes, that was -- I think Chief Superintendent Sheridan
15 retained that on his file, yes, the divisional office 10:45
16 file.

17 153 Q. Well, you got an instruction from Chief Superintendent
18 Sheridan, isn't that right, to contact the HSE to find
19 out their intentions/strategy, isn't that right?

20 A. Yes, I got an instruction to contact Ms. Ward again. 10:45

21 154 Q. Well, you see, that is what I am wondering; was it an
22 instruction to contact Ms. Ward?

23 A. Well, that was my clear understanding of it, yes.

24 155 Q. And when did he give you that?

25 A. That was much later. Just prior to I transferring. 10:45
26 The initial instruction to contact Ms. Ward was on foot
27 of her correspondence dated 18th of June and that is
28 when I made contact with her. And I have identified
29 there that was on 30th of June 2014. I think the

1 second request, just to make another contact, was
2 following the meeting in Mullingar.

3 156 Q. You see, the request was -- the intent of the request
4 was to find out what steps had been taken or would be
5 taken by the HSE? 10:46

6 A. Yeah, but that was -- that was just -- that wasn't in
7 relation to the first letter. The time where I would
8 have made an attempt to make secondary contact was just
9 prior to -- that was actually on the day that I was due
10 to transfer, Chief Superintendent Sheridan had asked me 10:46
11 to just make contact with the HSE person that I was
12 speaking with - that was Ms. Ward at all times, nobody
13 else - to see, to establish what actions, if any, the
14 HSE had taken on foot of that. And that was the
15 instruction that I was given. 10:47

16 157 Q. Well, you certainly phoned Ms. Ward and there is a note
17 made by her of her phone call with you at page 890.
18 Did you make any note of the phone call, of any of the
19 phone calls, with Ms. Ward?

20 A. I did, on the 30th of June. That note is the first -- 10:47

21 158 Q. Those four or five words. Did you make any note of
22 this phone call?

23 A. The second phone call?

24 159 Q. Yes.

25 A. As I said, I was out of the office when I received that 10:47
26 phone call. I could only have received that phone
27 call, it was around lunchtime, and, as I have stated in
28 my statement, I was attending -- this was my last day
29 of the division, I was transferring to the Kerry

1 division the following day, and that phone call would
2 have been taken around approximately lunchtime or just
3 prior to lunchtime. I was out of the office. I wasn't
4 in a position to take a note of it.

5 160 Q. Well, first of all, I understood from your statement 10:47
6 that you had been on holidays --

7 A. Yeah.

8 161 Q. -- annual leave from 4th to 18th of July, is that
9 right?

10 A. No. I was back on 16th of July. 10:48

11 162 Q. Back on 16th?

12 A. Yeah. The 8th July --

13 163 Q. You had previously been notified of your promotion?
14 A. On 4th July -- on 8th of July, yes. I was notified of
15 my promotion on 4th and then notified of transfer on 10:48
16 8th of July.

17 164 Q. Okay. But the chief instructed you, on your return to
18 duty, to find out what the HSE's intentions were, as to
19 whether further steps had been taken or would be taken
20 in relation to the referral, isn't that correct? 10:48

21 A. Well, what he asked me to do and it was, again, on
22 the -- on the day just prior to -- or the day of
23 transfer -- the day prior to transfer he asked me just
24 to make contact with the HSE person I was speaking to,
25 that was Ms. Ward, with a view to establishing had they 10:48
26 any strategies, had they held any strategy meetings or
27 had they taken any action on foot of it themselves.
28 That is what he had asked me to do.

29 165 Q. Yeah. Well, you see, her note there says: "Chief

1 which was Ms. Ward, that is what I was asked to do and
2 that is what I did. I wasn't asked to follow up with
3 liaison persons in the Bailieboro district who might
4 have been detailed for that particular job.

5 172 Q. Well, did you know Sergeant Byrne? 10:50

6 A. Yes, I knew of Sergeant Byrne, yes.

7 173 Q. And did you know he had occupied the position of
8 liaison officer?

9 A. No.

10 174 Q. Were there any other more appropriate ones in different 10:50
11 stations, either Cavan or Monaghan, who perhaps should
12 have been contacted?

13 A. There was other officers or other liaison guards in
14 other districts. I wasn't instructed to contact any
15 liaison guard in relation to it. I was asked to make 10:51
16 contact with Ms. Ward, that is what I was asked.

17 175 Q. You see, you had seen the first notification from
18 Tusla --

19 A. That's correct.

20 176 Q. -- which identified who it had come from, who the 10:51
21 designated social worker was, Ms. Argue, on the first
22 one --

23 A. Yes.

24 177 Q. -- signed by Mr. Deeney, and you didn't phone any of
25 them, the designated people, to find out what they were 10:51
26 doing?

27 A. I wasn't asked to phone any of them. And I was quite
28 clear on this, because the correspondence which had
29 come in to the chief superintendent was directly from

1 Ms. ward. And he asked me specifically to make contact
2 with her. There was no request for me to make contact.
3 I didn't view myself as having an investigative role in
4 this at all, from the point of view of the liaison
5 structure is there, if that needed to be pursued that 10:52
6 could have been pursued through the district officer in
7 Bailieboro.

8 178 Q. Well, you see, what concerns me is, just to establish:
9 You didn't phone Ms. Argue at any stage?

10 A. No, I didn't, no. 10:52

11 179 Q. You didn't phone the Child and Family Agency at
12 St. Davnet's at any stage?

13 A. No.

14 180 Q. You didn't phone Mr. Deeney at any stage?

15 A. No. 10:52

16 181 Q. You understood that the report that had come in from
17 Ms. Brophy made it clear that she had made her report
18 to the social services in Cavan and you didn't phone
19 the social services in Cavan to find out what they were
20 doing? 10:52

21 A. No, no.

22 182 Q. And you had the second notification dated 20th of June,
23 which identified Ms. McAulay now as the designated team
24 leader and you didn't phone Ms. McAulay?

25 A. No. As I say, in my head I wasn't asked to make 10:52
26 contact with those. I was asked to make contact with
27 Ms. ward.

28 183 Q. Well --

29 A. Like, the specific request I got was to make contact

1 with Ms. Ward to establish had they any actions.
2 That's what I did.

3 184 Q. Yes. And what did she tell you?
4 A. At the time, deferring to her notes, and it corresponds 10:53
5 to what she had indicated on a previous letter, was to
6 link in with -- that the Rian service would have had no
7 follow-up actions on it and that she would obtain the
8 details of the Social Work Department dealing with it.

9 185 Q. He yes. Her note that we are looking at there says: 10:53
10 "*I informed inspector --*" you are obviously designated
11 now in her one as Inspector O'Connell?

12 A. Yes.

13 186 Q. You must have told her you had been promoted, she
14 wouldn't know, I suppose?

15 A. No, she would have seen it on the email. 10:53

16 187 Q. Pardon?
17 A. On the email.

18 188 Q. On the email?
19 A. Yes.

20 189 Q. That is on the previous email, is it? 10:53
21 A. Yes.

22 190 Q. Yes. But, "*I informed Inspector Pat O'Connell that*
23 *further action would be the remit of the Social Work*
24 *Department. We would not be involved in this*
25 *follow-up.*" 10:54

26 **CHAIRMAN:** Mr. McGuinness, what page are you on?
27 **MR. MCGUINNESS:** It's page 890.

28 191 Q. "*I agreed to obtain contact details for social work and*
29 *to pass them on to Inspector O'Connell.*"

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And at page 891, at the bottom of the page, that is your email to her earlier that day --

A. That's correct.

192 Q. -- which led to the phone call, isn't that correct? 10:54

A. That's correct, yes, yes. And on foot of that --

193 Q. On foot of that she emails Laura Brophy, and then Laura Brophy gets back to her at page 893, and then Ms. Ward, at page 894, sends you this email, isn't that correct?

A. That's correct. 10:55

194 Q. So, you were being told, and it had been made clear to you the week before by Ms. Ward that Rian weren't involved in the follow-up, you had to get in touch with the social work in Cavan?

A. Mm-hmm. 10:55

195 Q. And at that stage, did you go back to Chief Superintendent Sheridan and say, look, you may not have thought about this but you have sent me to make the inquiry of the wrong person, Ms. Ward, it's not Ms. Ward who needs to be contacted, and in fact I have now been told I should contact the social work Department? Did you go back to Chief Superintendent Sheridan and report that? 10:55

A. Well, my recollection on it is that when I received that phone call it was during -- or prior to or during a presentation lunch to mark my departure from the division. I would have relayed that information to chief superintendent who was at that lunch at that particular time, because looking at the times that 10:56

1 Ms. ward forwarded the email, that it -- the call had
2 to be made around that time. I didn't, as I said, take
3 a note of the call, I wasn't in a position to do so at
4 the time.

5 196 Q. Well, I just want to be clear, are you saying that on 10:56
6 this date, the 21st, when you spoke to Ms. ward, when
7 she told you what the position was, that you relayed
8 that immediately to Chief Superintendent Sheridan?

9 A. That's my recollection; that I did tell him at the time
10 that Ms. ward had contacted me back, that they didn't 10:57
11 have any further actions on it. I have a vague
12 recollection of it. I didn't keep a note of it, I
13 don't have --

14 **CHAIRMAN:** What was the date of the lunch, inspector?

15 A. 21st of July, Judge. 10:57

16 **CHAIRMAN:** And it was where?

17 A. Where was the lunch?

18 **CHAIRMAN:** Yes.

19 A. In the Hillgrove Hotel, Judge.

20 **CHAIRMAN:** In Cavan? 10:57

21 A. Monaghan.

22 **CHAIRMAN:** Monaghan, yes. And you think -- I am sorry,
23 I am a bit unclear, Mr. McGuinness, it's my fault, but
24 what was said at the lunch and what was said to whom
25 allegedly at the lunch or what is going on? 10:57

26 197 Q. **MR. MCGUINNESS:** well, you had emailed Ms. ward on the
27 morning of the 21st?

28 A. Yes.

29 198 Q. Just before 11:00 in the morning?

1 A. Yes.

2 199 Q. For her to get back to you?

3 A. Yes.

4 200 Q. And you gave your phone number in the email?

5 A. That's correct. 10:57

6 201 Q. She did phone you back?

7 A. Yes.

8 202 Q. You were inquiring about any follow-up --

9 A. That's correct.

10 203 Q. -- and strategy meeting with the Gardaí, isn't that 10:58

11 right?

12 A. That's correct.

13 204 Q. You don't take any issue with that term as she has

14 recorded it, strategy meeting?

15 A. No, I don't think so. No, no. I think that is a 10:58

16 fair --

17 205 Q. And she made it clear, Rian wouldn't be involved in the

18 follow-up, you have got to go to social work Department

19 in Cavan, isn't that right?

20 A. Yeah, yeah. 10:58

21 206 Q. And you didn't then do that?

22 A. Well, I didn't do that, but I passed that information

23 to Chief Superintendent Sheridan. At the time I would

24 have said I am after receiving a phone call -- because

25 it was contemporaneous, nearly. He was present at the 10:58

26 lunch as well --

27 207 Q. Yes.

28 A. -- when I got the call. I would have passed that

29 information on pretty quickly to him --

1 208 Q. Yes.

2 A. -- from that point of view. And that is my
3 recollection of it.

4 209 Q. Yes. But you see, she promised to pass you on the
5 contact details, and then in the absence of those, you 10:58
6 had nothing to pass on to Chief Superintendent Sheridan
7 if you spoke to him, in fact, and you are not perhaps
8 clear that you spoke to him, are you?

9 A. Well, I have a recollection, a vague recollection,
10 Judge, of passing -- because of the timing of it and 10:59
11 the lunch and that, I do have -- I do recall telling
12 him that I am after getting a call and that they
13 didn't -- that that section didn't do any follow-up. I
14 can't be sure whether I told him in relation to the
15 Social Work Department. But again, that information 10:59
16 was all available on the file at that particular time.

17 210 Q. Well, you see, you were sent back to the contacts that
18 had already been designated, in fact, on at least the
19 first form, isn't that right?

20 A. Yes, yes. 10:59

21 211 Q. Okay.

22 A. Now -- yes.

23 212 Q. And you have, in your second statement you have
24 elaborately explained how you got the Garda email
25 system to check your archive to see whether you got 10:59
26 this email or whether it --

27 A. Yes.

28 213 Q. All the rest of it. But there is no evidence that you
29 either forwarded this on to Chief Superintendent

1 Sheridan --

2 A. No, no.

3 214 Q. -- or dealt with it in any other way, isn't that right?

4 A. Yeah, yeah. Because this is something that I annoyed
5 me, Judge. I mean, this email, I have no recollection 11:00
6 of seeing this email on 28th of July and it would have
7 taken me probably all of about 60 seconds or two
8 minutes to deal with this email. One was by way of
9 acknowledgement back to Ms. Ward, secondly was to
10 forward it on to Chief Superintendent Sheridan, and 11:00
11 neither of the those two actions were done. And that
12 is something that I am still at a loss as to why I
13 wouldn't have done that had it come in. I either
14 overlooked to do it or I deleted it in error, that is
15 my honest explanation around that. 11:00

16 215 Q. Do you think you deleted this?

17 A. There is a possibility it could have been deleted in
18 error. A possibility. I am not sure. I don't have a
19 recollection of seeing that email on 28th of July. I
20 was -- I checked my duty sheet and I was acting 11:00
21 district officer in Listowel on that particular date,
22 and I don't actually -- well, I certainly, to answer
23 your question, didn't forward it on to Chief
24 Superintendent Sheridan and I didn't acknowledge it
25 back to Ms. Ward. 11:01

26 216 Q. But the Chairman had asked at a previous sitting, your
27 email hadn't changed --

28 A. No, no.

29 217 Q. -- your email remained the same, and it was an active

1 account and presumably that is still your email?

2 A. Yes, it is, yes.

3 218 Q. You see, I am just concerned about, you obviously knew
4 the importance of the issue vis-a-vis the allegation
5 that was false, you saw it as a rape offence, isn't 11:01
6 that correct, in the notification?

7 A. That is what it was, yes.

8 219 Q. You didn't believe it?

9 A. No.

10 220 Q. You knew Maurice McCabe? 11:01

11 A. Correct.

12 221 Q. You didn't think he would be capable of it, obviously?

13 A. That's right.

14 222 Q. And you had been involved in some discussion with your
15 chief superintendent, you knew the steps he was taking 11:01
16 and had taken, isn't that right?

17 A. Yes, some --

18 223 Q. Various reporting up to the commissioner from the
19 beginning, isn't that right?

20 A. Mm-hmm. 11:01

21 224 Q. And you must have understood that he was anxious to
22 find out from the HSE what they were doing or going to
23 do, isn't that right?

24 A. Well, as far as Chief Superintendent Sheridan was
25 concerned, he was of the view that the matter didn't 11:02
26 require any Garda investigation, and he stated that in
27 his correspondence up to the assistant commissioner
28 once he had established that no new information had
29 come to light. I believe he was tasked following the

1 Mullingar meeting - and it was he who was tasked - to
2 follow up with the HSE on it. He asked me to make
3 contact with Ms. Ward, which is what I did. She
4 obviously contacted me on the 21st of July. My
5 recollection is that I relayed that information in very 11:02
6 close proximity to when the call would have come in
7 that the HSE didn't, in particular Ms. Ward didn't take
8 any further action or it wasn't their remit. And as
9 far as I was concerned that was what I had been asked
10 to do. 11:02

11 225 Q. But I take it from your answer that you did understand
12 that the commissioner, that is the assistant
13 commissioner, wanted to know what the HSE strategy was
14 and the Gardaí, therefore, wanted to know, and your
15 chief superintendent wanted to know -- 11:03

16 A. No, I didn't, I didn't know that the assistant
17 commissioner -- because this was something that Chief
18 Superintendent Sheridan asked me. I wasn't present at
19 the meeting in Mullingar. I had come back -- returned
20 actually from scheduled leave on that date and Chief 11:03
21 Superintendent Sheridan was away to the meeting. I
22 knew I was heading on transfer, I was very busy trying
23 to tidy up and deal with a number of items in the
24 divisional office prior to my departure and hand over.

25 226 Q. Yeah, but you knew this McCabe issue was a hot potato, 11:03
26 you knew it had gone up to the commissioner --

27 A. Yes.

28 227 Q. -- and you knew what your instructions were?

29 A. Yeah. Well, I knew Chief Superintendent Sheridan was

1 dealing with it and that there had been a meeting in
2 Mullingar. I wasn't aware of what the outcome of that
3 meeting was until Chief Superintendent Sheridan asked
4 me -- well, he asked me to make contact with Ms. Ward
5 and that is what I did. 11:04

6 228 Q. You see, I am just slightly concerned in that the
7 evidence --

8 A. Sorry, just to clarify, I wasn't aware of the full
9 context of -- that that was an action from the
10 Mullingar meeting. I was asked by Chief Superintendent 11:04
11 Sheridan to make further contact with her.

12 229 Q. It doesn't matter, it was a direction from your chief
13 superintendent?

14 A. Yeah. Well, it was a request, yes.

15 230 Q. And you knew that he had been reporting, because you 11:04
16 had been typing all the letters off to the commissioner
17 in Sligo, isn't that right?

18 A. Yes, some of them, yeah.

19 231 Q. Some of them. I am just concerned that this desire to
20 find out what the HSE were going to do, or had done, 11:04
21 seems to have been abandoned or run into the ground,
22 run into the sand by the Gardaí, and nobody appears to
23 have, on the evidence to date, actually made contact
24 with the HSE, is that your understanding of it?

25 A. That is my understanding of it, yes. 11:05

26 232 Q. And can you explain --

27 A. Bar the only contact that I had with a member of the
28 HSE was with Ms. Ward. And I have clearly set out in
29 my statement that I didn't have any contact with any

1 member from Tusla regarding it.

2 233 Q. well, could it be part of a strategy just to stand back
3 and let the HSE do their work with Sergeant McCabe?

4 A. well, I think Chief Superintendent Sheridan was of the
5 view, clearly he had documented it, that the documents 11:05
6 should be withdrawn and returned to the HSE, and that
7 it didn't require Garda investigation. At the back of
8 my head, Judge, that was in the back of my head at all
9 times, that it didn't require Garda investigation.

10 234 Q. Thank you. would you answer any questions anyone else 11:05
11 may have?

12

13 **INSPECTOR O'CONNELL WAS CROSS-EXAMINED BY MR. MCDOWELL:**

14 235 Q. **MR. MCDOWELL:** Inspector O'Connell, do I understand 11:06
15 that you were discussing the referral which came in
16 from Superintendent McGinn with Chief Superintendent
17 Sheridan on the day it was received?

18 A. I am not sure whether it was on the day it was
19 received, but it was certainly on or about that time
20 anyway, yes. 11:06

21 236 Q. Because he apparently -- I mean, apparently
22 Superintendent McGinn made an effort to transmit it to
23 Superintendent Sheridan on the 7th and then sent a
24 second duplicate letter with a typographical correction
25 in it on the 8th -- 11:06

26 A. That's correct.

27 237 Q. -- isn't that right?

28 A. That's correct, yeah.

29 238 Q. Did you receive one or both of those letters?

1 A. I believe both were received.

2 239 Q. I see.

3 A. I believe both were received.

4 240 Q. So he actually -- let's be clear about this, the very
5 day he got this in he was writing recommending a 11:06
6 reopening of this matter, is that right?

7 A. Sorry?

8 241 Q. The very day that Superintendent McGinn got this report
9 with the digital penetration allegation --

10 A. Yeah. 11:07

11 242 Q. -- he wrote to Chief Superintendent Sheridan
12 recommending that the matter be reopened?

13 A. Yeah. That would be the timelines, yeah. That his
14 recommendation was that it would be reviewed, I think.
15 Is that correct? 11:07

16 243 Q. I just want to be clear about this, and then he sent
17 with a duplicate with a tiny typographical error in it
18 on the 8th?

19 A. Yeah, the correspondence that came in was dated 8th,
20 8th of May. That is what came in on his report. 11:07

21 244 Q. It came in on the 8th?

22 A. Well, his report was dated the 8th of May, it came into
23 the divisional office on 12th of May.

24 245 Q. I see. But, I mean, you have just said that you think
25 both arrived in? 11:07

26 A. Well, I think both -- there was definitely -- there is
27 definitely a copy, I think, of the -- well, I stand
28 corrected but I think there is a copy of the 7th on the
29 file. It could have been copied in as part of

1 disclosure. But the report from Superintendent McGinn
2 that came in with that notification dated 2nd of May
3 was his report dated 8th of May.

4 246 Q. And are we clear --

5 A. I think he had been drafting a report on the 7th of 11:08
6 May.

7 247 Q. It looks like more than a draft, because it has a
8 date-stamp --

9 A. Yeah.

10 248 Q. -- and if you have a copy of both, it's unlikely -- 11:08
11 A. Yeah.

12 249 Q. -- he would have sent you a draft which he had put --
13 A. Well, there was some minor -- there was some, as you
14 said, minor typographical errors which he had
15 corrected. 11:08

16 250 Q. Doing your best and assisting the Tribunal --
17 A. Yes.

18 251 Q. -- is it your view that he probably sent you both?
19 A. It's possible both came in, yes.

20 252 Q. Well, how could both be on your file if he didn't send 11:08
21 them to you?

22 A. Yeah, well, it's --

23 253 Q. It's not just possible, it's probable, isn't it?
24 A. It's probable, yeah. Yeah.

25 254 Q. Yes. So the probability is that he sent a copy of this 11:08
26 memo on the 7th and on the 8th with the slight
27 typographical error in it?

28 A. Yeah. They would have both came in on the same
29 correspondence, anyway, Judge.

1 255 Q. And both of them may have come in on the same post --
2 A. Yeah.

3 256 Q. -- on the 12th, is that right?
4 A. No, well, I would say they would have come in on the
5 one correspondence on the 12th. 11:09

6 257 Q. I see. And you are in charge of the private office, so
7 to speak, of the chief superintendent, is that right?
8 A. That's correct, yeah.

9 258 Q. And did he call you in to discuss this with you?
10 A. We would have certainly discussed it in his office, 11:09
11 yeah, at that particular time, yes.

12 259 Q. You wouldn't have discussed it in front of the civilian
13 employees?
14 A. No, no.

15 260 Q. So he called you into his office to discuss the fact 11:09
16 that Sergeant McCabe was being accused of, according to
17 the documentation, rape, is that right?
18 A. That's correct, yes.

19 261 Q. And your immediate reaction was one of considerable
20 surprise and shock that somebody who you knew could be 11:10
21 accused of such a serious offence?
22 A. That's correct.

23 262 Q. And did Superintendent Sheridan share that point of
24 view?
25 A. His view was that this -- you know, my sense that I got 11:10
26 was that he viewed it as, this must be a mistake.

27 263 Q. Well, you see, the point is that looking at it in cold
28 black and white, there was a suggestion that Ms. D had
29 told Tulsa in relation to her complaint against

1 Sergeant McCabe that it entailed digital anal and
2 vaginal penetration, isn't that right?

3 A. Mm-hmm.

4 264 Q. And there were two immediate possibilities there, one
5 of which was that she had ramped up her allegation 11:10
6 against Sergeant McCabe --

7 A. Mm-hmm.

8 265 Q. -- and that this was a lot more serious than anybody
9 had ever understood before, that was one?

10 A. That was one. 11:11

11 266 Q. And the second was, that somehow somebody had put words
12 in her mouth which couldn't be right, isn't that right?

13 A. That's correct, yeah.

14 267 Q. Surely the first one was the most obvious one, that she
15 had made a new fresh ramped up claim of sexual abuse? 11:11

16 A. Yeah. well, I suppose looking at it in black and
17 white, what was on the page clearly needed to be
18 established how did this come about, how was this
19 report, disclosure, received.

20 268 Q. Because yourself and Superintendent Sheridan were of 11:11
21 the view that was never suggested until now, this is a
22 bit of a shock to both of us?

23 A. Well, it was certainly a shock to me, anyway, yes.

24 269 Q. And you must have been wondering did she say this or
25 did somebody, somehow, mis-record her as having said 11:12
26 this?

27 A. Yeah.

28 270 Q. But either of those was a working possibility, the day
29 you looked at it, isn't that right?

1 A. Yeah, it would need to be verified, yeah.

2 271 Q. Yes. Now, did Superintendent Sheridan say anything to
3 you about a conversation with Superintendent Leo
4 McGinn, that Leo McGinn had informed him that there was
5 an error in it? 11:12

6 A. No.

7 272 Q. No. Because he has given evidence here, I don't know
8 whether you were here for it, that he believes that
9 prior to receiving this letter, and obviously prior to
10 discussing it with you, that he had had a conversation 11:12
11 with Superintendent McGinn in which Superintendent
12 McGinn told him there was something erroneous about the
13 report -- about the statement. Did he mention that
14 possibility at all to you?

15 A. No, he didn't mention that he had been speaking to 11:13
16 Superintendent McGinn. I mean --

17 273 Q. And did he mention that Superintendent McGinn had told
18 him there was something wrong with this report?

19 A. No, he didn't say that to me, no.

20 274 Q. And surely it would have been very surprising to you if 11:13
21 the pair of you were looking at this document in a
22 state of shock, that he wouldn't say, by the way, Leo
23 McGinn thinks it's wrong too and we have been
24 discussing it over the last couple of days?

25 A. Yeah, well, Chief Superintendent Sheridan wouldn't 11:13
26 certainly share his mind on all things with me, you
27 know.

28 275 Q. Sorry?

29 A. He certainly wouldn't share his mind on all things with

1 me.

2 276 Q. No, but it was very strange that you were there in a
3 state of shock and if his evidence is to be believed,
4 Superintendent McGinn had already told him that there
5 was an error in all of this? 11:14

6 A. Yeah. Well, I certainly wasn't aware of the content of
7 any conversations that he had with Superintendent
8 McGinn. I believe that he had spoken to him, but I
9 wasn't aware of the content.

10 277 Q. I see. You see, I am trying to work out in my own mind 11:14
11 how you could possibly have had that conversation with
12 Superintendent Sheridan if he already had reason to
13 believe that a mistake had been made and that this was
14 a false report? Why wouldn't he say that to you?

15 A. Well, he said to me, he said -- what he said to me was 11:14
16 that this must be a mistake. That is what he said.
17 That is what was discussed. Whether it was a false
18 report --

19 278 Q. But he didn't say that the man who had sent it on to
20 him was already of the view that there was an error and 11:14
21 had done some preliminary inquiries which led him to
22 that view?

23 A. No, no. We certainly didn't have a long and detailed
24 discussion about it. It was something that had come
25 in, it was another item that required follow-up because 11:15
26 obviously the correspondence had been received. But we
27 didn't have a long and detailed discussion about it,
28 but we certainly -- he drafted a report then on foot of
29 that which was sent to the assistant commissioner and

1 it was dated the 14th of May.

2 279 Q. Well now, who drafted the letter of the 14th of May to
3 Assistant Commissioner Kenny?

4 A. That would have been Chief Superintendent Sheridan.

5 280 Q. And did you have it typed up? 11:15

6 A. It was typed up, yes.

7 281 Q. And there isn't any reference whatsoever to any doubt
8 about the correctness of the allegation of digital rape
9 in it, isn't that right?

10 A. No, that's correct. And you addressed that, yeah. 11:15

11 282 Q. Well, were you a bit shocked that Chief Superintendent
12 Sheridan would report it upwards without referring to
13 the fact that, number one, he himself believed it was
14 likely to be mistaken, and, number two, that he had
15 already spoken to Superintendent McGinn, who had 11:16
16 informed him it was mistaken?

17 A. As I said, I wasn't aware that he had spoken to
18 Superintendent McGinn on it. I mean, what I was -- the
19 report dated the 14th of May was what Chief
20 Superintendent Sheridan had directed the issue to the 11:16
21 assistant commissioner.

22 283 Q. But I mean, but Superintendent Kenny's -- sorry,
23 Sheridan's report to Commissioner Kenny didn't flag at
24 all that there was any problem with this report?

25 A. No. And I think you have established that with Chief 11:16
26 Superintendent Sheridan.

27 284 Q. Mmm?

28 A. No, and I think you have established that with Chief
29 Superintendent Sheridan.

1 285 Q. Yes.

2 A. Yes.

3 286 Q. Well, you heard his evidence?

4 A. Yes.

5 287 Q. And it came from your office? 11:16

6 A. It came from Chief Superintendent Sheridan, yes.

7 288 Q. Yes. But did you not think it was strange at the time

8 that he was holding back on what, if his evidence is

9 true, he knew to be the mistaken nature of this report

10 when he sent it on, on the 14th of May? 11:17

11 A. Sorry, what is the question?

12 289 Q. Did you not think that it was strange that, if his

13 evidence is correct, he was holding back his knowledge

14 that this was a mistaken report when he sent it on to

15 Commissioner Kenny on the 14th of May? 11:17

16 A. He obviously held back that information, yes. I didn't

17 know that information --

18 290 Q. Sorry, you have told us he doesn't share everything

19 with you but surely in these circumstances, he was

20 obliged to share this with Commissioner Kenny, not just 11:17

21 send him a false allegation masquerading as a true

22 allegation?

23 A. Well, I don't -- I don't know the reason why he didn't

24 put that in.

25 291 Q. You see, if you look at the letter of the 14th, he says 11:18

26 the allegation, which was one of digital rape in the

27 Garda referral form, was one which had been

28 investigated in 2007?

29 A. Yes.

1 292 Q. And you are saying that you had a conversation in which
2 you both expressed shock that this allegation could be
3 made against Sergeant McCabe but he had never told you
4 that he had already been told it was a mistaken
5 allegation by Superintendent McGinn, is that right? 11:18

6 A. That's correct, yeah. He didn't -- I wasn't aware of
7 any conversation that he had with Superintendent McGinn
8 at that time prior to -- he didn't disclose that to me,
9 and in terms of that piece of information not being on
10 the report, I can't -- I can't give you a reason why it 11:18
11 wasn't on the report.

12 293 Q. You heard his evidence and I take it you agree with it,
13 that the ordinary and natural meaning of his letter of
14 the 14th of May was that an allegation of digital rape
15 had been made? 11:19

16 A. Yeah, yes.

17 294 Q. And --

18 A. That is the way --

19 295 Q. And that is what Commissioner Kenny was to draw from
20 it? 11:19

21 A. Yeah. That's what had come in on the correspondence
22 from the notification, yeah.

23 296 Q. And this was a man who was the centre of national
24 publicity and at commissioner level -- assistant
25 commissioner level, An Garda Síochána is being misled 11:19
26 into believing that this allegation of digital rape had
27 been investigated in 2007, is that so?

28 A. Well, that would appear from the letter, that is
29 what -- that is what was sent up, yes. That is the

1 content on the letter, yeah.

2 297 Q. well --

3 **CHAIRMAN:** well, what Mr. McDowell is putting to you,
4 in fact, is: If that was happening it was very weird.

5 A. Yeah. Obviously that piece of information that is 11:20
6 missing from that is --

7 **MR. MCDOWELL:** I was hoping the Tribunal would draw
8 that inference. I hadn't yet put it to him. I am
9 going to come to it in a moment.

10 **CHAIRMAN:** No, no, no, I am not drawing any inference, 11:20
11 I am just listening at the moment.

12 **MR. MCDOWELL:** In the fullness of time I was hoping it
13 would draw that --

14 **CHAIRMAN:** well, I don't know, Mr. McDowell. I just
15 have to think. But, look, it's just this: We are 11:20
16 perhaps losing sight of the wood for the trees here. I
17 mean, in the event that an allegation is made of
18 someone, let us say, in relation to cheque fraud and
19 it's investigated and it's discovered the person
20 couldn't have committed any cheque fraud because 11:20
21 whatever reason, they were nowhere near the bank where
22 the cheques were passed on at the time, and then you
23 close the file and then five years later you get an
24 allegation, same date, of cheque fraud. You think it's
25 not new, but in some way it's enhanced, so why are you 11:20
26 sending around the enhanced notification knowing that
27 you have already cleared the person? That is what is
28 involved in this. This is what is so odd about it, you
29 know.

1 A. Yeah, could we bring up the letter, Judge, on the 14th
2 of May?

3 **CHAIRMAN:** You want to have a look at it?

4 A. Yes, just to the assistant commissioner, yeah.

5 **CHAIRMAN:** Could we have a look at it, Mr. McDowell? 11:21

6 **MR. MCDOWELL:** which letter?

7 A. That letter that you are referring to.

8 **CHAIRMAN:** It's 1764. That is what Mr. McDowell was
9 asking you. It's Volume 7, Mr. McDowell.

10 **MR. MCDOWELL:** Yes. 11:21

11 298 Q. The letter says:

12

13 *"I refer to the attached correspondence from District
14 Officer Bailieboro dated 8th of May 2014.*

15

16 *The allegations contained in the amended referral have
17 been the subject -- attached referral, have been the
18 subject of a previous Garda investigation which
19 resulted in the Director of Public Prosecutions
20 directing no prosecution against the alleged offender, 11:22
21 Mr. McCabe.*

22

23 *It is my understanding Ms. D has made a complaint based
24 on the allegations set out in the attached referral
25 letter to the following parties: Micheál Martin, TD, 11:22
26 and that he has subsequently referred the matter to An
27 Taoiseach, Enda Kenny, An Garda Síochána Ombudsman
28 Commission.*

29

1 *In the circumstances, I recommend that we await further*
2 *communications from the parties listed above prior to*
3 *commencing a review of this investigation.*

4
5 *A full copy of the Garda investigation file is* 11:22
6 *available at this office, forwarded for your*
7 *information and consideration."*

8
9 Now, looking at that in the circumstance that we are
10 led to believe that Superintendent Sheridan knew on 11:23
11 that date that this was an old allegation and that an
12 error had been made, I have got to suggest to you that,
13 to use the Tribunal's word, it was a very weird letter
14 to send in the circumstances.

15 A. Yeah. well, the second paragraph probably doesn't 11:23
16 read, doesn't read -- doesn't reflect the fact that the
17 referral was erroneous.

18 299 Q. But the statement that Ms. --

19 A. The allegations, you see, contained in the attached
20 referral have been the subject of previous -- that 11:23
21 would lend one to think these have been subject to a
22 previous investigation, yes, it would.

23 300 Q. But the statement that Ms. D had also made a complaint
24 based on the allegations set out in the attached
25 referral form to the leader of the opposition, which 11:23
26 had been sent on to the Taoiseach and to GSOC, what was
27 Superintendent Kenny to believe when he read that -- or
28 sorry, Assistant Commissioner Kenny, to believe when he
29 saw that?

1 A. Well, I don't know what he believed. I am sure he will
2 give evidence as to what he did believe when he
3 received it.

4 **CHAIRMAN:** No, it's not that. I mean, lawyers spend a
5 lot of time disputing the meaning of words, etcetera, 11:24
6 etcetera, but usually it's a waste of time - they are
7 perfectly clear. And this seems perfectly clear. What
8 Mr. McDowell is asking you, look, don't worry about the
9 hypothetical crazy assistant commissioner who might
10 think all kinds of strange things, if this is supposed 11:24
11 to convey something, what does it convey? That is --

12 A. What message is it conveying, yes.

13 **CHAIRMAN:** -- the question. I am not saying, by the
14 way, just for fear anyone will quote me, that Assistant
15 Commissioner Rooney or Kenny or anybody else is crazy. 11:24
16 I am sure they are very sensible individuals. But, I
17 am just saying, take the plain ordinary meaning.

18 A. Yeah, the message within that is -- that is the message
19 it would convey, yes.

20 301 Q. **MR. MCDOWELL:** So that a rape allegation had been made, 11:24
21 a rape allegation had been investigated and a rape
22 allegation had been made to Micheál Martin and the
23 Taoiseach was now receiving it, and that a rape
24 allegation was being sent to An Garda Síochána for
25 consideration. 11:25

26 A. Yeah.

27 302 Q. And then it says:

28

29 *"In the circumstances I recommend that we await further*

1 *communication from the parties before commencing a*
2 *review of the investigation. "*

3
4 So, we wait for GSOC and the Taoiseach and Micheál
5 Martin or whoever, before we start reinvestigating. 11:25
6 Does that strike you as a strange recommendation to
7 make? Here is a rape allegation, it's been made, it's
8 over the net in tennis terms, we wait for it to come
9 back before we review the investigation.

10 A. Well, to be honest, I can't make a call on what Chief 11:26
11 Superintendent Sheridan's recommendation was. That is
12 what he wrote, Judge. Like, I mean, if I was asked to
13 review that and give that the okay before it went out,
14 then certainly maybe I would have picked up on a few
15 things, but I didn't do that. 11:26

16 303 Q. Well, could I bring you to three emails which have been
17 considered in evidence before in this Tribunal?

18 A. Yes.

19 304 Q. The first is one dated the 15th of May 2014 and it's
20 page 867. Do you see that? 11:26

21 A. Yes.

22 305 Q. And it says -- it's from Laura Brophy to Fiona Ward,
23 and it says:

24
25 *"Hi Fiona* 11:27
26 *I just wanted to update you of my contact with Eileen*
27 *Argue, team leader, in the Cavan Social Work Service.*
28 *I had some difficulty getting a hold of Ms. Argue so it*
29 *was just minutes ago I was able to speak with her*

1 *directly. Ms. Argue informed me that she had contacted*
2 *the chief superintendent in charge of this*
3 *investigation and that he informed her that the alleged*
4 *has not yet been contacted in relation to this case as*
5 *they were just beginning to look into the report from* 11:27
6 *the social services yesterday."*

7
8 Now, this is sent on the 15th, so it refers to -- they
9 were just beginning to look at the matter on the 14th.

10
11 *"Ms. Argue informed him of the error on the report and*
12 *has told him that she will issue him with a new amended*
13 *report and a copy of my letter to social work*
14 *explaining the administrative error.*

15 *I requested that we get the original copy with the* 11:28
16 *errors on it back to be destroyed and she said they*
17 *were going to do that on their end but could not*
18 *guarantee that the chief superintendent will return it*
19 *but she will request this.*

20 *Ms. Argue informed me that he mentioned something about* 11:28
21 *keeping the original along with the updated report.*
22 *If you have any questions about this I am on the mobile*
23 *at 4:30pm today."*

24
25 was there any discussion, ever, to your knowledge, 11:28
26 between Ms. Argue and Chief Superintendent Sheridan?

27 A. Not to my knowledge, Judge.

28 306 Q. But we know that if this matter was going to be
29 reopened, and if we were only getting around to -- they

1 were just beginning to look at the report and that
2 Sergeant McCabe hadn't been contacted, that that would
3 have been something which would not have been open,
4 that wouldn't have been for Superintendent McGinn to
5 do, isn't that right? 11:29

6 A. I believe that Ms. Argue never spoke to Chief
7 Superintendent Sheridan in relation to it.

8 307 Q. No, but it wouldn't have been -- Superintendent McGinn
9 would have had no function in reopening an
10 investigation and saying he was just looking at the 11:29
11 file for the first time on the 14th, would he?

12 A. He would have no function, sorry?

13 308 Q. It wouldn't be his function to reopen an investigation?

14 A. No.

15 309 Q. He had in his letter of the 7th/8th of May recommended 11:29
16 that that step be taken, isn't that right --

17 A. Yeah.

18 310 Q. -- by people outside the area?

19 A. Yeah. He would have been in receipt of the
20 notification which had Ms. Argue's details on it. Now, 11:29
21 I don't know whether Ms. Argue spoke to Superintendent
22 McGinn, because those would have been the contact
23 details that would have been on the initial --

24 311 Q. well, she could theoretically have been mixing up her
25 chief superintendents with her superintendents? 11:30

26 A. She could, yeah. She could, yeah. That is fair.

27 312 Q. But if that is the case she was being told by
28 Superintendent McGinn that they had only got around to
29 looking at the report from social services yesterday,

1 which was the 14th of May, which couldn't be right?

2 A. No, that couldn't be right, no.

3 313 Q. Isn't that right?

4 A. That couldn't be right, no.

5 314 Q. But there was one person who could have just started 11:30
6 looking at it at that stage and that is Chief
7 Superintendent Sheridan. He had only been told about
8 it on the 12th.

9 A. Well, yeah. The correspondence was received on the
10 12th, yes. 11:30

11 315 Q. Yes. And do you see, that email was sent at two
12 minutes past three, and three-quarters of an hour
13 later, Laura Brophy sent Fiona a note saying:
14

15 *"Just a quick update. I tried Eileen Argue again but 11:30
16 unfortunately she is out of the office so I sent her an
17 email to update her.
18 I received a call back from the superintendent and he
19 informed me that he had not been told about the error
20 so I explained the issue to him. 11:31
21 He told me the matter has been given over to the
22 commissioner and a separate team to investigate the
23 case outside the region.
24 However, I agreed to send him a copy of the amended
25 report by registered post today and he will contact 11:31
26 those with a current copy of the erroneous report to
27 inform them.
28 I have sent the amended report and he will have it by
29 Monday morning and he will copy it to the relevant*

1 hadn't received the error was in relation to her
2 original letter which was never received by the Gardaí.
3 Her original letter, Ms. Brophy's, was never received
4 by the Gardaí.

5 321 Q. It appears that on the 16th he was alleging to 11:33
6 Ms. Brophy that he was unaware of this error?

7 A. That appears from that email, yes.

8 322 Q. And yet we have sworn evidence that the error had been
9 detected and known about well before that.

10 A. Well, that is what you can conclude from the email 11:33
11 message, I mean, that is -- that is the message you can
12 take out of that.

13 323 Q. And again, if we go to page 444, we have Laura Brophy
14 emailing Eileen Argue on the 16th of May 2014,
15 referring back to their telephone conversation of the 11:34
16 previous day, which is the 15th.

17
18 *"Following our phone conversation yesterday I am*
19 *contacting you to inform you that I had another call in*
20 *relation to the retrospective report which, as you are 11:34*
21 *aware, contains a clerical error. I was informed that*
22 *the superintendent in the jurisdiction referred to in*
23 *the report was not yet aware of the clerical error and*
24 *has been asked to meet with the Garda Commissioner in*
25 *relation to the case. 11:35*

26 *I have agreed to send the superintendent the amended*
27 *and correct report by registered post today.*
28 *If you have any queries relating to this, please don't*
29 *hesitate to contact me on..."*

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On her phone number. So, here we have the superintendent apparently -- or somebody telling her that the superintendent was not yet aware of the clerical error and had been asked to meet with the Garda Commissioner in relation to the case on the 16th. Can you throw any light on how that could have been said in good faith to Ms. Brophy and who could possibly have said it?

11:35

A. It would appear to me that the only person communicating with Ms. Brophy at that time was Superintendent McGinn.

11:35

324 Q. And why would he tell her that he anticipated discussing the matter with the Commissioner on the 16th?

11:36

A. Why would he tell her that?

325 Q. Why would he tell her that?

A. I don't know, he possibly had -- possibly had a view of what was happening with it. He could have had that from communicating with Chief Superintendent Sheridan.

11:36

326 Q. Well, we know that in a fit of enthusiasm on the 7th or 8th he had strongly recommended the reopening of this matter, partly, he says, on the basis that Superintendent Cunningham was the wrong man to have carried out the original investigation.

11:36

A. Yes.

327 Q. You heard that?

A. Yes. I heard that, yeah.

328 Q. And if this is to be believed, he was telling Laura

1 Brophy that there was an urgency that he should have
2 the correct version because he was due to speak to the
3 Commissioner about it.

4 A. Yeah, if that is to be believed. Now, the thing that
5 you have to bear in mind as well is that there is a lot 11:37
6 of mixing up of ranks in some of the communications
7 that we have seen.

8 329 Q. Well, that message could have come from Ms. D herself,
9 it could have come from her father --

10 A. Yeah. 11:37

11 330 Q. -- it could have come from Superintendent McGinn --

12 A. Yeah, I believe --

13 331 Q. -- or perhaps there is somebody else that I am leaving
14 out as the possible senders of that information. But
15 the clear implication was that the matter was -- 11:37
16 Ms. Brophy was being told in a number of messages that
17 the matter was now outside the area for investigation
18 and that the commissioner, presumably we are talking
19 about the assistant commissioner, was to become
20 involved in a discussion on it? 11:37

21 A. Yes.

22 332 Q. And that is the 16th?

23 A. Yes.

24 333 Q. And that is at a time, curiously, when the man for whom
25 you worked, Chief Superintendent Sheridan, had sent 11:37
26 forward a document that he knew or believed to be
27 erroneous, without any warning that there was any
28 problem with it?

29 A. Yes. He had sent a report up on the 14th, he did state

1 in the report and the communication and the message we
2 have discussed, he -- sorry?

3 334 Q. No, you finish.

4 A. So, yes, he did send up a minute to the assistant
5 commissioner on the 14th of May. That happened, that 11:38
6 communication, those emails, happened on the 16th of
7 May. On receipt then of when Ms. Brophy sent the
8 correspondence to Superintendent McGinn, that was
9 subsequently forwarded to Chief Superintendent
10 Sheridan, and he forwarded that to the assistant 11:38
11 commissioner, clearly confirming, yes, this is a
12 mistake, it should be withdrawn.

13 335 Q. Well, we will stop there for a second. You are not
14 suggesting, I take it, and -- well, anyway it's not for
15 you to suggest or even for me to suggest. You are not 11:38
16 suggesting Ms. Brophy could have imagined those
17 conversations?

18 A. Not at all, not at all. I mean, the reference to the
19 Garda Commissioner there I believe was taken up
20 incorrectly. 11:39

21 336 Q. What do you think it was a reference to?

22 A. I think that was possibly a reference to the assistant
23 commissioner.

24 337 Q. Yes. Because you might refer to an assistant
25 commissioner as Commissioner -- 11:39

26 A. Correct.

27 338 Q. -- Kenny, isn't that right?

28 A. Yes, correct.

29 339 Q. But it cannot be that she imagined a reference to

1 commissioner -- to Commissioner or assistant
2 commissioner --

3 A. No.

4 340 Q. -- completely?

5 A. No, no. 11:39

6 341 Q. So somebody was telling her --

7 A. I believe Superintendent McGinn probably told her that,
8 yeah.

9 342 Q. Somebody was telling her that Superintendent McGinn was
10 due to have a meeting with either the commissioner or 11:39
11 an assistant commissioner, most likely the latter,
12 would you agree?

13 A. Most likely the latter, yeah. Superintendent McGinn
14 would have -- I believed that that communication is
15 based around contact between Superintendent McGinn and 11:40
16 Ms. Brophy, and that is where she got the information
17 from, Superintendent McGinn. I believe that is who she
18 is referring to in that email.

19 343 Q. So was such a meeting with Assistant Commissioner Kenny
20 in contemplation at the time? 11:40

21 A. At that time, I don't believe -- from my knowledge or
22 within the divisional office I didn't believe a meeting
23 was in contemplation at that time. Subsequently
24 correspondence was received from the Commissioner's
25 office in Sligo that he requested a meeting, but I 11:40
26 wasn't aware that at that time there was any meeting
27 contemplated, no.

28 344 Q. Well, can I ask you this, Inspector O'Connell --

29 A. Yes.

1 345 Q. -- why would it not be in contemplation? On the face
2 of it he was being informed that Sergeant McCabe was
3 now being accused of a rape offence, Sergeant McCabe
4 was at the very centre of a national political storm --
5 A. Mm-hmm. 11:41

6 346 Q. -- why would it not be that he would want to get to the
7 bottom of this and find out something more about it?
8 A. Because within a few days of that, of the 16th and
9 correspondence being received from Ms. Brophy, Chief
10 Superintendent Sheridan had sent that letter to -- or 11:41
11 minute to him to the effect that, confirming that it
12 was a mistake and it didn't require any Garda
13 investigation.

14 347 Q. Yes. And that was on the 21st, isn't that right?
15 A. Yeah, it was in or around that time, yes. 11:41

16 348 Q. He wrote a letter on the 21st saying that it was the
17 same old matter --
18 A. Yeah.

19 349 Q. -- and it didn't require any further investigation?
20 A. Yes. 11:41

21 350 Q. But up to that point are you suggesting that he had
22 orally communicated that information to the assistant
23 commissioner?
24 A. No, I don't know that. I don't know if he had any
25 direct oral communication with the commissioner on it. 11:42
26 And I mean Commissioner Kenny, Assistant Commissioner
27 Kenny.

28 351 Q. The letter of the 21st only issued after Superintendent
29 McGinn had been informed in writing --

1 A. Yeah, once confirmation --

2 352 Q. -- that the allegation was incorrect?

3 A. Yes, once Ms. Brophy's amended report confirming that

4 it had been an error, that was forwarded up then and

5 the chief superintendent's minute accompanying that 11:42

6 sets out his views on it.

7 353 Q. I see. So are you aware of any communications between

8 Assistant Commissioner Kenny and Chief Superintendent

9 Sheridan where he was warned orally that the letter of

10 the 14th of May was hugely misleading? 11:43

11 A. No, I am not, sir, no.

12 354 Q. Are you aware of any file entry referring to that in

13 any of the records --

14 A. Am I aware of any file, is it? Sorry?

15 355 Q. A file entry or record of any kind of a warning to the 11:43

16 assistant commissioner that all of this was --

17 A. No, no, I am not.

18 356 Q. -- completely wrong?

19 A. No. Other than what the correspondence that went

20 through the divisional office reports. 11:43

21 357 Q. And as I take your evidence, and I just want to be

22 clear about it, you had no hint in your conversation

23 with Chief Superintendent Sheridan in the aftermath of

24 receiving the letter on the 12th, that he had already

25 spoken to Superintendent McGinn and had already been 11:44

26 informed that the matter -- that the digital rape

27 allegation was a mistake?

28 A. No, he did not tell me that but I mean, I had a sense

29 that he had spoken to him. I mean, from my experience

1 it wouldn't be unusual for superintendents to
2 communicate directly to chief superintendents or chief
3 superintendents to the rank above them. That would not
4 be unusual.

5 358 Q. But if he did entertain such a doubt about the matter, 11:44
6 he apparently decided not to warn Assistant
7 Commissioner Kenny of such doubts when he wrote to him
8 on the 14th of May?

9 A. Yeah, that's correct.

10 359 Q. Now, there is a reference there to nobody informing 11:44
11 Sergeant McCabe of the matter, isn't that right?

12 A. Yes.

13 **CHAIRMAN:** Where is that, Mr. McDowell?

14 **MR. MCDOWELL:** It's -- where is it?

15 A. Earlier on, is it? 11:45

16 360 Q. Yes, I think it's the Argue report, yes. Yes, it's at
17 page 867.

18 **CHAIRMAN:** This is Laura Brophy to Fiona --

19 **MR. MCDOWELL:** Laura Brophy to Fiona Ward. And in the
20 third sentence reads: 11:45

21
22 *"Ms. Argue informed me that she had contacted the chief*
23 *superintendent in charge of this investigation and he*
24 *informed her that the alleged had not yet been*
25 *contacted in relation to this case as they were just* 11:45
26 *beginning to look into the report from social services*
27 *yesterday."*

28 **CHAIRMAN:** Yes, sorry, I did note that at the time.
29 That is Sergeant McCabe obviously, he is called the

1 alleged. whatever -- that is not -- it's social work
2 speak, I presume?

3 **MR. MCDOWELL:** Yes, that is the phrase used in social
4 work.

5 361 Q. But did anybody at any stage, to your knowledge, 11:46
6 anywhere, think of alerting Sergeant McCabe to this
7 error?

8 A. Not to my knowledge. It certainly wasn't discussed
9 with me as regards contacting him.

10 362 Q. And I don't want to go over the material that 11:46
11 Mr. McGuinness went over at too much length but it does
12 appear that after the Monaghan meeting --

13 A. Sorry, which meeting?

14 363 Q. Sorry, the Mullingar meeting, rather, the Mullingar
15 meeting, that Chief Superintendent Sheridan deputed to 11:46
16 you the function of contacting the HSE?

17 A. No, I didn't realise that that was an action specific
18 out of the meeting because I wasn't at the meeting. I
19 was asked to contact Ms. Ward again. I didn't fully
20 appreciate that that was an action that he was tasked 11:47
21 with out of the meeting.

22 364 Q. And you have no recollection of Ms. Ward telling you
23 that she had no further function in the matter and that
24 the HSE were the people who you should be contacting --

25 A. Other than what we have -- what I have given evidence 11:47
26 earlier, that on the 21st that the phone call that was
27 made, yes.

28 **MR. MCDOWELL:** Thank you, inspector.

29 A. Thank you.

1 **CHAIRMAN:** Mr. Dockery?

2 **MR. DIGNAM:** Chairman, I think Mr. Dockery represents
3 Inspector O'Connell, so I think the running order --

4 **CHAIRMAN:** well, I don't mind, you can always go back.
5 It's Mr. Dockery. 11:47

6 **MR. DOCKERY:** Very good. Very briefly.

7

8 **INSPECTOR O'CONNELL WAS EXAMINED BY MR. DOCKERY:**

9 365 Q. **MR. DOCKERY:** I think, Inspector O'Connell, you have
10 given evidence that you got to know Sergeant McCabe 11:48
11 from in or about January '07 after your appointment as
12 a divisional training sergeant in Monaghan, isn't that
13 so?

14 A. Yes, that's correct. In January '07 I took up as the
15 divisional training sergeant along with Sergeant Regina 11:48
16 McArdle.

17 366 Q. And what impression did you have, what regard did you
18 have for him throughout the years after that?

19 A. As I said at the outset, I would have been briefed by
20 Sergeant McArdle as to who are the key personnel. She 11:48
21 had been in the position a lot longer than I had, she
22 was experienced. She had briefed me as to who the key
23 people were that I needed to get to know as the
24 training sergeant. One of them was Sergeant McCabe,
25 and she always spoke in positive terms about him. I 11:48
26 would certainly have been influenced by that. I would
27 also have been influenced by my own interactions with
28 Sergeant McCabe when I met him in Bailieboro for the
29 first time. And I formed a view that he had a very

1 good knowledge of the -- local knowledge and he
2 certainly had a good knowledge of the probationers that
3 were being attached to Bailieboro at that time. And
4 some of the issues that were arising with the
5 accelerated recruitment of probationers into the 11:49
6 Bailieboro were giving rise to a problems from a
7 supervisory aspect.

8 367 Q. And you had direct knowledge of that, isn't that so?

9 A. I had direct knowledge of that, yes, because I had
10 occasion to deal with some of these issues myself. In 11:49
11 fact, I would have reported directly to the
12 superintendent Bailieboro and to the chief
13 superintendent in Monaghan regarding some of the
14 issues. Well, one of the issues in particular that
15 became -- that was an issue for Sergeant McCabe 11:49
16 thereafter, and it related specifically to the
17 performance and the supervisory issues around
18 probationer Gardaí in Monaghan at the time and
19 standards of investigations.

20 368 Q. Well, in your capacity as a divisional training 11:49
21 sergeant, you had occasion to become involved in
22 recommending discipline of a probationer in regard to
23 one particular incident which was the subject of the
24 O'Higgins Report, isn't that so?

25 A. That's correct, Judge. One of the particular incidents 11:50
26 that was reviewed as part of the O'Higgins Commission
27 was on foot of a five-page report which I submitted
28 regarding the -- identifying the issues which I
29 believed required attention regarding the standard of

1 investigation, and I recommended that the probationer
2 be subject of a disciplinary investigation to establish
3 the full facts around the matter. And that was in May
4 of 2008, Judge.

5 369 Q. I think -- 11:50

6 **CHAIRMAN:** well, which one are we talking about here?

7 **MR. DOCKERY:** That was the incident on the bus at
8 Kingscourt, is that so?

9 A. That's correct.

10 **CHAIRMAN:** That was where the young lady was sexually 11:50
11 assaulted on the bus?

12 A. Yes, yes. And there was an allegation of false
13 imprisonment and public order as well.

14 **CHAIRMAN:** well, it was a very serious incident.

15 A. It was, Judge. 11:51

16 370 Q. **MR. DOCKERY:** And I think, inspector, that the
17 O'Higgins Report concluded in around 2007/2008 there
18 were an average of five probationers per unit in the
19 Bailieboro district, isn't that so, where some units
20 only had one experienced garda? 11:51

21 A. That's correct. And there was a large influx of
22 probationers into Bailieboro at the time. Certainly I
23 don't believe that the supervisory capacity was there.
24 The capacity was there to deal with the volume of
25 probationers that was going into Bailieboro. I would 11:51
26 have identified some of those issues, Judge, by way of
27 a business application which I would have made to Chief
28 Superintendent Rooney at the time for additional staff
29 regarding supervision for the training end of it, also,

1 and also identifying the need for additional
2 supervisory staff in Bailieboro.

3 371 Q. And I think the position is that Bailieboro had the
4 highest number of probationers in the division, isn't
5 that so, the Bailieboro district did? 11:52

6 A. Yeah, the Bailieboro district itself, you would have
7 had Bailieboro district, Cavan-Monaghan, Carrickmacross
8 and while Ballyconnell was also a district it didn't
9 receive any probationers at the time. But of the four
10 districts which were receiving probationers Bailieboro 11:52
11 was getting the most.

12 372 Q. The upshot of that then was that routine policing
13 duties, including investigations, fell into the hands
14 of probationers, the quality of investigations suffered
15 accordingly, and at the time there was no full-time 11:52
16 inspector at Bailieboro, isn't that right?

17 A. That's correct. And, you know, it was, the standard of
18 investigations and some of the issues that were
19 happening in Bailieboro at the time were a cause of
20 concern. These were issues, Judge, that I was aware 11:52
21 that Sergeant McCabe was reporting on or was -- had
22 concerns about and that he was reporting on at local
23 level during my time as divisional training sergeant.

24 373 Q. So you understood those concerns fully?

25 A. I did. 11:52

26 374 Q. And you were in sympathy with Sergeant McCabe to a
27 large degree insofar as he pointed out these features
28 of life in Bailieboro at the time?

29 A. Well, I certainly understood where he was coming from,

1 from the point of view that standards -- like, the
2 impression I got was that he was into standards of
3 investigation, that is something that I would have had
4 a keen interest in myself from the role that I had in
5 continuous professional development, was the title of 11:53
6 the office that both Sergeant McArdle and myself were
7 attached to, we would have had a direct involvement
8 with the probationers and obviously the issues that
9 were raising -- were being raised about probationers at
10 that time, we would have had an input into because we 11:53
11 wanted to ensure that probationers were turned out
12 properly, were able to do their job properly and at
13 that time there was issues there, there is no doubt
14 about it.

15 375 Q. Turning then just briefly, inspector, to the letter of 11:53
16 the 14th of May, 2014, sent from your chief
17 superintendent to Assistant Commissioner Kenny. Can I
18 ask you this: Firstly, did you type that letter?

19 A. I can't recall if I typed that particular letter. If
20 it wasn't typed by me it would have been typed by 11:54
21 another girl in the office.

22 376 Q. All right. Because you have said in your statements to
23 the Tribunal that you specifically have a recollection
24 of typing the letter of the 22nd of May, which
25 corrected the record, to the assistant commissioner, 11:54
26 isn't that right?

27 A. Yes, yes, I have a specific reference to that because I
28 would have been given that --

29 377 Q. And the subsequent letter of the 9th of June I think --

1 from --

2 A. Yes, to Ms. Ward.

3 378 Q. -- to Ms. Ward from the chief superintendent. And you
4 have told the Tribunal this morning that the chief
5 superintendent wouldn't necessarily share his mind with 11:54
6 you on all aspects of matters. You were the divisional
7 clerk, that was a central position within Monaghan
8 station, isn't that right?

9 A. That's correct, yes.

10 379 Q. Well, if that is the case, what is your view about the 11:54
11 likelihood that he would have shared his personal view
12 or suspicion about the original Garda notification with
13 the assistant commissioner in writing?

14 A. It's unlikely. I mean, he may -- I don't know what
15 level of relationship Chief Superintendent Sheridan had 11:55
16 with Assistant Commissioner Kenny at that time. All I
17 can say is from my experience of working with the man I
18 got the sense that he knew it was wrong.

19 380 Q. You got the sense of that from speaking with him?

20 A. Yes, yes. 11:55

21 381 Q. And I understand your evidence to be that you are not
22 in a position to state whether Chief Superintendent
23 Sheridan had any conversations with the assistant
24 commissioner in or around the date of this letter, is
25 that so? 11:55

26 A. Yes, that's correct. I am not aware if he did or any
27 communications he had with any other of his district
28 officers regarding the matter.

29 382 Q. But as soon as the position was clarified, it seems,

1 with Laura Brophy's letter of the 16th of May, you then
2 got instructions to type up the letter of the 22nd of
3 May?

4 A. That's correct, yes, yes.

5 383 Q. All right. 11:56

6 A. And I suppose that was the first confirmation that we
7 actually had in writing that this was a big error.

8 384 Q. Lastly then, I just wanted to ask you, inspector, about
9 the amended Garda notification dated the 10th June 2014
10 which identified the social work team leader as Carmel 11:56
11 McAulay, isn't that right?

12 A. Yes.

13 385 Q. Now, I think that subsequently the email received from
14 Fiona Ward of the 28th of July, which you never recall
15 seeing, identified somebody else as the social work 11:56
16 team leader, is that right?

17 A. Yes, that's correct, yeah.

18 386 Q. That was Eileen Argue?

19 A. That's correct, yeah. She was the lady's name who was
20 on the original notification, but obviously the amended 11:56
21 notification had a different social worker dealing with
22 the case now.

23 387 Q. And if the chief superintendent -- where would he have
24 gone to find out then who to contact if he wanted to
25 follow up the action plan he had agreed at the 11:57
26 Mullingar meeting?

27 A. Yeah, it would have been very easy. It would have been
28 a case of just referring back to the file to pull that
29 document or to liaise back with Superintendent McGinn

1 just wanted to check with you, do you believe that that
2 was a draft for you to work on or was it actually sent
3 as well?

4 A. I don't believe that was sent.

5 394 Q. And -- 11:59

6 A. I would say that is --

7 395 Q. It appears to be very similar to your letter of the
8 22nd?

9 A. That would have been prepared by Chief Superintendent
10 Sheridan for typing, yeah. 11:59

11 396 Q. Yes. And it's just, there are two things I wanted to
12 ask you about it. The file reference "MC/84/9/14",
13 what does "MC" refer to there?

14 A. It's the number that is on the correspondence register,
15 electronic register in Cavan-Monaghan, it possibly 11:59
16 refers to Monaghan-Cavan or MC.

17 397 Q. It's of no significance?

18 A. It's of no significance, no.

19 398 Q. If you go to the end of page 1763, in Chief
20 Superintendent Sheridan's draft -- 11:59

21 A. Yeah.

22 399 Q. -- there is a final paragraph saying: *"I also advise
23 wish to advise that a completed copy of the Garda
24 investigation file was disclosed to the Guerin
25 Inquiry."* 12:00

26 A. Yes.

27 400 Q. And if you go to page 1723, that is not there. Was
28 there any particular reason why that was taken off?

29 A. The investigation file, is it?

1 401 Q. Well, no, the letter dated 22nd of May as sent out
2 doesn't recite that fact. Oh, sorry, it does, I am
3 sorry.

4 **CHAIRMAN:** It does. Not to worry.

5 402 Q. **MR. MCDOWELL:** My misreading of it, sorry. The earlier 12:00
6 letter didn't state that.

7 A. The earlier letter of the 14th didn't state that, no,
8 no.

9 **CHAIRMAN:** Did you have any questions?

10 **MR. DIGNAM:** I just have a few questions, Chairman. 12:00
11

12 **INSPECTOR O'CONNELL WAS CROSS-EXAMINED BY MR. DIGNAM:**

13 403 Q. **MR. DIGNAM:** Inspector O'Connell, my name is Conor
14 Dignam. I appear on behalf of An Garda Síochána, other
15 than those guards who are represented by other teams. 12:01
16 Could I just ask you, I just want to explore with you
17 that correspondence through the middle of May,
18 beginning really on 14th of May --

19 A. Yes.

20 404 Q. -- onwards, because it's been put to you that there was 12:01
21 some delay in Chief Superintendent Sheridan warning or
22 telling the assistant commissioner that this was a
23 dreadful mistake. The first piece of correspondence
24 from Chief Superintendent Sheridan, as you know, is the
25 14th of May? 12:01

26 A. That's correct.

27 405 Q. And that is at page 1764.

28 A. Yes.

29 406 Q. And I am not going to take any time on this letter,

1 Mr. McDowell cross-examined the chief superintendent in
2 relation to the second paragraph on Friday, and indeed
3 cross-examined you in relation to it, and the meaning
4 that that conveyed. Can I just ask you to look at the
5 last paragraph in that letter, where he recommended, 12:01
6 that in the circumstances he recommends "*that we await*
7 *further communication from the parties listed above*",
8 and that includes Micheál Martin TD, the Taoiseach and
9 GSOC, "*prior to commencing a review of this*
10 *investigation*". Did you understand that to refer back 12:02
11 to Superintendent McGinn's recommendation that a review
12 be carried out?
13 A. Sorry?
14 407 Q. Did you understand the chief superintendent's
15 recommendation that that a review not commence to refer 12:02
16 back to Superintendent McGinn's recommendation of the
17 7th/8th May, that a review start immediately?
18 A. Yeah. I mean, Chief Superintendent Sheridan was clear
19 that it required further clarification on how the error
20 had occurred, it was primarily one of his main focuses, 12:02
21 and he certainly wasn't on for -- in my opinion, he
22 wasn't on for commencing any review of the
23 investigation.
24 408 Q. Now, you were then asked by Mr. McDowell in that last
25 round of questions about the draft that was in 12:03
26 handwriting. Was it Chief Superintendent Sheridan's
27 practice to write out his letters for typing?
28 A. Yeah, a lot of the time he would -- sometimes we would
29 write them out, sometimes he would type them himself on

1 his own computer in the office and he would print them
2 in his own office from time to time.

3 409 Q. Now --

4 A. He was different to other chief superintendents in that
5 regard. 12:03

6 410 Q. You were asked by Mr. McDowell whether there was
7 anything in the file which drew the reader's attention
8 to the mistake and to the fact that the mistake wasn't
9 referred to in the letter of the 14th of May. Do you
10 agree, Inspector O'Connell, that a file needs to be 12:03
11 read in its entirety?

12 A. I think any file needs to be read in its entirety, yes.

13 411 Q. Yes.

14 **CHAIRMAN:** well, that is, I suppose, why we are here.

15 412 Q. **MR. DIGNAM:** Inspector O'Connell, if we could then come 12:03
16 to the next letter, which is written by Chief
17 Superintendent Sheridan to the assistant commissioner,
18 which is the 22nd of May. And before I ask you to turn
19 to that, could I just ask you to turn to a number of
20 letters which predated that, the first being the 12:04
21 document at 1773, which is the letter of the 16th of
22 May 2014 from Laura Brophy sent to Superintendent
23 McGinn?

24 A. Yes.

25 413 Q. In which she clearly informs Superintendent McGinn of 12:04
26 the mistake and of the precise mistake which had been
27 made?

28 A. Yes, that's correct.

29 414 Q. And that is dated the 16th of May, which we have heard

1 evidence on, which was also sent on that day, which was
2 a Friday, it was sent by registered post. And it
3 appears to have been received -- we take it that it was
4 received, I should say, on the 19th of May. The next
5 document then is 1776, which is the letter -- a report 12:04
6 from Superintendent McGinn to Chief Superintendent
7 Sheridan of the 20th of May, which was enclosing
8 Ms. Brophy's correspondence?
9 A. Yes.
10 415 Q. And sending that to Chief Superintendent Sheridan? 12:05
11 A. That's correct.
12 416 Q. Yes. So that was sent on the 20th. Now, I don't see a
13 receipt -- a date received stamp, but if we assume that
14 it was received --
15 A. Well, it was forwarded on to the Commissioner, I think, 12:05
16 on the 22nd of May.
17 417 Q. Yes. So that was then sent on to the Commissioner by
18 Chief Superintendent Sheridan with his report of the
19 22nd of May, which is at 1781.
20 A. Yes. 12:05
21 418 Q. Yes. Now, do you accept that that is the time-line?
22 A. Yes, that is the time-line, yes.
23 419 Q. And am I right in saying that prior to receipt of the
24 report from Laura Brophy, there was no official
25 confirmation or written confirmation of the mistake 12:05
26 that had been made?
27 A. Yes, that would be correct. Prior to that letter from
28 Ms. Brophy, there was no written confirmation, Judge.
29 420 Q. Yes. Now, you have been very clear in your evidence,

1 Inspector O'Connell, that both you and -- sorry,
2 certainly that you and that your impression of Chief
3 Superintendent Sheridan was that this was wrong, going
4 back to earlier in May, in or around the 14th of May,
5 that this allegation was wrong, but am I correct in 12:06
6 saying that it was only when this was received from
7 Superintendent McGinn -- or, sorry, received from
8 Ms. Brophy, via Superintendent McGinn, that that
9 confirmation was, in fact, given, that this was a
10 mistake? 12:06

11 A. Yes, that would be certainly the position, because,
12 look, irrespective of what my personal view on it was
13 at the time, confirmation had to be received, one way
14 or the other, from the author of it or the origin of
15 the -- where the notification came from. 12:06

16 421 Q. Yes. So the chronology, and you might just confirm for
17 me, Inspector O'Connell, the chronology, as far as you
18 understand it to have been, was that the letter was
19 received -- or, sorry, the letter was sent by Chief
20 Superintendent Sheridan on the 14th of May in which he 12:07
21 didn't refer to a mistake having been made or indeed to
22 his personal beliefs about there having been a mistake?

23 A. Yes.

24 422 Q. That on the 16th, Superintendent McGinn receives
25 official confirmation from Ms. Brophy. That is 12:07
26 forwarded by superintendent -- sorry, forwarded by
27 Superintendent McGinn to Chief Superintendent Sheridan,
28 which is received by him on, probably, the 21st?

29 A. Yes.

1 423 Q. And on the 22nd, he writes his letter of the 22nd of
2 May directly to the assistant commissioner, telling him
3 that there has been a mistake and that the referral
4 contains incorrect information?
5 A. Yeah, and he said the referral should be withdrawn and 12:07
6 replaced with the attached referral, is my recollection
7 of it.
8 424 Q. Yes. So within a day of having received it from
9 Superintendent McGinn, Chief Superintendent Sheridan
10 writes to the assistant commissioner telling him that 12:07
11 there is a mistake, what the mistake is and enclosing
12 the corrected report?
13 A. Yes, that is the time-line, Judge, yes.
14 425 Q. And as part of the same territory, Inspector O'Connell,
15 you were asked why Ms. Ward's letter of the 18th of 12:08
16 June, and I am afraid I haven't got a page reference
17 for that document, but Ms. Ward's letter of the 18th of
18 June, you were asked why that wasn't forwarded on by
19 Chief Superintendent Sheridan to the assistant
20 commissioner. Now, to the extent that -- 12:08
21 **CHAIRMAN:** Yes, it's 883.
22 **MR. DIGNAM:** 18th of June?
23 **MR. MCGUINNESS:** 883.
24 **MR. DIGNAM:** Oh, page 883. Thank you, Mr. McGuinness.
25 A. Why wasn't that forwarded on, is that the question? 12:08
26 426 Q. Yes. And is it my understanding that you were asked
27 by -- sorry, that the chief superintendent went back to
28 Ms. Ward after that seeking further clarification, is
29 that my -- is my understanding correct?

1 A. Well, the 9th of June was when he first wrote -- the
2 first correspondence from Ms. Ward was around the 22nd
3 of May, her letter dated the 22nd of May, the date it
4 came in, and then he wrote on the 9th of June back to
5 her looking for written clarification, and then on the 12:09
6 18th of June Ms. Ward sent a further clarification
7 letter, and it was on foot of that letter then that I
8 was asked to make direct verbal contact with her to try
9 and clarify how the error had occurred.

10 427 Q. Yes. And at 884 we have a note of a telephone 12:09
11 conversation which you had with Ms. Ward on the 24th of
12 June?

13 A. Yeah, that is Ms. Ward's notes, yeah.

14 428 Q. And that -- am I correct in saying that that call was
15 made to Ms. Ward on foot of her letter of the 18th of 12:09
16 June in which you were seeking further details?

17 A. Well, as I said in my evidence, I did make attempts to
18 contact Ms. Ward. I had difficulty contacting her. My
19 record of when I actually spoke to her is on 30th of
20 June, but I did leave, possibly, a message to contact 12:09
21 me.

22 **CHAIRMAN:** Yes, there is a dispute. It's either the
23 24th or the 30th, and the reference is the 30th is the
24 lunch, the farewell.

25 429 Q. **MR. DIGNAM:** Yes. I suppose rather than concentrating 12:10
26 on the date, what I am asking you is, was that call
27 made essentially in response to the letter of the 18th
28 of June 2014 from Ms. Ward?

29 A. Yeah, yeah, absolutely, it was. That was the purpose.

1 430 Q. In that letter, Ms. Ward was setting out to respond to
2 a number of questions which had been asked by Chief
3 Superintendent Sheridan, one of which was, essentially
4 is this the same allegation that had been made in
5 '06/'07 or is it something new, and secondly, how did 12:10
6 the mistake happen?

7 A. That's correct, yes, they were the questions that he
8 was seeking clarification on.

9 431 Q. Yes. And then you made that phone call and you then --
10 or, sorry, Chief Superintendent Sheridan then received 12:10
11 a letter of the 1st of July 2014 referring to her
12 recent telephone contact with you?

13 A. Yes.

14 432 Q. And Ms. Ward then, in that letter, it's at page 887,
15 says that: 12:11

16
17 *"I wish to clarify that the administrative error*
18 *occurred as a result of a typographical mistake made by*
19 *the counsellor/therapist who compiled the report. This*
20 *error occurred when information from a report template 12:11*
21 *was cut and pasted into another template."*

22
23 And she goes on to say:

24
25 *"I wish to confirm that the inaccurate information 12:11*
26 *which was contained in the report originally sent does*
27 *not relate to the above-named in any way. Further,*
28 *please note that the error occurred in one section of*
29 *the report only, as previously notified. All other*

1 *information contained in the report is accurate."*

2
3 So there is further confirmation that this is a
4 mistake.

5 A. Yes. 12:11

6 433 Q. And are you aware that that -- following that letter,
7 Chief Superintendent Sheridan then wrote a detailed
8 report up to assistant commissioner on 3rd of July
9 2014?

10 A. Yes, on 3rd of July he submitted a comprehensive report 12:11
11 to the assistant commissioner. He makes reference to
12 both verbal and written communication from Ms. Ward.

13 434 Q. Yes. And confirms in that, am I right in saying, that
14 this was a mistake and that no further investigation
15 was required? 12:12

16 A. That's correct, yes.

17 435 Q. Now, Inspector O'Connell, there was reference when
18 Mr. McGuinness was asking you some questions in
19 relation to whether copies of the report were sent back
20 or destroyed, and I think you are aware that -- you 12:12
21 were dealing with the file, so you were aware that Rian
22 and the HSE were asking that the report be sent back?

23 A. Yes.

24 436 Q. Is it fair to say, Inspector O'Connell, that Chief
25 Superintendent Sheridan and Assistant Commissioner 12:12
26 Kenny had different views in relation to that?

27 A. Yes, yes, that would be fair. I can speak, Judge, in
28 relation to the thought process in the office was to
29 get the -- to comply with the request of Ms. Ward to

1 seek the return of the documents, to comply with her
2 written request. That was certainly my understanding,
3 as being the divisional clerk, of what Chief
4 Superintendent Sheridan wanted.

5 437 Q. Yes. And at page 1784, there is an email from, I think 12:13
6 it's the divisional office; you might confirm that,
7 Inspector O'Connell?

8 A. Yes, that is the Monaghan divisional office section
9 mailbox, yes.

10 438 Q. Yes. And that it's -- the footer on that email is that 12:13
11 it's sent on behalf of Chief Superintendent James
12 Sheridan, and it's addressed to Superintendent McGinn,
13 Sergeant Duffy - who was assistant commissioner
14 Kenny's, I think, private assistant, is that right?

15 A. Yes, that would be correct, yes. 12:13

16 439 Q. And Chief Superintendent Sheridan is asking for
17 confirmation that "*all copies of the report of the 13th*
18 *of August 2013,*" which I think is an error and I think
19 it's been established as an error?

20 A. Yes. 12:14

21 440 Q. "*... have been retracted and destroyed. An original*
22 *copy is on hand. Please forward same to this office so*
23 *that it can be returned to the HSE. I would be obliged*
24 *if you would be revert to this office in early course.*"

25 A. Yes. 12:14

26 441 Q. So that is Chief Superintendent Sheridan taking the
27 view that we have been asked to return the report by
28 the HSE and asking for confirmation that that has been
29 Done. And Assistant Commissioner Kenny appears to have

1 taken a different view as to what should happen, and,
2 at page 1793, an email or a letter of the 10th of June
3 2014. Assistant Commissioner Kenny, first of all,
4 expresses concern that a confidential matter like that
5 be addressed in email, and he goes on to say that: 12:15

6
7 *"In those circumstances, should any material in Garda*
8 *custody be retracted or destroyed regarding this*
9 *matter, no materials will be returned to the HSE*
10 *without permission from this office."* 12:15

11
12 And then he refers to the meeting of the 16th of June,
13 which we know didn't take place but ultimately took
14 place in Mullingar in the middle of July?

15 A. Yes. 12:15

16 442 Q. And lest it be necessary to ask you, Inspector
17 O'Connell, Assistant Commissioner Kenny is the
18 higher-ranking officer, so while they have different
19 views, his view is the one that prevails, is that
20 right? 12:15

21 A. Oh, yes, his instructions were -- those were his
22 instructions, yeah.

23 443 Q. Yes. You were asked a number of questions by
24 Mr. McDowell in relation to your interpretation of
25 emails between two people that you are not connected
26 with -- 12:15

27 A. Yes, that is true.

28 444 Q. -- about conversations that they had with persons other
29 than you?

1 A. Mm-hmm.

2 445 Q. And what wasn't put to you was that Superintendent
3 McGinn, in fact, attempted to give an explanation as to
4 what those persons could have meant in reference to
5 their conversations with him, and, in fact, he 12:16
6 explained -- or, sorry, offered a possible explanation,
7 that is all he felt he could do, that when he said he
8 wasn't aware of the error, that what he was -- what he
9 said was that he wasn't aware of the original
10 allegation? 12:16

11 A. All right, okay.

12 446 Q. Have you any knowledge as to Superintendent McGinn's
13 state of knowledge of the original --

14 A. No, I didn't. I never actually spoke to Superintendent
15 McGinn at any stage regarding this matter. He would 12:16
16 have been communicating directly with Chief Sheridan.

17 447 Q. Yes. And the first time -- the first reference to that
18 is on Day 13, page 119, when Superintendent McGinn was
19 asked about that. He said:
20

21 *"A. I don't know the evidence that Mr. D gave to the*
22 *Tribunal, but certainly, before I received the phone*
23 *call from Ms. Laura Brophy, I was aware that an error*
24 *had been made.*

25 Q. *Okay.*

26 A. *And that it may be the case that, I again stress*
27 *may, that Ms. Brophy had been told that I wasn't aware*
28 *of the nature of the sexual assault that had been*
29 *alleged or that had been investigated."*

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And on the same day, Day 13, page 123, he said:

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

A. Yeah, I mean, like, I think that is a fair point, that I wasn't -- I wasn't aware of what Superintendent McGinn's evidence was in relation to that, and I certainly wasn't -- the first time I seen those emails was part of disclosure. I actually probably concentrated on this when I am being asked a question about them.

12:17

448 Q. You said at the beginning of your evidence, earlier in your evidence, Inspector O'Connell, that even though both you and your impression of Chief Superintendent Sheridan was that he believed this had been a mistake, the correspondence still had to be dealt with. What did you mean by that?

12:18

A. Yeah, well, I mean, it's very simple: I mean, the correspondence had arrived in on our desk. It certainly was an allegation that, you know, that nobody would probably want to deal with from the point of view

12:18

1 that it's -- it contains a very serious allegation of a
2 criminal nature, and irrespective of me thinking that
3 it was wrong, it still had to be followed up from the
4 point of view of establishing, well, is it wrong,
5 confirming that it's wrong, and it's in that context I 12:18
6 would have said that.

7 449 Q. Yes. And in that context, did you believe that the
8 written confirmation from Ms. Brophy on behalf of Rian
9 was an important piece of information?

10 A. Yes, I think that that confirmation letter that 12:18
11 Ms. Brophy sent to Superintendent McGinn, which was
12 subsequently forwarded to Chief Sheridan, was the first
13 written confirmation that we had that it was a mistake.

14 450 Q. In dealing with the correspondence then on behalf of 12:19
15 Chief Superintendent Sheridan, Inspector O'Connell, you
16 seem to be clear in your view of his -- or, sorry,
17 clear in your impression that he believed that the
18 allegation was wrong, and the Tribunal has heard his
19 evidence. Could you just confirm that that was your
20 impression? 12:19

21 A. That was my impression, yes.

22 451 Q. Yes. And is it fair to say that the focus shifted --
23 the focus moved pretty quickly to confirming that it
24 was a mistake?

25 A. Yes, yes. That was the -- that was one of the 12:19
26 priorities, to establish what was the realities of this
27 correspondence and the verification of it.

28 452 Q. And is it your understanding that the second matter
29 which Chief Superintendent Sheridan focused on in the

1 correspondence that you sent on his behalf to
2 understand how the error occurred?

3 A. Yeah, and there was -- I suppose that was my
4 interaction with Ms. Ward, was specifically to
5 establish how the error had occurred. 12:20

6 453 Q. Yes. Now, I know you said this in your evidence,
7 Inspector O'Connell, and I may have missed it. In
8 relation to the notification that has "*withdrawn*"
9 written across the face of it --

10 A. Yes. 12:20

11 454 Q. -- who wrote that on the notification?

12 A. That was -- that is Chief Superintendent Sheridan's
13 writing.

14 455 Q. And do you know when that was written or have you any
15 idea when it was written? 12:20

16 A. It would have been written at the time that the report
17 was being forwarded up to the assistant commissioner,
18 around the 22nd of May, I think, where he was
19 confirming that it was a mistake and that he was
20 informing the Commissioner that, yes, this is a mistake 12:21
21 and the referral should be withdrawn and replaced with
22 the attached.

23 **MR. DIGNAM:** Thank you.

24 **MR. MCGUINNESS:** Nothing further for the witness,
25 Chairman. 12:21

26

27 **INSPECTOR O'CONNELL WAS QUESTIONED BY THE CHAIRMAN:**

28

29 456 Q. **CHAIRMAN:** Inspector, I just had a few questions which

1 occurred during the course of this.
2 I have been told by many, many people that effectively
3 they had no problem with Sergeant McCabe, and you are
4 one of them.

5 A. Yes. 12:21

6 457 Q. **CHAIRMAN:** Perhaps if we go through everybody in the
7 Cavan-Monaghan division, one of them has to be not
8 telling me the truth about that, but it could be there
9 was only one person, and you know about, you know, the
10 rat on the website, on Facebook, et cetera? 12:21

11 A. Yes.

12 458 Q. **CHAIRMAN:** I just want to know, look, what was the
13 mood?

14 A. Well, the mood in Bailieboro --

15 459 Q. **CHAIRMAN:** No, no, just listen to my question first, 12:21
16 don't jump in. What was the mood when we are talking
17 about April/May 2014 in Monaghan? You are part of the
18 Cavan-Monaghan division, and all of this stuff is going
19 on - by the way, I am aware of it, absolutely all of
20 it. 12:22

21 A. Yes, the mood would have been -- and if I can go back
22 even before that, Judge, if I may. I mean, in 2007 and
23 '8 in particular, the issues that Sergeant McCabe were
24 raising, I would have had knowledge of those because of
25 my direct involvement as a training sergeant, so I 12:22
26 would have been familiar with the issues that he was
27 raising. That certainly there was -- it was hugely
28 divisive in Bailieboro then at that time. Complaints
29 started to be made. A blame-game essentially emanated

1 between local management and Sergeant McCabe, in my
2 view, and in April/May 2014 the mood was that it had
3 escalated, and it certainly was a case that, you know,
4 nobody knew where this was going to end, and there was
5 probably a reluctance to get involved, certainly, you
6 know, to approach Sergeant McCabe about anything, I
7 would be of the view.

12:22

8 460 Q. **CHAIRMAN:** But, you see, there is a difference between
9 using structures within an organisation to take care of
10 problems. Like, I don't know whether you saw that
11 thing on Netflix, the Great Train Robbery. It's in two
12 parts. The first part is about the great train robbery
13 and the second part is about the investigation, but
14 Inspector Butler utters a line, which I am not going to
15 repeat, but it is to the effect that in every
16 organisation your boss is going to be a bit of an
17 idiot. Now, I am not saying that about the Gardaí, I
18 am saying that is a viewpoint that is perhaps held, but
19 sometimes you have to put up with that. But what
20 Sergeant McCabe was not doing was, I suppose, pursuing
21 the review within the organisation, but it was outside;
22 the entire organisation was under scrutiny from the
23 media, from the press, from politicians --

12:23

12:23

12:23

24 A. Yes.

25 461 Q. **CHAIRMAN:** -- in relation to it, and just made
26 everybody look bad?

12:24

27 A. Yes, it did, yeah, yeah. And I guess Sergeant McCabe
28 felt that he had no option but to pursue it through
29 those avenues because he had -- there was avenues that

1 had been tried at local level and had failed.

2 462 Q. **CHAIRMAN:** Yes. But then again, if you take such
3 things as, you know, accusing Commissioner Callinan of
4 corruption, I mean, you must have had a view about
5 that? I mean, that is, I suppose, the ultimate 12:24
6 escalation?

7 A. Yes, it is, yes.

8 463 Q. **CHAIRMAN:** well, what was your view?

9 A. well, I didn't believe that there was an element of
10 corruption, Judge, and I think the O'Higgins Commission 12:24
11 focused on corruption as part of their inquiry.

12 464 Q. **CHAIRMAN:** No, I know that, and that is not what I am
13 talking about. It was clearly wrong in relation to
14 what he said and that was in relation to placing
15 Superintendent Clancy on a promotion list as chief 12:24
16 superintendent. To say that it was thin, would be
17 mild. But again, it casts the entire organisation into
18 the public spotlight but not in a good way, and, after
19 all, you are all wearing the same uniform, you are all
20 pursuing the same end. So what did you think about it? 12:25
21 A. Yes, yes. Like, there is no doubt, I mean, that
22 there's huge negativity been cast on the organisation,
23 and there is a lot of very good work still going on
24 behind the scenes, Judge. In terms of Maurice bringing
25 it to that level, my own view on it was, listen, the 12:25
26 man feels that he needs to bring -- that he needs to
27 bring it to that route, then obviously he feels that he
28 is being forced into that route. I mean, there is a
29 certain amount, Judge, of information relating to

1 this -- the issue around Superintendent Clancy being
2 put on a promotion list which we wouldn't have been
3 aware of.

4 465 Q. **CHAIRMAN:** No, no, I don't want to go into that. It
5 just happens to be the historical context. It's 12:25
6 nothing to do with me. As far as I am concerned, I am
7 sure he was a fine officer. I have no idea. I don't
8 want to know. But it's not that. It's about the fact
9 that one particular person is not just rocking the boat
10 but rocking it so there's water coming in, taking in 12:26
11 water, and are you seriously telling me that people
12 didn't have a problem with that, including yourself?

13 A. Oh, no, no, I am not saying that to you at all, Judge.
14 There would have been a lot of people who wouldn't have
15 been happy. And even, like, I mean, when the initial 12:26
16 divisiveness in Bailieboro, I could sense that when I
17 used to go to Bailieboro as a training sergeant, that
18 there was a divide there, and obviously people wouldn't
19 have been happy that this was casting so much
20 negativity on the organisation. That would be a given. 12:26

21 466 Q. **CHAIRMAN:** well, then, I don't know how familiar you
22 were with the procedures of the HSE and I don't know
23 whether you had acted in these kind of cases, and maybe
24 you would just tell me that, first of all?

25 A. No, I hadn't actually acted in those, but I would have 12:27
26 been familiar with the procedures.

27 467 Q. **CHAIRMAN:** Yes. well, I have heard a bit of
28 contradictory information from head office and from
29 local office as to what you do. For instance, it was

1 said to me that you'd accept a Garda statement, you
2 wouldn't go through the process of verification as a
3 social worker. That seems to be wrong. But I think
4 you are aware that they contact you when they have an
5 allegation? 12:27

6 A. That's correct.

7 468 Q. **CHAIRMAN:** And you contact them when you have an
8 allegation?

9 A. That's correct.

10 469 Q. **CHAIRMAN:** But the ultimate result of that, you 12:27
11 contacting them or they contacting you, is, the reason
12 you contact them is because national policy, we have
13 got to protect children, so, to protect children, if
14 someone makes an allegation against a child, somebody
15 in the social work Department needs to go and talk to 12:27
16 that person and see what contact do they have with
17 children, are they a risk. Basic, plain common sense.

18 A. Yes.

19 470 Q. **CHAIRMAN:** So once you got this notification from the
20 HSE, I take it it was in your mind at some stage they 12:28
21 are going to go and contact Sergeant McCabe?

22 A. Yes, well the natural protocols, as I said earlier, is
23 that the notifications are dealt with at district
24 level, so they come in to the superintendent of the
25 district concerned. This particular notification had 12:28
26 been pushed up to Chief Superintendent Sheridan by
27 Superintendent McGinn, but the ultimate liaison -- if a
28 person at local level is to be appointed, it's the
29 superintendent who appoints and it's dealt with at that

1 level and that is the procedures, and that is where I
2 think the reference to Sergeant Tony Byrne was made.
3 He would have been the liaison sergeant in Bailieboro.
4 If he -- for that -- for liaison to be established, he
5 should have been appointed.

12:28

6 471 Q. **CHAIRMAN:** That is not quite the point. The point is,
7 as I say, the train is coming down the tracks, and the
8 train coming down the tracks in relation to Sergeant
9 McCabe had to be that, at some stage, a social worker
10 was going to contact him. Now, nobody may have
11 predicted it was going to be as idiotic as digital anal
12 and vaginal penetration, but you are aware from the
13 procedures that, once this notification comes in, it's
14 in their head; yes, we are going to contact this person
15 for, are they a risk to children? what children have
16 they got contact with? Two basic very simple ideas
17 that we have tried to act on in this country for a
18 couple of decades.

12:29

12:29

19 A. Yes, but it was also in my head, Judge, that Ms. Ward
20 had written to us looking for the withdrawal of it, so,
21 as far as I was concerned, the HSE were withdrawing all
22 that.

12:29

23 472 Q. **CHAIRMAN:** Yes.

24 A. And as far as I was concerned then, well, if they are
25 seeking us to withdraw it, surely they are going to
26 withdraw it within their own structures.

12:29

27 473 Q. Well, that is the second thing I was going to ask you
28 about was, was this: One thing that people perhaps
29 haven't picked up on, and perhaps I am wrong in picking

1 up on, I don't know, but I would like your help on it,
2 is this whole notion of, we wanted to know how the
3 error had occurred. If they are telling you that it
4 was completely wrong, why would you need to know how
5 the error occurred? 12:30

6 A. Well, I suppose I can only answer that that was what
7 Chief Superintendent Sheridan had asked me. He wanted
8 to know how this had happened.

9 **CHAIRMAN:** Yes, but why? You have to ask yourself the
10 question, why? 12:30

11 A. It was a serious mistake, Judge, I suppose, and, you
12 know, for that kind of a mistake to be happening, he
13 wanted clarification.

14 474 Q. **CHAIRMAN:** Yes. But, you see, I have been tasked to
15 look into the social workers and how they made 12:30
16 mistakes, but the Garda Síochána has never been tasked
17 with looking into how other organisations make
18 mistakes, so I am wondering why would anyone in the
19 Garda Síochána be at all interested in how this mistake
20 was made, cut and paste, taking out the wrong file, 12:30
21 whatever, whatever?

22 A. I'd say it was given the timing of it, Judge. Sergeant
23 McCabe was in the media very prominently at that time.
24 Here was a huge error after arriving in to the desk of
25 the chief superintendent. 12:31

26 475 Q. **CHAIRMAN:** But you never really got to the bottom of
27 that either?

28 A. No, I didn't, no, no.

29 476 Q. **CHAIRMAN:** I mean, I feel I only got an inkling of

1 getting to the bottom of this sometime in March of this
2 year, and that was only when investigators went out and
3 spoke to people. So you didn't get to the bottom of
4 it, nobody in the Gardaí got to the bottom of it, and
5 yet there was an interest in getting to the bottom of 12:31
6 it, which was never fulfilled. But I am wondering why?
7 why, having made the query, did you not follow through
8 on the query? And I am not necessarily talking about
9 you now, Inspector; I am talking about you and your
10 colleagues. 12:31

11 A. Yeah. Well, at the time, at the time, Judge, once
12 Chief Sheridan had got clarification in writing that it
13 was an error, he took -- he took what his steps were to
14 report it, to get it withdrawn and to stop it. In
15 terms of -- in terms of what I could have done, I was 12:32
16 always of the view that the matter wasn't being
17 investigated, that Chief Superintendent Sheridan was
18 clear on that, and that was the sense that I was
19 getting from within the office. Unfortunately, I
20 transferred on the 21st of July, Judge, and I took up 12:32
21 the position of acting district officer somewhere else,
22 and I was adjusting to that role, which was very, very
23 busy at that time.

24 477 Q. **CHAIRMAN:** Okay. Somebody officially contacts you and
25 says something very bad about a colleague, now I mean a 12:32
26 fellow officer in the Garda Síochána.

27 A. Mm-hmm.

28 478 Q. **CHAIRMAN:** And you are all officers by honorary title
29 at least.

1 A. Yes.

2 479 Q. **CHAIRMAN:** would you not give that person a heads-up
3 and say, look, I think you should be aware of the fact
4 that that matter that we all thought was put to bed has
5 now resurrected itself; it may go nowhere, but I think 12:33
6 you should be aware of it all the same?

7 A. I suppose the position that I held was that I would
8 have been privy to certain information that other
9 members of sergeant rank wouldn't have had. I was a
10 member of sergeant rank when the initial correspondence 12:33
11 came in, and Chief Superintendent Sheridan, where the
12 correspondence was -- he was dealing with it
13 personally, so had I have gone to Sergeant McCabe and
14 disclosed confidential information myself, as a member
15 of sergeant rank to a member of sergeant rank, I could 12:33
16 have ended up, by virtue of the nature of
17 confidentiality with -- of dealing with correspondence
18 within an office and regulations, I could have ended up
19 the subject of being disciplined myself for breaching
20 confidentiality. 12:33

21 480 Q. **CHAIRMAN:** Yes. well, I am tending to wonder whether
22 everybody was taking that point of view, because it
23 seems that when it came to everything that happened,
24 and we discussed that a few minutes ago, including
25 Commissioner Callinan being accused of corruption, one 12:33
26 of the things that was said to me was, we didn't
27 exactly know so we couldn't answer all his questions.
28 Was it a case of fearing to go without every single
29 answer that might be available, for fear that you'd be

1 part of yet another review, or what was the motivation?
2 Because I am still finding it very hard to understand
3 why nobody gave him a heads-up.

4 A. Well, from a personal perspective, Juge, and I can only
5 give you from a personal perspective, there would 12:34
6 certainly have been a reluctance and an element of fear
7 that if you made contact, that you were going to find
8 yourself embroiled into further controversy, and that
9 was a genuinely-held fear at that time, because the
10 situation was now gone to national prominence at 12:34
11 Commissioner level, and there was a reluctance and a
12 fear, a general fear, that if you contacted Sergeant
13 McCabe you might end up embroiled in something that you
14 had nothing to do with.

15 481 Q. **CHAIRMAN:** There is just one last matter that I wanted 12:35
16 to ask you about. If you go back to -- you came into
17 the Monaghan/Bailieboro area in 2008, first of all,
18 so -- it wasn't as early as 2008 --

19 A. 2007, Judge.

20 482 Q. **CHAIRMAN:** It was 2007. So would you have caught the 12:35
21 aftermath of this?

22 A. I would have caught the aftermath of the issues that
23 were going on at local level, definitely.

24 483 Q. **CHAIRMAN:** Yes. No, I am talking now about the
25 allegation of sexual abuse -- 12:35

26 A. No, no.

27 484 Q. **CHAIRMAN:** -- made by Ms. D?

28 A. No.

29 485 Q. **CHAIRMAN:** But you heard of it?

1 A. I heard of it, yeah, but I wouldn't have caught the
2 aftermath.

3 486 Q. **CHAIRMAN:** What was the feeling or the mood in the
4 station party?

5 A. It was divisive, Judge. Essentially it could be 12:35
6 regarded as nearly being a split in the station.

7 487 Q. **CHAIRMAN:** And give me the polarities of the split?

8 A. Oh, well, you had Sergeant McCabe on one side holding
9 the key position of sergeant in charge. You had the
10 other allegation then, a member -- a member's daughter. 12:35

11 It was -- when I came in in '07, it was very hard to
12 distinguish exactly who was on what side of whatever

13 camp there might have been, but there was certainly --
14 I got the impression, of any time I went down, I was

15 there for the purposes probably of examining 12:36
16 probationers' progress and I would be doing that with

17 supervisory sergeants, one of whom would have been
18 Sergeant McCabe, and I certainly got a feel that there

19 was a negative feel in Bailieboro, sort of a legacy
20 from that. 12:36

21 488 Q. **CHAIRMAN:** Well, was the view ever expressed to you
22 that he was pretty unlucky that this thing had come
23 along, or did people think it was what he deserved?

24 A. No, that wasn't expressed to me. As I said, I would
25 have worked closely with Sergeant McArdle primarily for 12:36

26 about three years. She would have dealt with more
27 in the -- she would have dealt with a lot more of the

28 probationers in Bailieboro prior to my arrival and even
29 during my arrival, and I would have been obviously

1 hearing back what she was telling me from her
2 interactions, and at all times, Judge, she was very
3 supportive of Sergeant McCabe.

4 489 Q. **CHAIRMAN:** But there would have been another point of
5 view as well? 12:37

6 A. There would have been, yeah.

7 490 Q. **CHAIRMAN:** Hence the rat on the website, et cetera?

8 A. Yes.

9 491 Q. **CHAIRMAN:** That comes later, I know.

10 A. Yes. And that would have been at local level, Judge, 12:37
11 yeah.

12 **CHAIRMAN:** All right. I think that is all I want to
13 ask. Thank you.

14 **MR. DOCKERY:** Chairman, if I could just follow up with
15 a question that might assist you in your inquiries in 12:37
16 that regard, if the witness might be able to assist.

17

18 **INSPECTOR O'CONNELL WAS FURTHER EXAMINED BY**

19 **MR. DOCKERY:**

20

21 492 Q. **MR. DOCKERY:** Inspector, the O'Higgins Commission 12:37
22 Report described the atmosphere in Bailieboro in 2007
23 and 2008 as difficult and tense for complex reasons. I
24 take it your evidence would be that that is -- that was
25 your view? 12:37

26 A. That would be my view, Judge, without being -- having
27 arrived into the division in '07, without having full
28 knowledge of the complexities that were actually there
29 at the given time and the individuals involved.

1 493 Q. Not only was there a probationer issue and the
2 overcrowding of probationers, the quality of
3 investigations and the absence of a full-time
4 inspector, but I think there were issues surrounding
5 the standard of accommodation within the station itself 12:38
6 isn't that right?

7 A. Yes, there was wide-ranging issues, not only personal
8 issues but accommodation issues as well. And in terms
9 of a work environment, it couldn't be described as a
10 positive working environment. 12:38

11 494 Q. Now, I suppose one significant event which occurred in
12 the year immediately preceding the matters with which
13 this Tribunal is concerned in May 2014, was the
14 decision on the 24th of July 2013 to inform Sergeant
15 McCabe that he was no longer the subject of a breach of 12:38
16 discipline, or the allegation of a breach of discipline
17 in relation to a missing computer in the Fr. Molloy
18 investigation, isn't that right?

19 A. Yes.

20 495 Q. You served under Chief Superintendent Rooney as 12:38
21 divisional clerk for two years, between December '09
22 and December '11?

23 A. That's correct, yes.

24 496 Q. Am I right in saying it was Chief Superintendent Rooney
25 who appointed Detective Superintendent O'Brien to 12:39
26 examine the facts rounding that issue of the missing
27 computer?

28 A. That would be correct, yes.

29 497 Q. He made that appointment. And I think that

1 disciplinary proceedings were commenced in February of
2 2012, is that right?

3 A. Yes, that would have been completed, yeah, around that
4 time, yes.

5 498 Q. So that was all going on during your time as divisional 12:39
6 officer as well?

7 A. Yes, in my time in the division office all that was
8 going on, yes.

9 499 Q. And what was Chief Superintendent Rooney's attitude
10 towards Sergeant McCabe? 12:39

11 A. Well, that particular time, around that time, Judge,
12 Sergeant McCabe would have had -- had complaints lodged
13 against superintendent Bailieboro and, I think, Chief
14 Superintendent Rooney. He certainly wouldn't have been
15 happy about that and he would have been of the view 12:39
16 that it was drawing negatively -- negative attention on
17 both the local district management and on the
18 divisional management structures within Cavan-Monaghan
19 and I certainly got the sense that he wasn't pleased
20 about that at all. 12:40

21 500 Q. And when Byrne/McGinn reported, and you have already
22 told the Tribunal that they never interviewed you, for
23 example, but when Byrne/McGinn reported, did Chief
24 Superintendent Rooney take the opportunity to circulate
25 the division with a summary of the favourable findings 12:40
26 in that report, so far as he was concerned?

27 A. Yes, there was a circular issued by Chief
28 Superintendent Rooney disclosing those matters, yeah.

29 501 Q. Yes.

1 **CHAIRMAN:** All right. So it's a quarter to one. So we
2 will say quarter to two.

3
4 **THE HEARING ADJOURNED FOR LUNCH**

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12:40

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

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3 **MR. MCGUINNESS:** The next witness, sir, we have is
4 Mr. Jim Gibson, the Chief Operations Officer of Tusla.
5 His statement of evidence is to be found at Volume 9, 13:49
6 page 2865.
7

8 **MR. JIM GIBSON, HAVING BEEN SWORN, WAS DIRECTLY**
9 **EXAMINED BY MR. MCGUINNESS:**

10
11 502 Q. **MR. MCGUINNESS:** Mr. Gibson, you're the Chief
12 Operations Officer for Tusla, is that correct?

13 A. That's correct.

14 503 Q. And before I ask you about your duties in that role,
15 could you just give me some background of your 13:50
16 qualifications and experience in this area?

17 A. Okay. I qualified as a professional social worker in
18 1987 in Swansea University, south Wales, in the United
19 Kingdom. I have held various positions within the
20 professional social worker management and I have worked 13:51
21 in several jurisdictions, namely England, south Wales,
22 Northern Ireland and the Irish Republic. I joined the
23 South Eastern Health Board in 1985 or 1986 as a social
24 work team leader, progressed as a principal social
25 worker, childcare manager, area manager, and in 2012 13:51
26 was appointed as an area manager in Waterford/Wexford
27 area. And last May was appointed as the interim COO
28 for Tusla, and in December was permanently appointed as
29 the Chief Operations Officer.

1 504 Q. Could you just explain to us, it might help, how the
2 transition, for example, from HSE to Tusla came about
3 or was envisaged and progressed?

4 A. Government policy dictated the need to establish a sole
5 agency to look at the protection and welfare of 13:52
6 children in the Irish State on foot of numerous
7 inquiries that highlighted core deficits in service
8 provision in this area. We went through a process of
9 being established in 2014 with the HSE. The COO at the
10 time made a reference to, it was like a boat leaving 13:52
11 the -- of a leaky boat leaving a harbour, because there
12 was serious issues in respect of resources - resources
13 in the area of corporate and administrative supports to
14 the agency as opposed to resources in financial terms.

15 505 Q. All right. Now, you've set out the role and function 13:52
16 of the agency in your statement and you have described,
17 obviously, the principles of having regard to the best
18 interest of the child as a statutory requirement under
19 the Childcare Act and to the paramountcy of that
20 consideration. But can I just ask you to outline, are 13:53
21 there specific details in managing retrospective
22 allegations of abuse?

23 A. Absolutely, and this was well-documented within the
24 history of the Child and Family Agency. The statutory
25 function primarily is the protection and welfare of 13:53
26 children within the context of community and the
27 family. The retrospective cases that have come to the
28 fore quite significantly over the last three years is
29 one dictated by previous case law, Barr and O'Neill

1 cases being certain examples where we really needed to
2 up our game as professional social workers on how we
3 worked the constitutional rights to fair procedure for
4 adults who are subject to an allegation of a
5 retrospective abuse. The matter is further complex 13:54
6 insofar as the legal and statutory powers that Tusla
7 operate under. So we operate under Section 3 of the
8 Childcare Act. But working with the retrospective
9 cases, it's very difficult; we have no statutory powers
10 to ensure people comply and come and work with us in 13:54
11 respect of allegations made.

12 506 Q. So I take it that last remark, you're pointing to the
13 lack of any powers of compulsion --

14 A. Absolutely.

15 507 Q. -- to require any particular party to assist you in 13:54
16 whatever way seems appropriate in that issue of
17 assessment, is that correct?

18 A. So, for example, someone could come into a social work
19 Department, make a disclosure or an allegation in
20 respect of a third party, and leave, and may be subject 13:54
21 to mental health or alcoholism or drug abuse, but, for
22 whatever reason, if we ask them to come back to allow
23 us to sort of get further information that would assist
24 us in working through an assessment, we have no power
25 to compel that person to come back, and that leaves 13:55
26 serious challenges for us as an agency. And the
27 matters are complex in nature and the capacity to carry
28 out assessments, forensic assessments, was not
29 traditionally the role and function of a social worker,

1 and there are sort of specific skills attached to that.
2 508 Q. Yes. Now, at page 2867, in the middle of your
3 statement there on page 2 of the statement, we will get
4 that on screen, you say there:

5
6 *"With respect to the cases which are the subject of the*
7 *Tribunal of Inquiry, there are two specific periods*
8 *during which referrals were received and for which*
9 *policies, procedures and guidance were in place.*
10 *However, a number of factors arose in the management of* 13:55
11 *cases, including, but not limited to, lack of specific*
12 *legislative powers under which to conduct assessments*
13 *of adults of concern, including lack of compellability,*
14 *lack of resources within children and family services*
15 *resulting in waiting lists for the management of such* 13:56
16 *cases of varying length and different areas, and*
17 *insufficient expertise required to address this*
18 *discrete and complex area of work."*

19
20 Now, firstly, you obviously appear to be limiting those 13:56
21 comments to the cases with which the Tribunal is
22 concerned directly, and I know later in your statement
23 you have dealt with the issue relating to Garda
24 Harrison, and that will be considered in another
25 module. So we're only concerned, obviously, with the 13:56
26 issues relating to Sergeant McCabe, and obviously,
27 needless to say, we are not concerned with any other
28 cases, any other specific cases in any other part of
29 the country or how they were handled, good, bad or

1 A. Absolutely.

2 514 Q. Okay. Now, you have given an overview in your
3 statement in relation to this matter, and I just noted
4 that you have said at the bottom of that page in
5 relation to the 2006 referral: 13:58

6

7 *"In December 2006 the Cavan-Monaghan Social work*
8 *Department received a referral in relation to a child,*
9 *Ms. D. The team dealt with this referral from the*
10 *period from December 2006 to July 2016, when the file* 13:59
11 *was transferred to a specialist social work team."*

12

13 And I just wanted to ask you about that, because you
14 fixed a timeframe and I was wondering is that an error
15 on your part, because you do, later in your statement, 13:59
16 obviously conclude that the social work Department
17 closed the file on Ms. D in 2007.

18 A. Yes.

19 515 Q. So how do you describe the team dealing with this? I
20 mean, it is obviously an issue as to whether they dealt 13:59
21 with it at all in the period.

22 A. Well, I was just about to say that.

23 516 Q. Yes.

24 A. And firstly, if I can just inform the Tribunal that the
25 matter came to my attention in January 2017, on the 13:59
26 25th January, and that was following a meeting with
27 Sergeant McCabe and his wife with the minister, and I
28 received a correspondence from the department to
29 actually generate a response and a report to the

1 minister. I asked the area manager and the regional
2 service director to come in to talk about the case.
3 And on the 27th January I issued a chronology, an
4 analysis of that, and a letter to the department
5 outlining that there were serious systemic failures and 14:00
6 human error in this matter and that it was our
7 intention to offer an apology to Sergeant McCabe as a
8 State agency. So my knowledge of the case started in
9 January of this year. With regards to my statement to
10 the Tribunal, I am making a timeline from 2006 to 2016 14:00
11 as the overall two cases. But certainly I accept the
12 2006/2007 case was closed.

13 517 Q. That's one thing that perhaps there's an issue to
14 explore there. What was the practice at the time in
15 2006 or 2007 when a child was referred to a child 14:01
16 sexual abuse assessment team and that team did it its
17 work? Was it the practice, or not, to open a file in
18 relation to the person complained of, or were they
19 dealt with as part of the other person's file?

20 A. Well, I'd have to refer to the '91 Childcare Act and 14:01
21 also Children First, and what the concerns would
22 emanate from an adult, where there's an allegation of
23 concern, is that there are associated child protection
24 concerns that need to be explored and defined by the
25 HSE then and the Child and Family Agency now. So, in 14:01
26 other words, if an allegation was made in respect of an
27 adult of child sexual abuse, we must always look to see
28 are there associated concerns in relation to that adult
29 in respect of children, but also their capacity of

1 employment, if they are a teacher, a youth worker,
2 working in a creche, and so forth.

3 518 Q. That is obviously very understandable, but bearing that
4 in mind and the statutory objective, would it not be
5 the appropriate point at that time to open a file in 14:02
6 relation to that person of concern, or does it just
7 drift along with the child's file or the young adult's
8 file?

9 A. Well, again, this is work that has sort of been
10 developing over a period of time. Back in 2006 and 14:02
11 2007, those details would have been held on the file of
12 the allegation. More recently over the several years,
13 the agency, given the volume of work that has come in,
14 the volume of referrals received in relation to
15 allegations of retrospective abuse, is that we do now 14:02
16 keep a file and we work through in accordance to our
17 policy in relation to this subject matter.

18 519 Q. Well, I mean, just staying on that latter last sentence
19 of page 2 of your statement. Is it not clear to you
20 and to the Tribunal and to everyone now looking at it, 14:03
21 you never dealt with the issue raised? You never had
22 an assessment conducted. The child protection issues
23 raised, whether legitimate or otherwise, were never
24 dealt with by the HSE?

25 A. In respect of this case. 14:03

26 520 Q. Yes.

27 A. Absolutely. You know, I have made a full statement to
28 the department that this matter, you know, you just
29 couldn't write the book on the mistakes that occurred

1 and the context in which those mistakes occurred as
2 well. We, as an agency, have stated clearly, in
3 January of this year, that we, you know, made serious
4 case management mistakes in this matter.

5 521 Q. Well, just going back to your own knowledge. Obviously 14:04
6 you became involved with the issue in 2017?

7 A. Sure.

8 522 Q. But presumably you had received some report prior to
9 that, and I am wondering when this matter was first
10 reported to you in terms of any management or error 14:04
11 issues?

12 A. Okay. Unfortunately, this matter came to my attention
13 in January 2017, which spoke loudly to myself that our
14 governance arrangements and oversight arrangements had
15 failed us in this particular case. This matter was 14:04
16 going back to 2013, and it's well-documented the
17 mistakes and the things that had occurred. As I stated
18 earlier, my immediate response was to call in the area
19 manager and regional service director and we had an
20 open discussion about the case and they were very clear 14:05
21 with me from the outset that there had been serious
22 case management mistakes made.

23 523 Q. Is this a meeting involving Mr. Lowry and others?

24 A. Gerry Lowry, the area manager for Cavan-Monaghan, and
25 Linda Creamer, the regional service director for Dublin 14:05
26 Northeast.

27 524 Q. Now, just looking at some different periods relating to
28 the issues. Would you expect to have been informed of,
29 for example, solicitors' letters coming into the team

1 leader in January 2016?

2 A. Absolutely. Not in the everyday case, but certainly
3 the subject, Sergeant McCabe, would have been, you
4 know, a high-profile individual within Irish society,
5 it's been well-documented, I don't need to go into 14:05
6 that. We have good governance in the agency. We also
7 have alert systems and escalation systems, so we have a
8 system called the Need-to-Know. We also have a complex
9 case review system. We also have staff supervision,
10 team meetings, area meetings, management meetings, 14:06
11 regional management meetings and national management
12 meetings. And none of this was escalated in those
13 formats to me as the Chief Operations Officer.

14 525 Q. And can you offer a view, based upon your
15 responsibility and your knowledge and everything that 14:06
16 you have learned about it, about why that was so?

17 A. Absolutely. My overview of the situation immediately
18 was that there was poor governance and poor oversight
19 within the Cavan-Monaghan area. And, you know, the
20 findings also in relation to the Ombudsman's report are 14:06
21 issues that were coming to the agency. In the stages
22 of the infancy, was that we needed to strengthen our
23 governance and oversight and ensure managers were
24 looking at the things that they should be looking at
25 and dealing with the things that they should be dealing 14:06
26 with. So, in response, as the Chief Operations Officer
27 I ensured that area managers and service directors were
28 involved in leadership and management training but also
29 governance training, which is mandatory for all area

1 managers and service directors this year, and that is
2 to strengthen the focus of where one should be at.

3 526 Q. Just to review the errors that you found and your
4 chronology and timeline, just going to August 2013.
5 The telephone intake which led to the creation of the 14:07
6 first intake record, and the social worker, the duty
7 social worker took the call, Ms. McGlone approved the
8 intake record and she left instructions on it "*duty to*
9 *notify*". Would you expect that the duty social worker,
10 whoever they were at the time, and I'm not pointing 14:07
11 fingers, ought to have notified the guards immediately
12 at that point in time?

13 A. There should have been a discussion, and Children First
14 sets out very clear, good -- the sort of strategies and
15 communication and the linkages between An Garda 14:08
16 Síochána and Tusla. So there is, in every area, a
17 Garda sergeant liaison officer who should tick-tack
18 with the identified social work team leader, and there
19 is nothing to stop them at any point in time to have
20 discussions about cases that come to their attention on 14:08
21 either side of that relationship, to have those
22 discussions prior to making any formal notification.
23 So my expectation would be there would be discussion,
24 there would be joint decision-making and the formal
25 notification would follow. 14:08

26 527 Q. Okay. But presumably you would agree that in a case
27 which is a retrospective case, it's perhaps all the
28 more important to either engage in those
29 pre-notification discussions or to actually get on with

1 the notification without any delay?
2 A. Well, I think the formal notification is always
3 assisted by that good collaboration. Any national
4 inquiry that we have had in this country and
5 internationally says that child protection is 14:09
6 everyone's business, and in Children First it's clearly
7 set down with very formal policies and procedures and
8 guidance between An Garda Síochána and the Child and
9 Family Agency.

10 528 Q. But I'm just wondering in this specific case, are you 14:09
11 accepting that it is a lapse from a standard that you'd
12 expect to apply --

13 A. Absolutely.

14 529 Q. There was no, either discussion or a timely
15 notification at that point in time? 14:09

16 A. My knowledge, having reviewed the information with the
17 area manager and the regional service director, was
18 that there were a number of contributory factors to the
19 poor governance and oversight arrangements, the issues
20 with regards to increase referral rates to the area. 14:09
21 And these aren't excuses, because, realistically,
22 people should know what needs to be tended to
23 immediately. But there were other factors that were
24 around. There was the retention and recruitment of
25 social workers, the paper-based system that was in 14:10
26 place in the Cavan-Monaghan area, the duty system, and
27 I think people have struggled on how that operates and
28 how can we define when things don't go terribly wrong.
29 The agency, when it was established, made it very clear

1 that our service at every framework should not be a
2 duty-based system, because an area relies on a number
3 of individuals to come and provide duty. And in many
4 examples from the past, it's been well-documented that,
5 in that system, someone is coming from a very busy 14:10
6 workload to come in and deal with something that could
7 be very serious on the day, but does not take full
8 responsibility for that, leaves it for the next person,
9 to the next person, and that system is outdated and it
10 does not give sort of consistency to approach. As an 14:11
11 agency, we have established a service delivery
12 framework which is an intake system, which is dedicated
13 by experienced workers to be fronted up with lots of
14 resources and looking at senior practitioners being
15 very much involved in that team. So you have one point 14:11
16 of entry to the organisation by way of a referral and
17 that referral will be dealt with in a consistent manner
18 with a consistent approach applied.

19 530 Q. I accept that. And are you obviously addressing the
20 issues that do arise from it, but just going back to 14:11
21 what happened here again. I mean, it wouldn't, as I
22 understand the system as it was, it wouldn't have
23 required the allocation of a social worker to take the
24 first step of notifying or engaging in pre-notification
25 discussions, isn't that right? 14:11

26 A. That's correct, yes.

27 531 Q. Okay. The next dealing with the file then appears to
28 have commenced just around 30th April. Were there any
29 criteria issued in relation to priority for unallocated

1 files or assessing which one ought to be, as it were,
2 pulled out of the cabinet for allocation or otherwise?

3 A. Absolutely. The agency has a prioritisation document,
4 policy document. We also have a threshold document
5 which assists social workers with their team leaders, 14:12
6 which is another issue with regards to good governance.
7 So it's not reliant on a social worker to make a
8 definitive decision. The social worker goes through
9 their initial inquiry, can go to their team leader and
10 say this is the case and these are the key components 14:12
11 of it, I think it meets the threshold to come into our
12 system, to move on to an initial assessment. The good
13 governance bit, which was lacking, was the team leader
14 having that oversight or the system having that
15 oversight from team leader, principal to area manager. 14:13

16 532 Q. Okay. But, for example, the dealing with the file that
17 took place in April and the beginning of May 2014 --

18 A. Absolutely. The referral information that came in from
19 the Rian counselling service should have initiated an
20 immediate response on the information to look at that 14:13
21 more in-depth than what it had been right through,
22 right through the period of time.

23 533 Q. I mean, on its face, it's an allegation of rape?

24 A. Absolutely.

25 534 Q. In particular of rape. But in terms of assessing what 14:13
26 ought to be done or judging what was done at the time
27 in April, the file is taken out of the cabinet and
28 we're told it wasn't allocated to anyone, but
29 Ms. Connolly deals with it and apparently receives an

1 instruction from Ms. Argue to do intake records for the
2 four children, two of whom were adults now?

3 A. Absolutely.

4 535 Q. Presumably you accept that that was inappropriate in
5 respect of all of them at that time? 14:14

6 A. That was below the standard of practice that we would
7 wish to see in place in our agency.

8 536 Q. Is it something that would concern you from the point
9 of view of the counsellor, Ms. Brophy, who hadn't
10 obviously made a referral in relation to any of the 14:14
11 children, that her name and albeit her erroneous
12 description of what is said to have happened Ms. D, her
13 name and that description ends up on the four intake
14 records for the children as well?

15 A. Yeah. And again, that was poor practice on our part as 14:14
16 an agency.

17 537 Q. But did your review encompass or did you receive any
18 explanation for why there was, as it were, movement on
19 the file at that point in time and why these actions
20 were taken and the Gardaí were then served with the 14:14
21 erroneous notification?

22 A. Again, I think it goes back to the whole issue of good
23 governance and oversight and looking at the entirety of
24 the case. The case catalogues a litany of errors and
25 system failures that would have, you know, would have 14:15
26 driven anyone in a management position to real
27 frustration and annoyance, because if we had opened up
28 the 2006/2007 file and made the comparison, there would
29 have been some queries with regards to the veracity of

1 the information. To go back to the counsellor and to
2 discuss it in a fair context at the time of referral --

3 538 Q. Yes.

4 A. -- would have been more beneficial to any sort of
5 direction that this case would have travelled. 14:15

6 539 Q. Yes.

7 A. The case was left in abeyance at various times, which
8 was not, again, acceptable by way of best practice, and
9 that led to different professional people coming in at
10 different times to make some form of assessment -- not 14:16
11 assessment, but to form some kind of opinion on how the
12 case should be managed.

13 540 Q. But, I mean, it was a happenstance; it seemed fortunate
14 perhaps at the time that the error was detected and
15 letters were written both to the Gardaí and to 14:16
16 Ms. Argue and to the social services in Cavan, but the
17 actual record was never then corrected because those
18 four intake records were left erroneously there. There
19 was the draft Garda notification that contained the
20 error and a copy of the one that actually issued, still 14:16
21 all remained on the record unamended or not cancelled.
22 They could have been marked "withdrawn" or "do not rely
23 on - error"?

24 A. And again, in response, poor practice, not to the
25 standard that we would aspire to, and led to, you know, 14:17
26 another rippled effect down the line in this case.

27 541 Q. But were there instructions or guidance issued to staff
28 in relation to, as it were, either filleting a file or
29 ensuring that erroneous information couldn't be relied

1 upon in any of your guidelines, is there any such
2 instructions?

3 A. Well, certainly in Children First and our policy
4 document in respect of the investigation and management
5 of allegations of abuse, there are set guidance set 14:17
6 down for practitioners. Our handbook also, which is a
7 clear policy document as well, details how staff should
8 respond to cases. So, you know, it is very unfortunate
9 and very disappointing that these mistakes occurred and
10 that this matter was left in abeyance for such a 14:17
11 sustained period of time.

12 542 Q. Well, the draft Barr letter that ultimately was
13 produced, the draft which Ms. McLoughlin produced and
14 was sent to her superiors and in respect of which she
15 received a set of instructions, would you have expected 14:18
16 both of them to have picked up on the error,
17 particularly in the light of the previous
18 identification of that error?

19 A. Well, certainly if the interagency cooperation and
20 working relationships between social workers and other 14:18
21 professionals, in this case a counsellor with Rian
22 counselling service, that that would have been picked
23 up at a more -- at the point of referral if there was
24 good collaboration, professional discussion, with
25 regards to what had been reported. It's very important 14:18
26 that we, as an agency, when we receive a referral, that
27 we look to examine the content of the information that
28 is referred, and in this context those discussions
29 should have occurred at the time.

1 543 Q. But you referred obviously earlier to the issue of an
2 initial assessment, and the Tribunal has heard what
3 seems to be differing or conflicting views about how
4 such an assessment is approached or conducted. On the
5 one hand, we have evidence from one witness who said 14:19
6 that -- he said that if you go to the complainant and
7 interview them about their statement, they might recant
8 the statement or they might give a version of it that
9 was inconsistent, as if that was something that had to
10 be avoided. Others have said that simply the practice 14:19
11 at the time was not to pursue a complainant who had
12 made a statement to the Gardaí by getting them to give
13 repeated iterations of it on different occasions. Was
14 there any guidance or standards at the time as to how a
15 complainant ought to be approached and assessed and 14:20
16 what was a minimum standard?
17 A. Absolutely. There's -- I referred to the document
18 earlier, there's the policy of the investigation
19 management of cases of allegations of abuse, and in
20 that very comprehensive policy document there are very 14:20
21 clear guidance for social work staff and how they
22 should manage those cases. And also to, and in
23 particular to, observe the constitutional right to fair
24 procedure.
25 544 Q. You're referring specifically to the 2014 -- 14:20
26 A. Yes, I am.
27 545 Q. And can you give any evidence to the Tribunal about how
28 widely they were disseminated, were available to staff,
29 and whether staff had been trained in their use?

1 A. Yeah. The policy document emanated from two particular
2 legal cases that the HSE and then the Child and Family
3 Agency had to deal with, where individuals'
4 constitutional rights weren't observed. The first COO,
5 Gordon Jeyes, of the Child and Family Agency had the 14:21
6 policy implemented and directed. There were issues,
7 there are challenges and complexities with regards to
8 some parts of the policy in respect of social work, so,
9 you know -- but I would honestly say to the Tribunal
10 the aspect of the constitutional right to fair 14:21
11 procedure for those persons of concern who were subject
12 to allegations of abuse were welcomed overall by social
13 work practitioners throughout the country. They had
14 difficulties with aspects of the policy, where a person
15 of concern would have the right to cross-examine an 14:21
16 individual who made a complaint, particularly a child,
17 an under-18-year-old. So the ethics of social work and
18 the document which was written in a legal context and
19 connotation as opposed to a practice book, just didn't
20 fit with some practitioners. And the agency have 14:22
21 instigated a review of the policy. But I must say, as
22 the Chief Operations Officer, the principle of fair
23 procedure embodied in that report is central to the
24 whole work in respect of the retrospective allegations
25 that some adults in this jurisdiction would face. 14:22
26 546 Q. And obviously it is a different and maybe a legal issue
27 as to when the duty to notify the person against whom
28 the complaint has been made of it, but that is not done
29 and was never done before a file is created?

1 A. No, it's not. And again I refer to back to the
2 comments I made, is that -- if it would help the
3 Tribunal, I could give you some figures of numbers and
4 the response of the agency as well, because we
5 implemented a service improvement plan in respect of 14:23
6 unallocated cases of retrospective abuse. We carried
7 out an audit of these cases last year and we took into
8 the system 1,058 allegations of retrospective abuse in
9 February and we realised that we had significant
10 increase in this work, that for them to sit in the 14:23
11 length of duration, that we needed to be more timely in
12 our response. We have reduced that number down to
13 approximately 300 at the moment to be allocated. And
14 we have given good guidance, good support to staff and
15 we have called on all staff within the agency to take a 14:23
16 proportion of this work, to reduce this issue with
17 regards to the length of time that a matter is referred
18 in to actually dealing with it.

19 547 Q. Just going back to one part of it. The corrected Garda
20 notification that was actually sent when amended, that 14:24
21 never appears to have actually been placed on the file.
22 Is that your understanding?

23 A. I'll be absolutely honest on that one, I'm not a
24 hundred percent sure, but if there was a Garda
25 notification made, it should be on the file. If it 14:24
26 wasn't made, there is no reason it should be on file.

27 548 Q. We have had some exploration of an issue as to what was
28 on the file at different stages and, in particular,
29 what was on the file when the SART team had it

1 allocated to them or took it in July 2017 -- '16. But
2 can I take it that you would expect to, and is it too
3 ideal a thing to expect, that everything would be put
4 on the file and would remain on the file?

5 A. Absolutely. 14:25

6 549 Q. Well, you see, you refer to the notification document
7 when dealing with June 2014:

8
9 *"This document was not on the file with the other*
10 *standard notifications that had been raised but placed* 14:25
11 *with correspondence located subsequent to the three*
12 *files being forwarded to the national office."*

13 A. The regional office.

14 550 Q. Pardon? The national office is --

15 A. Sorry, what page are we on? 14:25

16 551 Q. Perhaps if we look at page 2869.

17 A. I'm not too sure how to --

18 552 Q. Bullet point June '14, towards the bottom of the page.

19 A. The records should have been amended.

20 553 Q. Pardon? 14:25

21 A. The record should have been amended.

22 554 Q. It should be national -- the regional office, should
23 it?

24 A. Yeah, it should be. No, the record of the Garda
25 notification. 14:26

26 555 Q. Yes. But you see the second sentence of that paragraph
27 in June '14?

28 A. The document was not on file?

29 556 Q. Yes. *"This document was not on the file"*, et cetera,

1 et cetera.

2 "... was placed with correspondence located subsequent
3 to the three files: Maurice McCabe by one, Ms. D by
4 two, be forwarded to the national office."

5 A. It should have been on file. 14:26

6 557 Q. But I'm interested in the other correspondence.

7 A. All correspondence should be on file.

8 558 Q. But we've had Ms. Tobin give evidence here; she had
9 engaged, apparently, in an audit process which
10 apparently commenced by Mr. Cunningham making a file 14:26
11 available to her, and she made notes from that, and
12 then went about her business with Lisa O'Loghlen, her
13 team leader, but she seemed very clear that quite a
14 number of documents that were produced to the Tribunal
15 on the file were not on the file when it was produced 14:27
16 to her. Have you any insight or evidence to offer in
17 relation to that?

18 A. No, I didn't make the -- I hadn't made the comparison
19 between the area team and the SART regional team. But
20 my expectation would be, whatever was on the area file 14:27
21 should be on the regional SART file. It should be a
22 clear transfer of all relevant, all information, and,
23 you know, I would be very disappointed if it was the
24 case that an area was not given the full information to
25 a regional team, to take that up. 14:27

26 559 Q. There are a couple of the documents in particular I'm
27 not sure whether -- you have referred, obviously, to
28 the five-step plan that was set out by Mr. Deeney.

29 A. That would be reflective of our policy and the fair

1 procedures, yes.

2 560 Q. And then to a number of emails. Now, would you expect
3 staff to print off emails and put them on the file at
4 the time?

5 A. Well, a paper-based system, yes, of course. 14:27

6 561 Q. Okay. Did you review the circumstances concerning the
7 closure of the file relating to Ms. D in
8 October/November 2007? You saw that it was closed,
9 obviously?

10 A. Yes, obviously it was closed and it was brought to a 14:28
11 sort of -- the referral to the specialist sexual abuse
12 team, but also An Garda Síochána had informed of the
13 DPP's decision in respect of the matter, that it was
14 closed, there would be no prosecution. There would be,
15 certainly -- and hindsight is a wonderful thing, to go 14:28
16 back and look back and see what should or shouldn't
17 have happened. But there's probably a question now
18 that, you know, the manner in which it was closed or
19 how it was closed or how there were connections in the
20 future with regards to the 2013 referrals. So it was 14:28
21 closed and --

22 562 Q. I mean, the Tribunal is interested only insofar as it
23 relates to or is capable of explaining the actions in
24 relation to the 2013 file?

25 A. Yeah. 14:29

26 563 Q. But do you accept that it does appear to have had a
27 significant impact on the rationale for --

28 A. Well, certainly if you were receiving the 2013
29 information, you would certainly look back to what

1 files your agency had, and it would be, you know, it
2 would be considered, considered in a context of
3 comparability as opposed to building up a picture of an
4 individual, because, you know, certainly in
5 Cavan-Monaghan, the paperless -- the paper system 14:29
6 should have flagged that this person had a previous
7 referral to the agency, and that would have allowed you
8 to go back and look at the context and the nature of
9 that.

10 564 Q. I mean, the Tribunal has seen and has heard evidence 14:29
11 from both Rhona Murphy and Mary O'Reilly. Obviously
12 Ms. Murphy wrote her letter of the 10th October
13 referring to the closing of the file, but noting that
14 Sergeant McCabe hadn't yet or wasn't going to be met in
15 relation to the allegations. She wrote that in a 14:30
16 report to Mary O'Reilly. Then the team leader, Mary
17 Tiernan, signed off on the closure of the file some
18 time a little bit later in November?

19 A. Yeah.

20 565 Q. But have you seen Ms. Tiernan's statement to the 14:30
21 Tribunal?

22 A. I did, some time ago.

23 566 Q. Do you agree with her assessment about the issue of the
24 minimum threshold not being met, in her view, for
25 the -- 14:30

26 A. I would need to go back and look at that, to be honest.

27 567 Q. Right, okay.

28 **CHAIRMAN:** In other words, Mr. McGuinness, the point
29 you are asking about is: would it ever have been

1 justifiable just to shut the file without speaking to
2 the person against whom the allegation was made back in
3 2006/2007? The minimum threshold was the reason given
4 there, but would it ever otherwise be?

5 **MR. MCGUINNESS:** Yes.

14:31

6 568 Q. And if the threshold isn't met, do you then not write
7 to the person complained of?

8 A. I think when you look back maybe in 2006/2007, that may
9 have been sort of practice not to engage with someone,
10 where you did not feel there was cause to. Now, there
11 is an issue, and the issue has arisen for us as a State
12 child protection welfare agency, that, no matter what,
13 you should have that contact and that discussion.

14:31

14 569 Q. Okay.

15 A. But I couldn't give you the number, but the number of
16 referrals that we receive that maybe go nowhere and
17 aren't -- the person making the allegation doesn't
18 engage with us fully, is that -- do we go and knock on
19 everyone's door or do we hold that information or, you
20 know, close that off?

14:31

21 570 Q. Yes. No, it can be, no doubt, a matter --

22 A. So it is a complex issue.

23 571 Q. -- difficult judgement and exercise discretion in
24 particular cases?

25 A. Yeah.

14:31

26 572 Q. But in this case did you identify any trigger or
27 objective reason why the file was picked up on the 30th
28 April 2014 and something was done to it to set in train
29 Garda notifications?

1 A. No. And I spoke to the area manager and the regional
2 service director with regards to the timelines and the
3 lapse of action and inaction, and it was explained in
4 the context of, we had a discussion earlier on with,
5 you know, a lot of unallocated cases, staff resources 14:32
6 and so on. But there are no excuses here with regards
7 to why the matter wasn't picked up in the fashion it
8 was and how it was not communicated to senior
9 management in the regional and the national office. It
10 just lacked a concept of escalating something that 14:32
11 should have been escalated and discussed at a higher
12 level.

13 573 Q. Have you seen any evidence or have you any reason to
14 believe that there was any improper Garda involvement
15 or interfering or meddling with the process by which 14:33
16 this file was handled or dealt with at any time?

17 A. Absolutely not. And I'm assured by the management in
18 fault in this case that there was no evidence of such
19 behaviour.

20 574 Q. Right. would you answer any questions anyone else may 14:33
21 have?

22

23 **MR. GIBSON WAS CROSS-EXAMINED BY MR. MCDOWELL:**

24

25 575 Q. **MR. MCDOWELL:** Good afternoon, Mr. Gibson. Michael 14:33
26 McDowell is my name. I am one of the barristers
27 representing Sergeant McCabe. When did Tusla at a
28 national level first become aware that a false
29 allegation of child rape had been made against Sergeant

1 McCabe?

2 A. January -- the 25th January 2017.

3 576 Q. I see. When did Tusla at a regional level first become
4 aware that a false allegation of child rape had been
5 made against Sergeant McCabe? 14:34

6 A. I am not exact -- it was in 2016, I think it was around
7 May or June of 2016.

8 577 Q. This is in relation to the SART --

9 A. Yes.

10 578 Q. -- file. And you've heard -- or I presume you have 14:34
11 been told that there is evidence here that the file
12 that was sent to SART had been filleted?

13 A. I have heard that, and I have heard that internally as
14 well.

15 579 Q. But you believe that SART was aware that a false 14:34
16 allegation of child rape had been made against Sergeant
17 McCabe in 2016, is that right?

18 A. I would need to check that to be a hundred percent, and
19 I can come back to you on that. My understanding was
20 that, last year, SART received the file in respect of 14:34
21 Sergeant Maurice McCabe.

22 580 Q. We know that, but, I mean, I'm asking you when was --
23 when, at a regional or a national level, was it first
24 realised that Tusla had given An Garda Síochána a
25 referral form alleging that Sergeant McCabe had engaged 14:35
26 in child rape?

27 A. At a national level, January 25th, 2017. And that
28 followed a meeting with Sergeant McCabe and the
29 minister, and the department officials communicated

1 with me.

2 581 Q. And what about SART, do you believe that SART knew
3 about it and didn't tell you on a national level or do
4 you believe that they weren't aware that a false
5 allegation had been made? 14:35

6 A. Well, SART had received the case file from the area, I
7 would ordinarily believe that the regional service
8 director would have been involved or known of that
9 matter, and I am also aware that SART dealt with the
10 issue and the matter was deemed to close. 14:36

11 582 Q. What I am trying to find out here is, you are a chief
12 operational officer --

13 A. Absolutely.

14 583 Q. -- on a national level. And Sergeant McCabe goes to
15 Minister Zappone, isn't that right? 14:36

16 A. That's correct.

17 584 Q. And that's the first your organisation hears, at
18 national level, that it had made this allegation
19 against --

20 A. Absolutely. And my response at the time was that it 14:36
21 was clear that governance and oversight was not in
22 place in the area or the region, because that was the
23 first knowledge I had of the matter.

24 585 Q. Did that meeting take place before or after the 'Prime
25 Time' programme? 14:36

26 A. It was before, because the letter that I had written to
27 the department appeared on the 'Prime Time' and that's
28 why I am absolutely sure of that.

29 586 Q. Well, is it unreasonable of me to put the following

1 proposition to you: that a determined effort was made,
2 at least at one level and maybe at two levels, within
3 your organisation to keep you in the dark at a national
4 level that this catastrophic error had been made?

5 A. Certainly, when I was made aware of the matter and 14:37
6 called the relevant managers in, it was very clear that
7 they highlighted that serious mistakes had been made in
8 the management of the case. The regional service
9 director, who would oversee the SART team, if that case
10 was referred in to SART and they dealt with it and it 14:37
11 was closed, there would have been no reason for her to
12 escalate it. But given the profile of the subject, I
13 would have -- I was disappointed that, as Chief
14 Operations Officer, that our governance and oversight
15 had not escalated the matter into the national office. 14:38

16 587 Q. Going back to the question I put to you. I mean, you
17 are a national organisation, you have standards, you
18 have a reputation?

19 A. Absolutely.

20 588 Q. You have a public profile. And I have to put to you 14:38
21 again that it's clear that, at least at one level and
22 maybe at two levels, a decision was made to keep you in
23 the dark at a national level as to what had happened
24 here?

25 A. There was certainly a poor lack of communication and 14:38
26 the practice fell well below what I would have
27 considered good practice. I believe the area manager
28 has appeared before the Tribunal and he has taken full
29 responsibility for not communicating --

1 589 Q. Is this Mr. Lowry?
2 A. Yes.
3 590 Q. Yes. But, you see, I'm asking a different, I'm asking
4 you now, because we've heard Mr. Lowry --
5 A. Yeah. 14:39
6 591 Q. I'm asking you, is it not obvious to you that he must
7 have decided that this was something he was going to
8 keep away from you at national level?
9 A. I think he made a professional decision to deal with it
10 at an area level, and that included not making a formal 14:39
11 communication to his service director, regional service
12 director, and to me ultimately as the area manager, and
13 that fell very short of best practice, sir.
14 592 Q. But you are using the phrase, I don't want to
15 characterise it as management speak, that he made a 14:39
16 professional decision. It appears that he consciously
17 followed a policy of keeping you in the dark. You were
18 entitled to know this, weren't you?
19 A. I was entitled to know when I took up position as an
20 interim service director in May of 2016. 14:39
21 593 Q. Yes.
22 A. And as permanent COO in January 2017.
23 594 Q. And your predecessor was entitled to know that?
24 A. Absolutely, yes.
25 595 Q. And it appears that Mr. Lowry was following a concerted 14:40
26 policy to keep the national organisation in the dark as
27 to what had happened?
28 A. Well, I would say again, sir, in response, that he made
29 a professional decision not to escalate and to share

1 that information with the national office. I think the
2 question would probably be best asked of Mr. Lowry.
3 His rationale at the time --

4 596 Q. No, because we're going to come to your reaction to
5 realising that you were kept in the dark, in a moment. 14:40
6 But I'm suggesting to you, you can't just simply
7 describe this as a professional decision. It's a
8 disgraceful decision, isn't it, to keep you in the dark
9 on this issue?

10 A. Well, as I said, it didn't reach the standards that we 14:40
11 had aspired to as an agency.

12 597 Q. Well, it's a very serious lapse, isn't it?

13 A. Absolutely.

14 598 Q. But only because he was found out. He could have got
15 away with it. If Ms. McLoughlin had never sent her 14:41
16 letter of the 29th December 2015, he would have got
17 away with it cleanly, isn't that right?

18 A. It's not my intention to try and defend anybody and I
19 don't want to create an impression in the Tribunal that
20 I am trying to protect anyone. I have made it 14:41
21 absolutely clear with my evidence that the practice
22 fell very, very short of what our expectations were.
23 You're asking me questions about another individual and
24 their motivation. One thing, the fact is, he did not
25 escalate the matter to the regional or the national 14:41
26 office. His modus -- his motive for that -- em...

27 599 Q. You have never speculated on what his motive was?

28 A. Well, I've given a considered view on the whole
29 catalogue of case management mistakes and the context

1 that they were in, and I am saying clearly they fell
2 very short of what we expect as a State agency.

3 600 Q. Okay. Well, as I understand it, you've instituted a
4 review into the whole affair, is that right?

5 A. That's absolutely correct, yes. 14:42

6 601 Q. Yeah.

7 A. That was my immediate response, and I created other --

8 602 Q. Well, could we go back to Laura Connolly, for instance.
9 Has your review entailed interviewing her as to what
10 happened and asking her about her interaction with the 14:42
11 file?

12 A. The systems review is in draft format at this juncture,
13 and I can make that available to the Tribunal. There
14 are issues emanating from public representative bodies
15 in relation to the content of that document. I'd 14:43
16 prefer to submit that to the Tribunal. But it
17 certainly does highlight concerns that have been
18 expressed with regard to the case management and the
19 failings of the area.

20 603 Q. You told me that you had commenced a review of the 14:43
21 matter?

22 A. Systems --

23 604 Q. And now you're telling me that this review is in draft
24 form at this juncture, is that right?

25 A. Absolutely, and I'm not making any lies on that. I 14:43
26 need to sign off that document, but I need to engage
27 with the employees of the agency at the behest of the
28 public representative trade union.

29 605 Q. What are the public representative -- oh, I see the

1 trade union is stepping in, is it?

2 A. Yes, sir.

3 606 Q. To safeguard the interests of individual members, is
4 it?

5 A. To safeguard some fair procedure to employees that have 14:44
6 went through a systems reviewing.

7 607 Q. I see.

8 A. I don't, I don't see it as a major obstacle, but it's
9 something that I need to observe and work through.

10 608 Q. Well, let's go back to April, May, June of 2014. It 14:44
11 became apparent at some time during the month of May --

12 A. Sorry?

13 609 Q. Sorry, it became apparent at some stage during the
14 month of May that a catastrophic error had been made by
15 Tusla in a Garda referral form. And we have been told 14:44
16 here that the person who drafted that form, Laura
17 Connolly, was never once, until this Tribunal was
18 established, asked by anybody to give an account of her
19 involvement in the affair. You're aware of that?

20 A. I'm aware that she raised some issues with regards to 14:45
21 the systems review.

22 610 Q. I presume you're going to say that that also falls very
23 far short of the standards that you would consider
24 appropriate in the circumstances?

25 A. Absolutely. 14:45

26 611 Q. Because would you agree with me that it seems to
27 suggest that somebody wasn't interested in setting out
28 for the record the circumstances in which she came to
29 make the Garda referral form in the first place and

1 draft it up, and secondly, to prepare intake forms in
2 respect of the McCabe children; nobody was interested
3 in that context in asking her to put on paper her
4 recollection of those events?

5 A. Could I respectfully suggest that I make the report 14:45
6 that covers all those issues -- at this point in time,
7 I'm not clear about my own facts on that, and I would
8 rather come back on that one, that particular question.

9 612 Q. You want to do your own inquiries?

10 A. No, sir, not at all. I want to be very honest and 14:46
11 truthful here with regards to what information you are
12 receiving.

13 613 Q. You see, the point -- what I am driving at is this, and
14 I'm not trying to embarrass you.

15 A. No, no, it's okay. 14:46

16 614 Q. I'm suggesting that throughout all of the events that
17 we have heard about in respect of Tusla and this file,
18 there seems to have been an absolute determination to
19 put nothing on the record as to what went wrong and to
20 make no effort whatsoever to put an account of the 14:46
21 precise errors that were made in writing at any given
22 stage?

23 A. Well, I would beg to differ. My correspondence to the
24 department clearly outlined -- if I could read from the
25 correspondence. I have it here. 14:47

26 **CHAIRMAN:** We are talking about -- we're into January
27 2017, I understand, and that's when you became
28 involved, Mr. Gibson?

29 A. Yes.

1 **CHAIRMAN:** I think Mr. McDowell is going back.

2 **MR. MCDOWELL:** I am dealing with an earlier period.

3 **CHAIRMAN:** Yes.

4 615 **Q.** **MR. MCDOWELL:** when things were going wrong, nobody
5 asked anybody else involved in the process to make a 14:47
6 note of what had gone wrong?

7 **A.** Certainly there are systems in place for professionals
8 and managers to engage with other senior managers to
9 have the support, so our supervision policy document,
10 our Need-to-Know escalation, our risk register, all 14:47
11 these things were set in place but they were not
12 utilised by the area, and therefore, yeah, you're
13 correct that people were not acting in a manner that
14 recorded the issues and sought solutions and to move
15 the matter forward. 14:48

16 616 **Q.** You see --

17 **A.** And I honestly haven't sort of tried to put a veil over
18 that at all. I think in my evidence I am quite open
19 and honest that we have made serious mistakes in this
20 case, a catalogue of mistakes. I know Linda Creamer, 14:48
21 the service director, was in and giving evidence as
22 well with regards to the litany of mistakes that were
23 made here.

24 617 **Q.** You see, you can see Laura Brophy making her mistake
25 with her template? 14:48

26 **A.** Sure.

27 618 **Q.** And you can see Laura Connolly using that template to
28 prepare her Garda referral form, those two things could
29 happen, but I'm suggesting to you -- and they could

1 happen by accident, but I'm suggesting to you that
2 there was no accident whatsoever in the manner in which
3 Tusla addressed those circumstances, that a deliberate
4 policy of not inquiring as to what had gone wrong, not
5 recording what had gone wrong, not asking Laura 14:49
6 Connolly to explain exactly what happened on the 30th
7 April, that's what was implemented at local level by
8 Mr. Lowry, isn't that so?

9 A. I accept that, yes.

10 619 Q. And, you see, I'm suggesting to you that it's very 14:49
11 convenient here for some people before this Tribunal to
12 come in and say that there's been a litany of errors
13 for which they are terribly sorry, but the reality is
14 that a deliberate policy choice was made to leave it
15 uninvestigated at the time, I am suggesting that to 14:49
16 you; isn't that so? Mr. Lowry should have asked
17 everybody involved, would you mind, just on two sheets
18 of paper, telling me what went wrong here.

19 A. There's definitely a vacuum of evidence that would
20 suggest that the matter was being proactively discussed 14:50
21 and worked on in the area and escalated to the regional
22 and national office, I accept that, and that -- and
23 given the subject that these allegations were made, I
24 would have expected that there would have been more
25 proactive thoughts. And secondly, when we look at 14:50
26 Children First and some of the comments I made earlier,
27 there is a strategic relationship at an area level with
28 An Garda Síochána and the Child and Family Agency. So
29 a superintendent would meet with the area manager to

1 discuss matters of concern and of challenge and look
2 and analyse patterns of referrals between the
3 notifications. So that appeared to be lacking as well.
4 So --

5 620 Q. You see, on the 30th April either Ms. Connolly took out 14:51
6 that file on a random basis from a filing cabinet or
7 she received an instruction which is evidenced by a
8 Post-It instructing her to take some steps in respect
9 of that file from Eileen Argue. One of those is
10 correct. She either did it on a random basis, lucky 14:51
11 dip, out comes a file; or she was told by Eileen Argue
12 to take that particular file out, make a Garda referral
13 and put it back in the cabinet. One of those accounts
14 is correct, isn't it?

15 A. That's correct. 14:51

16 621 Q. Or, sorry, they're not both compatible with each other?

17 A. No.

18 **MR. MCDERMOTT:** Chairman, I am sorry to interrupt. It
19 just strikes me a little bit unfair to ask one witness
20 to decide between the testimony given by other 14:52
21 witnesses. I would have thought that matter is a
22 matter for one person in the room and that is the sole
23 Member, and is a matter the sole Member won't make a
24 view on until he has heard all of the evidence. It
25 just seems a little bit invidious to put the witness 14:52
26 into your shoes and ask the witness, well, who do you
27 believe, or should we believe either of them or none of
28 them, or whatever it may be.

29 **MR. MCDOWELL:** I am not about to ask the witness who he

1 believed or what he thinks happened. I am saying that
2 is the situation.

3 A. One or other.

4 622 Q. There's one or other explanation there, but not both?
5 **CHAIRMAN:** Your point is well made, but I think we're 14:52
6 not going there, and I wouldn't listen to the answer in
7 any event.

8 623 Q. **MR. MCDOWELL:** And I am suggesting to you that if a
9 note had been -- sorry, if an explanation had been
10 demanded by Mr. Lowry on the day, we'd know the answer 14:53
11 to that. If he had said in May or early June, when all
12 of this catastrophic error came to light, if he said,
13 would you mind just recording what you did here, we
14 would have a clearer picture of what happened, isn't
15 that right? 14:53

16 A. That's correct.

17 624 Q. And I am suggesting to you that it goes much further
18 than that, that the people involved did not want any
19 clear picture to emerge as to why this file had been
20 taken out on that day and that that's the only 14:53
21 explanation for why no record was made of what had gone
22 wrong, do you understand me?

23 A. Mmm.

24 **CHAIRMAN:** I'm not quite getting it, Mr. McDowell.
25 Maybe it would help, is the point that you find it hard 14:53
26 to accept, and obviously I'm not trying to look into
27 your mind, but you're making a submission that it would
28 be hard to accept that, given everything that was
29 happening in relation to Sergeant McCabe, that someone

1 would randomly pick out the file, is that the point you
2 are making?

3 **MR. MCDOWELL:** No, I am making the following -- I am
4 making a different point, Judge.

5 **CHAIRMAN:** Yes. 14:54

6 **MR. MCDOWELL:** Perhaps I'm not making myself clear. I
7 will make myself very clear now. I'm suggesting that
8 this is not just a series of lapses, that this is a
9 deliberate decision not to inquire at the proximate
10 time as to how this had gone so catastrophically wrong. 14:54

11 **CHAIRMAN:** Yes, but is that a question of hiding your
12 head in the sand? Okay, there is an absence of --

13 **MR. MCDOWELL:** You would have expected any competent
14 manager to inquire into what had gone wrong.

15 **CHAIRMAN:** But you would also expect them to read the 14:54
16 file, Mr. McDowell.

17 **MR. MCDOWELL:** Oh, sorry, Judge, there are many other
18 things you might expect, but I am just saying --

19 **CHAIRMAN:** But, I mean, you don't ask the right
20 question until such time as you have the information to 14:54
21 ask it. I am sorry, I am a little bit the sea. I'm
22 not trying to interrupt you at all, but --

23 **MR. MCDOWELL:** Judge, what I am saying is very simple
24 and I am putting it to this witness that this is not
25 simply a matter of saying, we have made a litany of 14:55
26 mistakes here, our standards collapsed. I am saying
27 that there was a deliberate cover-up here.

28 A. I totally disagree.

29 625 Q. Mmm?

1 A. I totally disagree. The Child and Family Agency
2 haven't been involved in any cover-up.

3 626 Q. You disagree there was a cover-up?

4 A. There's no evidence --

5 627 Q. I'm not suggesting you covered up. 14:55

6 A. Pardon?

7 628 Q. I'm not suggesting you covered up.

8 A. Well, there's no evidence to suggest that Gerry Lowry
9 or anybody else covered up. I think what we have
10 highlighted and explained is a litany of poor 14:55
11 decision-making, poor practice, that didn't reach the
12 standard that we would aspire to as an agency. To
13 insinuate that Gerry Lowry or anyone else was involved
14 in some kind of cover-up or deception is not evidence
15 in my mind. 14:56

16 629 Q. So you're quite content to regard this as a series of
17 lapses and departure from proper standards and
18 implementation of poor standards?

19 A. Implementation of poor standards with other mitigating
20 factors. As I outlined very early on in my evidence to 14:56
21 the Tribunal, is that we had a situation where we had
22 increase in unallocated cases, we had difficulty in the
23 retention and recruitment of staff, the staff were
24 working off a paper system, and so forth. You have
25 heard this evidence, and do I need to repeat it? 14:56

26 630 Q. As regards -- as regards this event, have you ever
27 asked Mr. Lowry for an explanation of these matters?

28 A. Of course.

29 631 Q. Is that part of your review?

1 A. Well, it's part of the review but it's also part of my
2 function as the chief operations officer, to ask why
3 did the situation be managed or mismanaged in the
4 manner it was, because certainly it's thrown this
5 agency under, you know, a very significant spotlight, 14:57
6 and the reasons that came forward were those that you
7 have heard already.

8 632 Q. Was it your understanding that Mr. Lowry had discussed
9 the matter with Ms. Louise Carolan or somebody else and
10 given an instruction that although this was a sensitive 14:57
11 file, it was to be treated in the same way as any other
12 file, or did you hear that for the first time in the
13 context --

14 A. I heard that from Mr. Gerry Lowry in my conversations
15 with him, and, to me, that was a poor call because of 14:58
16 the high-profile nature and all those other issues that
17 were surrounding this matter. This matter should have
18 been escalated, it should have been subject to an
19 internal complex case review and there certainly should
20 have been very robust and clear discussion with An 14:58
21 Garda Síochána in respect of the collaboration and
22 joint working on this matter. It's as plain and simple
23 as that. There was serious deficits in all those
24 things. These processes are set down in Children First
25 with regards to how we should work together and how we 14:58
26 would have strategic meetings at sergeant and social
27 work team leader but also at area manager and
28 superintendent level to discuss and work through very
29 complex and challenging matters, and in this case that

1 didn't happen.

2 633 Q. Was it your impression that this file -- that the
3 sensitivity of this file was appreciated within Tusla,
4 from 2013 onwards, from August 2013 onwards?

5 A. You're obviously relating to the area, the area in 14:59
6 respect of the Tusla as the area, the area of
7 Cavan-Monaghan area.

8 634 Q. Yeah. Sorry, I'm talking about Cavan-Monaghan.

9 A. Yeah. I would assume --

10 635 Q. Was it your impression that it was the sensitivity of 14:59
11 this file and the fact that it concerned Maurice McCabe
12 and there were issues concerning that, was appreciated
13 in the Tusla agency in Cavan-Monaghan at the time?

14 A. Given my involvement and the date of my appointment I
15 would never have had any -- from May of last year, I 14:59
16 should have been involved and should have known about
17 the case. I would assume that members of Tusla would
18 have been aware of the sensitivities surrounding
19 Sergeant McCabe and this matter.

20 636 Q. Because one of your staff has given evidence here that 15:00
21 she may have been aware that it was Sergeant McCabe
22 from hearing that discussed through a partition wall?

23 A. Well, I'd say most people --

24 637 Q. Was it your impression that the appreciation it was a
25 sensitive case was more widespread than that? 15:00

26 A. I would assume so. Prior to my involvement in the
27 chief operations role, I worked and lived in Waterford,
28 and I was aware of the issues pertaining to Sergeant
29 McCabe as a whistleblower.

1 if the referral was made by -- you know, in respect of
2 another professional, whether it be a guard, nurse,
3 teacher, who would be in a collaborative working
4 relationship, certainly there would be sensitivities
5 around that. 15:02

6 **CHAIRMAN:** I can clearly see that. But it may be on
7 your side, Mr. McDowell, in the event that anyone has
8 kept press clippings, or whatever, or any radio or
9 whatever, it's just I'd like to know.

10 **MR. MCDOWELL:** Yes. 15:02

11 **CHAIRMAN:** And I am afraid at the moment I'm a bit in
12 the dark about that.

13 **MR. MCDOWELL:** Certainly --

14 **CHAIRMAN:** You can come back on it.

15 **MR. MCDOWELL:** Certainly, it's my belief that up to the 15:02
16 summer of 2013 he was not a national name and is not
17 referred to in the media significantly, if at all.

18 **CHAIRMAN:** And I'm just wondering when did all that
19 start, because these things do tend to start like a
20 trickle and sometimes it's hard to identify the source. 15:03
21 I'm sorry for interrupting.

22 638 Q. **MR. MCDOWELL:** But it was a file which Mr. Lowry said
23 he recollects giving a direction, though he can't
24 remember to whom, was to be dealt with in the ordinary
25 way and without regard to its sensitivity? 15:03

26 A. I would -- being sensitive about a matter, about
27 another professional from another agency in respect of
28 a child protection concern is -- the sensitivity is
29 around actually trying to contain who has access to

1 that information. You know, those assigned to a case
2 in the Child and Family Agency would be asked to be
3 very clear about adhering to the policies and practices
4 and particularly confidentiality of a matter. They can
5 only discuss it with their line management. So 15:04
6 practitioners discuss cases to get peer support and
7 review of cases.

8 639 Q. Have your inquiries thrown any light on the question as
9 to why the Garda referral form prepared by Ms. Connolly
10 in blank was directed to the superintendent at 15:04
11 Bailieboro Garda Station?

12 **CHAIRMAN:** The investigation was in Monaghan, so
13 that's --

14 A. Yeah.

15 **MR. MCDOWELL:** The original Garda investigation was 15:04
16 carried out in Cavan, Judge.

17 **CHAIRMAN:** That's right.

18 **MR. MCDOWELL:** The file was in Monaghan.

19 **CHAIRMAN:** Yes.

20 640 Q. **MR. MCDOWELL:** But Bailieboro was the one station that 15:04
21 wasn't involved. Have your inquiries ascertained why
22 Ms. Connolly's handiwork was later filled in and
23 referred to the superintendent Bailieboro.

24 A. The explanation given was that that was the area Garda
25 station. 15:05

26 641 Q. The area of what?

27 A. The police division for the Cavan-Monaghan area.

28 642 Q. Who supplied that explanation to you?

29 A. I think that was in discussions with Mr. Lowry.

1 643 Q. I see. You see, the day it lands on the
2 superintendent's desk in Bailieboro he's immediately
3 suggesting that the whole 2006/2007 matter be
4 reopened -- or, sorry, it should be reviewed or sent to
5 the cold case file. I'm just wondering, in that 15:05
6 context, did you ever ask why it went to this man?
7 A. The response I got was that that was normal procedure,
8 to send that notification to that particular Garda
9 station, which is Bailieboro.

10 644 Q. And did you make any inquiries yourself in relation to 15:06
11 the dealings between Superintendent McGinn and Eileen
12 Argue --
13 A. No.

14 645 Q. -- in May 2014?
15 A. As I said, I became involved in this case in January 15:06
16 2017.

17 646 Q. Yes.
18 A. And I initiated a systems review, which is in draft
19 format, and I did not wish to enter into areas where
20 the Tribunal would be wishing to investigate. So I 15:06
21 haven't proactively looked at those things. Our review
22 was a systems review, looking at the systems failures,
23 and some of the human errors that occurred in this
24 case.

25 647 Q. So when you mention the idea of a systems review, 15:07
26 that's different from just finding out what happened or
27 what went wrong, it's a different idea, it's how can we
28 put in a robust system which makes sure that this
29 doesn't happen again, is that correct?

1 A. That's correct.

2 648 Q. And does it involve finding out what went wrong?

3 A. Certainly it showed -- it showed that there was a lack
4 of good governance and oversight in the area, that the
5 area failed to utilise clear procedures and policies to 15:07
6 escalate matters of complex -- of a complex nature. So
7 our Need-to-Know system wasn't activated by the area,
8 our risk escalation system wasn't activated by the
9 area.

10 649 Q. And in relation to Ms. Kay McLoughlin's letter of the 15:08
11 29th December 2015, have you been able to ascertain any
12 reason as to why that was sent, from your internal
13 inquiries?

14 A. Would it be possible to have a look at the letter?

15 **CHAIRMAN:** Yes. We might get it up onto the screen. 15:08

16 **MR. MCDOWELL:** Yes.

17 **CHAIRMAN:** I know it's a famous letter, but I'm afraid
18 it's going to take me a second to find the page number.
19 It's the letter, basically, it's called the Barr
20 letter, and it says: Dear Mr. McCabe, you have been 15:08
21 accused of the following, digital abuse --

22 A. Okay, yes.

23 **CHAIRMAN:** -- and we would like to meet with you
24 because it is very important that we protect children.
25 What page have you got for me? 15:08

26 **MR. MCGUINNESS:** 462 or 1586.

27 **CHAIRMAN:** Yes, 462.

28 650 Q. **MR. MCDOWELL:** So we know that that letter was drafted
29 earlier that year, I think in May of that year, and

1 submitted to Mr. Lowry for approval, don't we?

2 A. Okay, yes.

3 651 Q. Is that right?

4 A. Yes.

5 652 Q. Have you been in a position, from your internal 15:09
6 inquiries, to find any explanation as to why it was
7 written with that content?

8 A. Sorry, could you repeat that again?

9 653 Q. Sorry, you can see that the allegations made by Ms. D
10 are as follows: 15:09
11

12 *"That on one occasion between 1998 and 1999, at the
13 home of Maurice McCabe, Ms. D alleged that Maurice
14 McCabe sexually abused her. The abuse allegedly
15 involved digital penetration when the victim was aged 15:09
16 six to seven years old."*

17

18 Now, have you, from your inquiries, because
19 Ms. McLoughlin was simply not in a position here to
20 tell us how she came to write that, have you been able 15:10
21 to find out how that letter could have been written?

22 A. No. But what I understand is that the letter was put
23 together to include the additional information which
24 was received by Rian counselling service, which was
25 later redacted but did not find its redaction onto the 15:10
26 Tusla file, and again it's an example of very poor
27 practice. Someone, a new person comes along to deal
28 with the matter, picks up the file and starts off where
29 someone left off a considerable time in the past.

1 Again, no checks and balances. It fell short of best
2 practice and had serious consequence for Sergeant
3 McCabe to receive such a letter, which was new and very
4 concerning and it sort of escalated whatever allegation
5 was around in the past. So it comes down to practice 15:11
6 and it comes down to the professional looking at the
7 file in its totality to look at what other commentary
8 or case notes are on file, to advise them of the
9 action. But again, this sort of practice should have
10 been sort of embodied in a good sort of social 15:11
11 worker/social work team leader relationship, where a
12 case was discussed and the actions were set out to be
13 followed.

14 654 Q. You see --

15 **CHAIRMAN:** No, but the whole point of having a file is 15:11
16 that people are aware from the file.

17 A. Absolutely.

18 **CHAIRMAN:** It doesn't matter --

19 A. You should be able to read it and see --

20 **CHAIRMAN:** Yes. That is why somebody had the brilliant 15:12
21 idea, oh, you should have a file.

22 A. Yeah.

23 **CHAIRMAN:** I mean, centuries ago.

24 A. Absolutely.

25 **CHAIRMAN:** Yes. 15:12

26 655 Q. **MR. MCDOWELL:** You see, the point I am putting to you
27 is that it would appear that significant efforts were
28 made to clear all this false allegation of rape off the
29 Garda files until Assistant Commissioner Kenny said no,

1 you are not destroying or sending back material. But
2 this effort is being made by Tusla --

3 **CHAIRMAN:** But are you saying that in a bad sense?

4 **MR. MCDOWELL:** No, no --

5 **CHAIRMAN:** I can see sighing happening in other parts 15:12
6 of the room.

7 656 Q. **MR. MCDOWELL:** I am just asking, how could it be that
8 your agency was demanding of others that they clean the
9 file out of this false allegation and, at the same
10 time, leaving it uncorrected and dangerous on their own 15:12
11 material, in their own files?

12 **CHAIRMAN:** And the question, therefore, is, why
13 wouldn't you do as well as the Garda? That might be --

14 **MR. MCDOWELL:** well, if you are asking others to go
15 rooting around and find all evidence of this and send 15:13
16 it back, how did it not happen in your own
17 organisation?

18 A. well, you know, that, again, is an example of very poor
19 practice and, you know, there's an issue following this
20 Tribunal for myself, as the Chief Operations Officer, 15:13
21 to engage in other processes. And the explanation is
22 that it's poor practice, it did not take the totality
23 of the information that was on file into consideration.
24 So if you wish me to continue, you know, saying sloppy
25 practice, poor practice, or, you know, that is the 15:13
26 rationale, that is the issues here at hand. We're very
27 disappointed, as a State agency, that these things
28 occurred and the manner in which they occurred and the
29 impact that they had on Sergeant McCabe. I can't make

1 that any clearer as that.

2 657 Q. well, could I ask you, could I ask you have you --
3 you've heard here evidence from your SART witnesses
4 that this file in their hands had been edited so as to
5 take off evidence of the mistake? 15:14

6 A. I have heard that, and my intention will be to deal
7 with that and to initiate an internal investigation to
8 ascertain if that's correct or not.

9 **MR. MCGUINNESS:** Chairman just to intervene there. I
10 am not sure that that is a fair characterisation of the 15:14
11 evidence from Ms. Tobin. She certainly gave evidence
12 that a number of matters weren't on it, but she
13 certainly had no direct evidence that things that had
14 been on it were filleted, as it were.

15 **CHAIRMAN:** It's very hard to know, Mr. McGuinness, what 15:14
16 is the position on that.

17 **MR. MCDOWELL:** It's material that was on the file,
18 apparently, at one stage, and later is not on the file.

19 **CHAIRMAN:** Yes, but looking at it from my point of view
20 where I have to decide things on probability, I mean I 15:14
21 am looking at that, and it's a very serious matter, and
22 saying, well, maybe somebody had it on their desk and
23 didn't put it back, as opposed to a deliberate
24 filleting. It's hard to know, Mr. McDowell, but
25 certainly that is a possibility. 15:15

26 658 Q. **MR. MCDOWELL:** Have you evaluated the possibility that
27 somebody, in April of 2014, contacted somebody in Tulsa
28 in Monaghan with a view to inquiring whatever had
29 become of the proposal to refer the matter to An Garda

1 Síochána?

2 A. Could you --

3 659 Q. Have you evaluated the possibility or have you inquired
4 at all into the possibility that somebody, somewhere in
5 April 2014, contacted An Garda Síochána -- or, sorry, 15:15
6 contacted Tusla with a view to inquiring what had come
7 of the prior proposal to refer the matter to An Garda
8 Síochána?

9 A. Prior proposal being?

10 660 Q. Well, we know that Ms. McGlone directed that it should 15:16
11 be done, we know that on -- sorry, if we take one
12 inference from the Post-It that is found on the file,
13 it suggests that Ms. Argue directed somebody to take
14 the file out, prepare a Garda referral form and put it
15 back in the cabinet. And I am asking you, have you 15:16
16 evaluated or inquired of the possibility that that was
17 as a result of somebody who was expecting such a
18 referral to take place, making inquiries as to why it
19 hadn't taken place?

20 A. My response is quite clear: that there was poor 15:16
21 governance over the unallocated and the waiting list
22 for retrospective cases, and the system that was
23 deployed in Cavan-Monaghan was haphazard. That when
24 they had time, they went to that unallocated cases of
25 retrospectives and they had discussions with regards to 15:17
26 what sort of -- would fit the priority to be dealt with
27 when staff were available to do so. I have no reason
28 to believe that it was, you know, a matter of just
29 taking something out of a drawer and saying we will

1 deal with this today. So that there was some form of
2 system there. It may not have been the best, but the
3 agreement was that they would manage that case and move
4 that particular case on at that particular time.

5 661 Q. So you're saying that you don't think that anybody 15:17
6 prompted Ms. Argue to give a direction for a referral
7 to be done?

8 A. That's correct, that's my understanding at this
9 juncture.

10 662 Q. And what's that based on? 15:18

11 A. It's based on discussions. And a systems review has
12 been undertaken to date that has not thrown up what you
13 are suggesting, discussions with the area manager and
14 the regional service director.

15 663 Q. Mr. Lowry, is that right? 15:18

16 A. Mr. Lowry and Ms. Creamer, yeah.

17 664 Q. That this was just a random event on the 30th April,
18 although --

19 A. There were other cases that would have been dealt with
20 that were retrospective allegation cases that would 15:18
21 have been dealt with and picked up at different --
22 various times by the Cavan-Monaghan team that related
23 to their specific area.

24 665 Q. Mr. McGuinness asked you about the decision to prepare
25 intake forms in respect of all of the McCabe children, 15:19
26 both children and adult?

27 A. Which is another example of poor practice. We don't
28 open case files on adults in the context of this, this
29 particular case, and certainly was premature.

1 666 Q. Well, I take it that you saw the file note, the contact
2 sheet prepared by Ms. Connolly seeking directions on
3 this matter?
4 A. Yes.

5 667 Q. Have you inquired into whether she did make such an 15:19
6 inquiry and received that direction?
7 A. Sorry, could you --

8 668 Q. Have you inquired into whether Ms. Connolly did make
9 such an inquiry of --
10 A. No. 15:20

11 669 Q. -- Ms. Argue and received a direction to include all
12 four?
13 A. No, I made no further inquiries, sir.

14 670 Q. Is that because you're waiting for agreement with the
15 trade unions? 15:20
16 A. No, sir, that was not. It was more in context of being
17 aware of the Tribunal.

18 671 Q. I see. The point is that you have agreed it was poor
19 practice, but I am just wondering was it two or was it
20 four, as far as you were concerned, who would have the 15:20
21 intake files opened on them?
22 A. All, sir. As I said, those files were opened
23 prematurely without considering the facts of the case,
24 and certainly in this particular case not referring to
25 the information held on file and the amendments that 15:20
26 were made.

27 672 Q. And you discount the possibility that this was part of
28 somebody outside inquiring as to what progress had been
29 made?

1 A. As far as my knowledge, sir, yes.

2 673 Q. So two substandard decisions were made that day: one,
3 to make a referral without consulting the Gardaí at
4 all --

5 A. That's correct, yeah. 15:21

6 674 Q. -- and two, to carry out intake forms or to execute
7 intake forms?

8 A. That's correct.

9 675 Q. And there were two reasonably capable officers involved
10 in this, at least? 15:21

11 A. That's correct.

12 676 Q. And none of them has been able to give you an
13 explanation as to what happened, is that right?

14 A. That's correct.

15 **MR. MCDOWELL:** Thank you. 15:22

16 **MR. CUSH:** No questions.

17 **CHAIRMAN:** No questions. Mr. McDermott?

18 **MR. MCDERMOTT:** No, thank you, sir.

19 **MR. DIGNAM:** I just have a few questions, Chairman. I
20 won't be very long. 15:22

21

22 **MR. GIBSON WAS CROSS-EXAMINED BY MR. DIGNAM:**

23

24 677 Q. **MR. DIGNAM:** Mr. Gibson, you have referred in your
25 evidence to serious systemic failures and human error 15:22
26 and described things that happened in Tusla in various
27 different ways. Do you accept, and I take it that you
28 do accept, that there were such serious failures on the
29 part of Tusla?

1 A. Absolutely.

2 678 Q. Yes. And do you accept that those failures led to the
3 issuing of the Barr letter on the 29th December 2015 --

4 A. Yes.

5 679 Q. -- containing the incorrect allegations? 15:22

6 A. Yes.

7 680 Q. Yes. And it's primarily a matter for the Chair, but do
8 you apportion blame to An Garda Síochána for the
9 sending out of that Barr letter on the 29th December
10 2015? 15:23

11 A. Could you kindly repeat that?

12 681 Q. Yes.

13 **CHAIRMAN:** No, well I have to be taken to be capable
14 of, you know, making obvious decisions, such as nobody
15 is blaming and there's no evidence to suggest the 15:23
16 Gardaí at the moment inspired the letter of the 29th
17 December, received on the 2nd January.

18 **MR. DIGNAM:** No, Chairman. But there were two comments
19 made by Mr. Gibson that I wanted to explore with him.

20 **CHAIRMAN:** Yes. 15:23

21 **MR. DIGNAM:** If he is suggesting that the Gardaí,
22 either through acts or omissions, led to the Barr
23 letter being sent out in December 2015, then I
24 obviously have to --

25 **CHAIRMAN:** Fair enough. 15:23

26 **MR. DIGNAM:** Yes.

27 **CHAIRMAN:** So do you blame the Gardaí for the Barr
28 letter?

29 A. No.

1 **MR. DIGNAM:** Thank you. I don't need to go any further
2 on that, Chairman.

3 682 Q. Then, Mr. Gibson, in relation to the sending out of
4 the -- sorry, the intake report of the 9th August 2013,
5 this is on foot of the verbal communication, it was 15:24
6 written on that, that there was a duty to Garda notify.
7 Do I take from that, and I appreciate that you haven't
8 got direct involvement in this, but do I take from that
9 that the social workers in Tusla dealing with the file
10 at that stage was satisfied -- were satisfied that the 15:24
11 allegation that they had received on that date was
12 sufficiently serious to warrant notification being sent
13 to An Garda Síochána?

14 A. Absolutely. And it's important to note that the making
15 of a notification between both agencies is on suspicion 15:24
16 as opposed to a founded outcome --

17 683 Q. Yes.

18 A. -- you know, so it's a matter of sharing information
19 that then allows both agencies to have good
20 collaborative processes in place to inform them of the 15:24
21 next steps to be taken.

22 684 Q. Yes. Bear with me for one moment. You referred
23 earlier on in your evidence that there is -- before
24 Garda notification is sent out, there should be, I
25 think you described it as a tick-tack between the team 15:25
26 leader and the Garda liaison officer before the Garda
27 notification is sent out?

28 A. Well, that would be, you know, sort of reflective of
29 good practice.

1 685 Q. Yes. And is that provided for in either Children First
2 or in your own interpretation document, policy
3 document?

4 A. Oh, no, that is set down in Children First. Like, you
5 know, and when you do at strategy meetings, that can be 15:25
6 telephone conversations, that can be, you know, calling
7 and having a discussion about these matters. It
8 creates the opportunity that there's a go-to person in
9 each agency to manage all matters of child protection
10 welfare concern. 15:25

11 686 Q. I see. As far as I can see, Mr. Gibson, and correct me
12 if I am wrong, but on page 2776 of the booklet, clause
13 7.4.5 -- sorry, that may be the wrong page. Sorry,
14 2736, I am sorry, clause 7.4.5 of Children First - you
15 will see it there in front of you, Mr. Gibson - covers 15:26
16 the procedure for the HSE to notify An Garda Síochána
17 of a suspected case of physical or sexual abuse, and
18 doesn't provide expressly for any sort of
19 pre-notification tick-tack either between social
20 workers and members of An Garda Síochána, and the only 15:26
21 reference that I can see to that type of informal
22 communication is in 7.5.1, immediately below the clause
23 which I've just opened, and it provides:

24
25 *"In cases where the HSE is aware of concerns about a 15:26*
26 *child but is unable to establish sufficient grounds for*
27 *formal notification, the HSE should consult with An*
28 *Garda Síochána on an informal basis."*

29

1 But you accepted that, in fact, the social worker in
2 this case was satisfied that she had sufficient grounds
3 to Garda notify?
4 A. On the basis of the information there. But what I did
5 say in my evidence was, ordinarily, a social worker or 15:27
6 team leader would consult with, and in particular when
7 it's a profession of another agency that is very much a
8 collaborative partner in the protection and welfare
9 children, would have a discussion.
10 687 Q. But under the procedures -- 15:27
11 A. Well, the procedures are quite clear, that we should
12 have a consultation. Every inquiry in the child abuse
13 in Ireland and internationally states very clearly the
14 need to have strong interdisciplinary and interagency
15 collaboration, and that involves having discussions. 15:27
16 So even if I give an example of the Child and Family
17 Agency, when we talk about our service delivery model
18 and we set out what is our business and how we do that
19 business, we engage with teachers, doctors, nurses,
20 guards, with regards to what our service -- we always 15:28
21 say, lift the phone and discuss this matter to assist
22 you in making a decision, whether this constitutes a
23 child protection concern that reaches a threshold to be
24 referred to our agency.
25 688 Q. Mr. Gibson, where is that stated -- in a case where you 15:28
26 have accepted it had reached that threshold, where is
27 it stated in your procedures that there should be
28 pre-notification informal contact about a particular
29 case?

1 A. That is best practice, sir.

2 689 Q. Well, why is it not stated in Children First and in
3 your own policy document?

4 A. It is best practice that we have good open
5 communication with An Garda Síochána in relation to 15:28
6 child protection welfare matters.

7 690 Q. Do you accept --

8 A. And I am saying in this particular case, given the
9 sensitivities around it, we should have been having
10 those conversations. 15:28

11 691 Q. Yes. Do you accept that it is not expressly stated, do
12 you accept that it is not expressly stated, I am taking
13 your word that it is best practice, do you accept that
14 it is not stated in Children First or in your own
15 policy document that there should be pre-notification 15:29
16 informal communication?

17 A. An Garda Síochána is the largest referring agent to the
18 Child and Family Agency. They represent over 40% of
19 the referrals received by the agency. And on many
20 occasions we have those discussions. 15:29

21 692 Q. Yes. Mr. Gibson, I asked you a fairly straightforward
22 question: do you accept that in a case where the
23 social worker is satisfied that it should be Garda
24 notified, that there is no express provision for
25 pre-notification informal communication, Children First 15:29
26 or your own policy document?

27 A. I'm saying from a procedural perspective, yes, in
28 enhancing best practice, conversation should take
29 place.

1 693 Q. Now, I'm not sure, Mr. Gibson, whether you were either
2 here for earlier evidence or have read the transcripts,
3 but are you aware that there appears to have been a
4 difference of opinion or at least a difference of
5 emphasis between different social workers who have 15:30
6 given evidence. Some believed that a Garda
7 notification should be always an automatic reaction as
8 soon as a referral is made, and others believed that
9 you should wait and look at the file or communicate
10 with the complainant? 15:30

11 A. Well, I would agree that there is a process to making a
12 Garda notification in respect of child abuse, child
13 abuse or neglect, and part of that process is to
14 establish facts, to analyse those facts, to discuss
15 with other relevant parties the information at hand. 15:30
16 That will give you an informed decision about making a
17 formal Garda notification. That would include talking
18 to An Garda Síochána.

19 694 Q. And you very fairly, Mr. Gibson, said, at page 122 of
20 the transcript today: *"That if we had opened the 15:30*
21 *2006/07 file, made the comparison, there would have*
22 *been some queries with regards to the veracity of the*
23 *information,"* I think the quote goes on to say, and
24 that *"would have been more beneficial to any sort of*
25 *direction that this case would have travelled."* 15:31

26 A. Yes.

27 695 Q. Do I take it from that, Mr. Gibson, that if the '06/'07
28 file which was available to the social workers in
29 August 2013 had been opened, they would have seen the

1 difference between the written referral that was made?
2 A. Absolutely, yes.
3 696 Q. Yes. And that that would have put them on alert that
4 there was a difference between the two accounts?
5 A. Absolutely. 15:31
6 697 Q. Yes. And that would then have allowed them to make
7 further inquiries?
8 A. To go back and have those discussions before making a
9 formal notification.
10 698 Q. Do you accept, Mr. Gibson, that one of the first steps 15:31
11 that should be taken when a referral comes in, is that
12 the complainant should be contacted?
13 A. This is one of the complexities of the work and I would
14 certainly say that that the complainant should be --
15 699 Q. Contacted? 15:31
16 A. Contacted.
17 700 Q. Yes. In this case, we have a referral from Ms. Brophy.
18 Should somebody in the Social Work Department --
19 A. Absolutely.
20 701 Q. Yeah. And if that had happened in this case -- 15:32
21 A. It may have assisted in clarifying the information that
22 was being transmitted to the Child and Family Agency.
23 **MR. DIGNAM:** Thank you, Mr. Gibson.
24 **MR. McDERMOTT:** Chairman, just one matter arising, if I
25 may. 15:32
26
27 **MR. GIBSON WAS EXAMINED BY MR. McDERMOTT:**
28
29 702 Q. **MR. McDERMOTT:** You'll recall Mr. Dignam put to you

1 paragraph 7.5 of Children First which describes one
2 circumstance in which the Gardaí and the HSE can
3 informally communicate.

4 A. Yes.

5 703 Q. And he seemed to be suggesting to you that there was no 15:32
6 other provision that would allow the Gardaí and the HSE
7 to talk. Could I just bring your attention to page
8 2707 and paragraph 4.3. If you would just indicate to
9 the Chair your understanding of what is set out at
10 paragraph 4.3. It's just coming up now. If the screen 15:32
11 can go up slightly to get the heading.

12 **CHAIRMAN:** what does it say? Maybe you would tell me
13 what it says, if you wouldn't mind.

14 **MR. MCDERMOTT:** It says:

15 15:33
16 *"Benefits of interagency cooperation and exchange of*
17 *information in relation to child protection and*
18 *welfare. Effective interagency cooperation has a*
19 *number of benefits."*

20 15:33

21 And then it lists them:

22

23 *"Ensuring comprehensive response, avoiding gaps in the*
24 *service response, providing mutual support."*

25 **CHAIRMAN:** Right. Do you think that covers it? 15:33

26 A. Yeah. That's what I have said, you know. Absolutely.

27 **MR. DIGNAM:** Chairman, I am aware of that provision in
28 Children First. That wasn't the question that I was
29 putting to --

1 **CHAIRMAN:** No, I know. As I said this morning, we
2 spend a lot of time disputing what is there in black
3 and white. Your point is that there's no specific
4 provision for, before you make a referral talk to the
5 social worker. 15:34

6 **MR. DIGNAM:** Yes.

7 **CHAIRMAN:** I suppose if it is a case or what I am
8 inquiring into, you seem to be saying, look, it is good
9 enough to simply send the referral without talking to
10 the social worker, but there may be a nuance on that, 15:34
11 which is, once you've sent the referral, people should,
12 nonetheless, talk to one another.

13 **MR. DIGNAM:** Absolutely.

14 **CHAIRMAN:** I don't know, where do you stand on all of
15 that? There's three possibilities. The first is just 15:34
16 talk to them and send the referral; two is, send the
17 referral and talk to them; and three is, send the
18 referral and don't talk to them, which is -- really, we
19 are at about number three in this case.

20 A. I would certainly advocate that we have discussions and 15:34
21 we explore and analyse information that informs us to
22 make notifications to An Garda Síochána in respect of
23 child protection operations.

24 **MR. McDOWELL:** Chairman, there is one issue.

25 **CHAIRMAN:** We will let Mr. Dignam finish first, if you 15:35
26 don't mind, Mr. McDowell.

27
28
29

1 **MR. GIBSON WAS FURTHER CROSS-EXAMINED BY MR. DIGNAM:**

2
3 704 Q. **MR. DIGNAM:** Just to finish that point, Chairman, I
4 should in fairness have put to Mr. Gibson that in fact
5 in his evidence he said that the pre-notification -- or 15:35
6 it had been suggested in his evidence that the
7 pre-notification correspondence or communication should
8 be with the designated liaison officer, and I think I
9 should put that to Mr. Gibson; that in fact to the
10 extent that there was any pre-notification or 15:35
11 contemporaneous with the notification going in,
12 communication with An Garda Síochána in this case, it
13 wasn't with the designated liaison officer, it was in
14 fact with an investigating officer, Inspector
15 Cunningham, who had investigated the matter seven or 15:35
16 eight years earlier?

17 **CHAIRMAN:** This is back in 2006?

18 **MR. DIGNAM:** Yes.

19 705 Q. Do you accept that to the extent that there should be
20 any pre-notification communication it should be with a 15:35
21 liaison officer, the relevant liaison officer?

22 A. Yes.

23 706 Q. Yes.

24 **CHAIRMAN:** well, and if you can't get the liaison
25 officer you just stop? 15:35

26 A. Absolutely not, Chairman.

27 **CHAIRMAN:** There's two ways of looking at it. Sorry
28 Mr. McDowell, yeah.

29

MR. GIBSON WAS FURTHER CROSS-EXAMINED BY MR. MCDOWELL

- 1
- 2 707 Q. MR. MCDOWELL: Chairman, I wonder, you know that Keara
3 McGlone drafted a letter on the 12th August 2013, which
4 was sent out on the 15th August to Superintendent Noel
5 Cunningham, saying that she would like to talk to him 15:36
6 about the case before she went to the point of
7 contacting something McCabe, you know that, isn't that
8 right?
- 9 A. I heard that, yes.
- 10 708 Q. And that is because she had read the file and had 15:36
11 realised that he had investigated this matter before.
12 And she has given evidence that she did not realise at
13 that stage that there was any suggestion of digital
14 penetrative abuse at all, we know that as well?
- 15 A. Yes. 15:36
- 16 709 Q. Is her letter what you are talking about, trying to
17 find out the facts before you start engaging in --
- 18 A. Well, there was certainly evidence that she was trying
19 to, you know, establish some factual information with
20 regards to making this notification, I think, you know. 15:36
- 21 710 Q. Because if you then go back to the paragraph that you
22 made reference to just a moment past, the informal
23 consultation at paragraph 7.5, would that constitute an
24 informal consultation?
- 25 A. Well, if she is writing it's more informal. And I 15:37
26 never mentioned informal. What I mentioned in evidence
27 was to professional discussions --
- 28 711 Q. She was asking him to contact her?
- 29 A. Yes. And I think that would be indicative of 'Can we

1 have a professional discussion about this matter,
2 please?'

3 712 Q. Exactly. Thanks.

4

5 **MR. GIBSON WAS RE-EXAMINED BY MR. MCGUINNESS AS**

15:37

6 **FOLLOWS:**

7 713 Q. **MR. MCGUINNESS:** Mr. Gibson, just one matter. In one
8 of your answers to Mr. McDowell in the context of his
9 questions about liaising with An Garda Síochána, you
10 mentioned the possibility of a superintendent meeting
11 with an area manager to discuss?

15:38

12 A. Absolutely, yes.

13 714 Q. And have you any evidence that that occurred in this
14 case on any occasion in relation to any particular part
15 of it?

15:38

16 A. The evidence I have at the moment is that that
17 strategic relationship between the Child and Family
18 Agency and An Garda Síochána in Cavan-Monaghan was
19 weak.

20 **CHAIRMAN:** weak?

15:38

21 A. Was weak. That those meetings didn't occur on a
22 quarterly basis or as often as they should have.

23 715 Q. **MR. MCGUINNESS:** Pardon?

24 A. They did occur, but not as often as they should have.

25 716 Q. But you're not suggesting, are you, that on any
26 occasion the superintendent met with the area manager
27 in relation to this case?

15:38

28 A. Oh no. I am not suggesting that at all.

29 717 Q. Thank you.

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CHAIRMAN: Thank you very much, Mr. Gibson.

A. Thank you.

THE WITNESS WITHDREW

15:39

CHAIRMAN: All right. How are we doing on time? We have 20 minutes.

MS. LEADER: Yes, sir.

MR. MCGUINNESS: We have the next witness.

15:39

CHAIRMAN: Is this a short witness, Ms. Leader?

MS. LEADER: We could perhaps take Ms. Waters, who is a short witness. Mr. Quinlan may be a bit longer than 20 minutes.

CHAIRMAN: Yes, that'd be great.

15:39

MS. EVELYN WATERS, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MS. LEADER

MS. LEADER: You can sit down, Ms. Waters.

A. Okay.

15:40

MS. LEADER: Ms. Waters answered a series of questions put to her by the Tribunal and the answer to those questions appear in volume 10, page 2880.

CHAIRMAN: Is your first name Evelyn?

A. That's right.

15:40

CHAIRMAN: Yes.

718 Q. **MS. LEADER:** It will come up on the screen in front of you if you need assistance. Now, Ms. Waters, I understand you're a counsellor and connected to an

1 agency which is the sister agency of Rian, is that
2 correct?

3 A. That's correct, yes.

4 719 Q. And that's based in the southeast, is that correct?

5 A. That's correct. 15:40

6 720 Q. And you were a counsellor engaged with Ms. D following
7 her move from Rian to the southeast, is that correct?

8 A. That's correct, yes.

9 721 Q. Now, if I could ask you to answer any series of
10 questions about the file that was transferred from Rian 15:41
11 to your service?

12 A. Yes.

13 722 Q. Do you know when that file was first transferred to the
14 southeast? I think you said the record suggests that
15 it was transferred first of all on the 2nd May 2014, is 15:41
16 that correct?

17 A. That's correct, yes.

18 723 Q. And you checked the records in order to establish that
19 that was correct?

20 A. I did. 15:41

21 724 Q. Thereafter you have no personal knowledge of it but
22 from your knowledge of the organisation as a whole you
23 think that transfer of the file took place by post, is
24 that correct?

25 A. I believe so, yes. 15:41

26 725 Q. Did you speak at any time at the transfer of the first
27 file to anybody in Rian or indeed Ms. Brophy or
28 Ms. Ward?

29 A. No, I did not.

1 726 Q. And you're certain that that is the case?
2 A. Absolutely certain.

3 727 Q. Now, I don't think you actually ever received the file
4 when it was first transferred, am I correct in saying
5 that? 15:42
6 A. Could I just pull up the statement?

7 728 Q. Sure. It's page 2881.
8 A. Yeah. No, I didn't personally receive the file. I
9 believe the file came to the service and it would have
10 come to either the administrator of the service or the 15:42
11 director of the service.

12 729 Q. Okay. And you checked the records in order to ensure
13 that your answer is correct?
14 A. That is correct.

15 730 Q. Yes. Now I think the file was transferred for a second 15:42
16 time and that would appear to be between the 29th May
17 2014, is that correct?
18 A. There is a letter on the file that was sent on the 28th
19 May 2014, that arrived in our office on the 29th May
20 2014 and it accompanied a full copy of the second file. 15:42

21 731 Q. And did you at that stage consult with the file? Were
22 you assigned to deal with it at that stage?
23 A. I would have been assigned to deal with it after that
24 time, the exact date of which I cannot say, but it
25 would have been between 29/5/14 and 3/6/2014. And in 15:43
26 preparation for meeting with Ms. D I would have had
27 access to the file.

28 732 Q. Okay. Were you one of a number of counsellors or were
29 you the only counsellor attached to the agency at that

1 time?

2 A. There would have been a number of counsellors attached
3 to the agency, but I would have been the one allocated
4 to that particular client.

5 733 Q. Would Dr. O'Neill have oversaw that case? 15:43

6 A. He would have overseen that process, yes.

7 734 Q. Did you look at the file once it was transferred to
8 you?

9 A. The second file I had access to it and I read it in
10 preparation for meeting with Ms. D. 15:43

11 735 Q. What do you think was on the file at that stage, the
12 file that had been transferred?

13 A. I have listed all that was -- that is in the file.
14 There was a copy of the original database form, a copy
15 of the initial assessment form carried out by Rian, a 15:44
16 copy of the client clinical notes, a copy of the client
17 correspondence and a copy of the corrected
18 retrospective report form dated 14/5/2014. The file
19 also included copies of notes by the therapist of
20 additional correspondence between the client and 15:44
21 therapist, identifying the error in the original
22 notification documents.

23 736 Q. So prior to meeting with Ms. D you would have been
24 aware that there was an allegation made in relation to
25 Sergeant McCabe, that that had been incorrectly 15:44
26 communicated to Tusla and that had, as far as Rian was
27 concerned, been corrected, is that correct?

28 A. That is correct.

29 737 Q. And did you know what the mistake was at that stage?

1 A. I don't have a clear recollection of seeing it written
2 down but I have a recollection of knowing what it was
3 and I believe it was informed to me at a meeting with
4 my case manager before I took the client on.

5 738 Q. And that was Dr. O'Neill -- 15:45

6 A. That would be Dr. O'Neill.

7 739 Q. -- who previously gave evidence to the Tribunal. Did
8 you speak to Laura Brophy at any stage in relation to
9 the matter?

10 A. I did not. 15:45

11 740 Q. Or indeed Ms. Fiona Ward?

12 A. I did not.

13 741 Q. In relation to any conversations you may have with
14 Tusla personnel or HSE personnel, did you speak to any,
15 other than the people you've just identified here? 15:45

16 A. No, I did not.

17 742 Q. And is that a normal file transfer situation?

18 A. It would be, yes.

19 743 Q. Okay. And just for the purposes of being clear in
20 relation to the matter did you at any time see a copy 15:45
21 of the incorrect retrospective report that Ms. Brophy
22 had sent to HSE?

23 A. I have no clear recollection of seeing it written down,
24 but, as I said earlier, I have a recollection of being
25 aware of the words and I believe that that was shared 15:46
26 with me with the director of service, Dr. Gerard
27 O'Neill, before I met with the client.

28 744 Q. Okay. Now I think you actually met with Ms. D on four
29 separate occasions, is that correct?

1 A. Yes, I did. That's correct.

2 745 Q. And her attendance at counselling was discontinued in
3 circumstances where you had made a number of attempts
4 to engage with her after your last appointment with her
5 and that hadn't been followed through by her, is that a 15:46
6 fair summary of the situation?

7 A. More or less, yes, that's fair enough, yeah.

8 746 Q. And did you at any time refer matters onwards from your
9 agency to any other agency in relation to anything
10 Ms. D said to you? 15:46

11 A. No. No, I did not.

12 747 Q. No. And did you at any time have any discussions with
13 any members of An Garda Síochána in relation to Ms. D?

14 A. No, I did not.

15 748 Q. Okay. Now I think there are two particular extracts of 15:47
16 counselling I wish to refer you to. First of all
17 there's one on the 4th July 2014 and that was your
18 first session with Ms. D, is that correct?

19 A. May I see it on the screen?

20 749 Q. Yes, of course. Yes. It's page 375 of the materials. 15:47
21 The first page of that is called an initial appointment
22 form and it appears at 371. Maybe if that could be
23 brought up first of all for you. Is that your writing
24 on that form?

25 A. That is correct, yes. 15:47

26 750 Q. And it's headed "*Initial Appointment Form*" and it
27 appears that the date of interview was 4th July 2014?

28 A. That's correct.

29 751 Q. And do you think that was the first time you met Ms. D?

1 A. That was the first time I met with her, yes.

2 752 Q. Now it would appear that on page 372, it's a heavily
3 redacted page, Ms. Waters, you see that it is mostly
4 blank, there's a reference -- first of all, if you
5 could confirm to me, is that your writing? 15:48

6 A. Yes, it is.

7 753 Q. Okay. And it would appear that you refer there "*In*
8 *2014 media coverage of the individual, Ms. D stated --*"
9 I'm not sure what that next word is? It might be
10 "*something about*", is it "*stated publicity*" perhaps? 15:48

11 A. I'm sorry, it's very difficult for me to see with the
12 redaction piece down over it.

13 754 Q. "*stated publicity*"?

14 A. "*Media coverage of the individual --*"

15 755 Q. Yes? 15:49

16 A. "-- *Ms. D stated thinking about her case and the fact*
17 *that her case had not been recorded.*"

18 756 Q. And "*met blank also*"?

19 A. She did, yes.

20 757 Q. Yes. Do you think that's something -- obviously you've 15:49
21 recorded it as Ms. D saying it was that following any
22 interaction you had with her or any prompting in
23 relation to the matter?

24 A. There is a question on the initial assessment form
25 about any current outstanding legal issues for people, 15:49
26 and I believe I wrote that as a supplement because
27 there weren't enough lines and this identified some
28 activity that Ms. D had already activated in relation
29 to her distress about the original notification that

1 went in many years ago. So she had already taken care
2 of that by consulting with relevant legal bodies.

3 758 Q. I suppose when you say original notification, do you
4 mean 2013 or 2007?

5 A. I believe 2007. 15:50

6 759 Q. Okay. All right. If we could then turn to the next
7 page 373, there is a series of questions which are
8 answered by Ms. D and you will see the second last
9 question: "*Has the abuse been reported or is there an*
10 *intention to report to child protection service or the* 15:50
11 *Gardaí?"* And the answer to that, if you could just
12 read it out for me, Ms. Waters, please.

13 A. Yes, "*Laura did*". That is the first part of the
14 answer. And then --

15 **CHAIRMAN:** We will just blank the name. So, I am just 15:50
16 going to say no one report that name, please. So,
17 Ms. D did.

18 A. That name, Judge, refers to Ms. Brophy. I'm sorry.
19 All right.

20 **CHAIRMAN:** All right. 15:51

21 A. "*Laura did*", as in Laura Brophy did.

22 760 Q. **MS. LEADER:** Maybe if you refer to people as Ms. D?
23 A. This is not Ms. D,, this is Laura Brophy.

24 761 Q. Thank, you sorry.

25 **CHAIRMAN:** My mistake. 15:51

26 A. I'm sorry to confuse you.

27 **CHAIRMAN:** My mistake.

28 A. So, I will read that answer again. When I asked had
29 the abuse been reported she said "*Yes, Laura did*" and I

1 understood Laura to be Laura Brophy.

2 762 Q. **MS. LEADER:** Thank you.

3 A. *"She also said at 13 years she reported to Gardaí by*
4 *father."* So, with her father's help, I suppose. *"The*
5 *file went to DPP --"* Now, do you see the piece *"and was* 15:51
6 *not correct"*, that relates to that the first entry
7 there. I was trying to write and do it at the same
8 time. *"And was not correct"* relates to the first
9 entry, *"yes, Laura did"*.

10 763 Q. So, the *"and not correct"* is a reference to the 15:52
11 incorrect report, is that right?

12 A. That is correct.

13 764 Q. And Ms. D told you about that?

14 A. Yes. She referred to it in that initial meeting.

15 765 Q. Thank you. Then there is a question *"In relation to* 15:52
16 *the alleged perpetrator --"* and it would appear that
17 people had been notified in relation to that, and that
18 was Ms. D's understanding of the matter, is that
19 correct?

20 A. Yes. Because the notification had been made by Laura 15:52
21 Brophy previously.

22 766 Q. And the third page of that, 374 you've signed off on
23 that document at the very bottom of it?

24 A. Yes, I did.

25 767 Q. Okay. Now there would appear to be a continuation 15:52
26 page, at 375, where a record of a conversation was kept
27 by you and if you could just outline that. It starts
28 at *"Ms. D spoke of how she felt"* and if you could
29 continue on there, it's further down, sorry, the page,

1 yes. *"Ms. D spoke --"*

2 A. *"-- of how she felt triggered by recent media coverage*
3 *of whistleblower GMCC."* I understand that to be Garda
4 McCabe.

5 768 Q. Did you understand that at that time? 15:53

6 A. Yes, I did.

7 769 Q. And did you know who Sergeant McCabe was at that time?

8 A. I would have known of him just simply from his name
9 being heard in the media, but that was all. Sorry, so:
10 *"-- to consider how her own case had been handled in* 15:53
11 *the office he worked in. Ms. D wondered if her case*
12 *warranted being further investigated as it had come*
13 *through the system at the same time as he alleges*
14 *unsatisfactory procedures took place."*

15 770 Q. Okay. That is your record of the conversation? 15:54

16 A. Yes, it is.

17 771 Q. Okay. And I think you had a further consultation with
18 her on the 26th September 2014 and an extract of those
19 notes appears from page 377. Halfway, at number 2,
20 point number 2, there's a reference to what would 15:54
21 appear to be the allegation made by Ms. D against
22 Sergeant McCabe. And if you could just read that out
23 there for me, please. Sorry, I'm not looking at the
24 screen, it starts *"Ms. D also aware --"* under a
25 redacted portion. 15:55

26 A. Okay. *"Ms. D is also aware that she will be and is*
27 *entitled to make a statement to the Gardaí today. This*
28 *is not something Ms. D is deciding on now. Ms. D*
29 *reported feeling distressed by the actual event but*

1 *also feeling distressed by how this was actually*
2 *handled by the relevant administration."*

3 772 Q. Okay. what did you understand, can you remember, by
4 what she was saying by "*relevant administration*" at
5 that stage? 15:55

6 A. I believed that what she meant was that she didn't
7 understand the DPP's decision in the first situation.

8 773 Q. Did it have anything to do, do you think, with Laura
9 Brophy's mistake in referring the matter on to --

10 A. No, I understand that to be in relation to feeling 15:55
11 distressed by the first, the handling of her first time
12 complaint, if you know what I mean. Her first time
13 that she offered her disclosure.

14 774 Q. Now, at page 2881 of the letter you sent into the 15:56
15 Tribunal you were asked to outline any conversations
16 you had with Ms. D which touched on the allegation she
17 had made concerning Sergeant McCabe. If you could
18 just, you referred to some of them from your notes
19 there, but if you can just explain to the Tribunal
20 other conversations which you may have had with her, 15:56
21 and that's at page 2882 of the materials, at the very
22 top of the page.

23 **CHAIRMAN:** If you want to lead that, Ms. Leader, if you
24 can read it better, maybe you can.

25 775 Q. **MS. LEADER:** Yes. First of all, she says: 15:56

26
27 *"At the initial meeting on the 4/7/2014 Ms. D described*
28 *a once-off incident of alleged abuse that took place in*
29 *her childhood in the home of a friend of her father's.*

1 *I understood that to be the home of Sergeant McCabe.*
2 *She reported having short flashes of recollection of*
3 *the incident in recent times which she believed were*
4 *triggered by the recent media coverage regarding*
5 *Sergeant McCabe. She explained that the alleged abuse* 15:57
6 *had been reported after she informed her parents in her*
7 *teens and the file went to the DPP and was not*
8 *proceeded with at that time. She also explained that*
9 *during her time in Rian NCS National Service she made a*
10 *notification of retrospective abuse to Laura Brophy, a* 15:57
11 *therapist there. Ms. D explained the matter relating*
12 *to how her initial report had been handled was to be*
13 *investigated by GSOC."*

14
15 And then: 15:57

16
17 *"She also referred to the 26th September 2014, Ms. D*
18 *reported a meeting she had attended with Alan Shatter*
19 *which had gone well. She informed me that the recent*
20 *investigations would include how her original statement* 15:57
21 *of the alleged abuse had been handled. Ms. D reported*
22 *feeling distressed by the actual incident and how this*
23 *was handled by the relevant administration at that*
24 *time."*

25
26 And it doesn't appear that anything relevant was
27 discussed on the 3rd October 2014, isn't this correct,
28 in relation to Sergeant McCabe?

29 A. Only insofar as she was linking that experience,

1 alleged experience with how she is feeling.

2 776 Q. With later life?

3 A. Yes.

4 777 Q. Okay. And I think ultimately the file was closed on
5 the 13th January 2014 when Ms. D didn't meet you again, 15:58
6 is that correct?

7 **CHAIRMAN:** It would be '15, wouldn't it?

8 **MS. LEADER:** '15.

9 A. '15. I would have written to her.

10 778 Q. There is a typographical error I think. 15:58

11 **CHAIRMAN:** Yes.

12 A. I would have written to her requesting that she contact
13 me by a certain date and when she didn't I closed the
14 file the following January when I came back to work
15 after Christmas. 15:58

16 779 Q. **MS. LEADER:** Okay. So other than Dr. O'Neill and Ms. D
17 did you discuss these matters with anybody else?

18 A. I did not.

19 780 Q. If you would answer any questions anybody else might
20 have. 15:59

21

22 **CHAIRMAN:** Are there any questions?

23

24 **MS. WATERS WAS CROSS-EXAMINED BY MR. MCDOWELL:**

25 781 Q. **MR. MCDOWELL:** Very, very briefly. On page 373 you say 15:59
26 *"Does the client think the alleged perpetrator presents*
27 *a risk to children today?"* And you record her answer
28 as: *"Yes, and this has been notified."* Is that right?

29 A. That's correct.

1 782 Q. That's what she said to you at the time?
2 A. Yes, I believe so.
3 783 Q. I see. And going back to page 2882 you record her as
4 saying: *"She reported having "short flashes" of*
5 *recollection of the incident in recent times which she* 15:59
6 *believed were triggered by the recent media coverage*
7 *regarding Sergeant McCabe"* - is that right?
8 A. That is correct, yes.
9 784 Q. Thank you.
10 16:00
11 **CHAIRMAN:** Okay, is there any --
12 **MR. CUSH:** Very briefly, Chairman.
13 **CHAIRMAN:** Yes.
14
15 **MS. WATERS WAS CROSS-EXAMINED BY MR. CUSH:** 16:00
16 785 Q. **MR. CUSH:** Ms. Waters, you described reading the second
17 file in anticipation of meeting with Ms. D and you have
18 described what was on that file, and I just want you to
19 look at two particular documents so you can say whether
20 these documents were on the file. The first document 16:00
21 is at page 978, Chairman.
22 **CHAIRMAN:** Yeah.
23 A. Yes.
24 786 Q. **MR. CUSH:** These are Ms. Brophy's notes, the first of
25 which records being informed of the error. Can you 16:00
26 confirm that that document was on the file?
27 A. Yes, I can confirm I recall seeing that on the file,
28 yes.
29 787 Q. And then 991, Chairman, if I may, this is a letter, a

1 subsequent piece of correspondence written by
2 Ms. Brophy to Ms. D dated May 16th, 2014. Was that on
3 the file when you received it?
4 A. Yes, I believe so.
5 **CHAIRMAN:** What one is that? 16:01
6 **MR. CUSH:** That's a letter of the 16th May, Chairman --
7 **CHAIRMAN:** Yes.
8 **MR. CUSH:** -- from Ms. Brophy to Ms. D in which she is
9 apologising --
10 **CHAIRMAN:** -- for the error. 16:01
11 788 Q. **MR. CUSH:** I think you have checked the file recently,
12 Ms. Waters, isn't that right?
13 A. I did, that's correct.
14 789 Q. And you can confirm that that was on the file?
15 A. I can confirm that, yes. 16:01
16 790 Q. Thank you. Thank you Chairman.
17
18 **CHAIRMAN:** Is there any other questions? Thank you
19 very much. Thanks.
20 16:01
21 **THE WITNESS WITHDREW**
22
23 **CHAIRMAN:** I think that's as far as we are going today.
24 If anyone thinks that we're rising for the 18:05 at
25 Ballinrobe, I have been informed that the horse called 16:01
26 *Hague Convention* is not running because it's lame,
27 there we go.
28 **THE HEARING THEN ADJOURNED UNTIL TUESDAY, 25TH JULY**
29 **2017 AT 10:00AM**

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