

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 TUESDAY, 25TH JULY 2017 - DAY 16

16

Gwen Malone Stenography
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action.

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1 THE HEARING RESUMED ON TUESDAY, 25TH DAY OF JULY, 2017

2 AS FOLLOWS:

3
4 **MR. MARRINAN:** Sir, the first witness this morning is
5 Simon Mark McConnell, please. This is at page 2595 of 10:01
6 the materials.

7
8 MR. SIMON MARK MCCONNELL, HAVING BEEN SWORN, WAS

9 DIRECTLY EXAMINED BY MR. MARRINAN:

10 1 Q. **MR. MARRINAN:** Now, I think you are a senior scientific 10:01
11 officer in the Forensic Science Department in Northern
12 Ireland, is that right?

13 A. That's correct.

14 2 Q. And would you just tell the Chairman what your
15 qualifications are, please? 10:02

16 A. I have a Master's of Science in Forensic Computing. I
17 also have Bachelor of Engineering in Electronic
18 Systems, and a Master's of Science in Electronics and
19 Digital Signal Processing.

20 3 Q. Now, I think you have worked for the Forensic Science 10:02
21 Northern Ireland for the last 14 years, is that right?

22 A. That's correct, yes.

23 4 Q. And you accepted a brief from the Tribunal to examine,
24 amongst other things, certain documents, isn't that
25 right? 10:02

26 A. That's correct, yes.

27 5 Q. And also computer records?

28 A. Yes.

29 6 Q. Now, on the 23rd of June of 2017, a number of documents

1 were selected by you for examination in line with the
2 Disclosure Tribunal's Terms of Reference, and under a
3 Memorandum of Undertaking agreed between solicitors
4 Byrne Wallace, the British Standards Institute Dublin,
5 and the Forensic Science Northern Ireland Laboratory, 10:03
6 is that right?

7 A. That's correct, yes.

8 7 Q. I think these documents were transferred to, what you
9 describe as an encrypted digital storage device and
10 placed in a sealed evidence bag which was then 10:03
11 numbered, isn't that right?

12 A. That's correct, yes.

13 8 Q. I think it was entered into the records of your
14 laboratory?

15 A. Yes. 10:03

16 9 Q. Now, I think that you describe that item in the
17 following terms: "*BSI provided files*", is that right?

18 A. That's correct.

19 10 Q. And can you tell us where those files actually emanate
20 from? 10:03

21 A. An examination was done by BSI previously of a computer
22 and those files were taken from the image from that
23 computer.

24 11 Q. I think that your understanding was that that computer,
25 in fact, had been destroyed, is that right? 10:04

26 A. That's correct, yes.

27 12 Q. But a mirror image had been taken of it effectively, of
28 the files on it, is that right?

29 A. Before destruction, yes.

1 13 Q. And did you, from examination of that, discover any
2 evidence that what you were being provided with had in
3 any way been interfered with by anybody?
4 A. Reviewing the files and documents, there was nothing to
5 indicate that there was any interference with those 10:04
6 files and documents.

7 14 Q. Now, I think that the purpose of your examination of
8 the files was to determine the authenticity of the
9 files themselves and of their content and associated
10 metadata. Would you just tell us what metadata is? 10:05
11 A. It's information which is contained within the file
12 about the file, such as the created date, in the case
13 of a word document the last printed date, the last
14 modified date, the size of the file. So it's various
15 parameters of that file described and that information 10:05
16 is held within the file itself.

17 15 Q. So, if I create a file on my computer, does it have the
18 date that the file was actually created?
19 A. Yes. That would be part of what is known as the
20 metadata. 10:05

21 16 Q. Yes. And then if I conduct an operation, for example,
22 if I was to copy that file to another file, would that
23 be recorded in the metadata of the original file?
24 A. The original file would remain intact, but the copied
25 file would contain new metadata. 10:06

26 17 Q. And would that indicate that I had copied the file from
27 the original file?
28 A. There are indications within the metadata whereby you
29 can tell if a file has been copied, yes.

1 18 Q. And if I were to perform another operation such as to
2 print off the file, or to print the file, or cause an
3 amendment to the file, would those show up on the
4 metadata?
5 A. Yes, that's correct. Yes. 10:06
6 19 Q. I think that specifically you were tasked to determine
7 whether the evidence, the physical evidence that you
8 observed from an examination of the files would support
9 the proposition that a document produced with Ms. Y's
10 details was used as a template for a document produced 10:06
11 for Ms. X, is that right?
12 A. That's correct, yes.
13 20 Q. I think that Ms. X actually has changed now and is
14 known as Ms. D, and that is how we'll refer to her from
15 now on. 10:07
16 A. I understand that, yes.
17 21 Q. So effectively, you had access to two files: The Ms. D
18 file -- and if we could just have page 964, please,
19 brought up on the screen. This is, if you just scroll
20 down there, you can see it on the screen, this is a 10:07
21 copy of the document that -- the file that you were
22 examining, it's Retrospective Disclosure of Abuse. Do
23 you see that?
24 A. Yes.
25 22 Q. And it has the various references on it and, but in 10:07
26 particular under "*Description of Abuse*" we were
27 concerned with the description of abuse there, I will
28 just read it: "Ms. --" and then it's deleted. You had
29 access to the original name, isn't that right?

1 A. I did, yes.

2 23 Q. *"Ms... informed me that she suffered sexual abuse in*
3 *childhood. The abuse involved digital penetration,*
4 *both vaginal and anal. The alleged would also threaten*
5 *Ms. --" and the name is deleted again -- "-- father if* 10:08
6 *she said anything."* Isn't that right?

7 A. Yes".

8 24 Q. And I think there was a concentration on that
9 particular paragraph under *"Description of Abuse"* as it
10 was common to both documents that you were examining, 10:08
11 is that right?

12 A. It was exactly the same in both documents, including
13 the name, which was carried across from the previous
14 document.

15 25 Q. Now, I think that, first of all, the examinations were 10:09
16 carried out on the actual files themselves, isn't that
17 right?

18 A. That's correct.

19 26 Q. And through an agreed protocol, none of the documents
20 were copied or taken away? 10:09

21 A. No.

22 27 Q. And that was for the purpose of protecting the identity
23 of Ms. Y, is that right?

24 A. That's correct.

25 28 Q. And you viewed the file content for the purposes of 10:09
26 comparisons, isn't that so?

27 A. I did, yes.

28 29 Q. would you just indicate to the Chairman what
29 comparisons that you saw?

1 A. The Ms. D document, and specifically with regards to a
2 "Description of Abuse", the paragraph was exactly the
3 same from the Ms. Y document. All the other content in
4 the Ms. D document pertained to Ms. D.

5 30 Q. If you wouldn't just mind pulling the microphone a 10:10
6 little bit closer.

7 A. Sorry. So that was -- that was the comparison that was
8 done. And the main finding there was the fact that
9 from the previous document the description of abuse was
10 exactly the same, unaltered. Looking at the metadata 10:10
11 from the documents, it was found that the last printed
12 time on both documents was exactly the same, being the
13 5th of June 2013 at 11:55, and that indicated that the
14 Ms. Y document would have been used as a template for
15 the Ms. D document. 10:11

16 31 Q. So if we could just be clear about this. The
17 retrospective report in relation to Ms. D document and
18 the retrospective report in relation to the Ms. Y
19 document, both were last modified on 5th of June 2013,
20 is that right? 10:11

21 A. That was the last printed time. Whenever a document is
22 created as a new word document, it won't have a last
23 printed time because it's never been printed, but if a
24 document is copied from another document which has
25 previously been printed they will both contain the same 10:11
26 last printed time.

27 32 Q. All right.

28 A. And in the case of the Ms. D document, the actual file
29 created time was after the last printed time, which

1 would indicate that it was a copied file.

2 33 Q. So, sorry, I may just have picked you up slightly wrong
3 in relation to it, I am sorry. The Ms. Y document had
4 a last printed time of the 5th of June 2013 at 11:55 --
5 A. That's correct. 10:12

6 34 Q. -- is that correct?
7 A. Yes.

8 35 Q. So that was the last activity on that file, is that so?
9 A. That was the last time that the file was printed.

10 36 Q. The Ms. D file was last modified on the 9th August of 10:12
11 2013, is that right?
12 A. That's correct.

13 37 Q. And I think you'd access to a witness statement from
14 Laura Brophy and indeed she has given evidence to the
15 Tribunal. And you are familiar with the importance of 10:12
16 that date, isn't that right?
17 A. Yes, that's correct.

18 38 Q. The last printed time associated with that document,
19 the Ms. D document, is also the 5th of June of 2013 at
20 11:55? 10:13
21 A. That's correct.

22 39 Q. And what does that indicate to you?
23 A. Well, the content created time of the Ms. D document
24 was the 9th of August, so essentially if it wasn't a
25 copy then the last printed time, if it had been 10:13
26 printed, would have been after the timestamp of the 9th
27 of August, but because it is a copied file it has a
28 timestamp, which is the 5th of June, which is actually
29 before the content created time, which is, essentially

1 that last printed time is carried across from the
2 document from which it was copied.

3 40 Q. And does that indicate to you that the Ms. D file was
4 in fact a copy of the Ms. Y file?

5 A. It does, yes. It would appear that the Ms. Y file was 10:14
6 used as a template for the Ms. D document.

7 41 Q. I think that is supported by an examination which
8 clearly indicates that the content of the section
9 entitled "*Description of Abuse*" in both documents is
10 identical, isn't that right? 10:14

11 A. Yes, I would agree.

12 42 Q. Now, in terms of your own overall finding in relation
13 to the brief that you had, what is your professional
14 opinion in relation to the two documents and whether or
15 not your examination supports the proposition that the 10:15
16 Ms. D document was prepared from a template from the
17 Ms. Y document?

18 A. Well, looking closely at the documents and looking at
19 their content and looking at a lower forensic level, I
20 found that the documents did not appear to have been 10:15
21 interfered with in any way, and looking at the
22 metadata, corresponded to the fact that one document
23 was a copy of the other document. The Ms. Y document
24 was used as a template to produce the Ms. D document.

25 43 Q. Thank you very much. Would you answer any questions, 10:16
26 please.

27 **MR. GORDON:** No questions.

28 **MR. CUSH:** No questions, Chairman.

29 **MR. DONAL MCGUINNESS:** No questions, Judge.

1 **CHAIRMAN:** Sorry, did you say a couple of questions?
2 **MR. DONAL MCGUINNESS:** No questions, Chairman.
3
4 **MR. MCCONNELL WAS QUESTIONED BY THE CHAIRMAN:**
5 44 Q. **CHAIRMAN:** To all appearances, insofar as you can could 10:16
6 see, Mr. McConnell, both of these files were genuine
7 files?
8 A. That's correct.
9 45 Q. **CHAIRMAN:** It didn't look -- there was nothing to
10 indicate to you that they had been created by way of 10:16
11 creating a lie or an illusion?
12 A. No. I looked at the files on a number of different
13 levels and there was no indication of that.
14 **CHAIRMAN:** Yes. Thank you. I very much appreciate
15 your help. 10:16
16
17 **THE WITNESS THEN WITHDREW**
18
19 **MR. MARRINAN:** The next witness is Kieran Kenny. 1740.
20 10:17
21 **MR. KIERAN KENNY HAVING BEEN SWORN, WAS DIRECTLY**
22 **EXAMINED BY MR. MARRINAN:**
23 46 Q. **MR. MARRINAN:** Now, I think, Mr. Kenny, that you are a
24 former assistant commissioner in the Gardaí, isn't that
25 right? 10:17
26 A. That's correct, Chairman.
27 47 Q. And that you retired after a distinguished career on
28 2nd of April of 2016?
29 A. That's correct.

1 48 Q. Would you just give a brief outline to the Tribunal of
2 your career in the Gardaí?

3 A. Yes, Chairman. I gave 41 years of my life to An Garda
4 Síochána, Chairman. I am second generation; my father
5 was in the same profession before me. I commenced my 10:18
6 career in 1975 to no great surprise, and on completion
7 of my training at Templemore I was assigned to
8 Donnybrook Garda Station in Dublin. I remained there
9 as a garda until 1980, when I moved to the garda dogs
10 section and I handled a garda explosive dog for a 10:18
11 period of six years. I was promoted to the rank of
12 sergeant in 1987, and my first posting then was
13 attached to a crime task force which operated in Dublin
14 City at that time, and that amalgamated subsequently --
15 that was divisionalised and I was in charge of the 10:18
16 south central divisional task force, which would have
17 covered the areas of the city centre and the right-hand
18 side, Pearse Street side of the water. I remained
19 there until 1993, and then I was a station house
20 officer in charge of Pearse Street Garda Station for 10:19
21 approximately a year and some months. I was promoted
22 to the rank of inspector in 1995, and I was allocated
23 to Donnybrook Garda Station. I remained there until
24 2000, when I was promoted to the rank of superintendent
25 and I was allocated to the Garda College, where I was 10:19
26 the head of initial training for two-and-a-half years.
27 When that period expired, I then transferred to the
28 crime policy and administration section in Garda
29 Headquarters where I remained for a number of years,

1 and I returned to Donnybrook as a district officer in
2 2005, and I was there for a period of approximately
3 nine months, and then I was promoted to the rank of
4 chief superintendent. I was allocated to the
5 Sligo-Leitrim division and that happened in October of 10:20
6 2006. I was promoted to the rank of assistant
7 commissioner in October 2009, and I was given
8 responsibility for the Northern Region, which covers
9 the six counties on the southern side of the border,
10 and I also had my duties in relation to the border 10:20
11 itself and I was responsible for liaising with the PSNI
12 and the statutory agencies in Northern Ireland. Also
13 during that period, Chairman, I would have been the
14 regional commander for the eastern region for a period
15 of two years, which took in another seven counties of 10:20
16 Wicklow, Laois, Offaly, Kildare, Meath and Westmeath.
17 And in the latter part of my service I was also
18 responsible at corporate level for internal affairs
19 or -- sorry, internal audit, risk governance,
20 governance and risk management and legal affairs. And 10:20
21 that's a quick snap of my career to date, Chairman.
22 49 Q. Thank you very much. And I think that during the
23 relevant period of time, you were acting assistant
24 commissioner from 2009 until 2016, is that right?
25 A. In what regard, please? 10:21
26 50 Q. Mmm? You were assistant commissioner?
27 A. Yes, I was.
28 51 Q. Yes. During that period of time. And from 2006 you
29 were also in the Northern Region, is that right?

1 A. That's correct, yes. In the Sligo-Leitrim division.

2 52 Q. Could you just tell us what you knew at that time of
3 Sergeant McCabe?

4 A. During -- I knew nothing of Sergeant McCabe until -- I
5 had no dealings with him or knew of him. Obviously I 10:21
6 knew from the media but personal knowledge of Sergeant
7 McCabe, I had none.

8 53 Q. Well, what did you know of him from the media?

9 A. Well, his involvement in the penalty points issues was
10 -- also his involvement in highlighting deficiencies of 10:22
11 investigations in the Cavan-Monaghan division.

12 54 Q. Well, this was within your division, isn't that right?

13 A. It was within my region, yes.

14 55 Q. Region, yes.

15 A. Yes. 10:22

16 56 Q. So what view had you formed of him?

17 A. I didn't have any view, Chairman, good or bad in
18 relation to Sergeant McCabe. This was something that
19 he was doing. He was reporting these matters for his
20 own reasons. I didn't have any view. 10:22

21 57 Q. What do you mean "for his own reasons"?

22 A. Well, you know, I presume, I am just giving my own
23 opinion on this, that he had difficulties with some
24 issues that were going on in the station or the
25 district where he was working, and he was highlighting 10:22
26 them.

27 58 Q. Well, I mean, this was within your region --

28 A. Yes.

29 59 Q. -- in circumstances where, I presume that this hadn't

1 happened before, a member of An Garda Síochána --
2 A. well, you see, I took -- I took up my position as
3 regional commissioner from 2009, a lot of the issues
4 that I am talking about here would have happened prior
5 to that. 10:23

6 60 Q. I am just trying to get a flavour --

7 A. Yeah.

8 61 Q. -- Mr. Kenny, of the attitude that then prevailed
9 towards Sergeant McCabe, and you are in charge of the
10 region? 10:23

11 A. Yes.

12 62 Q. He is one of your guards in the region?

13 A. Yes.

14 63 Q. He is a sergeant. And he has made a very large number
15 of complaints? 10:23

16 A. Yes.

17 64 Q. There is a file on him in Garda Headquarters that
18 stretches to 3,500 pages?

19 A. Yes.

20 65 Q. I assume that headquarters would have contacted you at 10:23
21 some stage to ask you about Sergeant McCabe, did they?

22 A. well, you see, I also was in charge of the eastern --
23 the Eastern Region at this stage as well, so I would
24 have been aware of Sergeant McCabe's circumstances, for
25 a better word, and I would have dealt with several 10:24
26 issues regarding his workplace welfare and those types
27 of things.

28 66 Q. well, was there a view that you had in relation to the
29 allegations that were being made by Sergeant McCabe?

1 A. I didn't have any view on -- negative or otherwise.
2 67 Q. You didn't have any view?
3 A. Well, they obviously were being looked at and I
4 suppose, I didn't -- until that had been determined, I
5 didn't form an opinion on them, no. 10:24
6 68 Q. Very well. And I think the first that you knew of this
7 particular matter was on 15th of May of 2014, when
8 correspondence was received at the regional office in
9 Sligo, is that right?
10 A. That's correct. 10:24
11 69 Q. And I think that this came from Chief Superintendent
12 Sheridan, and if we could have page 3227 up on the
13 screen, please. We will see the letter that was sent
14 to you, it's already been opened to the Tribunal. It
15 says: 10:25
16
17 *"The allegations contained in the attached referral*
18 *have been the subject of a previous Garda investigation*
19 *which resulted in the Director of Public Prosecutions*
20 *directing no prosecution against the alleged offender,* 10:25
21 *Mr. McCabe."*
22
23 Isn't that right?
24 A. Yes.
25 70 Q. And it then goes on to say: 10:25
26
27 *"It is my understanding that Ms. D has made a complaint*
28 *based on the allegations set out in the attached*
29 *referral form to the following parties..."*

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And then it says Mr. Micheál Martin and that it was subsequently referred on to the Taoiseach and then the An Garda Síochána Ombudsman Commission. Obviously, it was, therefore, quite important from two perspectives, I suppose; in the first instance it was important because it referred to Sergeant McCabe and he was very much in the media at the time, isn't that right?

10:26

A. Yes.

71 Q. And it also refers to the complainant, Ms. D?

10:26

A. Yes.

72 Q. And she was bringing the matter to the attention of Micheál Martin, the Taoiseach and also the Ombudsman Commission, isn't that so?

A. Yes.

10:26

73 Q. So this wasn't a normal report that was coming in, sure it wasn't?

A. It was a report in relation to an allegation, firstly, against a serving member of An Garda Síochána, and then, as you correctly say, it involved Sergeant McCabe and the -- and that part of it. And then I suppose, the parties involved, the Garda Ombudsman Commission and Mr. Martin and Mr. Kenny, yes.

10:26

74 Q. Had you been previously aware of the case or the allegation that had been made in 2006 against Sergeant McCabe?

10:27

A. Not -- I became aware of that allegation firstly in, I think it was at sometime during March of this year when the discovery of documents was taking place in respect

1 of the Guerin investigation and Chief Sheridan, from my
2 best recollection, would have been in contact with my
3 office in respect of collating all of the files and
4 matters that we would have in relation to Sergeant
5 McCabe. And at that stage I became aware that there 10:27
6 had been an investigation, the one referred to in the
7 second paragraph there.

8 75 Q. And were you aware of the nature of the allegation that
9 had been levelled against Sergeant McCabe by Ms. D?

10 A. Yes, briefly. I was aware briefly of it and I was 10:28
11 aware of the outcome of the investigation.

12 76 Q. When you say briefly, could you be more specific? Were
13 you aware that it was an allegation of inappropriate
14 touching?

15 A. Yes, I was. 10:28

16 77 Q. It certainly wasn't a rape offence, isn't that right?

17 A. Yes.

18 78 Q. Then, if we could just turn over to page 3228, please.
19 This was the report that was sent to the chief
20 superintendent from his superintendent, Superintendent 10:28
21 McGinn?

22 A. Yes.

23 79 Q. Did you read that?

24 A. I did.

25 80 Q. And you will see in that, if you look at the first 10:28
26 page, 3228, the fifth paragraph:

27

28 *"The allegation was investigated from Monaghan Garda*
29 *Station by then Inspector Noel Cunningham, who is now*

1 *district officer at Monaghan."*

2 A. Yes.

3 81 Q. And then below that:

4

5 *"No copy of the investigation file is held or was held* 10:29
6 *at Bailieboro district. On interrogation of the*
7 *correspondence register here, only records of*
8 *documentation received here to notify Maurice McCabe of*
9 *the DPP's directions and a few other similar type items*
10 *of correspondence were noted. It is believed the* 10:29
11 *investigation file with all subsequent relevant*
12 *documentation is held at Monaghan Garda Station."*

13 A. Yes.

14 82 Q. So from that, you would have gleaned that the matter
15 had been investigated previously but you were already 10:29
16 aware of that from March, isn't that right?

17 A. I was, yes.

18 83 Q. Then the final paragraph over the page at 3229, this is
19 the recommendation from Superintendent McGinn:

20

21 *"In light of the referral received on foot of his D's* 10:30
22 *disclosure to a professional I feel it appropriate to*
23 *have the investigation reviewed. I suggest that the*
24 *file and investigation in its entirety be reviewed at*
25 *officer level within An Garda Síochána, or that it be* 10:30
26 *referred to the Cold Case Unit NBCI. In any case, if a*
27 *review of the case be conducted I suggest it be*
28 *conducted external of personnel within Cavan-Monaghan*
29 *division."*

1 A. Yes.

2 84 Q. And when you read that at the time, what was your
3 reaction to that?

4 A. My reaction to that was, it was Superintendent McGinn's
5 view on the matter at that stage and it was just 10:30
6 something I took note or notice of.

7 85 Q. Were you aware of any difficulty at that point in time
8 in terms of the Inspector Cunningham, as he then was,
9 having a difficulty in relation to investigating the
10 case? 10:31

11 A. This is -- I am jumping ahead here, but --

12 86 Q. Well, I am asking you here, at this point in time, when
13 you are reading that, were you aware of any difficulty
14 at that point in time that inspector, then
15 Superintendent Cunningham, had in relation to 10:31
16 investigating this matter --

17 A. Yes, I was.

18 87 Q. -- in 2007?

19 A. Yes, I was.

20 88 Q. And how were you aware of that? 10:31

21 A. Well, this issue arose, I have been here for a number
22 of days listening to the evidence, and the issue arose
23 in respect of Inspector Cunningham having difficulty
24 being appointed to investigate this matter by Chief
25 Rooney in 2006/2007. I was aware of that, and I have 10:31
26 to say, Chairman, it's been the -- it has been greatly
27 frustrating for me since that time, I was trying to
28 recollect where I would have come. I certainly didn't
29 speak to Superintendent Cunningham in relation to his

1 investigation, but that information, I did have it. I
2 was either party to a conversation or that was
3 mentioned to me at some stage, and I have tried
4 endlessly over the last couple of days to try and
5 recollect, Chairman, where that information came from, 10:32
6 and I cannot.

7 89 Q. Well, you will appreciate that Superintendent
8 Cunningham indicated that he conducted his
9 investigation but he had spoken to Sergeant Eamon
10 White, who is the clerk -- 10:32

11 A. Yes.

12 90 Q. -- to Chief Superintendent Rooney --

13 A. Yes.

14 91 Q. -- and had mentioned the matter to him and expressed
15 his concerns? 10:33

16 A. Yes, yes.

17 92 Q. Chief superintendent -- or Sergeant Eamon White retired
18 very shortly thereafter, isn't that right?

19 A. Yes.

20 93 Q. So he was no longer in An Garda Síochána. Chief 10:33
21 Superintendent Rooney advised GSOC that he was
22 surprised at the suggestion that was being made by
23 Superintendent Cunningham, are you aware of that?

24 A. No, I am not.

25 94 Q. You are not. But in any event, Chief Superintendent 10:33
26 Cunningham first documented this matter in November of
27 2014 when he made his statement to GSOC?

28 A. Yes.

29 95 Q. So it's not in any documentation, it's not in any

1 report --

2 A. No.

3 96 Q. -- isn't that right?

4 A. No.

5 97 Q. So the source of this information could be quite 10:33
6 important?

7 A. Yes, I realise that, Chairman.

8 98 Q. And it doesn't appear that, Chief Superintendent Rooney
9 is of the view that this in fact was something that
10 wasn't said to him and it doesn't appear to have been 10:34
11 directly said to him, if the sergeant to whom it was
12 said has long left An Garda Síochána --

13 A. Yes.

14 99 Q. -- and if Superintendent Cunningham, who guards this
15 information closely, he told the Tribunal, didn't, in 10:34
16 fact, put that in writing until November of 2014 --

17 A. Yes.

18 100 Q. -- it would appear that somebody must have had a
19 conversation with Superintendent Cunningham?

20 A. Well, all I can say, Chairman, for myself, I didn't 10:34
21 discuss this matter with Superintendent Cunningham.

22 101 Q. All right.

23 A. This information came to my attention, either through a
24 conversation I was party of, to, or some other medium,
25 and Chairman, it would be -- I just cannot recall where 10:34
26 I got the information from. I did have it. I cannot
27 recall where it came from. And I would -- and I am
28 not -- I am trying to assist the Tribunal here. It has
29 frustrated me for the last three or four days,

1 Chairman, because I knew the issue was here and I was
2 just wracking my brain trying to remember from where.
3 And truthfully, I cannot, Chairman, I cannot recall.
4 But it had to be known for me to have that information.

5 102 Q. Now, I am talking specifically about the information -- 10:35
6 not the information, because Inspector O'Connell told
7 us yesterday that it was generally known out there --

8 A. Yes.

9 103 Q. -- that there was the investigation --

10 A. Yes. 10:35

11 104 Q. -- and that Superintendent Cunningham may not have
12 wanted to conduct the investigation?

13 A. Yes, yes.

14 105 Q. But I am talking specifically about Superintendent
15 Cunningham drawing his chief superintendent's attention 10:35
16 to the matter.

17 A. Yes, and that is what I am referring to.

18 106 Q. Yes. Just so we are clear in relation to that.

19 A. No, I am quite clear on that.

20 107 Q. Because there is a difference between general rumour -- 10:36
21 A. No, I understand.

22 108 Q. -- and identifying a specific occasion on which
23 Superintendent Cunningham sought to be relieved from
24 the case?

25 A. Yes, I understand that. 10:36

26 109 Q. And that was regarded by Superintendent Cunningham as
27 being a formal request. So you understand the
28 distinction between the two?

29 A. Mm-hmm.

1 110 Q. And you understand, so there is no difficulty in
2 relation to it, that I am referring to the second
3 aspect, not general rumour --

4 A. Yes, I do.

5 111 Q. -- but a specific referral. But in any event, you 10:36
6 looked at this recommendation there from Superintendent
7 McGinn. Did you not think, having seen that, that
8 perhaps the best thing to do in the circumstances was
9 to contact Superintendent Cunningham and ask him his
10 view in relation to the overall investigation and 10:36
11 perhaps get some additional information from him that
12 he might have?

13 A. Well, Chairman, I was looking at this from a strategic
14 level in my role as the regional commander. This
15 matter was being handled by -- at district and 10:37
16 divisional level in the Cavan-Monaghan by
17 Superintendent McGinn and by Chief Superintendent
18 Sheridan. It wouldn't be something that I would do in
19 the course of an investigation, but I would rely on the
20 officers that were reporting to me from the division 10:37
21 and from the district to keep me informed of matters
22 that I should be kept informed of.

23 112 Q. There would be nothing to prohibit you from calling
24 Superintendent Cunningham in and asking him about his
25 investigation of Sergeant McCabe in 2006/2007? 10:37

26 A. Absolutely not.

27 113 Q. But are you saying it's just simply your practice that
28 you don't do that and that you would only refer to, in
29 this instance, Superintendent McGinn and chief

1 superintendent --

2 A. Yes. Chief Superintendent Sheridan would have a role
3 here in the sense that he would be the first line
4 manager for Superintendent McGinn and Chief
5 Superintendent Sheridan would report to me. That is 10:38
6 the way it would be.

7 114 Q. And then if we turn over to page 3230, please. This
8 was also attached to the notification that you received
9 from the chief superintendent, is that right?

10 A. That's correct. 10:38

11 115 Q. And it's a Notification of Suspected Child Abuse. Did
12 you read that?

13 A. Yes, I did.

14 116 Q. And you'd have noted in the description of the
15 notification: 10:38
16

17 *"Ms. D is attending counselling with Rian. During the*
18 *course of counselling she alleged that she experienced*
19 *sexual abuse in childhood, that this abuse involved*
20 *digital penetration, both vaginal and anal."* 10:38
21

22 Now, what was your reaction to that?

23 A. It was a Notification of Suspected Child Abuse and it
24 was a serious allegation that was contained in the
25 notification. 10:38

26 117 Q. But you knew it to be an error because you'd read the
27 earlier file?

28 A. I had read the earlier file, but, Chairman, I wasn't --
29 I didn't -- you know, I didn't see the -- I wasn't sure

1 whether this was, you know, an extension of what had
2 been previously alleged, so I wasn't completely sure.
3 This, to me, was a new allegation, and perhaps there
4 was additional information in the allegation.

5 118 Q. You told me earlier you'd read the file in March? 10:39

6 A. Yes, I did. I read the file. You have got to
7 understand, Chairman, that this file, when I read it,
8 was one file among 12 or 13 other files. When I say I
9 read it, I didn't read it or study it in detail.

10 119 Q. I thought you agreed with me that it didn't involve a 10:39
11 rape offence and that it was --

12 A. Yes, I did.

13 120 Q. -- was an inappropriate touching, was the way, I think,
14 I put it?

15 A. Yes, I did, yes. 10:40

16 121 Q. So here we are, where this isn't just an extension --

17 A. Yes.

18 122 Q. -- this is a change in the very nature of the
19 allegation --

20 A. Yes, that's correct. 10:40

21 123 Q. -- insofar as it's a rape offence?

22 A. Sorry, probably the words I used, that is what I meant.
23 That there was additional information or an additional
24 part to the allegation here.

25 124 Q. And what was your response to that, seeing this 10:40
26 effectively new allegation coming in?

27 A. Yes. Well, it was something I had to consider in
28 relation to what way the Garda organisation would
29 approach this in respect of investigating criminal

1 aspects of anything that may be in here.

2 125 Q. But if you referred back to the report in fact from
3 Superintendent McGinn you'd have seen that he was
4 acting under the impression that this was the very
5 offence that had been investigated by Inspector Noel 10:40
6 Cunningham and it had gone to the DPP and there had
7 been a direction of no prosecution.

8 A. Well, in fact, it wasn't.

9 126 Q. It wasn't, we know that.

10 A. Yes. 10:41

11 127 Q. But his report indicates, and the reading of the report
12 indicates, that the notification and the offence in the
13 notification is, in fact, the allegation that was
14 investigated from Monaghan Garda Station by then
15 Inspector Noel Cunningham. 10:41

16 A. Yes, yes. That was his view.

17 128 Q. So if you put those two documents together, you were
18 now left in a situation where you have a notification
19 of child abuse with a rape offence and you have a
20 report from Superintendent McGinn, which, by 10:41
21 implication, is that that rape offence has been
22 investigated in 2006/2007, and the DPP has directed no
23 prosecution?

24 A. Yeah. Again, I can't speak for what was in
25 Superintendent McGinn's mind, but I'm not sure that 10:42
26 Superintendent McGinn had viewed the original
27 investigation file.

28 129 Q. Well, this is one of the problems you had.

29 A. Yes.

1 130 Q. And I'm just wondering why it didn't leap out from the
2 page at you when you looked at it and why you didn't
3 realise no, this allegation of rape was never made
4 against Sergeant McCabe.

5 A. Well, I did realise that, sir. Yes, I did. 10:42

6 131 Q. It was never referred to the DPP's office?

7 A. Not in the context of the way it appears here, no.

8 132 Q. But you see, I am just wondering how it is, Mr. Kenny,
9 that you didn't realise from examining just those two
10 documents that, in fact, a grievous error had been 10:42
11 made?

12 A. At that stage, Chairman, I didn't, because as I said
13 initially, from recollection, my view on this was that,
14 okay, it may very well be similar to the matter that
15 was investigated in 2006/2007, but there was additional 10:43
16 information in here in respect of the allegation that
17 was being made, in the sense that it differed, which we
18 will go into I'm sure, in time, in the sense that it
19 was very specific here in relation to the digital
20 penetration, that didn't appear on the actual 10:43
21 investigation file from 2006/2007.

22 133 Q. Yes. But really, you know, I'm concerned because it
23 does appear, and you haven't alluded to this in the
24 statement that you made to the Tribunal on the 3rd of
25 May of 2017, it appears that at this very early 10:43
26 juncture, that you were familiar with the 2006
27 investigation, 2007 direction by the DPP because you
28 had looked at the file in March of 2014 in preparation
29 for the Guerin Inquiry. And it would appear on foot of

1 the documentation that you were sent at that time, as
2 early as the 14th of May, that on reading that, that if
3 you had examined it closely, you would have realised,
4 no, this is wrong, there is an error here, there is no
5 rape offence to be investigated, the 2006/2007 10:44
6 investigation was in relation to inappropriate touching
7 at its very highest. Do you see where I am coming
8 from?

9 A. No, I do. And my answer to that is that, to go back to
10 it, that this new notification, the first one, for want 10:44
11 of a better word, emanated from a counselling session
12 that Ms. D would have had with her counsellor. And my
13 view then was that this additional information was put
14 by her to the counsellor. I took it as it was written,
15 Chairman. 10:45

16 134 Q. Yes. Well, if you took it as it was written perhaps
17 you might have realised that there was an error. In
18 any event, at page 3226, you send on -- you write to
19 headquarters, to the Commissioner's office, isn't that
20 right? 10:45

21 A. Yes.

22 135 Q. And this is on the 16th May, two days later. And you
23 write:
24
25 *"The attached report from Chief Superintendent 10:45*
26 *Sheridan, Monaghan, is forwarded for your information.*
27 *It concerns a Notification of Suspected Child Abuse*
28 *received by Superintendent McGinn, Bailieboro, from*
29 *Tusla Child and Family Agency on 7th May 2014. You*

1 *will note that the allegation identifies the alleged*
2 *perpetrator as Mr. Maurice McCabe and the victim is*
3 *Ms. D. I'm considering this matter at the present time*
4 *and I will keep you informed of developments."*

10:46

5
6 Attached to that is the report at page 3227 of Chief
7 Superintendent Sheridan, and then also the report from
8 Superintendent McGinn to the chief superintendent at
9 page 3228, isn't that right?

10 A. Yes.

10:46

11 136 Q. And then the notification at 3230, the Notification of
12 Suspected Child Abuse. So the three documents have
13 gone to the Commissioner's office?

14 A. Yes.

15 137 Q. And at that time, those three documents -- the
16 notification, is in fact, we know, wrong, isn't that
17 right?

10:46

18 A. Yes, that's correct.

19 138 Q. Now, I think that you then received an acknowledgement
20 of that at page 3232, please. This is from
21 Superintendent Frank Walsh, who is the private
22 secretary to the Commissioner.

10:47

23
24 *"I am directed by the Commissioner to refer to previous*
25 *correspondence from your office of the 16th of May 2014*
26 *in the above and to inquire on the current status of*
27 *the matter."*

10:47

28
29 Is that right?

1 A. That is correct.

2 139 Q. Sorry, I beg your pardon, that is -- I think you may
3 have got an earlier -- I will just check now -- an
4 earlier --

5 A. That is dated 16th of May, Chairman, that would have 10:48
6 been the response.

7 140 Q. Yes. Yes. So, in any event, there matters stood,
8 isn't that right?

9 A. At that time, yes.

10 141 Q. Yes. And you didn't -- you say you didn't notice that 10:48
11 this rape offence was in fact incorrect and you didn't
12 take any action on foot of it, isn't that right?

13 A. It was additional information to what was contained in
14 the allegation in the original investigation file.

15 **CHAIRMAN:** I am sorry, Mr. Marrinan, can I just ask 10:48
16 you, apart from that letter of 17th of July, which of
17 course is two months after the correspondence from the
18 assistant commissioner, there wasn't anything else in
19 between, was there, as far as we know?

20 **MR. MARRINAN:** Sorry, I had the wrong date, sir. That, 10:48
21 from the Commissioner's office, should read I think
22 16th of July -- no, it's 17th of July. I referred to
23 the wrong page number. It's 3232. The acknowledgement
24 that I referred to is a later one, sir.

25 A. Sorry, Chairman, the 16th of May is the date. 10:49
26 **MR. MARRINAN:** Sorry, I have the wrong one.

27 **CHAIRMAN:** Is there something in between, in other
28 words, the 16th of May and 17th of July? That is what
29 I am asking.

1 **MR. MARRINAN:** There is an acknowledgement, I beg your
2 pardon. This is at page 3224.

3 **CHAIRMAN:** Okay.

4 142 Q. **MR. MARRINAN:** This is from the Commissioner's office,
5 have you got that there, Mr. Kenny. 10:49

6 A. Yes, I have.

7 143 Q. I will read that out, dated 16th of May:
8
9 *"I am directed by the Commissioner to refer to email*
10 *correspondence from your office of the 16th May 2014,* 10:49
11 *the content of which has been noted by the*
12 *Commissioner. It is noted that you are considering*
13 *this matter and that you would keep the Commissioner*
14 *informed of developments."*

15 A. Yes, that is the correct document. 10:50

16 144 Q. The next matter is that you then receive correspondence
17 from Chief Superintendent Sheridan on the 23rd of May
18 of 2014, is that right?

19 A. Yes.

20 145 Q. And this is at page 3164, please. Now, you are 10:50
21 familiar with this, it's already been read into the
22 record of the Tribunal, so I won't read it in, in its
23 entirety, but the second paragraph:
24
25 *"The previous referral contained incorrect information* 10:50
26 *and should therefore be withdrawn and replaced with the*
27 *attached."*

28 A. Yes.

29 146 Q. Is that correct?

1 A. That's correct.

2 147 Q. The next paragraph we will just skip, and then the next
3 one:

4
5 *"The attached referral does not disclose any new* 10:51
6 *information/evidence in regard to these matters, and*
7 *therefore, at this time, does not require any further*
8 *action by An Garda Síochána."*

9
10 That is a very clear view expressed by Chief 10:51
11 Superintendent Sheridan, isn't that right?

12 A. Yes.

13 148 Q. *"It is my understanding that Ms. D has made a complaint*
14 *based on allegations set out in the attached referral*
15 *form to the following parties."* 10:51

16
17 And then he again refers you to the complaint made to
18 Micheál Martin and subsequently to the Taoiseach --

19 A. Yes.

20 149 Q. -- and then to the Ombudsman's commission. 10:51

21
22 *"A full copy of the Garda investigation file is*
23 *available at this office. I also wish to advise that a*
24 *complete copy of the Garda investigation file was*
25 *disclosed to the Guerin Inquiry."* 10:52

26
27 And you were already aware of that, isn't that right?

28 A. Yes, I was.

29 150 Q. And that document included a letter from Fiona Ward to

1 the chief superintendent. This is at page 1721,
2 please. It's dated the 22nd of May of 2014. And that
3 was included in the documentation, isn't that so?
4 A. Yes. That letter was from Laura Brophy.
5 151 Q. Yes. 10:52
6 A. Yes.
7 152 Q. So having reviewed that, the chief superintendent is
8 very clear in his view, is he not?
9 A. I think, Chairman, the letter I have here was cc'ed to
10 Fiona Ward. It was addressed to Chief Superintendent 10:52
11 McGinn. The letter that is on the screen here is
12 addressed to Chief Superintendent Sheridan, so it's not
13 the same letter. And the date --
14 153 Q. Okay, we will come back to --
15 A. -- 16th of May is on it. I have deliberately kept 10:53
16 documents, Chairman, from my file in the regional
17 office so as I am clear on exactly the documents I am
18 dealing with here.
19 154 Q. Yeah. I will come back to that.
20 A. I am just pointing it out. 10:53
21 155 Q. We may have an error in the page numbers but I will
22 come back to that. But if we could just go back to the
23 actual report that was sent to you from Chief
24 Superintendent Sheridan?
25 A. Superintendent McGinn we are speaking about, I think, 10:53
26 is it?
27 156 Q. Mmm?
28 A. Sorry, I don't mean to be awkward here. The letter you
29 referred to a few minutes ago was addressed to

1 Superintendent McGinn, it's dated the 16th of May and
2 it's signed by Laura Brophy.

3 157 Q. Yes.

4 A. Yes, that is the correspondence that was attached to
5 this -- 10:54

6 158 Q. -- letter from Chief Superintendent Sheridan.

7 A. Yes.

8 159 Q. Yes, that is what I said.

9 A. Sorry, my misunderstanding. I am just trying to be
10 clear. 10:54

11 160 Q. We will call off our investigation in relation to that
12 particular error. But in any event if I could return
13 to the letter sent by Chief Superintendent Sheridan.

14 A. Yes.

15 161 Q. He is very firm in his statement there to you: 10:54

16

17 *"The attached referral does not disclose any new*
18 *information/evidence in regard to these matters, and*
19 *therefore, at this time, does not require any further*
20 *action by An Garda Síochána."* 10:54

21

22 A. Yes.

23 162 Q. Well, was there any particular reason then why the
24 matter wasn't closed off?

25 A. At that stage, no. That was chief superintendent's 10:55
26 opinion -- or Chief Superintendent Sheridan's opinion
27 on the matter. As I said to you, I was dealing with
28 this at a strategic level, so you know, I wanted -- I
29 suppose, looking at it from an organisational

1 perspective in relation to exposure or risk I wanted to
2 be sure or to reassure myself that this was definitely
3 the case. That was Chief Superintendent Sheridan's
4 opinion.

5 163 Q. There is also, at page 3165 -- do you see the document 10:55
6 there?

7 A. Yes.

8 164 Q. And had you sight of that as well?

9 A. This document, yes.

10 165 Q. And it's a reference to the documents, it says: 10:55
11
12 *"Reference above and attached correspondence received*
13 *from HSE dated 22nd inst.*

14
15 *The report in question is dated 13th August 2000 [sic] 10:56*
16 *and if you can confirm that all copies of same have*
17 *been retracted and destroyed. If an original copy is*
18 *on hand please forward same to this office so that it*
19 *can be returned to the HSE. I would be obliged if you*
20 *would revert to this office in early course, forwarded 10:56*
21 *please."*

22
23 And then it's sent on behalf of Chief Superintendent
24 Sheridan, it's to the Superintendent McGinn, isn't that
25 right? 10:56

26 A. That's correct.

27 166 Q. And it has *"Follow up with Kieran"*, and that is
28 reference to you, is that right?

29 A. No, *"Follow up with Karen"*.

1 167 Q. Karen, sorry.

2 A. Karen would have been my PA, my secretary. Sergeant
3 Duffy worked for me in the office in Sligo.

4 168 Q. And your response in relation to that, what did you
5 think when you saw those documents, what was your view 10:57
6 of the --

7 A. Well, I suppose, the word destroyed was the first word
8 that jumped out at me, out of this document. And
9 Chairman, I have 41 years' service in An Garda
10 Síochána, I conducted and was involved in many major 10:57
11 investigations and my personal opinion is that when a
12 document is generated, it's a record, and I
13 certainly -- I don't see any circumstances that I would
14 be allowing the destruction of a document that has been
15 created. I have no difficulty whatsoever with 10:57
16 retracted, withdrawn, or any other words that somebody
17 wants to use, but certainly once a document is created,
18 it's a record, it's appropriately filed with whatever
19 action has been taken in respect of the document
20 written on it. But once it's a record, it remains a 10:57
21 record. And that's the reason that I took that view in
22 respect of the document, Chairman.

23 169 Q. And if we could have page 3167 on the screen. This is
24 a direction given by you to the chief superintendent --

25 A. Yes. 10:58

26 170 Q. -- which expresses or confirms the view that you have
27 just expressed?

28 A. Yes.

29 171 Q. Is to the chief superintendent of Monaghan. It reads:

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"With reference to the above I am in receipt of an email from your office on 29th May 2014. I am concerned that a confidential matter such as this is dealt with by way of email."

10:58

A. Yes.

172 Q. Then: *"Under no circumstances should any material in Garda custody be retracted or destroyed regarding this matter. No materials will be returned to the HSE without permission from this office. I intend to hold a meeting at my office in Sligo on Monday the 16th June 2014 at 10:00am. I request that both you and Superintendent McGinn attend and are in possession of all material/correspondence regarding to this matter."*

10:58

And that is signed by you. Exactly what was going to be investigated at that point in time?

10:59

A. I just, I suppose, number one, I was responding to the issue with the documents and in very strong terms I gave a direction of what was to take place in regard to that. At this stage, we have had an incorrect referral, we have had amended referral and we have this issue with the documentation. So what was in my head at that time was that I decided that I wanted to sit down with the people, with my officers on the ground who were dealing with this at operational level, Chief Superintendent Sheridan and Superintendent McGinn, in order that they would brief me and bring me up to date in respect of all aspects of the matter. I just wanted

10:59

10:59

1 to be -- I suppose, clarity on the issues, I wanted to
2 be assured that the situation was as it was portrayed
3 to me, and an opportunity to tease out matters and
4 discuss it in a format face-to-face with the Garda
5 officers concerned. 11:00

6 173 Q. Well, I wonder; you had come upon a file which had been
7 drawn to your attention in relation to Sergeant McCabe
8 in March of 2014?

9 A. Yes.

10 174 Q. You were aware of what the allegation then was, the 11:00
11 nature of the allegation and the fact that it had gone
12 to the office of the Director of Public Prosecutions
13 and no prosecution had been directed, isn't that right?

14 A. Yes.

15 175 Q. When matters are drawn to your attention in May, you 11:01
16 identify very quickly that the allegation that is now
17 being brought into play by Ms. D is not the same
18 allegation as the one that had been made in March of
19 2014 that you'd seen?

20 A. Yes. 11:01

21 176 Q. Yes. You don't inform anybody of that, but you are
22 subsequently advised by Chief Superintendent Sheridan
23 that an error has been made and it's an error that
24 involves Tusla, in giving incorrect information to the
25 Gardaí, isn't that right? 11:01

26 A. You made a statement there, Chairman, that I didn't
27 inform anybody of the first allegation. I did.

28 177 Q. Who did you inform?

29 A. The Commissioner.

1 178 Q. well, I will come back to that.

2 A. That is okay, but I am just -- I want to be clear.

3 179 Q. Now that you are dealing with it, did you advise the
4 Commissioner that the allegation that is now being sent
5 to the Commissioner's office does not correspond with 11:02
6 the allegation in the file that you'd examined in
7 March?

8 A. Not at that time, no.

9 180 Q. why not?

10 A. Chairman, again, I suppose this was moving and I 11:02
11 just -- I was always of the impression that that matter
12 had -- that that had been done, and I wasn't aware that
13 that hadn't gone to the Commissioner's office until I
14 actually studied the materials for this Tribunal.

15 181 Q. well, I mean, you have referred to it, so we may as 11:02
16 well deal with it now.

17 A. Yes.

18 182 Q. You were referring the matter to the Commissioner's
19 office.

20 A. Yes. 11:02

21 183 Q. You sent a notification that had been sent by Tusla,
22 which is an incorrect notification, isn't that right?

23 A. That's correct.

24 184 Q. You were aware when you sent the letter to headquarters
25 that that allegation contained in that notification, 11:03
26 which was a rape offence, was not the allegation that
27 was disclosed in March of 2014 when you read the file?

28 A. Yes.

29 185 Q. why didn't you alert the Commissioner's office to the

1 difficulty that arose at that juncture?

2 A. Because, as I said, my attitude towards the incorrect
3 referral was that it was a new referral and it could
4 then -- additional information, different to what was
5 in the matter that was investigated in 2006 and 2007. 11:03
6 So it stood on its own merits as regards -- until I was
7 informed that it was incorrect.

8 186 Q. But, can that be right? Because you also sent a letter
9 from Superintendent McGinn in those documents saying
10 that this allegation had been investigated in 11:03
11 2006/2007, it had gone to the Director of Public
12 Prosecutions' office and they had directed no
13 prosecution, so that can't be right, can it?

14 A. But it is, Chairman. I mean, my recollection of it is,
15 I took the initial report that came from Chief 11:04
16 Superintendent Sheridan to be as a new referral with
17 more serious matters mentioned in it. I wasn't aware
18 of what had taken place between Ms. D and her
19 counsellor in respect of the making of that, it now
20 turns out to be an incorrect allegation. 11:04

21 187 Q. So this document rested in the Commissioner's office,
22 your letter, which doesn't allude to the mistake that
23 apparently has been made by Superintendent McGinn?

24 A. The report, Chairman, from Superintendent McGinn and
25 the report from Chief Superintendent Sheridan and the 11:04
26 referral were attached to the documentation that went
27 to the Commissioner's office.

28 188 Q. Yes, I know. And the only person who appears to have
29 known at that time that the notification was either a

1 new notification and therefore was not the matter
2 investigated in 2006/2007, or else it was an error --

3 A. Yes.

4 189 Q. -- the only person who knew at that time when it was
5 sent was you, because the chief superintendent didn't 11:05
6 know and Superintendent McGinn didn't know, and was
7 operating on a false assumption?

8 A. Chief Superintendent Sheridan, in his covering report
9 to me, alludes to the fact that the matter was
10 investigated in 2006/2007. 11:05

11 190 Q. which compounds the problem further, because you knew
12 that it wasn't; you have told the Chairman that you
13 thought that this was a fresh allegation.

14 A. Yes.

15 191 Q. But it wasn't a fresh allegation. 11:05

16 A. We subsequently --

17 192 Q. No, no, at the time it wasn't. It was a fresh
18 allegation to you, which in fact couldn't have been
19 investigated in 2006/2007, isn't that right?

20 A. I didn't consider the matter in that way. 11:05

21 193 Q. You see, the other problem is, and I will cut to the
22 chase in relation to this, is the Commissioner's office
23 was never advised or sent the corrected notification,
24 isn't that right?

25 A. That's correct. 11:06

26 194 Q. So until 2017 when this matter erupted in the media and
27 in Dáil Éireann, the Commissioner's office, even at
28 that stage, had documentation from you including an
29 allegation of penetrative abuse, isn't that right?

1 A. That's correct.

2 195 Q. How can that be? why didn't you notify the
3 Commissioner's office of the error and false accusation
4 against Sergeant McCabe?

5 A. As I said, Chairman, I was under the impression right 11:07
6 up to the time of my making my statement for this
7 Tribunal that that notification had been sent to the
8 Commissioner's office. I mean, I just -- that was my
9 impression, I just can't put it any more than that. I
10 just say at that time, I mean, the amount of 11:07
11 responsibilities I had - and I am not making this in
12 any way as an excuse for it - it's just, it's something
13 that I assumed or I was of the impression that it had
14 been forwarded from my office, Chairman, genuinely.

15 196 Q. well, you will understand that this is another 11:07
16 extraordinary error and failure relating to Sergeant
17 McCabe that the Tribunal is investigating, you
18 understand that?

19 A. I understand what you are saying.

20 197 Q. And you understand that sitting in a file in Garda 11:08
21 Headquarters, an active file, that whoever would read
22 that file would look at the notification of abuse and
23 discern that Sergeant McCabe was being accused of a
24 rape offence, isn't that right?

25 A. From that specific part of the file, yes. 11:08

26 198 Q. So in any event, if we could just move on to deal with
27 the documentation, on the 3rd July of 2014 a letter is
28 sent to you from Chief Superintendent Sheridan,
29 detailing the whole history of the file, isn't that

1 right?

2 A. Yes.

3 199 Q. And again, it's already been opened to the Tribunal and
4 you are familiar with the contents of it, isn't that
5 right? 11:09

6 A. Yes.

7 **CHAIRMAN:** If you could give me a page number, please.

8 **MR. MARRINAN:** I beg your pardon, sir. It's 1805.

9 200 Q. This informs you of the whole background in relation to
10 the matter, isn't that right, and it's a full and very 11:09
11 thorough report?

12 A. Yes.

13 201 Q. Are there any observations that you wish to make
14 yourself in relation to it?

15 A. Not at this time, Chairman. 11:09

16 202 Q. At page 1807, at the bottom of the page, Chief
17 Superintendent Sheridan says:
18
19 *"The referral of the 2nd May 2014 was issued in error
20 and is not relevant to allegations of Ms. D."* 11:10
21
22 And then over the page:
23
24 *"I understand Ms. D had a meeting with Mr. Micheál
25 Martin TD and made him aware of the allegations she had 11:10
26 made and he referred them to An Taoiseach, Enda Kenny.
27 I also understand that Ms. D --"*
28
29 Sorry, page 1808.

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"I also understand that Ms. D made a complaint relating to these matters to the Garda Síochána Ombudsman Commission. They have indicated that they will not be investigating the allegation made by Ms. D against Sergeant Maurice McCabe but they will be investigating the original Garda investigation of her complaint. Ms. D has not requested An Garda Síochána to reinvestigate her complaint or to review it. Tusla have requested the return of the referral which contained the incorrect information."

11:10
11:11

Did you send a copy of that to headquarters?

A. No, I didn't.

203 Q. And, why not?

11:11

A. Well, that was a report to me from Superintendent Sheridan, Chairman. I didn't deem it necessary to send that at that time.

204 Q. But you sent on -- had you sent up the earlier report?

A. Yes, I did. The earlier report was a notification of an allegation of sexual abuse against a serving member of An Garda Síochána, and I would send that, that would be -- that would be correct, that I would send that. This was, the correspondence in relation to the handling of the matter at this time.

11:11
11:11

205 Q. Sorry, I don't understand. You'd sent to the Commissioner's office correspondence that you had received from Chief Superintendent Sheridan concerning a notification --

1 A. Yes.

2 206 Q. -- of child sexual abuse?

3 A. That was the first notification, yes.

4 207 Q. And that had been sent to the Commissioner's office?

5 A. Yes. 11:12

6 208 Q. You hadn't sent that to HRM, had you?

7 A. No.

8 209 Q. why not?

9 A. Because I would expect that once it went to the
10 Commissioner's office that that would be where it would 11:12
11 go.

12 210 Q. So that was sent to the Commissioner's office on the
13 understanding it would be drawn to the attention of the
14 Commissioner and that they would then send it on to
15 HRM, is that it? 11:12

16 A. Yes. That is my understanding.

17 211 Q. So that incorrect information was being sent, it's
18 never been rectified, and here you have a second report
19 that has come in from Chief Superintendent Sheridan,
20 which rectifies the error, sets out the history of the 11:13
21 case and how the error arose, and you didn't send that
22 to the Commissioner's office in the first instance,
23 isn't that right?

24 A. Yes.

25 212 Q. And you didn't send that to the Commissioner's office 11:13
26 with the expectation that it would then go to HRM so
27 the matter could be rectified, is that the position?

28 A. Rectified? I don't know what you mean by rectified.

29 213 Q. Well, there had been an error in the original referral

1 to the Commissioner's office --

2 A. Yes, yes.

3 214 Q. -- which then, naturally, would have gone to HRM.

4 A. Yes.

5 215 Q. So that error had to be rectified? 11:13

6 A. Yes.

7 216 Q. And can you explain why it wasn't rectified?

8 A. Because, Chairman, this correspondence came -- when I

9 sent back a minute to Chief Superintendent Sheridan in

10 respect of the redaction of the documents, in the last 11:14

11 paragraph of that letter I indicated it was my

12 intention to hold a meeting in Sligo in relation to the

13 matter on 16th of June. That didn't take place for

14 availability reasons mainly, and I was always aware

15 that the meeting in Mullingar was going to take 11:14

16 place -- or that a meeting with them was going to take

17 place, and I wanted to be able to sit down and discuss

18 these matters before I formed a conclusive opinion on

19 it.

20 217 Q. If you could go to page 3232, please. This is a letter 11:14

21 again from Superintendent Frank Walsh, private

22 secretary to the Commissioner, who hasn't heard from

23 you at all since the 16th of May 2014, isn't that

24 right?

25 A. Yes. 11:15

26 218 Q. *"I am directed by the Commissioner to refer to previous*

27 *correspondence from your office of the 16th of May 2014*

28 *in the above and to inquire on the current status of*

29 *the matter."*

1 A. Yes.

2 219 Q. This is a matter that needed to be addressed --

3 A. Yes.

4 220 Q. -- isn't that so?

5 A. Yes. 11:15

6 221 Q. So, if we could just come to this meeting that you had
7 then on the 16th July 2014.

8 **CHAIRMAN:** Just before you come to that, Mr. Murrinan,
9 I am sorry, I have been wondering about that letter
10 for, I suppose, half an hour, maybe. And I am just 11:15
11 wondering, what happened in consequence of that letter?
12 I know there is nothing -- nothing follows it, but...

13 **MR. MARRINAN:** There is a follow-up letter.

14 **CHAIRMAN:** This is the follow-up letter of the 17th
15 July, is it? 11:16

16 **MR. MARRINAN:** No, it's just after the meeting that I
17 am going to deal with now. Perhaps I could deal with
18 it then.

19 **CHAIRMAN:** All right. Please do, yes.

20 222 Q. **MR. MARRINAN:** So the meeting is on the 16th July, the 11:16
21 day before you got that letter, reminder from the
22 Commissioner's office, isn't that right?

23 A. Yes.

24 223 Q. I don't intend to open up all the meeting. It's
25 minuted or noted by Sergeant Duffy in relation to it. 11:16
26 But if I could just ask you one question in relation to
27 it, and it's this: Is there anywhere minuted in that
28 meeting a reference to Sergeant McCabe's position in
29 relation to all this?

1 A. If could you clarify that for me, please?

2 224 Q. Is there a reference in the three pages, typed pages,
3 of this meeting that you had with Chief Superintendent
4 Sheridan, Superintendent McGinn and again I think
5 Sergeant Karen Duffy was merely there as a notetaker, 11:17
6 is there any reference at all to Sergeant McCabe's
7 position in relation to all this?

8 A. Well, this meeting was in respect of the notification
9 that was received in respect of Ms. D.

10 225 Q. I know that. The question was: Is there any reference 11:17
11 at all to Sergeant McCabe's position? Namely, somebody
12 against whom a false accusation had been made and who,
13 on review of the file at that time, would have shown
14 that he was somebody who was extremely vulnerable, for
15 a variety of reasons. And, was there any discussion or 11:18
16 is there anywhere minuted any reference to any concern
17 expressed by you, by superintendent Sheridan or
18 Superintendent McGinn?

19 A. Well, Chairman, I think it's important that I -- and I
20 will come back to the question, that I outline exactly 11:18
21 what this meeting in Mullingar was. The meeting in
22 Mullingar was convened in order that I would be able to
23 sit down with the officers concerned and discuss the
24 whole matter. Sergeant Duffy was brought there as a
25 notetaker and that would be the way that I would 11:18
26 normally do business. These are notes of a meeting
27 that took place in Mullingar. The notes that are here
28 are the general themes. This isn't a transcript,
29 Chairman. So there would have been discussion around

1 these points. My style of having a meeting is, by
2 having a notetaker it allows me to participate more
3 actively in the meeting. And the way I normally run
4 meetings, I put propositions and I test and tease out
5 matters to get people's responses to it. And Chairman, 11:19
6 that is exactly what I was doing here. These notes are
7 Sergeant Duffy's interpretation of what took place at
8 the meeting and I have no issue with anything that is
9 written here, but just to say that these were
10 conversations that took place between I and the 11:19
11 officers that were dealing with this matter in respect
12 of the issue itself. And I was looking at it here, I
13 was seeking clarification and assurance from the
14 officers dealing with the matter at operational level
15 that from a corporate perspective that An Garda 11:19
16 Síochána had taken -- had done everything that was
17 expected of them in respect of this matter from a
18 criminal aspect of it. We did discuss matters in
19 respect of various other issues in respect of what the
20 HSE's intentions were and these have been gone over 11:19
21 many times here. I have no definite recollection that
22 we went in any depth into respect of Sergeant McCabe's
23 circumstances.

24 226 Q. All right. So the answer to my question is, no?

25 A. Yes, but I think it was important that I was given an 11:20
26 opportunity to explain what that meeting was about and
27 the purpose of it and how it was conducted.

28 227 Q. Did anybody consider that perhaps Sergeant McCabe
29 should be advised of what had happened?

1 A. My own view on that was that this was an error that had
2 been made by an external agency, be it Rian, Tusla, the
3 HSE. It had come into the Garda environment through a
4 notification. I would have expected that in their
5 handling of the new referral, that the HSE would have 11:20
6 informed Sergeant McCabe of the error that they had
7 made and they had acknowledged and I didn't see it as a
8 Garda function.

9 228 Q. It wasn't discussed at the meeting, though?

10 A. No, it wasn't, no. 11:20

11 229 Q. So you didn't say 'Look, I have considered whether or
12 not we should discuss the matter with Sergeant McCabe
13 and notify him, but I have discounted that'?

14 A. No, I didn't.

15 230 Q. Chief Superintendent Sheridan didn't say 'Do you not 11:21
16 think we should alert Sergeant McCabe to this error?'

17 A. No.

18 231 Q. Superintendent McGinn didn't say 'Look, maybe we should
19 talk to Maurice'?

20 A. It wasn't discussed. 11:21

21 232 Q. All right.

22 **CHAIRMAN:** Can you give me a page reference for that
23 famous meeting, please, Mr. Marrinan?

24 **MR. MARRINAN:** 1835.

25 **CHAIRMAN:** Thank you. 11:21

26 233 Q. **MR. MARRINAN:** During this period of time, had you in
27 fact met with Sergeant McCabe?

28 A. I don't -- I had a number of interactions with Sergeant
29 McCabe.

1 234 Q. At this time?

2 A. Yes. And I am just trying to recall them now. And

3 just --

4 235 Q. Well, it's not unimportant because --

5 A. No, I am not trying to make less of the importance of 11:22

6 it, I am just trying to collect my thoughts here.

7 Chairman, in relation to -- I was the regional

8 commander in the eastern region, Mullingar station, in

9 the region that Sergeant McCabe was working in. I

10 would have been dealing in respect of Sergeant McCabe's 11:23

11 welfare and workplace issues while attached to

12 Mullingar. I know that after the Guerin report was

13 published, that I met Sergeant McCabe on a Saturday

14 morning in Mullingar with Inspector Murray for the

15 purpose of telling Sergeant McCabe that his access to 11:23

16 the PULSE system had been restored. In or around that

17 time, I -- I would have met him on that occasion for

18 that purpose. I also would have been -- had dealings

19 with Sergeant McCabe in respect of a phone call that I

20 would have had between him and I, and I remember it was 11:23

21 a Friday evening, Chairman, I don't have the date, but

22 it was around that time, again in respect of issues

23 that he was experiencing in his workplace in Mullingar.

24 And that phone call would have lasted for a period of

25 time and Sergeant McCabe outlined concerns he had and I 11:24

26 listened to them and I actioned them. I also would

27 have had interaction with Sergeant McCabe in relation

28 to a grievance procedure issue that he was dealing

29 with, just to give him an update on where that was

1 going and I would have met with Sergeant McCabe with
2 the Commissioner around that time in -- with his
3 solicitor, in relation, again, to workplace issues that
4 he had in Mullingar. They are the four instances,
5 Chairman, that I can remember. 11:24

6 236 Q. So this might have heightened your awareness to the
7 dilemma you found yourself in as to whether or not you
8 should, in fact, talk to him about this false
9 allegation that had been sent from Tusla to the Gardaí?

10 A. Well, as I said, Chairman, I had the view that the 11:24
11 responsibility and the onus to address that matter with
12 Sergeant McCabe rested with the HSE, Tusla, Rian, or
13 whatever agency -- the HSE, I would refer to them in
14 block, that that was their responsibility. And I would
15 have expected, chairperson, as part of their dealing 11:25
16 with the matter from their perspective, I had an
17 expectation that that would have happened. They were
18 the people that were in possession of the complete
19 information in regard to what their intentions or what
20 way they were going to deal with the matter. 11:25

21 237 Q. Had you an expectation also that they would investigate
22 the matter themselves and as part of that investigation
23 that they would end up writing to Sergeant McCabe and
24 notifying him of the allegation?

25 A. Yes. I would have expected that when they had their 11:25
26 business done in respect of risk or safety or whatever,
27 whatever they would do, that once that was coming to
28 the end and closure was in sight, that he would have
29 been informed of the process, yes.

1 238 Q. So your expectation as of the 16th of July of 2014 was
2 that there would be no Garda investigation, is that
3 right?

4 A. Yes.

5 239 Q. That GSOC were investigating this purely from the point 11:26
6 of view of reviewing whether or not the original
7 investigation was conducted properly?

8 A. Yes, with all the components that went with that in
9 respect of the referral and the PULSE system, yes.

10 240 Q. That the HSE/Tusla would conduct their own 11:26
11 investigation in relation to allegations that were then
12 on their file?

13 A. Yes. Because I wouldn't have been party in totality to
14 what went on between Ms. D and her counsellor. I only
15 acted -- I only had the information that was given to 11:26
16 me.

17 241 Q. But in any event, we will come to page 1835. It starts
18 off:
19

20 *"Assistant Commissioner Kenny outlines that we need to 11:27
21 deal with this matter, given the people involved."*
22

23 I think that speaks for itself.

24 A. Yes.

25 242 Q. And then you go on to say: 11:27
26

27 *"He outlined that he doesn't accept that the referral
28 passed through three different people in the HSE and it
29 was not noticed."*

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You then go on in paragraph 3:

"Assistant Commissioner Kenny outlined that no correspondence will be destroyed and nothing will be retracted." 11:27

Was that on the basis that you knew that quite a serious error had been made and that you wanted a record of it and the Gardaí's interaction in relation to it? 11:27

A. Yes. I think in my role as an assistant commissioner that was something that I personally would expected that I would do and that is what I did.

243 Q. And then: *"He outlines that he accepts the HSE made a mistake and that they have amended it. He outlined that he was aware that GSOC are now carrying out an investigation into the original investigation file and how the matter was investigated. There are a few issues. Chief Superintendent Rooney, Cavan-Monaghan division, appointed Superintendent Noel Cunningham to investigate the matter. Superintendent Cunningham informed Chief Superintendent Rooney that he was of the view that the matter should be investigated by members outside the Cavan-Monaghan division. However, Chief Superintendent Rooney directed Superintendent Cunningham to complete the investigation."* 11:28

we have already dealt with that.

1 A. Yes, Chairman.

2 244 Q. And you have no idea where you got that information
3 from?

4 A. No. And I have tried to recall it, Chairman, and it's
5 not in my interests to sit here and say that I don't 11:29
6 know. I genuinely cannot recall where that came from.

7 245 Q. To get a complete history before you went to the
8 meeting in Mullingar, to get a complete history in
9 relation to a file that, in which errors had been made,
10 albeit by Tusla, but had been investigated by the 11:29
11 Gardaí, again I ask you, was there any reason why you
12 wouldn't have brought in the investigator,
13 Superintendent Cunningham, to that meeting or at least
14 consult him?

15 A. Well, chairperson, in my role as regional commander, I 11:29
16 dealt with the officers that were dealing with this
17 matter, and you can see from the way I dealt with this
18 matter that the amount of people that had knowledge of
19 this, I kept it as limited as possible, even the way
20 that the files were dealt with, the minutes were dealt 11:29
21 with. These minutes, not side -- but I think it's
22 important I say it, are notes of the meeting at that
23 took place. They weren't my notes of the meeting.
24 They were not circulated or shared with anybody, they
25 were retained in a file in my office in Sligo Garda 11:30
26 Station for my reference in relation to dealing with
27 the matter. And also, I think, you know, we can go
28 down through this meeting record line-by-line but I
29 think it's important to say that these are the themes

1 that were being discussed. There were conversations
2 taking place in around these themes and this is
3 Sergeant Duffy's interpretation of it, which I don't
4 dispute.

5 246 Q. Now, at the bottom of the page: 11:30

6
7 *"Assistant Commissioner Kenny outlined that he had*
8 *concerns that the injured party went for counselling*
9 *and a referral was made to the HSE and a referral was*
10 *then made to An Garda Síochána. He outlined that he* 11:30
11 *was of the view that this referral should be dealt with*
12 *as a new referral --"*

13 A. Yes.

14 247 Q. *"-- that we can't just take it as the same incident."*

15 A. If we take two parts to that, it actually was a new 11:31
16 referral, in the sense that this was the first referral
17 that An Garda Síochána had about this matter, because I
18 was of the view that no referral had been incorrectly
19 -- as it turned out, had been sent by the Garda
20 Síochána to the HSE in 2006/2007. So what we had here 11:31
21 was the First Active referral in respect of this
22 matter.

23 248 Q. Mr. Kenny, surely the whole purpose of a referral is to
24 notify the other party --

25 A. Yes. 11:31

26 249 Q. -- that an allegation has been made?

27 A. Yes.

28 250 Q. In 2006, the Gardaí were aware of the fact, and a
29 perusal of the file would demonstrate this quite

1 clearly, that the HSE were aware of it and were
2 investigating the matter, isn't that right?

3 A. I wasn't aware of that.

4 251 Q. Well, you had access to the file?

5 A. Yes. 11:32

6 252 Q. The file contains Inspector Cunningham's notes and
7 reference to the HSE and to talking to the HSE and to
8 looking at their files?

9 A. I stand corrected on this, Chairman, but I don't -- or
10 the file that I used or the file that was in Sligo was 11:32
11 the investigation file. I can't say for certain -- I
12 don't have a recollection of that being on the file,
13 and I stand corrected on that. I haven't looked at
14 this file.

15 253 Q. So is it your position that, as far as you were 11:32
16 concerned at this meeting, that the HSE had no
17 involvement at all in relation to this matter in
18 2006/2007?

19 A. Yes.

20 254 Q. No involvement at all -- 11:32

21 A. No, because --

22 255 Q. -- that is your position?

23 A. Yeah. Because it hadn't been -- I want to make sure --
24 Chairman, I just need to get this correct. The... the
25 file that -- the allegation was made, I'm not certain 11:33
26 on this, chairperson, I just -- the HSE, this matter
27 was investigated in 2006 and 2007 by Inspector
28 Cunningham, an allegation that was made. I don't
29 believe that I had knowledge that a referral was made

1 to the HSE by An Garda Síochána at that time.

2 256 Q. Well, you see, it has been put up by Chief
3 Superintendent Sheridan, I think, and perhaps
4 Superintendent McGinn as well, that they weren't aware
5 of Sergeant Fraher's notification in relation to this 11:33
6 matter to the HSE being a formal document that was
7 sent. But I am dealing with something a little bit
8 more fundamental. Were you approaching this at this
9 meeting on your evidence, on the 16th July 2014 on the
10 basis that the Ms. D allegation in 2006 that was 11:34
11 investigated by the Gardaí in 2007 was never in the
12 hands of the HSE at that time?

13 A. I was approaching it from the point of view that I was
14 relying on the information given to me by Chief
15 Superintendent Sheridan, that no referral had been made 11:34
16 to the HSE in respect of this matter.

17 257 Q. So you were approaching it on the basis that there was
18 no involvement by the HSE in 2006/2007?

19 A. Yes.

20 258 Q. You then go on over the page 1836, you observe at 11:34
21 paragraph 2 there:

22

23 *"Assistant Commissioner Kenny outlines that safety*
24 *issues don't appear to be on the HSE's radar agenda."*

25 A. Yes. And what I meant by that, chairperson, was that 11:34
26 all of the correspondence that I had seen up to now was
27 dealing with errors and with incorrect -- there had
28 been no mention of what the HSE's intentions were in
29 respect of the safety and welfare issues here.

1 259 Q. well, they had only just got the referral in May.
2 A. Yes.

3 260 Q. It was still early days --
4 A. Yes.

5 261 Q. -- if you hadn't have known about the 2006/2007 11:35
6 referral.
7 A. Yes.

8 262 Q. It seems like a very strong statement to make if it's
9 just referring to the actions of the HSE trying to
10 correct an error, that they don't appear to be on the 11:35
11 HSE --
12 A. Yeah, they were words I used, Chairperson. It was just
13 my view on it.

14 263 Q. You then go on halfway down the page:
15 11:35
16 *"Assistant Commissioner Kenny outlined that he was of*
17 *the view that legal opinion and advice would be*
18 *necessary."*
19

20 Ultimately, you didn't get that, isn't that right? 11:36
21 A. No. I reconsidered that matter after I had informed
22 the Commissioner that I was going to do that and I
23 suppose, after having the benefit of having the meeting
24 in Mullingar and reviewing the file, I reviewed the
25 matter and, I suppose, I probably looked at it from a 11:36
26 number of aspects. Firstly, in relation to the
27 referral itself, what we actually had now was a new
28 referral, so I was satisfied that that was being
29 actioned. And I suppose I also had the benefit, as I

1 said, of having the meeting in Mullingar and I was
2 satisfied that the referral referred to the allegations
3 that Ms. D had made and had been investigated in
4 2006/2007, and I suppose the fact that it didn't
5 contain any new information. I also was aware that 11:37
6 GSOC were investigating the handling of the original
7 investigation in 2006 and 2007 and I knew that would
8 take in the issue of the PULSE matters and the referral
9 which subsequently turned out not to be correct. So I
10 suppose I formed the opinion then that An Garda 11:37
11 Síochána had taken this matter as far as we could in
12 respect of our roles and responsibilities of dealing
13 with the criminal aspects of the matter. So, with all
14 of those things in mind, I was satisfied at that stage
15 that legal advice was no longer necessary in this 11:37
16 matter and that was the conclusion I came to.

17 264 Q. The follow-on from that:

18
19 *"Assistant Commissioner Kenny raised the issue of the*
20 *possibility of the need to liaise with the injured* 11:37
21 *party to establish if the referral is the same as her*
22 *complaint in 2006/2007."*

23
24 I mean, you are still pushing that case during the
25 course of the meeting when it's abundantly clear in the 11:38
26 report from Chief Superintendent Sheridan that it is
27 the same?

28 A. Chairperson, the reason for the meeting was to discuss
29 all aspects of the matter. And, as I said initially,

1 all the time I was putting up propositions, I was
2 looking for clarification, I was teasing out the matter
3 and I was just testing -- and you'll see that on each
4 occasion that I took issue, for want of a better word,
5 with respect to the allegation, Chief Superintendent 11:38
6 Sheridan responded, reassuring me that the matter had
7 been previously investigated and that it was the same.
8 What I was doing here was, I was facilitating the
9 meeting and I was testing and I was probing, and in my
10 role as the assistant commissioner or the regional 11:38
11 commander I think that was a function I should have
12 done.

13 265 Q. Well, one reading of it is that you are promoting in
14 the first instance that the matter should be
15 investigated again as a criminal offence because it may 11:39
16 not be the same accusation at all, isn't that right?

17 A. Yes, I was putting --

18 266 Q. And you are pulled back from that by the chief
19 superintendent?

20 A. Yes. 11:39

21 267 Q. And here is another example where you are saying
22 contact the injured party and again you are pulled back
23 by the chief superintendent?

24 A. I was putting out there the possibility, I was just --
25 I was probing and I was looking for assurance and 11:39
26 clarity.

27 268 Q. Again, the next paragraph:
28
29 *"Chief Superintendent Sheridan outlined that the*

1 *referral received is the same as the statement made in*
2 *2006/2007 and the referral states that a file was*
3 *completed."*

4 A. Yes. Yes. But also, chairperson, I would say that
5 after that meeting in Mullingar, and I think what 11:40
6 satisfied me in respect of that, was that I went back
7 and I looked at the referral form, and on the last two
8 lines of the referral form, both the correct one and
9 incorrect one, and indeed chief Sheridan had alluded to
10 it previously, that Ms. D, in her consultations with 11:40
11 the counsellor, said that this matter was the matter
12 that had been investigated by the Gardaí in 2006 and
13 2007. So I took stock of that as well. But it was
14 only after the meeting in Mullingar that I sat down and
15 I suppose was focused and gave an in-depth notice or 11:40
16 concern -- or an in-depth study of the file in itself
17 to come to that conclusion.

18 269 Q. We continue on:

19
20 *"He suggested --"* 11:40

21
22 That is Chief Superintendent Sheridan.

23
24 *"-- that we liaise with the HSE to establish what their*
25 *intentions regarding this referral --"* 11:40

26 A. Yes.

27 270 Q. What did you take him to mean?

28 A. Well, normally with a notification in the normal course
29 of events, there's two parties to it: The Garda

1 Síochána would deal with the criminal aspects of it and
2 that would subsequently end up with the DPP, or
3 directions would be given, that would either be pursued
4 or otherwise; the risk, the health and the safety
5 issues would be dealt with by the HSE. So what I was 11:41
6 trying to establish there was, I wanted to find out
7 or -- Chief Superintendent Sheridan was to pursue to
8 find out what they were doing about this matter, and
9 that would have taken in all of the issues regarding
10 what we spoke about earlier in relation to Sergeant 11:41
11 McCabe and informing him of the outcome of it.

12 271 Q. Yes. Well, you know, there is another side to that as
13 well, because you are maintaining that you weren't
14 aware of any HSE involvement in 2006/2007?

15 A. Yes. 11:41

16 272 Q. When there had been a very thorough investigation
17 conducted by Inspector Cunningham, with a lot of notes
18 on file from the HSE, but you say you weren't aware of
19 those. But regardless, wouldn't it have been helpful
20 to have met with the HSE to advise them of the history 11:42
21 of the case?

22 A. Well, the interaction with the HSE was a matter that
23 Chief Superintendent Sheridan had undertaken to pursue.

24 273 Q. Well, was it with a view to advising them of the
25 history of the case? I mean, wouldn't it have been 11:42
26 very productive if you, as assistant commissioner,
27 along with the chief superintendent and the
28 superintendent, had approached it on the basis of:
29 This new referral has come in, in 2014, it relates to a

1 matter that we investigated in 2006/2007, it's an old
2 case - all right?

3 A. Yes.

4 274 Q. At that time, it's eight years since the matter was
5 investigated by the Gardaí. 11:43

6 A. Yes.

7 275 Q. According to your evidence, the HSE should have been
8 advised at that time of the allegation, but weren't
9 advised.

10 A. That's what I understood to be the position. 11:43

11 276 Q. So there had been no opportunity in 2007 for some form
12 of a liaison meeting between the Gardaí and the HSE,
13 isn't that right?

14 A. Yes.

15 277 Q. And those liaison meetings are so that each party is 11:43
16 fully informed of all developments?

17 A. Yes.

18 278 Q. Isn't that right?

19 A. Yes.

20 279 Q. So here is an opportunity for the Gardaí to talk to the 11:44
21 HSE, either informally or formally at a liaison
22 meeting, to discuss the Maurice McCabe file, isn't that
23 right?

24 A. Yes.

25 280 Q. And it wasn't done informally, isn't that so? 11:44

26 A. Afterwards, no.

27 281 Q. And it wasn't done formally at a liaison meeting?

28 A. No.

29 282 Q. And have you any explanation as to why neither of those

1 two courses were adopted?
2 A. Well, Chief Superintendent Sheridan was given that
3 task, so what I would have been waiting for there was
4 him to report developments back to me in respect of
5 what had happened there. 11:45
6 283 Q. In any event, it's noted that:
7
8 *"Assistant Commissioner Kenny raised the question of*
9 *what will we do if this was a new referral."*
10 11:45
11 And I suppose the answer to that is to conduct a
12 criminal investigation. And then you are reminded
13 again by Superintendent McGinn that a criminal
14 investigation would commence, and that the Gardaí would
15 meet with the HSE. 11:45
16 A. Yes.
17 284 Q. *"Assistant Commissioner Kenny outlined that the*
18 *notification of the matter is the concern."*
19 A. Yes.
20 285 Q. And what did you mean by that? 11:45
21 A. The fact that no notification -- in my knowledge, at
22 that stage, that no notification had been made by An
23 Garda Síochána to the HSE in respect of the original --
24 that was the issue.
25 286 Q. In relation to? 11:45
26 A. To the original --
27 287 Q. So your concern at the time was that the Guards hadn't
28 sent a notification in 2007?
29 A. Yes.

1 288 Q. Yes. And then Superintendent McGinn outlined that the
2 suspected offender was not arrested at the time of the
3 investigation, and this may be an issue. And also the
4 fact that the matter was investigated by members with
5 the Cavan-Monaghan division? 11:46

6 A. Yes.

7 289 Q. Is this with a view to promoting that the matter be
8 reinvestigated?

9 A. Again, it was an input from Superintendent McGinn, it
10 was his view in respect of that. 11:46

11 290 Q. What did you take it to mean?

12 A. I didn't really take any -- he just was stating, I
13 suppose, his opinion on things that hadn't been done
14 or -- and the fact that it was investigated from within
15 the division where Sergeant McCabe was stationed. 11:46

16 291 Q. And then we just move down:
17

18 *"Chief Superintendent Sheridan outlined that he would*
19 *liaise with the HSE to establish what their*
20 *intentions/strategy is."* 11:47

21 A. Yes.

22 292 Q. Again, perhaps make eminent sense, that wasn't done.
23 You observe: *"Assistant Commissioner Kenny outlined*
24 *that advice is needed and the matter needs to be dealt*
25 *with correctly."* 11:47

26 A. Yes.

27 293 Q. Just stop there for a moment. The matter had been
28 referred to the Commissioner's office by you, isn't
29 that right?

1 A. Yes.

2 294 Q. You had correspondence back from the Commissioner's
3 office --

4 A. Yes.

5 295 Q. -- inquiring what the up-to-date position was? 11:47

6 A. Yes.

7 296 Q. would that not have been a natural port of call to get
8 advice from the Commissioner's office?

9 A. In respect of how to conduct the matter?

10 297 Q. Yes. 11:47

11 A. No. I mean, the Commissioner was being kept informed
12 of developments but the actual dealing with this matter
13 was taking place at district and divisional level,
14 which would be normal for issues such as this.

15 298 Q. well, would the Commissioner -- the Commissioner hadn't 11:48
16 been kept up to date with developments.

17 A. Yes, I know that now.

18 299 Q. You know that now.

19 A. Yes.

20 300 Q. In fact, the Commissioner was left with the view that 11:48
21 this was a rape offence that had been investigated and
22 no prosecution directed --

23 A. Yes.

24 301 Q. -- in 2007, isn't that right?

25 A. Yes. 11:48

26 302 Q. In any event, the meeting -- sorry, there is another
27 reference:
28
29 *"Chief Superintendent Sheridan outlined that the*

1 *injured party reported the matter to GSOC so the matter*
2 *would be reinvestigated and that the suspected offender*
3 *may be exposed."*
4

5 Is that exposed to the possibility of arrest, is that 11:48
6 how you took that to mean?

7 A. No, I took this that that was Chief Superintendent
8 Sheridan's opinion on the motivation for Ms. D to bring
9 this matter back up again.

10 303 Q. But, in any event, the meeting subsequently concluded, 11:49
11 isn't that right?

12 A. That's correct.

13 304 Q. And it concluded on the basis that:

14
15 *"Assistant Commissioner Kenny outlined that he will 11:49*
16 *make contact with Mr. Ken Ruane, head of legal affairs.*
17 *Chief Superintendent Sheridan will liaise with the HSE*
18 *to establish what their intention/strategy is. The*
19 *correspondence will have to be acknowledged and we need*
20 *to deal with the situation and the matter correctly. 11:49*
21 *He outlined that we might also need to deal with what*
22 *was done with the matter since 2006/2007."*

23 A. Yes.

24 305 Q. I think that meeting concluded at 2:10, was it 2:20 -- 11:49
25 yes, 2:30. It was of 40 minutes duration. If we just
26 turn to page 3233. This is a letter that you sent to
27 the Commissioner's office, is that right?

28 A. Yes.

29 306 Q. And it's dated 28th July.

1 **CHAIRMAN:** It's the exact same as 1839, isn't that
2 right?
3 **MR. MARRINAN:** It must be, yes, sir.
4 **CHAIRMAN:** It is, yes.
5 **MR. MARRINAN:** Sorry, there are different references. 11:50
6 **CHAIRMAN:** Don't worry.
7 307 **Q. MR. MARRINAN:** It says: "*I refer to your*
8 *correspondence of the 17th inst.*" we have already
9 opened that. "*On 16th July 2014 I held a meeting with*
10 *Chief Superintendent Sheridan, Cavan-Monaghan division,* 11:50
11 *and Superintendent McGinn, Bailieboro, in relation to*
12 *this matter. As a result of this meeting I will be*
13 *consulting with Mr. Ken Ruane, head of legal affairs,*
14 *in relation to this matter. Chief Superintendent*
15 *Sheridan will be liaising with the HSE to establish* 11:51
16 *what their intentions are in relation to the referral.*
17 *Developments will be reported. "*
18
19 You then received a reply at the following page, 3234.
20 It's dated 31st of July of 2014. 11:51
21
22 "*I am directed by the Commissioner to refer to yours of*
23 *the 28th July 2014, the content of which has been noted*
24 *by the Commissioner. Please report further following*
25 *consultations with the head of legal affairs and the* 11:52
26 *HSE."*
27
28 was any of that done?
29 **A.** No. As I said, I have outlined my position in respect

1 of the legal advices earlier, and Chief Superintendent
2 Sheridan did not revert to me with any report in
3 respect of developments in relation to his interactions
4 or otherwise with the HSE. So there were no
5 developments to report to the Commissioner. 11:52

6 **CHAIRMAN:** But sorry, what about the major development
7 to report to the Commissioner; that this is a complete
8 mistake? I would have thought that is the one thing
9 that the Commissioner would want to know.

10 A. Chairperson, as I said -- 11:52

11 **CHAIRMAN:** I am sorry, Mr. Marrinan, no doubt, will ask
12 that question, but it is really on my mind. I can't
13 understand it.

14 A. I was of the view that that had gone to headquarters.
15 Chairperson, what I want to say: At the time that I 11:53
16 was dealing with this, I was the regional commander for
17 two regions. I was responsible for policing 13 of the
18 26 counties, I had in excess of 3,000 people working
19 for me, I had corporate responsibilities in
20 headquarters. I was on the road five or six hours a 11:53
21 day. I was probably spending two days in Mullingar and
22 I also had the border and northern stuff going on as
23 well. So I expected that my office would deal with
24 matters and I always was under the impression that that
25 matter -- that those documents or that that update had 11:53
26 gone to the Commissioner's office. And, as I said to
27 you, chairperson, genuinely, I only discovered that
28 when I was preparing my statement for this Tribunal.

29 308 Q. **MR. MARRINAN:** I mean, as far as matters stood at that

1 time, obviously a very grave error had been made in
2 relation to Sergeant McCabe?

3 A. Yes.

4 309 Q. The fault didn't lay with the Gardaí?

5 A. No, it didn't. 11:54

6 310 Q. There was absolutely no reason to try and conceal --

7 A. None. And nor did I.

8 311 Q. -- the error?

9 A. No.

10 312 Q. I mean, that is the striking thing about this. It's 11:54
11 not as though the Guards have done something wrong --

12 A. No.

13 313 Q. -- and they are trying to cover their tracks. This was
14 the HSE who had made the error.

15 A. Yes. 11:54

16 314 Q. You have adopted the position in relation to it, that
17 this event is going to remain recorded in the sense
18 that you are not going to hand back the original
19 documents, you are not going to have matters just
20 brushed under the carpet as though nothing had 11:55
21 happened, isn't that right?

22 A. Yes.

23 315 Q. So from that point of view, Mr. Kenny, it wouldn't
24 appear that you could be open to any criticism in
25 relation to how you dealt with that aspect of it? 11:55

26 A. Yes.

27 316 Q. But there is also, from the other side, where
28 headquarters are kept in the dark in relation to the
29 error, isn't that right?

1 A. Yes.

2 317 Q. But it's not just a matter of not notifying
3 headquarters; they are kept in the dark in
4 circumstances where the erroneous report has been sent
5 to them, isn't that so? 11:55

6 A. Yes.

7 318 Q. And that error has not been corrected?

8 A. Yes. As it turned out, yes.

9 319 Q. And not only in the Commissioner's office, but also in
10 relation to the HRM, who might themselves investigate 11:56
11 the matter, isn't that right?

12 A. The investigation of the matter would have been
13 conducted at the level that we were discussing, yeah.
14 At district and divisional level.

15 320 Q. So from that point of view, would you accept that that 11:56
16 is entirely unsatisfactory; that that error occurred in
17 relation to this particular file?

18 A. In respect of the amended version of the incorrect file
19 not going to headquarters, yes, as I said, I was always
20 under the impression that it had and I didn't discover 11:56
21 that it hadn't until I was preparing my statement for
22 this Tribunal.

23 321 Q. And then it appears that there were three parties who
24 appeared to be of the view at the time that approaching
25 the HSE to establish what their strategy was, or would 11:57
26 be, in relation to a controversial figure, such as
27 Sergeant McCabe -- I think you will agree that he was
28 controversial at the time, isn't that right?

29 A. He was prominent. I wouldn't say controversial.

1 322 Q. Well... But, in any event, Chief Superintendent
2 Sheridan clearly was of the view that the HSE should be
3 approached to ascertain what their view was?
4 A. Yes.

5 323 Q. Perhaps express and inform them of the history of the 11:57
6 case --
7 A. Yes.

8 324 Q. -- isn't that right? He had won you over to that
9 viewpoint, isn't that so?
10 A. Yes. 11:58

11 325 Q. And it's clear that that viewpoint was endorsed in the
12 correspondence that came from Superintendent Walsh,
13 isn't that right?
14 A. Yes.

15 326 Q. So, how is it that absolutely nothing is done? 11:58
16 A. Well, as I said, Chief Superintendent Sheridan was
17 tasked with performing that function, and I was
18 awaiting developments in that regard.

19 327 Q. In any event, that was the last dealing that you had in
20 relation to this matter? 11:58
21 A. Yes.

22 328 Q. And you have already, I think, advised us that you met
23 with Sergeant McCabe and you didn't discuss the matter
24 with him?
25 A. No, I did not, no. 11:59

26 **CHAIRMAN:** It would seem that the meeting was on the
27 9th of May, 2014, but I am not completely sure about
28 that. That comes from Commissioner O'Sullivan's
29 statement to the Tribunal. I don't know whether

1 that --

2 A. It was the Saturday, chairperson, after the Guerin
3 report had been published. Saturday morning.

4 **CHAIRMAN:** It's the 6th of May Seán Guerin provided the
5 report -- 11:59

6 A. Yeah.

7 **CHAIRMAN:** -- which recommended the establishment -- I
8 don't know whether it was published on that day?

9 329 Q. **MR. MARRINAN:** I think you might have also met him in
10 August as well, is that right, 2014? 11:59

11 A. With his solicitor.

12 330 Q. Yes.

13 A. Yes, that's correct.

14 **CHAIRMAN:** And what was that -- sorry, Mr. Marrinan,
15 what was that about, that particular one? 11:59

16 **MR. MARRINAN:** Sorry, it's only information that we
17 have only just got in.

18 **CHAIRMAN:** Oh, I see. Does the assistant commissioner
19 know --

20 **MR. MARRINAN:** It wasn't in relation -- obviously it 11:59
21 wasn't in relation to --

22 A. It was in respect of workplace issues in the station in
23 Mullingar, Chairperson.

24 **CHAIRMAN:** It was kind of -- yes, bullying-type issues?

25 A. Yes. 12:00

26 **CHAIRMAN:** Stress, that kind of thing?

27 A. Yes.

28 331 Q. **MR. MARRINAN:** Were you aware of the fact that, at the
29 time, that Detective Superintendent Walsh was also

1 meeting with Sergeant McCabe?
2 A. No, I wasn't.
3 332 Q. You weren't aware of that?
4 A. No, no.
5 333 Q. Did you perhaps -- would it not have been advisable 12:00
6 maybe to contact the Commissioner's office and to ask
7 whether, in the circumstances, bearing in mind the
8 history of the case, whether it would be appropriate to
9 arrange for Sergeant McCabe to attend a meeting where
10 all this could be discussed quite openly with him? 12:00
11 A. I didn't consider that matter, Chairperson.
12 334 Q. In hindsight, might that have been a matter that you
13 regret not doing?
14 A. With the way that this played out, yes. But hindsight
15 is a wonderful thing. 12:01
16 **MR. MARRINAN:** Yes, indeed. Thank you. Would you
17 answer any questions, please.
18
19 **MR. KENNY WAS CROSS-EXAMINED BY MR. GORDON:**
20 12:01
21 335 Q. **MR. GORDON:** Good morning, Mr. Kenny. Breffni Gordon
22 is my name. I am one of the barristers representing
23 Sergeant McCabe in these proceedings. Can I begin by
24 just asking you about a comment that you made this
25 morning at an early stage of your evidence. You had 12:01
26 been asked by Mr. Marrinan what your view of Sergeant
27 McCabe was when he was under your charge when you were
28 the regional commander, and you informed the Chairman
29 that he was reporting matters for his own reasons.

1 That was your answer to the question. You accepted
2 that you had read something about him in the papers,
3 you may have met him a couple of times, but you did say
4 that he was reporting matters for his own reasons.

5 A. Yes. 12:02

6 336 Q. I just want to ask you about that remark which you
7 made. What did you mean exactly by that?

8 A. Well, you know, Sergeant McCabe is an honourable
9 person. He was working in a district. He had issues
10 with practices and procedures and things that were 12:02
11 going on in the district, and he took those matters and
12 he reported them to try and -- to rectify them or to
13 get them corrected. You know, he is a man that, you
14 know, obviously, was concerned about the standard of
15 the way things were being done in the district where he 12:02
16 was working, and that's what I meant. His own reasons
17 were probably his professionalism and he was making
18 sure that things were correct, and I have no issue with
19 that.

20 337 Q. Well, I was asking you the question, would you say that 12:02
21 he was reporting these matters for good reason?

22 A. Yes. And I would also go further to say that some of
23 the things that he did report, some of the subsequent
24 fixes that have been put in in respect of them, the
25 organisation owes him gratitude for that. 12:03

26 338 Q. I mean, he was generally, without dealing with any of
27 the specific complaints that he made, he was generally
28 reporting poor practice?

29 A. Yes.

1 339 Q. Poor standards in policing?
2 A. Yes, yes.
3 340 Q. Poor management, in places?
4 A. Yes.
5 341 Q. And, I mean, that can transcend to incompetence -- 12:03
6 A. From his perspective, yes.
7 342 Q. Well, it wasn't just from his perspective, I suggest to
8 you?
9 A. Well, it had to be from his perspective. They were his
10 views on the matters, and I am just being fair to other 12:03
11 people here, but that is what Sergeant McCabe was
12 doing. I have no issue with his motivation.
13 343 Q. Well, do you think he was right to bring these things
14 to attention?
15 A. Of course he was right. 12:03
16 344 Q. I think you know now that of the allegations that were
17 made and the reports that he made, that many of his
18 reports have been upheld --
19 A. Yes.
20 345 Q. -- where he has referred to poor police practices and 12:03
21 poor standards?
22 A. Yes.
23 346 Q. And that many of these reports that he made were
24 reports of matters that would have been in his
25 district, in the first instance, and in your region, in 12:04
26 the second?
27 A. Yes.
28 347 Q. In fact, quite an amount of the reports that he made
29 concerned issues and matters that were unfolding or had

1 unfolded in your region?

2 A. That had unfolded, yes.

3 348 Q. Can I just ask you this: did any of this cause you any
4 annoyance at the time?

5 A. No, I mean, you know, I was in policing for 41 years, 12:04
6 you know, I am well used to dealing with issues from --
7 internally and externally. I never was annoyed in
8 respect to what Sergeant McCabe was doing, no.

9 349 Q. Just having regard to your particular positioning in
10 all of this, I mean, you were one of the most senior 12:04
11 Gardaí who is now giving evidence to this Tribunal, you
12 occupied a very, very senior position in the
13 organisation of An Garda Síochána at the time, can you
14 say what the general view of Garda McCabe was at that
15 level? 12:05

16 A. Well, again, and I am not evading your question, at
17 strategic level, at the assistant commissioner level
18 can be a lonely place in the sense that, you know, you
19 occupy your own office and you have your immediate
20 staff around you. If you are asking me for my opinion 12:05
21 of what it was on the ground, I suspect some people may
22 have not been happy about it. I'd be very surprised if
23 that wasn't the case.

24 350 Q. Well, he was highlighting issues that may have, to use
25 expressions that were used here, may have caused people 12:05
26 concern, he might have been a thorn in somebody's side?

27 A. Yes.

28 351 Q. He might have upset, in fact, managers?

29 A. I can understand that, but I don't have any evidence of

1 it.

2 352 Q. But in any event, what you say is that he was properly
3 motivated, he was genuine, he was doing these things
4 for good reasons, as far as you are aware?

5 A. Yes, I honestly, Chairperson, never questioned that. 12:06

6 353 Q. Can I just ask you again -- this is not in the sequence
7 in which I had intended to cross-examine you, Assistant
8 Commissioner. But you have mentioned, in response to a
9 number of questions again asked by Mr. Marrinan, and
10 you have confirmed, I think, that when you reported to 12:06
11 the Commissioner, I think, you included in your report
12 an erroneous aspect of this, or an erroneous dimension,
13 where the rape allegation was contained in the report
14 and was not specifically stated as being an error,
15 isn't that so? You have agreed with Mr. Marrinan in 12:07
16 relation to that?

17 A. Yes.

18 354 Q. And I think you may have accepted that that position,
19 so far as your correspondence was concerned, remained
20 pretty much uncorrected? 12:07

21 A. Yes, unfortunately, yes.

22 355 Q. And can you remember what type of correspondence was
23 coming back, in response, from the Commissioner's
24 office?

25 A. Generally, they were notifications of receipt and just 12:07
26 seeking further information or developments.

27 356 Q. I just want to ask you about that, because, I mean, you
28 have been dealing with it from your vantage point, but
29 can I suggest to you that you reporting a rape

1 allegation to the Commissioner, and this is the
2 official line, it's the official communication from you
3 to the Commissioner's office, must have startled the
4 Commissioner in some way?

5 A. I can't comment on that. 12:08

6 357 Q. In other words, what I find surprising here is that
7 when you report a rape allegation to the Commissioner
8 concerning somebody who was perhaps controversial at
9 the time, he was certainly a member of An Garda
10 Síochána, that the only response that appears from the 12:08
11 Commissioner's office is "please keep me informed of
12 developments"?

13 A. Yes.

14 358 Q. Is that not difficult to understand in the context of
15 what we now know? 12:08

16 A. Well, I mean, I can't speak for the Commissioner, but,
17 I mean, I reported the matters and that was the
18 acknowledgement I got back from her office.

19 359 Q. I know you can't speak for the Commissioner, but did
20 you speak to the Commissioner at that time? 12:08

21 A. No, I didn't.

22 360 Q. Would you not think that the Commissioner, when
23 receiving correspondence of that type from you, the
24 error that perhaps you created would have alarmed the
25 Commissioner; no? On a very simplistic level, do you 12:09
26 not think the Commissioner would have phoned you up and
27 said, are you serious, has Maurice McCabe in fact been
28 accused of this?

29 A. That didn't happen.

1 361 Q. But that is remarkable, I suggest to you. It's
2 implausible, I suggest to you. It's not what you sent
3 up; it was what was not coming back that makes this a
4 little mysterious, I suggest?

5 A. I can't answer that. 12:09

6 362 Q. Well, do you agree that what you put on the
7 Commissioner's desk was a mistake? You have accepted
8 that many times this morning.

9 A. Well, in the sense -- I mean, what I put on the
10 Commissioner's desk was the information that was 12:09
11 provided to me by the people who were dealing with this
12 in the divisional district concerned.

13 363 Q. I don't propose to rehearse all of that again, but you
14 did accept --

15 A. I sent the documentation as it was given to me. That 12:09
16 is what went forward.

17 364 Q. But you did accept, in response to questions that were
18 asked by Mr. Marrinan this morning, that you did not
19 correct the information that was sent; you didn't point
20 out, in other words, that the new allegation was an 12:10
21 error?

22 A. Subsequently, yes.

23 365 Q. Yes. And you left that, in fact, uncorrected - in
24 fact, you never corrected it?

25 A. That's correct. 12:10

26 366 Q. Yes. All I am saying is that, surely, looking at this
27 thing and bearing in mind what was happening at the
28 time, the media interest in Maurice McCabe, that the
29 Commissioner would have written something other than

1 "please keep me informed".

2 A. well, that was the response, Chairperson.

3 367 Q. And surely the Commissioner would have, at a minimum, I
4 suggest to you, and as a matter of common sense, I
5 suggest to you, picked up the phone and said, is 12:10
6 Maurice really accused of this?

7 A. It didn't happen.

8 368 Q. It didn't happen?

9 A. No.

10 369 Q. So you had no conversation whatsoever with the 12:10
11 Commissioner around this subject matter at that time?

12 A. No.

13 370 Q. Over the phone or otherwise?

14 A. No.

15 371 Q. Did you have any meetings with the Commissioner around 12:11
16 this time in relation to any other subject?

17 A. Yes, we would have had regular management meetings.

18 372 Q. Plenty of meetings?

19 A. Yes.

20 373 Q. And Maurice McCabe's name never surfaced, you say, in 12:11
21 any of those meetings?

22 A. No.

23 374 Q. At all?

24 A. No.

25 375 Q. Did the Commissioner even ask you about the document 12:11
26 that you had sent up?

27 A. No.

28 376 Q. Okay.

29 **CHAIRMAN:** The Commissioner at this stage would have

1 been Acting Commissioner, Nóirín O'Sullivan, would that
2 have been right?

3 A. Yes, yes.

4 **MR. GORDON:** Yes.

5 **CHAIRMAN:** And she would have assumed the role of 12:11
6 Commissioner a few months later.

7 A. Yes, since March, Chairperson.

8 **CHAIRMAN:** Yes.

9 377 Q. **MR. GORDON:** Did anybody in the Commissioner's office
10 ask you any questions about this? 12:11

11 A. No.

12 378 Q. Did any person in Garda Headquarters ask you any
13 questions about this?

14 A. No.

15 379 Q. Did you volunteer any information going up the other 12:11
16 way?

17 A. No.

18 380 Q. Did you think this was an important issue?

19 A. Yeah, any allegation against a serving member of An
20 Garda Síochána is important and serious. 12:12

21 381 Q. Well, when the Commissioner was asking you to keep her
22 informed of developments, I mean, how were you going to
23 do that? How were you going to achieve that particular
24 purpose?

25 A. By way of report. 12:12

26 382 Q. Well, did you keep her informed of developments?

27 A. Well, with the exception of what we have spoken about,
28 the update on the meeting in Mullingar was a
29 development.

1 383 Q. That was a development?
2 A. Well, in the sense that the meeting took place and then
3 what was to happen afterwards, but nothing -- nothing
4 was progressed in either of those two strands so there
5 weren't any developments to report. 12:12
6 384 Q. But you had apprised the Commissioner of that
7 development without correcting the original
8 notification that you had sent up?
9 A. Yes, yes.
10 385 Q. So you hadn't really reported any development and you 12:12
11 had certainly not corrected anything for the
12 Commissioner's office --
13 A. Not in respect of that, no.
14 386 Q. Pardon me?
15 A. Not in respect of the correction. 12:13
16 387 Q. I just want to ask you about that particular meeting
17 that you attended in Mullingar.
18 A. Yes.
19 388 Q. I think it's 1336 in one booklet, Chairman, and 1835,
20 Mr. Costello tells me. It's 1835, I beg your pardon, 12:13
21 Chairperson.
22 Now, we know from the evidence already given in the
23 proceedings, Mr. Kenny, that this meeting was
24 originally arranged for a date one month earlier, but
25 we can see from the notes there that the meeting 12:14
26 proceeded on 16th July 2014?
27 A. Yes.
28 **CHAIRMAN:** Mr. Gordon, I am not going to try and stop
29 you going through the entire of this --

1 **MR. GORDON:** I don't intend to do that.

2 **CHAIRMAN:** But I almost feel like a Roman senator at
3 this point and the soothsayer is going through the
4 entrails of telling me what is there. It is really a
5 question of entrails. But if there is a specific 12:14
6 point, please do.

7 **MR. GORDON:** There is. I don't intend to go over any
8 of the questions that Mr. Marrinan had asked.

9 **CHAIRMAN:** No, no. And as I say, I am not trying to
10 stop you, but I think it appropriate to say that for 12:14
11 fear we go through all three pages again.

12 **MR. GORDON:** That is understood, Chairman. Thank you.

13 389 Q. You can see that the meeting, in fact, proceeded on the
14 16th of July 2014, and notably, the meeting was at
15 Mullingar Garda Station. 12:14

16 A. Yes.

17 390 Q. And the parties who were present and their particular
18 places of work are also noted there, isn't that so?

19 A. Yes.

20 391 Q. And I think that, of the parties that were present, 12:14
21 none of them would have any connection with Mullingar
22 Garda Station?

23 A. Yes. Well, except me.

24 392 Q. And can I ask you --

25 A. That is where my office was. 12:15

26 393 Q. Was there a morning meeting in your office on that day?

27 A. Yes. And just to explain Mullingar, Chairperson, now
28 that it has come up --

29 **CHAIRMAN:** You said you spent two days in Mullingar?

1 A. Yes. But, Chairperson, as regional commander of the
2 Eastern Region, my office was in Mullingar. On that
3 morning, I was chairing a changed management meeting,
4 which was a national one, and the reason that I
5 selected Mullingar was because people were coming from 12:15
6 all of the counties in the country, so it was location
7 and convenience for people was the reason it was there,
8 and Superintendent McGinn was attending that meeting,
9 and Chief Superintendent Sheridan undertook to come, so
10 it was for convenience rather than anything else. So 12:15
11 that is why the meeting was in Mullingar.
12 **CHAIRMAN:** All right.

13 394 Q. **MR. GORDON:** Can I ask you, how did you prepare for
14 that meeting in Mullingar?

15 A. I had the file, as such, that I had, and there was no 12:15
16 more preparation in it than that. I just chaired the
17 meeting in respect --

18 395 Q. Can I ask just you to develop that a bit. What you are
19 saying is you had the file, as such, that you had.
20 What do you mean exactly by that? 12:16

21 A. Well, the file relating to this matter.

22 396 Q. But what was in the file that you had?

23 A. Was the incorrect referral and the correct referral and
24 all the documentation that went around that, the issue
25 with the HSE looking for the documents to be redacted, 12:16
26 and I had the report from Chief Superintendent
27 Sheridan. I think that's what was there.

28 397 Q. So you had the correct and the incorrect referral in
29 your file?

1 A. Sorry?

2 398 Q. You had the correct and the incorrect referral in your
3 file?

4 A. Sorry?

5 399 Q. You had the correct referral and you had the incorrect 12:16
6 copy --

7 A. Yes.

8 400 Q. -- in your file?

9 A. I never got the correct referral. I got a letter
10 relating to it. 12:17

11 401 Q. What you said at the meeting was that you *"had concerns*
12 *that the injured party went for counselling and a*
13 *referral was made to the HSE and a referral was then*
14 *made to An Garda Síochána."* It says "He", but you, in
15 fact, *"outlined that you were of the view that this 12:17*
16 *referral should be dealt with as a new referral, that*
17 *we can't just take it as the same incident."*

18 A. Yes.

19 402 Q. Okay. Why did you form that particular view?

20 A. Because at that time this was the only referral in 12:17
21 relation to this matter that I was aware of, so it was
22 a new referral, and that is what I meant by that.

23 403 Q. Were you not at that moment making that observation
24 moving perhaps slightly outside of the file of papers
25 that you had? 12:17

26 A. Sorry?

27 404 Q. Were you not moving slightly outside of the file of
28 papers that you say you had at the meeting?

29 A. No, because I had -- I had the referral, I had the -- I

1 had the correct referral and I viewed that as the only
2 referral. That is why it was a new referral.

3 405 Q. What informed that view?

4 A. Because I was informed by Chief Superintendent Sheridan
5 that a referral hadn't been previously forwarded by the 12:18
6 Garda Síochána to the HSE as part of the 2006/2007
7 investigation, so when I used the words "new referral",
8 to me it was a new referral from the HSE to An Garda
9 Síochána.

10 406 Q. So at that moment in time, I mean at least you are on 12:18
11 the record there as being acutely aware of the
12 difference between the documents, would you accept
13 that?

14 A. Yes.

15 407 Q. Okay. And as Mr. Marrinan has pointed out, and I won't 12:18
16 go through it, you, when reporting on this meeting
17 then, did not bring that particular distinction to the
18 Commissioner's office in perhaps your second piece of
19 correspondence keeping that office updated?

20 A. No, I didn't, because that new referral, that was what 12:19
21 the -- no, I didn't, no. It was the issue of the
22 referral not being completed in the 2006/2007 matter
23 was what I was primarily concerned about.

24 408 Q. And could I just ask you this --

25 **CHAIRMAN:** Sorry, can I just stop you, Mr. Gordon. 12:19
26 Concerned in the sense that the Garda could be hauled
27 over the coals in relation to --

28 A. There would be exposure or risk from the fact that we
29 hadn't done it, Chairperson. I was looking at it from

1 that perspective.

2 **CHAIRMAN:** In other words, bad practice?

3 A. Yes.

4 409 Q. **MR. GORDON:** Appreciating what you have said earlier 12:19
5 about these minutes, they were taken by Sergeant Duffy,
6 they are not a transcript. Obviously they don't record
7 tone or emphasis or things like that. But Mr. Marrinan
8 again has taken you through the different parts of it
9 where you emphasise matters by contributing to the
10 meeting as you did. In fact, much of the meeting at 12:20
11 the start of the meeting was taken up by observations
12 that you yourself made in relation to this.

13 A. Yes, some -- yes, at the beginning, yes.

14 410 Q. What I just want to know about the meeting, and this is
15 the reason I asked you about the file, you had the file 12:20
16 on the desk at the meeting?

17 A. Yes.

18 411 Q. You were chairing the meeting, I take it, were you?

19 A. Yes.

20 412 Q. The only document that appears to be referred to in 12:20
21 these minutes is the referral?

22 A. Yes, because that's the issue we were dealing with, you
23 know. If you look here, it was -- the two issues that
24 really were here was the matter not being recorded on
25 PULSE, for what that is worth, and no referral being 12:20
26 made to the HSE. The issue regarding the incorrect
27 referral, for want of a better word, Chairperson, that
28 pretty much had been determined and accepted by all
29 parties that that was an error, and that is it. Then

1 you had the issue of the new referral, which was
2 dealing with the matter that we had, but it was -- the
3 primary focus of this meeting for me were the two
4 issues regarding not being recorded on PULSE, no
5 referral being made to the HSE in 2006/2007, and I also 12:21
6 wanted to satisfy myself that, in respect of the
7 information contained in the new referral, that An
8 Garda Síochána had taken that matter as far as we could
9 in respect of our roles and responsibilities.

10 413 Q. But the point I am making to you and asking you to deal 12:21
11 with this if you can, is that you were having a
12 meeting, you made contributions, you made observations,
13 there is reference to the referral. The meeting
14 concludes by you tasking other officers with particular
15 matters, a recommendation was made that the views of 12:22
16 the legal department would be sought?

17 A. Yes.

18 414 Q. The only document that appears to be noted in the
19 minutes is the referral. There doesn't appear to be a
20 record here that any other document was discussed or 12:22
21 produced at that meeting, do you understand what I am
22 saying?

23 A. Yeah, but I don't think the meeting was about
24 documents. I think the meeting was about the whole
25 issue itself. 12:22

26 415 Q. It was about the whole issue itself?

27 A. Yes.

28 416 Q. Well, can you tell us in a sentence what the meeting
29 was about?

1 A. The meeting was about, from my perspective, was an
2 opportunity to bring the officers together, as I said
3 earlier, who were dealing with the matter, and to brief
4 me or bring me up to speed or bring anything to my
5 attention that should have been brought to my 12:22
6 attention, and everything that had been generated up to
7 that was on the table for discussion.

8 417 Q. Earlier this morning you volunteered the point or the
9 information that, at that time, you were commanding
10 3,000-plus members of An Garda Síochána? 12:23

11 A. Yes.

12 418 Q. You were, I think, in charge of two different regions?

13 A. Yes.

14 419 Q. I just don't understand the meeting, when you had been
15 told before the meeting that there was nothing -- there 12:23
16 was nothing to see here?
17 why I held the meeting?

18 420 Q. Yes.

19 A. No, I think the fact that I held the meeting showed how
20 important -- the importance that I placed on this 12:23
21 meeting, and, as I said earlier, there were pieces that
22 had happened that I just wanted -- I hadn't sat down
23 and discussed this matter with the two officers
24 concerned. I was coming at this from a strategic
25 perspective, and again, just what you outlined, I 12:23
26 wanted an opportunity where I could focus in on the
27 detail of it, which I hadn't done in that format prior
28 to that.

29 421 Q. All right. will you tell the Chairman, then, what new

1 information emerged at the meeting that you didn't
2 already have?

3 A. As it turned out, the report that came from Chief
4 Superintendent Sheridan in between my taking issue with
5 the redaction and the meeting was pretty comprehensive, 12:24
6 and nothing of a new nature emerged at the meeting.

7 422 Q. Nothing did, no.

8 A. No. But I still think, and I stand over it, that I was
9 right to hold it, and I think it was something that I
10 should have done, just to assure myself and make sure 12:24
11 that there was matters were being dealt with.

12 423 Q. And do you stand over the fact that you didn't inform
13 the Commissioner then of --

14 A. About?

15 424 Q. Of the correct information. 12:24

16 A. Yes. And as I said again, it's a fault that rests with
17 my office in Sligo, which ultimately is under my remit,
18 but I was of the view -- I genuinely was of the view
19 that that had been forwarded. And I didn't,
20 Chairperson, and I say it here, I wasn't aware of that 12:25
21 until I was preparing for this Tribunal.

22 425 Q. You see, from -- I have to put this particular vantage
23 point to you: The minutes, if you were Maurice McCabe,
24 Sergeant McCabe, might read as you suggesting that this
25 error might be perpetuated in some way, kept alive, 12:25
26 somebody used the expression breathing new life into
27 the thing, but you knew there was nothing to see here,
28 you could have done this on your desk with the file,
29 nothing emerged from the meeting, you didn't get any

1 new information, the contribution of everybody is there
2 to see.

3 A. Yes.

4 426 Q. So you could have made this decision with the file
5 that's on your desk? 12:25

6 A. Yes.

7 427 Q. Without involving any of these people in a face-to-face
8 way, as you say?

9 A. I certainly didn't think that would be good practice on
10 my behalf. I wanted an opportunity to sit down and to 12:25
11 discuss the matter with the officers concerned. And as
12 far as keeping matters alive or festering or anything
13 like that, Chairperson, that never entered my head, nor
14 would I be involved in any practice such as that.

15 428 Q. Do you accept that when you read, and, I mean, these 12:26
16 things don't have tone, sometimes concentration,
17 emphasis, but do you accept that, on a reading of the
18 minutes as they have been gone over in the Tribunal in
19 some detail this morning by Mr. Marrinan, that they
20 could be read and they could be understood as meaning 12:26
21 that you were highlighting parts of this file that were
22 certainly adverse to Sergeant McCabe's interests?

23 A. No, I don't accept that at all. That was not my
24 motivation nor my intention. I had no reason to do
25 that. 12:26

26 429 Q. Okay. Do you accept that it could be read as meaning
27 or it could be understood as meaning that maybe you at
28 the meeting were saying, you know: Is this really a
29 mistake here? I don't believe this is a mistake?

1 A. No --

2 430 Q. Surely this is accurate --

3 A. No, I never formed that view. As I said to you, the
4 style of the way that I ran the meeting was for
5 clarification and assurance, and I put propositions and 12:27
6 I got responses. And if you look at the minutes, you
7 will see, and I said they are themes, but it was a
8 question or a proposition, there was a response, and
9 that is the way that the meeting ran.

10 431 Q. Mm-hmm. Well, didn't you use -- I am sorry to do this, 12:27
11 Chairman, and I don't want to go over the paragraphs
12 again and again. But in the very first paragraph, your
13 contribution, the observation was expressed in fairly
14 emotive terms. You said that this was a matter that --
15 that had to be dealt with because of the people 12:27
16 involved. And you say: *"It is unbelievable that the*
17 *HSE completed the referral via copy and paste."*
18 You don't accept that the referral passed through three
19 different people in the HSE and was not noted. You
20 didn't accept this, and you say it's unbelievable -- 12:27

21 A. You know, again I say that these are notes of what went
22 on at the meeting. That was not what I was referring
23 to there. It's just I --

24 432 Q. Sorry, can I just stop you there. That is what you are
25 referring to because that is the note of the meeting. 12:28

26 A. Yeah, it's a note -- yes, I accept that, but that is
27 not what I meant.

28 433 Q. Well, what did you mean?

29 A. What I meant there was, I found it hard to understand

1 how the referral could pass through three different
2 people without being noticed. Whether I accepted it or
3 not is irrelevant. I just didn't understand how it
4 could happen.

5 434 Q. All right. And you certainly expressed that. But what 12:28
6 I am asking you is, looking at that letter from
7 Sergeant McCabe's vantage point --

8 A. Yes.

9 435 Q. -- that a different meaning could be attributed to or 12:28
10 given to that --

11 A. Yes, but I go back again to what I reiterated at the
12 beginning: the notes of this meeting were not
13 circulated. They are called minutes but they are
14 actually notes, and I don't have a difficulty with
15 that. But these notes were -- I had the notes taken on 12:28
16 my behalf so as I could contribute to the meeting in a
17 more active format. That is what I did. These were
18 the notes of the meeting. They were retained in a
19 confidential file. They were not copied or circulated.
20 They were notes for the file for me as to what happened 12:29
21 at the meeting in Mullingar. So, you know, these notes
22 were not in any other person's domain except Sergeant
23 Duffy and I.

24 436 Q. Well, was it not possible --

25 A. Sorry? 12:29

26 437 Q. Was it not possible, bearing in mind the information as
27 it was being discussed here and the observations that
28 were made, particularly by you, that this meeting could
29 have turned to a point where Maurice McCabe could have

1 been investigated for a second time in relation to
2 matters?

3 A. No, it didn't, nor was it. Because what I was doing,
4 and I -- I was performing a role at the level that I
5 was at. This matter was being dealt with at divisional 12:29
6 and district level and I was probing that, from an
7 organisational point of view, that we had made sure
8 that any responsibilities that we had in relation to
9 the criminal aspects of the matter had been dealt with.

10 438 Q. But you knew that already and we were sure about that, 12:30
11 were we not?

12 A. I had a fairly firm opinion of it, but I wanted
13 clarification in the format of sitting down with the
14 officers concerned, and then, after this meeting, I was
15 100 percent -- 12:30

16 439 Q. Again, can I just stop you there. How could you
17 possibly clarify the DPP's clear and unequivocal
18 directions as you knew them, how would you clarify --

19 A. No, I didn't have an issue with that. I didn't have an
20 issue with that. 12:30

21 440 Q. But what then concerned you from, to use your words, a
22 criminal perspective?

23 A. Well, that is what An Garda Síochána's role in this
24 would be, with all that goes with that, but as I said
25 to you -- 12:30

26 441 Q. But what I am asking you is, what concerned you, from a
27 criminal perspective, about this?

28 A. That the notification hadn't gone to the HSE and that
29 the matter hadn't been recorded on PULSE.

1 442 Q. I am asking you what you concerned from a criminal
2 perspective?
3 A. That is the criminal perspective of it, the way that
4 the Garda Síochána handled the file itself in the
5 original investigation. 12:31
6 443 Q. I am not sure that I understand your answer.
7 A. Well, I think -- what I am talking about is that there
8 was no issue, as far as I was concerned, that the
9 matter had been investigated properly, that the DPP had
10 given directions. That issue wasn't up for discussion 12:31
11 or wasn't an issue.
12 444 Q. Do you accept that -- I mean, you have given your
13 account about your concerns, what they were, I can't
14 really contradict you in relation to that, but do you
15 accept that the minutes of the meeting may have given 12:31
16 rise, or that the events of the meeting, I suppose I
17 should call them, may have given rise to a situation
18 where this known error may have been allowed to simmer
19 a little further, to live for a little longer, because
20 it wasn't actually knocked on the head, if you 12:32
21 understand me?
22 A. The incorrect -- I am -- sorry, I am not clear on what
23 you are saying.
24 445 Q. Well, I will be clear.
25 **CHAIRMAN:** Maybe that is a good point to leave it, 12:32
26 Mr. Gordon. I am sure you will be 10 or 15 minutes
27 after lunch, but it's appropriate because we are all
28 working very hard, particularly the stenographer.
29

1 THE HEARING ADJOURNED FOR LUNCH

2
3
4 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

5 **MR. GORDON:** Good afternoon, Mr. Kenny. Good 13:39
6 afternoon, Judge.

7 446 Q. Just before the break, Mr. Kenny, I was asking you -- I
8 just want to ask you some more questions about this
9 Mullingar meeting and we will leave it at that. I was
10 asking you about the fact that a number of people at 13:39
11 that meeting were very high-ranking police officers.
12 It's clear that there was a superintendent, a chief
13 superintendent, you, at the time assistant
14 commissioner. The subject matter has been ventilated
15 ad nauseam here. What I was about to ask you before 13:40
16 the break is: why is it that the situation as
17 presented on paper or in the discussion was a situation
18 where there was nothing to see, were none of the
19 officers who were present capable of knocking this on
20 the head? 13:40

21 A. Chairperson, I mean, the meeting was held for the
22 purpose of clarification and just assurance on my part
23 from, as I said, from a corporate perspective, that
24 everything had been dealt with properly and that there
25 was no risk or exposure to the organisation. When you 13:40
26 say knocking on the head, I mean, the two outcomes of
27 the meeting, for want of a better word, were the legal
28 advices, which we've dealt with, and then the
29 intentions or strategy of the HSE. You know, the

1 completeness of this matter would have been, ideally,
2 if the HSE had gone and done their business and then it
3 would be concluded.

4 447 Q. But it didn't complete as it was anticipated, did it?
5 A. Sorry, I'm finding it difficult to hear you. 13:41

6 448 Q. I beg your pardon. It didn't complete as anticipated,
7 the outcome?
8 A. They weren't completed.

9 449 Q. No.
10 A. No, I agree. 13:41

11 450 Q. So what we had is a meeting set up to deal with the
12 particular subject matter, there was a discussion,
13 there was a direction given at the end of the meeting?
14 A. Yes.

15 451 Q. But there was no outcome? 13:41
16 A. Well, the outcome, from my perspective, in relation to
17 the legal advice is, I gave my response to that and my
18 reasons for that. Chief Sheridan was tasked with
19 handling the HSE issue, and there were no developments
20 or there were no developments reported to me 13:41
21 subsequently in relation to that matter.

22 452 Q. I suppose really what everybody is finding -- I can
23 only speak for our client and our team, we are finding
24 it difficult to understand why it was that you couldn't
25 have contacted the one person who would have provided 13:42
26 answers, filled in the gaps, and that was
27 Superintendent Cunningham?
28 A. Yes.

29 453 Q. I mean, the question-mark at that stage or at a stage

1 in the meeting was whether a HSE referral had been
2 made, isn't that so?

3 A. I'm sorry?

4 454 Q. The question was whether a HSE referral had been made,
5 it was one of the questions that was unresolved at the 13:42
6 meeting?

7 A. Had the HSE referral been -- sorry?

8 455 Q. Had a HSE referral been made, that was one of the
9 questions?

10 A. Yes, sorry, yes. 13:42

11 456 Q. One of the important questions, it seems, at the
12 meeting?

13 A. Yes.

14 457 Q. Despite what the file had to say about it. All that
15 had to happen is somebody ask Superintendent Cunningham 13:42
16 that question?

17 A. Well, as I say, the purpose of the meeting for me was
18 for clarification, without going back over it again,
19 and that is why the officers were there. I was trying
20 to keep this very much to the people that were involved 13:43
21 in it. My own view was that I had been given
22 information by Chief Superintendent Sheridan telling me
23 that a referral had not been made in this matter and I
24 took that at face value. So as far as I was concerned
25 in Mullingar, the Garda Síochána had not made a 13:43
26 referral to the HSE in 2006/2007. So I had that from
27 Chief Superintendent Sheridan and that's what my
28 understanding was and I had no reason to doubt that.

29 458 Q. Well, we've had that a number of times now, and we do

1 know that Superintendent Cunningham had the
2 information, we know that now?

3 A. Yes.

4 459 Q. We know that, had you looked at the file, that might
5 have been something that you could have discovered on a 13:43
6 perusal of the file?

7 A. Well, let me say, you know, I just want to say that the
8 file that was retained at regional office level didn't
9 have that information on it. The file I had was the
10 file that was submitted to the DPP. So I wasn't aware 13:44
11 of the things we've spoken about earlier in respect of
12 what Superintendent Cunningham may or may not have had
13 there.

14 460 Q. What I am getting at or what I am driving at here, is
15 that if you had simply left the meeting, went down to 13:44
16 Superintendent Cunningham's office or phoned him, that
17 particular issue was resolvable there and then, the
18 meeting could have concluded and none of this would
19 have --

20 A. No, but the point I'm making is: at that meeting, the 13:44
21 people that were present there were of the opinion that
22 a referral had not been made by An Garda Síochána to
23 the HSE in 2006/2007.

24 461 Q. I mean, I don't want to open up correspondence again
25 that's been opened at some length this morning, but the 13:44
26 correspondence did say it appears?

27 A. Yes.

28 462 Q. Isn't that so?

29 A. Yes.

1 463 Q. So all you had to do was find out was there or was
2 there not a referral?

3 A. Well, I would have expected that that would have been
4 done at -- you know, the people that were dealing with
5 it. The information was fed to me in the position 13:45
6 where I was in the organisation and I took it at face
7 value.

8 464 Q. Why is it that you didn't direct either the chief
9 superintendent, Chief Superintendent Sheridan, or the
10 superintendent to make the inquiry? 13:45

11 A. Because it didn't -- I'm not saying it didn't arise;
12 it's just, it didn't come up. Because, as I said, my
13 understanding was that no referral had been made.

14 465 Q. And that was important to you, to resolve that
15 question -- 13:45

16 A. Yes.

17 466 Q. -- either way?

18 A. Well, yes. Surely because I wanted to know why that
19 hadn't happened.

20 467 Q. And what was the importance of that? 13:45

21 A. Well, the importance of it was that it was a procedure
22 that hadn't been followed, and there had been, you
23 know, a timeframe between when it happened and
24 subsequent.

25 468 Q. But, I mean, the referral made or not wasn't really, I 13:46
26 suggest to you respectfully, important at all, in the
27 context of what you are dealing with --

28 A. Well, the fact --

29 469 Q. -- at that meeting.

1 A. well, it was important because it hadn't been
2 submitted.

3 470 Q. And it was a procedural concern that you had?

4 A. I just wanted to make sure that it didn't expose the
5 organisation to any risk or to -- you know, that we 13:46
6 weren't exposed to anything because of it. I just
7 wanted to make sure that that was dealt with.

8 471 Q. But do you realise now the exposure, the potential
9 exposure that may have arisen by placing that
10 question-mark or that question over the file? It kept 13:46
11 the file alive, kept the meeting alive, didn't conclude
12 the meeting?

13 A. well, the meeting did conclude, but, as I said, the
14 minutes of this meeting were not for public
15 consumption, so these were matters that were discussed 13:46
16 among the two officers that were dealing with this
17 matter, with me as the regional commander.

18 472 Q. I think that following the meeting -- this is page
19 1839, Chairman, and just coming up on screen there,
20 Mr. Kenny -- you wrote to the Commissioner's private 13:47
21 secretary. You refer to correspondence of the 17th,
22 you said that you had held a meeting with Chief
23 Superintendent Sheridan, Superintendent McGinn, and
24 that as a result of the meeting you indicated that you
25 were going to consult further with -- or consult with 13:47
26 Mr. Ken Ruane of Legal Affairs, isn't that right, and
27 you indicated in that correspondence that Chief
28 Superintendent Sheridan would be liaising with the HSE
29 to establish -- it's just the copy I have is a little

1 difficult to read -- he was going to liaise with the
2 HSE to establish what their intentions were regarding
3 the referral?

4 A. Yes.

5 473 Q. Now, is that what you were trying to find out, what the 13:48
6 HSE's intentions were?

7 A. Yes. I wanted -- with a view to finalising the matter.

8 474 Q. And, as Mr. Costello points out beside me, this was
9 effectively the upshot of the meeting?

10 A. Yes, they were the two issues that came out of the 13:48
11 meeting, yes.

12 475 Q. Okay. All I'm trying to do is suggest to you
13 respectfully that these don't appear to be particularly
14 important matters in the context of what you are
15 dealing with in the round, if you understand the 13:49
16 question?

17 A. Well, again, you know, the legal advices covered a lot
18 of matter, okay, in generality of the handling of the
19 situation up to then, and the two issues for me were
20 that we now had a live HSE referral and I wanted to 13:49
21 make sure that An Garda Síochána had done their
22 business with that, and then the natural progression
23 from there would be that the HSE would take it to a
24 conclusion and then it would be jointly signed off at
25 the end. So that was important to me, to see where 13:49
26 that was going to go. And the second part, and I've
27 explained it earlier, in respect of the legal advices,
28 that was something that I reconsidered myself
29 afterwards and, for my own reasons, I didn't pursue

1 that.

2 476 Q. And you can see also from that correspondence the date
3 and what you refer to, that you didn't take or avail of
4 the opportunity to apprise the Commissioner of the
5 correct information, even at that stage? 13:50

6 A. No, because I had these outstanding matters to deal
7 with.

8 477 Q. Okay, okay.

9 A. Yeah. But I accept what you are saying, and, as I
10 said, you know, that was -- that was -- 13:50

11 478 Q. Would you go this far with me: it looks a little
12 peculiar?

13 A. It looks what?

14 479 Q. A little peculiar?

15 A. No, I don't. 13:50

16 480 Q. You don't accept that?

17 A. No, I don't accept that, no. I accept that my
18 office -- and it's the office, and, you know, as I
19 said, I told you the amount of things that I was
20 dealing with at that time, and unfortunately that 13:50
21 happened and I regret that.

22 481 Q. And again just to finish with the meeting, I just want
23 to suggest to you that from Maurice McCabe, Sergeant
24 McCabe's vantage point, that it looks or perhaps looks
25 or is capable of looking as a situation where the 13:50
26 parties at the meeting, maybe you in particular, were
27 presenting an argument at that meeting that didn't have
28 any logical validity. I mean, you knew going into the
29 meeting that there was nothing to see?

1 A. Yes.

2 482 Q. You had the meeting, you still didn't gain any new
3 information at the meeting, and you came out the same
4 as you went in.

5 A. Yeah, but I know that now at the conclusion of the 13:51
6 meeting, but that wasn't my purpose going into the
7 meeting. I think it was responsible of me to hold the
8 meeting and I think it showed the importance and the
9 seriousness I placed on the matter. I think it was
10 important that I brought the people that were dealing 13:51
11 with this matter at operational level, where I wasn't,
12 would give me any additional information or any
13 developments, which there weren't, and they would bring
14 them to my attention, you know, in relation to things
15 that should have been brought to my attention. And 13:51
16 that was the purpose of the meeting.

17 483 Q. So can the Chairman then rule out any possibility then
18 that there was an opportunity available at the meeting
19 to perhaps take some of the information and spin it or
20 keep it alive or perpetuate it? 13:51

21 A. Absolutely --

22 484 Q. Just to keep the file in existence?

23 A. No.

24 485 Q. Nothing more than that?

25 A. No, absolutely not. And, you know, that would never be 13:51
26 my style. I had no reason to do it and I certainly did
27 not do it with this matter.

28 486 Q. You see, some of the information at the meeting was
29 technically true, wasn't it?

1 A. Technically?

2 487 Q. Technically true. An allegation had been made?

3 A. Which allegation?

4 488 Q. That much alone was true. An allegation had been made,
5 Maurice McCabe was concerned with the allegation. That 13:52
6 much at least was technically true, whatever about the
7 gory details --

8 A. Well, in fact, if you look at the second referral,
9 there was no allegation made because it had --

10 489 Q. I am just saying that, forgetting about the gory detail 13:52
11 and the mistakes and the errors, one sitting at the
12 meeting, even if you were asleep at the meeting, you'd
13 know that there was an allegation of some sort made by
14 somebody against Maurice McCabe?

15 A. No, there was a mistake made by the HSE, which the 13:52
16 second referral clearly acknowledged, and there was no
17 new allegation made against Sergeant McCabe.

18 490 Q. I'm not asking was there a new allegation made. I'm
19 asking you to confirm that there was mention, at least,
20 of an allegation being made against Maurice McCabe. 13:53

21 A. Yes.

22 491 Q. Yeah. So that much was at least technically true?

23 A. Yes, but it was the 2006/2007 matter we were dealing
24 with.

25 492 Q. What I want to do is to ask you about the knowledge 13:53
26 again that you had of Maurice McCabe and your
27 interaction, as it were, with management above, not
28 very far above, and any conversations that you may have
29 had around this time. I think you confirmed to

1 Mr. Marrinan that you had some meetings with Maurice
2 McCabe?

3 A. Yes.

4 493 Q. You mentioned perhaps four this morning in your
5 evidence, as I recollect? 13:53

6 A. That's what I can recall, and I think that's accurate.

7 494 Q. Now, can I just ask you, I might be able to paraphrase
8 this, just to speed it up. A booklet of correspondence
9 has been provided --

10 A. Yes. 13:54

11 495 Q. -- to the Tribunal this morning. I don't know whether
12 you have had an opportunity to see it?

13 A. No, I haven't.

14 496 Q. If I could bring up on screen, Chairman, 3349. Just to
15 help you here because there are a number of letters 13:54
16 here. This is correspondence that was generated around
17 the time that the Commissioner --

18 **MR. O'HIGGINS:** I wonder, Chairman, would it be
19 possible for the witness to be provided with a hard
20 copy. 13:54

21 **MR. GORDON:** Absolutely.

22 **CHAIRMAN:** Mr. O'Higgins, yes, certainly. Isn't that
23 in Volume 10 now?

24 **MR. GORDON:** It should be on the screen, in fact.

25 **CHAIRMAN:** Have we an updated volume? 13:54

26 **MR. MARRINAN:** It should be volume 11, sir.

27 **CHAIRMAN:** Yes, it's in Volume 11. If you want to take
28 out volume 11, just for fear anything is left out. We
29 only see a bit on the screen.

1 A. Thank you.

2 497 Q. **MR. GORDON:** I think you have a hard copy now?

3 A. I have, yes.

4 498 Q. The first letter I just want to refer you to is a
5 letter appearing at 3349. That's correspondence from 13:55
6 Mr. Costello on behalf of Sergeant McCabe to the
7 Commissioner's office, and you will see there from --
8 it's up on screen there --

9 A. Just give me two seconds to catch up with you, please.

10 499 Q. Yeah. 13:55

11 A. Yes, I have it now.

12 500 Q. You will see that the correspondence contains
13 Mr. Costello's reference, "SC". It is correspondence
14 by courier and it is strictly private and confidential.
15 And as I indicated just before you got the hard copy of 13:55
16 the correspondence, I don't propose to go through all
17 of it, but just to help you, this was correspondence
18 that was passing between Mr. Costello's office and the
19 Commissioner's office between May and July of that year
20 in relation to evidence that the then-Commissioner was 13:56
21 giving to the Justice Committee. She was the Acting
22 Commissioner at the time, I think, the Acting or the
23 Interim Commissioner probably properly put. In that
24 correspondence, Mr. Costello was pointing out on his
25 client's behalf that his client had a concern about the 13:56
26 evidence that was being given by the Commissioner to
27 the Committee, okay?

28 A. Yes.

29 501 Q. And that's where the letter as we see it there at 3349

1 becomes relevant. It's a letter dated 29th May 2014.
2 I will ask you just to drift over the letter just to
3 save some time, and come down to paragraph 4, where you
4 will see that Mr. Costello directly addresses the
5 issue, and he says:

13:56

6
7 *"We fully appreciate that from our instructions as*
8 *advised to you, our client, in the telephone*
9 *conversation yesterday, that the evidence that you gave*
10 *to the Committee on Justice was based on misleading*
11 *information given to you. The damage being done to our*
12 *client is being compounded by public statements*
13 *suggesting that he is receiving daily support contact*
14 *from his supervisor."*

13:57

15
16 Do you see that?

13:57

17 A. Yes.

18 502 Q. *"For the record, he has never received such contact or*
19 *support at all."*

20 A. Yes.

13:57

21 503 Q. So in a nutshell what was happening here is the
22 Commissioner was apparently telling the Justice
23 Committee that Sergeant McCabe was receiving some
24 support from his superiors?

25 A. Yes.

13:57

26 504 Q. And the context of this letter is a letter where it
27 records the fact that a phone call had been made to the
28 Commissioner directly, not the Commissioner's office,
29 complaining about this and pointing out to the

1 Commissioner directly that no such support was being
2 provided?

3 A. Yes.

4 505 Q. So it's a letter of complaint?

5 A. Yes.

13:58

6 506 Q. Okay. And if you want, I will open the rest of the
7 letter. But what I want to do is just to move on to
8 what is perhaps the next relevant letter in that chain
9 of correspondence. It's a reply to a letter dated 29th
10 May 2014, again from Mr. Costello. Now, you will see
11 that the Commissioner's reference is appearing at the
12 top of the page. Mr. Costello's reference SC/LF. The
13 first part of the letter says:

13:58

14

15 *"I am directed by the Commissioner to acknowledge*
16 *receipt of your correspondence of the 29th May 2014."*

13:58

17

18 what I want to do then is take you on to the very last
19 paragraph of that letter.

20 A. Yes.

13:58

21 507 Q. And skip over the remainder, if I may. The letter
22 concludes by saying:

23

24 *"The Commissioner wishes to assure you and your client*
25 *that your client's welfare and wellbeing and his*
26 *protection in the workplace are of paramount*
27 *importance. In that regard, Assistant Commissioner*
28 *Kenny, who has responsibility for policing in the*
29 *Eastern Region, has been directed to engage with*

13:58

1 *Sergeant McCabe and to ensure that he has the full*
 2 *support of his managers and is provided with a safe and*
 3 *positive working environment."*

4
 5 Now, I just want to pause there for a moment, 13:59
 6 Mr. Kenny. That puts you in contact, on the
 7 Commissioner's direction, with Sergeant McCabe in
 8 relation to that subject matter. Do you understand
 9 that?

10 A. Yes, I understand what you are saying. 13:59

11 508 Q. Now, I mean, it is a direction, but can I ask you did
 12 you contact Sergeant McCabe in accordance with that
 13 direction?

14 A. Yes, I did, through the chief superintendent in the
 15 Westmeath division. 13:59

16 509 Q. When did you get that direction from the Commissioner?

17 A. I don't have -- I don't have documents of that nature
 18 in front of me because I just don't have them here.

19 510 Q. You can see that the letter is dated 30th May 2014?

20 A. Yes. I assume, and again I don't have the 14:00

21 correspondence in front of me, that that came in that
 22 format to me, as in Mullingar. I'm sure, perhaps, from
 23 the materials discovered from the eastern regional
 24 office, it's probably there. But what I would say in
 25 general terms about this is: if such a direction would 14:00
 26 come to me in respect of engaging directly with
 27 Sergeant McCabe, I knew that Sergeant McCabe had been
 28 in contact with the chief superintendent in Mullingar
 29 and the superintendent, indeed there were various

1 inspectors at different times that were liaising with
2 Sergeant McCabe just in relation to workplace issues
3 and his welfare. So what I would have done with that
4 was, and I'm sure I did, was that I would have given
5 that direction, you know, in that format, on the 14:00
6 Commissioner's direction, to the chief superintendent
7 in Mullingar, and I know that happened because there
8 were various strands of correspondence that came in
9 relation to that.

10 511 Q. Are you saying that, in response to that 14:01
11 correspondence, that you gave a direction to somebody
12 down the line --

13 A. Yes.

14 512 Q. -- to provide the support --

15 A. Yes. 14:01

16 513 Q. -- but didn't do so yourself?

17 A. No, I didn't, not in my role as regional commander, but
18 that wouldn't be unusual, that it would come down
19 through the chain -- I would have given that task to
20 the chief superintendent in the Westmeath division. 14:01

21 514 Q. Do you recall ringing Maurice McCabe in relation to
22 that direction?

23 A. You see, I'm not certain was it in relation to this,
24 but I did have a conversation with Sergeant McCabe.

25 515 Q. There's no question you had a conversation, because you 14:01
26 were directed to do that?

27 A. Yes.

28 516 Q. Yeah.

29 A. But --

1 517 Q. Do you remember anything about the conversation?
2 A. I do, I do, because I think there was about eight or
3 nine points that Sergeant McCabe raised in relation to
4 ongoing issues that were happening in Mullingar at that
5 time. And I knew that those matters were being looked 14:02
6 at or being dealt with by the people in the division
7 who were given that task.

8 518 Q. Okay. Can I ask you to turn to page 3353.
9 A. 335?

10 519 Q. 3353. 14:02

11 **CHAIRMAN:** Turn the page.
12 A. Sorry, Chairman.

13 520 Q. **MR. GORDON:** It should come up on the screen. This is
14 a letter dated 6th June 2014. Again, it bears the
15 Commissioner's reference. It's by courier. It's 14:02
16 strictly private and confidential. It's from Séan
17 Costello to the Commissioner. I will just ask you to
18 look directly at paragraph 3 of that letter, and
19 Mr. Costello says:
20 14:02

21 *"It was only in the aftermath of our client's direct
22 contact with you that he received any relevant contact
23 having been contacted by Assistant Commissioner Kenny,
24 Chief Superintendent Mark Curran" --*

25 A. Yes. 14:02

26 521 Q. *" -- and laterally Inspector Dermot Dray."*
27
28 which perhaps is a typo, but nonetheless there is an
29 acknowledgment there in that correspondence that you

1 had made contact with --

2 A. Yes.

3 522 Q. -- with Maurice McCabe --

4 A. Yes.

5 523 Q. -- in relation to this particular issue, the fact that 14:03
6 he wasn't getting support. Just concentrate there for
7 a moment, not on the particular point that is being
8 made by Mr. Costello but on the date of the letter.
9 You will see that it's the 6th, isn't that so?

10 A. Yes. 14:03

11 524 Q. And I think that that letter, just to take it in terms
12 of timing of these events, that is a letter that was
13 written by Mr. Costello some ten days before you wrote
14 to the Commissioner in your letter of the 16th, isn't
15 that right? 14:03

16 A. Yes, yeah.

17 525 Q. And in your letter to the Commissioner you were telling
18 the Commissioner that there was a digital penetrative
19 rape allegation, isn't that so, in your letter of the
20 16th? 14:03

21 A. That's what was contained on the referral form, yes. I
22 was telling the Commissioner -- I was reporting to the
23 Commissioner matters that had been brought to my
24 attention and supporting documentation in relation to
25 that. When the covering minute I put, I was putting 14:04
26 the Commissioner on notice and giving her information
27 that this had arrived.

28 526 Q. Well, what I am driving at is this: I had asked you
29 this morning about the level of contact, if any, that

1 you had with the Commissioner in relation to the
2 correspondence as you'd sent it in, the official way,
3 up through --

4 A. Yes.

5 527 Q. -- her private secretary and into her office, and you 14:04
6 had said that there was no contact in relation -- in
7 fairness to that particular matter, is what you said,
8 isn't that so?

9 A. Yes.

10 528 Q. And at the very same time as these events were taking 14:04
11 place and having regard to your concerns as you
12 expressed them at the meeting, coming back the other
13 way was a direction from the Commissioner to make
14 contact with Sergeant McCabe, isn't that right?

15 A. Yes. 14:04

16 529 Q. You can see that in the first letter I've opened, but
17 you can see in the second letter that I've opened that
18 you had, in fact, contacted Maurice McCabe?

19 A. Yes.

20 530 Q. At that time? 14:05

21 A. Yes.

22 531 Q. So apart from any meetings that you had, that you
23 discussed this morning in your evidence about PULSE --

24 A. Yes.

25 532 Q. -- and restoring him to PULSE, this was directly on 14:05
26 point here, wasn't it? I mean, you were meeting with
27 Maurice McCabe but at the same time you had his rape
28 file on your desk?

29 A. I'm not sure it was a meeting. I think --

1 533 Q. Well, sorry. If it was a phone call or --
2 A. Yeah.

3 534 Q. -- or a discussion of some sort --
4 A. That is my recollection of it, and I stand corrected on
5 that. 14:05

6 **CHAIRMAN:** Yes, but it was one meeting and three phone
7 calls, was what the evidence was this morning.

8 A. I'm certain I only engaged once with Sergeant McCabe,
9 Chairman.

10 **CHAIRMAN:** And that was the PULSE meeting? 14:05
11 A. The PULSE restoration.

12 535 Q. **MR. GORDON:** And that is a completely separate meeting?
13 A. Yes.

14 536 Q. And completely separate issue, isn't it?
15 A. Yes, yes. 14:05

16 537 Q. But at this time, during this period, when you were
17 sending the correspondence up to the Commissioner, as
18 we have discussed it this morning, you had a file on
19 your desk. You're getting, downward from the
20 Commissioner's office, a direction to talk to Maurice 14:06
21 McCabe about the support that he required --

22 A. Yes.

23 538 Q. -- in his working environment?
24 A. Yes.

25 539 Q. And the timing is very proximate, isn't it? 14:06
26 A. Yes.

27 540 Q. It's the same time, in fact?
28 A. I accept that, but as I outlined this morning, the
29 amount of responsibility I had at that time, this would

1 depend on whether I was in Mullingar, because that's
2 where correspondence in relation to Sergeant McCabe and
3 the workplace stuff would come to. And again, I am
4 just trying to be helpful here, so I am not sure when I
5 would have seen that, and it's quite possible I may 14:06
6 have seen it, I don't know.

7 541 Q. Are you saying that you don't really remember too much
8 about the direction that was given by the Commissioner?
9 A. I do remember the direction but I don't have dates
10 here. 14:06

11 542 Q. Well, tell us what you remember about that, first of
12 all?
13 A. No, well I remember the direction being given to me
14 to --

15 543 Q. What was that about? Tell us about the direction? 14:06
16 A. Was to make contact with Sergeant McCabe. I'm going
17 from memory on this now.

18 544 Q. Yes.
19 A. I haven't seen these documents for over three years.
20 And it was just to -- it was in relation to issues that 14:07
21 were affecting Maurice in the workplace and I was to
22 ensure that these matters were addressed and that he
23 was to be continued to be given support and welfare in
24 respect of his duties in Mullingar station. Briefly,
25 that was, in a nutshell, what it was. 14:07

26 545 Q. And if you were having this sort of contact, not with
27 Maurice McCabe but with the Commissioner --
28 A. Yes.

29 546 Q. -- in relation to what needed to be done, how come you

1 didn't just tell the Commissioner at that point in
2 time?

3 A. No, because that came to me in a written format.

4 547 Q. Okay. You never told the Commissioner, though, that
5 this never happened? 14:07

6 A. Sorry?

7 548 Q. You never told the Commissioner about the error that
8 you have made?

9 A. No, and again I explained that this morning. That
10 occurred at office level. I genuinely, up to preparing 14:08
11 my statement for this Tribunal, was under the
12 impression that that had gone. I honestly -- that was
13 my -- that was my view.

14 **CHAIRMAN:** Sorry, Mr. Gordon, I am sorry, I am finding
15 that difficult to follow - Commissioner. 14:08

16 A. Yes, Chairman.

17 **CHAIRMAN:** And the reason I am finding it difficult to
18 follow is, the chain of command indicates you're the
19 one in contact with Headquarters.

20 A. Yes. 14:08

21 **CHAIRMAN:** Albeit exceptional circumstances --

22 A. Yes.

23 **CHAIRMAN:** -- where someone can be in contact with
24 Headquarters. One of those is confidential
25 communications. 14:08

26 A. Yes.

27 **CHAIRMAN:** And there may be others as well, such as
28 where you can't be raised, for whatever reason.

29 A. Yes.

1 **CHAIRMAN:** But you never said so far that you gave a
2 direction to somebody in the office --

3 A. No, I didn't, Chairman.

4 **CHAIRMAN:** -- look, correct that.

5 A. And I take full responsibility for that. 14:08

6 **CHAIRMAN:** Yes. And this is a very important thing.

7 A. Yeah, but what I am saying to you, Chairman, is that,
8 and I'm not using this in any way to water down the
9 point you're making.

10 **CHAIRMAN:** Yes. 14:09

11 A. That it wouldn't be unusual, in my absence, that
12 documents or things of that nature would be sent on my
13 behalf, just so as the process wouldn't be delayed, and
14 that did not happen in this instance, Chairman.

15 **CHAIRMAN:** well, this is a very, very unusual 14:09
16 situation. It's hard to equate it with a usual
17 situation.

18 A. Yes.

19 **CHAIRMAN:** That's where I am having the difficulty.

20 A. No, I accept that, Chairman, but, I mean, that's what 14:09
21 happened.

22 549 Q. **MR. GORDON:** Mr. Kenny, this situation developed a
23 little further to a point where you, in fact, met with
24 Maurice McCabe on the 7th August, you met with the
25 Commissioner in his presence? 14:09

26 A. Yes.

27 550 Q. And you met with Mr. Costello?

28 A. Yes, I remember that.

29 551 Q. Does that ring a bell?

1 A. Okay.

2 552 Q. So Maurice McCabe was present - Sergeant McCabe, I
3 should say - you were present, Sergeant McCabe's
4 solicitor, Mr. Costello, seated beside me here, was
5 present, and the Commissioner of An Garda Síochána was 14:10
6 present?

7 A. Yes.

8 553 Q. And perhaps Ken Ruane was present?

9 A. I think, from recollection, yes, that's correct.

10 554 Q. Do you remember that meeting? 14:10

11 A. I do.

12 555 Q. Can I suggest to you that that was a golden opportunity
13 to tell the Commissioner first and foremost that a
14 grave error had occurred, that remained uncorrected,
15 that you knew was in existence and that there was an 14:10
16 opportunity generally to clear things up, which you
17 never did?

18 A. Yes, but -- and again, I accept what you are saying,
19 but the meeting was in relation to workplace issues in
20 Mullingar. 14:10

21 556 Q. The meeting was in workplace --

22 A. Yeah, that's my terminology, but that's what it was.

23 557 Q. Do you think not for a moment, just stepping back from
24 this, that a file sent up to the Commissioner's office
25 about a member of An Garda Síochána, an employee of the 14:11
26 State, that wasn't a workplace issue?

27 A. Em, well, this was a -- this was an allegation -- yeah,
28 I can't say -- no, but what I meant by that was, that
29 the meeting with Mr. McCabe, with Sergeant McCabe and

1 his solicitor, was in relation to issues that were
2 impacting on Sergeant McCabe's work in Mullingar Garda
3 Station. That is my recollection of it.

4 558 Q. Well, that is correct, of course?
5 A. Yeah. 14:11

6 559 Q. Because that's what we see and read about in the
7 correspondence?
8 A. Well, that's my memory of it as well.

9 560 Q. But you never told Maurice McCabe about these matters?
10 A. No, I didn't. 14:11

11 561 Q. Well, why didn't you do that?
12 A. In relation to the --

13 562 Q. Why didn't you tell Maurice McCabe, Sergeant McCabe,
14 that there was a very live unpleasant file passing
15 between you and the Commissioner in relation to a rape 14:11
16 allegation?
17 A. Because, as I said at the outset, my view on that was
18 that the onus and responsibility to inform Sergeant
19 McCabe of the error that was made, that responsibility,
20 in my view, rested with the HSE. 14:12

21 563 Q. But don't you see, and you must have seen at the time,
22 I suggest to you, that Maurice McCabe's employer, the
23 Commissioner, was sitting there with him present with a
24 rape allegation file on her desk.
25 A. Yes. 14:12

26 564 Q. And are you seriously suggesting to this Tribunal that
27 you never had any discussion with the Commissioner
28 about that?
29 A. Yes, on oath, I am.

1 565 Q. And do you accept that, to say the least, it looks a
2 little odd that you didn't?
3 A. Em, I don't, because again what transpired afterwards
4 with this --
5 566 Q. Don't mind what transpired. 14:13
6 A. Yes.
7 567 Q. We will come to that, perhaps, if we need to.
8 A. Yeah.
9 568 Q. But, I mean, they're sitting there now, they've put you
10 in contact, from the correspondence, have put you 14:13
11 there --
12 A. Yeah.
13 569 Q. -- in the same room now --
14 A. Yes.
15 570 Q. -- as the Commissioner? 14:13
16 A. Yes.
17 571 Q. With Maurice McCabe and with his solicitor present, and
18 he's complaining about workplace issues, on your
19 account. At the very same time, the very same time,
20 you're also dealing and managing a rape file with Ken 14:13
21 Ruane, who was also at the meeting?
22 A. Yes, but that was the first -- the incorrect allegation
23 you're referring to here, subsequently that was
24 amended.
25 **CHAIRMAN:** Mr. Gordon, not to interrupt you, but I am 14:13
26 wondering about this again and maybe it's better I
27 should ask at this point. The nature of those meetings
28 is that there's one side, which is Mr. Costello,
29 Sergeant McCabe, and then there's, if you like, your

1 side.

2 A. Yes, Chairman.

3 **CHAIRMAN:** So I imagine you did meet the Commissioner
4 beforehand for a brief chat; look, how are we going to
5 approach this meeting? Nothing wrong with that. That 14:14
6 is the type of meeting --

7 A. Yes.

8 **CHAIRMAN:** -- you must have done.

9 A. I can't say yes or no, Chairman, but I would tend to
10 think that probably was the case. 14:14

11 **CHAIRMAN:** And surely the question of this thing came
12 up?

13 A. It didn't, Chairman.

14 **CHAIRMAN:** All right. Okay.

15 572 Q. **MR. GORDON:** Just one final question or two, just about 14:14
16 that particular matter. This, after all, started when
17 Sergeant McCabe had a discussion with the Commissioner
18 about her evidence?

19 A. Sorry, about?

20 573 Q. About her evidence. He was complaining about the 14:14
21 evidence that she was giving to the Justice Committee.
22 He was saying the evidence you're giving to the Justice
23 Committee is not correct.

24 A. Yes, yes.

25 574 Q. Now, in any organisation, but in particular in An Garda 14:14
26 Síochána, it would have been a very unusual state of
27 affairs to have a member of the Gardaí of sergeant rank
28 telling the Commissioner that her evidence wasn't
29 correct. I mean, it's almost an affront to her rank,

1 do you accept that?

2 A. Yes. Well, they were unusual times.

3 575 Q. They were very unusual times, yes. And here was the
4 person who was making that accusation, Maurice McCabe,
5 seated in front of her at the meeting? 14:15

6 A. Yes.

7 576 Q. And she thinking that there's some rape file in
8 existence about this man. Do you understand that so
9 far?

10 A. Yes. 14:15

11 577 Q. And nobody is joining up the dots here?

12 A. All I can say, it wasn't raised or mentioned at the
13 meeting, that I can recollect.

14 578 Q. At any time?

15 A. No. 14:15

16 **MR. GORDON:** Thank you.

17 **CHAIRMAN:** Are you happy enough, Mr. Gordon? Yes.

18 **MR. GORDON:** Thank you, Chairman.

19 **CHAIRMAN:** Is there any other questions?

20 **MR. O'HIGGINS:** A few questions, Chairman. 14:16

21

22 **MR. KENNY WAS EXAMINED BY MR. O'HIGGINS:**

23

24 579 Q. **MR. O'HIGGINS:** Former Assistant Commissioner Kenny,
25 can I ask you, first of all, in terms of just the, as 14:16
26 it were, line management situation. Ordinarily, who
27 would be your line manager?

28 A. A person of executive director or chief superintendent
29 rank.

1 580 Q. Yes.

2 A. Sorry, line manager up or down?

3 581 Q. Well, underneath it's Jim Sheridan.

4 A. Underneath, chief superintendent executive director.

5 582 Q. Chief Superintendent Sheridan? 14:16

6 A. Yes.

7 583 Q. And beneath that again, Superintendent McGinn?

8 A. Superintendent McGinn.

9 584 Q. Right. Now, you've indicated to the Tribunal that you
10 had a number -- there was a number of aspects to your 14:17
11 role as assistant commissioner in the Northern Region.
12 Can you just, very briefly now, just outline, broadly
13 speaking, what that role involved in terms of the
14 different basket of tasks that you had?

15 A. Well, in the Northern Region, which was my home region, 14:17
16 for want of a better word, I was the regional commander
17 for the six counties on the southern side of the
18 border, and that incorporated everything from general
19 policing to security, dissident activity. At this
20 time, as well, I was leading the murder investigation 14:17
21 into a colleague of ours who was shot in the Louth
22 division and I was also conducting a historical missing
23 persons inquiry in the Donegal division.

24 585 Q. When you say 'at this time', are you referring to 2014?

25 A. Yes, during the time of the referral and what we are 14:17
26 talking about here.

27 586 Q. May/June 2014?

28 A. Yes. And that -- also, on at least three or four times
29 a month I would be in Belfast because part of my duties

1 there as well was cross-border liaison with the PSNI,
2 that was my role, because obviously the borders of the
3 six counties on both sides, so that took up a lot of my
4 time. And then I was involved with a lot of statutory
5 agencies in the North with peace-building and
6 cross-border activity. 14:18

7 587 Q. Yes. I mean, you have acknowledged, I think, in your
8 evidence that the referral and the whole issue
9 concerning Sergeant McCabe was an important issue?

10 A. Yes. 14:18

11 588 Q. It was a serious issue. But just in terms of
12 perspective, can you assist the Tribunal; it wasn't the
13 only thing to cross your desk or on your plate?

14 A. No. And with the height of respect for Sergeant
15 McCabe, that is the case. I had a lot of serious
16 issues to deal with at that time. 14:18

17 589 Q. Right. Did you have any role in relation to dealing
18 with litigation on behalf of An Garda Síochána?

19 A. Yes, I had responsibility for legal affairs during that
20 period. So on a daily basis I was making decisions in
21 relation to settlement amounts, whether An Garda
22 Síochána would proceed with cases. I was giving -- in
23 conjunction with legal affairs, but Mr. Ruane was
24 reporting to me, in charge of legal affairs, so that
25 would have taken -- you know, when I went to
26 Headquarters, you know, that would have been at least
27 one day a week, and then other decisions I was giving
28 were done via telephone conversations and the like. 14:19

29 590 Q. Yes. Now, can I ask you to take a look at page 3227

1 for a moment, please, of the materials, which I think
2 is the report from Chief Superintendent Jim Sheridan of
3 the 14th May. 3227. Do you see in that report, and
4 this is the -- that is correct, isn't it, that is the
5 document from -- the report from the officer underneath 14:20
6 you in rank, as it were, who is reporting to you, Chief
7 Superintendent Sheridan, he's providing a report to
8 you, isn't that right?

9 A. Yes.

10 591 Q. And it raises the issue, which I think is also the 14:20
11 subject around about this time of the Paul Williams'
12 articles, he's raising the issue as to Ms. D's
13 position, isn't that right? Do you see where halfway
14 down it makes reference to: *"It is my understanding*
15 *Ms. D has made a complaint based on the allegations set* 14:20
16 *out in the attached referral to the following parties."*

17 A. Yes, yes.

18 592 Q. And it refers to Micheál Martin, and then refers to the
19 Ombudsman commission, GSOC?

20 A. Yes. 14:21

21 593 Q. In relation to that, from a Garda governance point of
22 view, or you have used the expression corporate point
23 of view, what concern did that raise for you?

24 A. I suppose in relation to Mr. Martin and Mr. Kenny, the
25 fact that contact had been made and perhaps some 14:21
26 additional information or fresh information might have
27 emanated from that source, that was one, and then I
28 suppose the fact that An Garda Síochána Ombudsman
29 Commission were involved, I knew from that, or it

1 suggested to me that they would be looking at the
2 handling of the original Garda investigation in
3 2006/2007.

4 594 Q. Yes. Would you mind looking for a moment at documents
5 at page 3212 and 3213. These are two of, I think, a 14:22
6 number of articles from Mr. Williams in or about this
7 time - the 16th of April and I think also the 3rd of
8 May. And it appears -- it reprises Ms. D's complaints
9 as to, on her case, the inadequacies of the Garda
10 investigation back in 2007, isn't that so? 14:22

11 A. Yes.

12 595 Q. Can you assist the Tribunal, is that something, broadly
13 speaking, you were aware of, that Ms. D had complaints
14 and misgivings about the Garda investigation and its
15 adequacy? 14:22

16 A. Yes.

17 596 Q. And from a Garda point of view, sitting, as you did, in
18 the chair of an assistant commissioner, in relation to
19 PULSE and the believed non-notification to the HSE back
20 in '07, what were your concerns from a corporate point 14:23
21 of view?

22 A. Well, I suppose in relation to the notification, as
23 I've outlined in detail, the fact that it hadn't been
24 made, and, in relation to PULSE, that a record that
25 should have been completed in respect of the allegation 14:23
26 hadn't been completed.

27 597 Q. Am I right in my understanding that when the Mullingar
28 meeting intended for June proceeded ultimately in July,
29 it proceeded on the basis, the mistaken basis, that

1 there had been no HSE referral --

2 A. Yes.

3 598 Q. -- back in '07?

4 A. Yes.

5 599 Q. And that wasn't a question that was raised at the time; 14:23

6 it was, in fact, an assumed premise that turned out to

7 be wrong?

8 A. Yes. From my perspective, that was reported to me and

9 I took it as being the situation.

10 **CHAIRMAN:** Excuse me for intervening at this point, but 14:24

11 I am wondering more and more and more why wasn't

12 Inspector Cunningham contacted. I can't understand.

13 A. With respect, Chairman, I --

14 **CHAIRMAN:** I mean, there was this original

15 investigation. 14:24

16 A. Yes.

17 **CHAIRMAN:** It was, as far as I can see, highly

18 competent.

19 A. Yes.

20 **CHAIRMAN:** Balanced, very, very thorough. 14:24

21 A. Yes.

22 **CHAIRMAN:** You could hold it up perhaps as a model

23 investigation in relation to this.

24 A. Yes.

25 **CHAIRMAN:** Even if you didn't want to be involved in 14:24

26 it --

27 A. Yes.

28 **CHAIRMAN:** -- and you heard that, as you say, from

29 somewhere.

1 A. Yes, but I had no issue --

2 **CHAIRMAN:** He certainly went about it with
3 determination --

4 A. Yes, I agree.

5 **CHAIRMAN:** -- to do a good job. And then this being 14:24
6 questioned, so why not ask him? I can't understand it.

7 A. I had no issue -- well, again, Chairman, from my
8 perspective, I had no issue with Inspector Cunningham's
9 investigation. As far as I was concerned, the matter
10 was concluded, and the directions had come back and 14:25
11 there was no prosecution. So, as far as I was
12 concerned, Inspector Cunningham had completed -- you
13 know, I didn't consider inviting Inspector Cunningham
14 to the meeting.

15 **CHAIRMAN:** Yes, but who knows more about this than him. 14:25

16 A. I agree.

17 **CHAIRMAN:** I mean, even now, he's the person who knows
18 more about this than anybody --

19 A. Chairperson, again, I was of the view that no referral
20 had been submitted. 14:25

21 **CHAIRMAN:** No, but, I mean, he'd know. Was he
22 ostracised in some way?

23 A. No.

24 **CHAIRMAN:** Was there something going on that I'm not
25 being told about -- 14:25

26 A. No.

27 **CHAIRMAN:** -- because it just makes no sense at this
28 point.

29 A. Well, Chairperson, all I can say is the people that I

1 had the meeting with in Mullingar were the people that
2 were directly concerned with dealing with the matter as
3 we had.

4 **CHAIRMAN:** I'm not saying members of the Gardaí would
5 ostracise each other. Do you understand that? 14:25

6 A. Yes, I understand.

7 **CHAIRMAN:** I am just saying, is there something going
8 on that I'm not aware of?

9 A. No, that wasn't the case. I just took the view that
10 Inspector Cunningham's role in this was complete. 14:25

11 **CHAIRMAN:** But the more questions are asked, the more I
12 come back to this thing: why was he being excluded
13 from this?

14 A. He wasn't excluded, Chairperson. I just didn't --

15 **CHAIRMAN:** But, I mean, isn't it obvious; if we say, 14:26
16 look, if Leonardo da Vinci is around and you are
17 discussing the Mona Lisa and you want someone to give
18 you a heads-up on the Mona Lisa, go to Leonardo da
19 Vinci.

20 A. Yes. 14:26

21 **CHAIRMAN:** It's similar here. You have got the man who
22 completed the investigation, and furthermore, the
23 investigation has gone in to GSOC --

24 A. Yes.

25 **CHAIRMAN:** -- who are going to be querying it. You're 14:26
26 worried about accountability, the corporate end of
27 things.

28 A. Yes.

29 **CHAIRMAN:** So why are you excluding him?

1 A. I didn't exclude him, Chairperson. I just didn't
2 include him. It just didn't occur to me, Chairperson.

3 600 Q. **MR. O'HIGGINS:** Mr. Kenny, just tweeting on from the
4 Chairman's inquiry, is it the case that you had
5 received the information that you understood to be 14:26
6 correct in full from your immediate line manager
7 underneath?

8 A. Yes.

9 601 Q. Jim Sheridan?

10 A. Yes. 14:26

11 602 Q. And you'd received two reasonably comprehensive reports
12 from him by the time the Mullingar meeting came on,
13 isn't that so?

14 A. Yes.

15 603 Q. And, in fact, there had been no fresh allegation made 14:27
16 by Ms. D, but, in fact, an incorrect characterisation
17 of what she had said to a counsellor?

18 A. That's correct.

19 604 Q. So there was no new Garda matter, no new complaint to
20 An Garda Síochána, it was absolutely clear? 14:27

21 A. Yes, sir.

22 **CHAIRMAN:** No, but there was at the same time, now you
23 have Enda Kenny involved, you have Micheál Martin
24 involved, you have GSOC involved.

25 A. Yes. 14:27

26 **CHAIRMAN:** So...

27 A. The issues, Chairperson, for GSOC, as I understood it,
28 would have been the referral and the PULSE incident.

29 **CHAIRMAN:** PULSE isn't mentioned at the meeting in

1 July.

2 A. Sorry?

3 **CHAIRMAN:** PULSE isn't mentioned at the meeting in
4 July.

5 A. Well, it's mentioned that the matter wasn't recorded on 14:28
6 PULSE.

7 **CHAIRMAN:** Yes. I mean, that's it.

8 A. Yes.

9 **CHAIRMAN:** And was there any reason you weren't going
10 to Sergeant Fraher about that or getting someone to go 14:28
11 to Sergeant Fraher?

12 A. Well, I was aware that GSOC were going to investigate
13 that matter, Chairperson.

14 **CHAIRMAN:** Well, true, but it was only a telephone
15 call. I'll leave it. I'm sorry for interrupting you, 14:28
16 Mr. O'Higgins.

17 A. No, I take your point.

18 **MR. O'HIGGINS:** Not at all, Chairman.

19 605 Q. Just again tweeting off the Chairman's inquiry, you
20 have stated in evidence, and I am just going to ask you 14:28
21 to develop this, if you can, to assist the Tribunal,
22 you've stated in evidence that you were not
23 concerned -- you were concerned, in fact, to keep this
24 to a small number of people?

25 A. That was my honourable intentions at that time, yes. 14:29

26 606 Q. Well, first of all, what was your purpose in confining
27 this to a tight circle of people, 'this' meaning the
28 new referral and enlarged allegation?

29 A. Because the incorrect referral was wrong and I didn't

1 want that information circulating.

2 607 Q. why not?

3 A. Because --

4 608 Q. what harm would it do and to whom?

5 A. well, it would have done damage to Sergeant McCabe. 14:29

6 **CHAIRMAN:** But it had gone to Headquarters.

7 A. Yes.

8 **CHAIRMAN:** I mean, to Headquarters.

9 A. Yes.

10 **CHAIRMAN:** I assume it's not just the Commissioner who 14:29
11 opens her post.

12 A. well, it went to the Commissioner's office,
13 Chairperson, and it went under confidential cover.

14 609 Q. **MR. O'HIGGINS:** well, put it like this, Mr. Kenny: did 14:29
15 you take a decision to publish far and wide this
16 notification when it came in or did you direct any of
17 your line managers to do that?

18 A. No.

19 610 Q. why not?

20 A. Because it was a serious allegation, it would impact on 14:30
21 the character and reputation of Sergeant McCabe and I
22 didn't want that to happen.

23 611 Q. You said in evidence that the Mullingar meeting, as far
24 as you're concerned, was about Ms. D?

25 A. Yes. 14:30

26 612 Q. what do you mean by that?

27 A. well, again, if you just draw it back, I mean at the
28 stage we had the Mullingar meeting we knew that the
29 first referral was incorrect.

1 613 Q. Yes.

2 A. So really what we were looking at now was Ms. D's
3 meeting with the counsellor and what came out of that.
4 There was no new allegation against Sergeant McCabe
5 because it was already investigated and it was 14:30
6 determined that it was the same allegation that Ms. D
7 made that was investigated in 2006/2007. So there was
8 no new allegation made against Sergeant McCabe.

9 614 Q. Would you accept the proposition that over the course
10 of perhaps May and into June and maybe even into July 14:31
11 of 2014, there was a building bank of information
12 whilst An Garda Síochána, you and a small number of
13 persons you had confined the matter to, took steps to
14 clarify the position --

15 A. Yes. 14:31

16 615 Q. -- from a Garda perspective?

17 A. Yes.

18 616 Q. Would you accept the proposition that there was a
19 degree of uncertainty and possibly even fumbling in
20 terms of the immediate response not being based upon a 14:31
21 certainty of knowledge as to precisely what had
22 happened?

23 A. Well, from my perspective, I wanted to get to that
24 point, and that's what the Mullingar meeting was about.
25 Clarity and assurance for me that what we had on the 14:31
26 table was -- what we were dealing with was factual.

27 617 Q. Chief Superintendent Sheridan has offered the view that
28 from a Garda perspective, as far as he was concerned,
29 there was no necessity to re-open any investigation or

1 initiate a fresh investigation. Do you agree with
2 that?

3 A. That was Chief Superintendent Sheridan's view from the
4 start and he consistently remained with that. I agree
5 with it, when we got to the point where I was satisfied 14:32
6 that the allegation was the same allegation that was
7 investigated in 2006/2007, yes.

8 618 Q. Yes. We have heard mention of the 3rd July report from
9 him to you, which, as it were, summarised matters --

10 A. Yes. 14:32

11 619 Q. -- and pulled things together once they had been
12 ascertained from the HSE, and so on?

13 A. Yes.

14 620 Q. Is it the case that, in fact, prior to the 3rd July
15 report, you, in fact, had made a decision so as to get 14:32
16 everybody around the table so there would be an oral
17 discussion and not just a dry written document
18 exchange?

19 A. Yeah.

20 621 Q. There would be an oral discussion intended for June? 14:33

21 A. Yes.

22 622 Q. Isn't that so?

23 A. Yes.

24 623 Q. What date in June was that?

25 A. I think, off hand, the 20th comes into my head, but I 14:33
26 can check it here.

27 624 Q. In any event, it was your initial intention to hold
28 that meeting in June?

29 A. Yes.

1 **CHAIRMAN:** It is the 16th of June at 10am.

2 A. Yes.

3 **MR. O'HIGGINS:** Obligated, Chairman.

4 625 Q. The 16th of June. Now, as it happens, you proceeded
5 with the meeting at a later date, but in between 14:33
6 that --

7 A. Yes.

8 626 Q. -- the 16th of June and the date of the meeting in
9 Mullingar, Jim Sheridan's report dated 3rd July --

10 A. Came to me, yes. 14:33

11 627 Q. -- as it were, intervened and came to you?

12 A. Yes.

13 628 Q. But you proceeded with the meeting anyway?

14 A. Yes.

15 629 Q. It having been arranged previously? 14:33

16 A. Yes.

17 630 Q. Now, just going back to something Mr. Marrinan asked
18 you about. It was suggested, I think, to you, that
19 there was a degree -- it was somewhat outrageous for An
20 Garda Síochána to deal with this matter, to have a 14:34
21 series of reports around this matter and then have a
22 meeting, in circumstances where the early indication
23 was, certainly from one of your colleagues, that this
24 was the salient matter that was reinvestigated and
25 concluded back in 2007? 14:34

26 A. Yes. Well, from my perspective, as I said, it was an
27 opportunity for me to sit down with the persons
28 involved face-to-face and be briefed in respect of the
29 matter and any information or any other items -- other

1 parts of it that they needed to bring to my attention,
2 I saw that as good practice.

3 631 Q. Yes. I think you have said in evidence that nothing
4 new really emerged after the 3rd July 2014 report from
5 Jim Sheridan? 14:35

6 A. No. Well, I knew that after the meeting in Mullingar.

7 632 Q. Yes. That being so and that being the resting place of
8 your conclusions, after Mullingar did you take any
9 decision to re-open investigation or commence a fresh
10 one? 14:35

11 A. No.

12 633 Q. Why not?

13 A. Because it was -- when I went to the meeting in
14 Mullingar, I had the benefit of Chief Superintendent
15 Sheridan's report, and then I probed that issue on a 14:35
16 number of occasions during the meeting, which the
17 minutes reflect, and I was satisfied at that stage that
18 the matter was the same matter that was investigated in
19 2006/2007, and, as I mentioned earlier, when I went and
20 looked at the referral forms, it confirmed again, as 14:36
21 Chief Superintendent Sheridan had been saying to me,
22 that Ms. D, in her consultation with the counsellor,
23 stated that herself.

24 634 Q. Mr. Kenny, was this essentially a local matter that was
25 being handled at district and divisional level? 14:36

26 A. Yes, yes. Not taking away from the people involved,
27 but that's what it was.

28 **CHAIRMAN:** Yes, but allegations against members of An
29 Garda Síochána always go to Headquarters.

1 A. Yes, they do.

2 **CHAIRMAN:** To B Branch.

3 A. Yes, Chairperson, yes.

4 **MR. O'HIGGINS:** Thanks very much.

5 **MR. MARRINAN:** One matter, sir. 14:37

6

7 **MR. KENNY WAS RE-EXAMINED BY MR. MARRINAN:**

8

9 635 Q. **MR. MARRINAN:** Mr. Kenny, when Mr. Lowry, Gerard Lowry,

10 was in the witness box giving evidence in relation to 14:37

11 HSE and Tusla, he's the area manager and ultimately had

12 responsibility, you were the assistant commissioner and

13 ultimately had responsibility, but I asked him a

14 question in relation to a series of errors that the

15 Tribunal has heard about in July of this year, in the 14:37

16 three-and-a-half weeks of our sittings --

17 A. Yes.

18 636 Q. -- and pointed out to him that every error that was

19 made was to the detriment of Sergeant McCabe. You

20 probably have been following the Tribunal's business; 14:37

21 you may have heard me make that suggestion to him.

22 A. Not directly.

23 637 Q. No.

24 A. But I accept what you say.

25 638 Q. And I just want to point out a number of matters in 14:37

26 relation to the Garda side of things. We're confronted

27 with a situation where Superintendent Cunningham,

28 Inspector Cunningham as he then was -- oh, no, he's

29 superintendent -- ignores a letter that is sent to him

1 in August 2013 from Keara McGlone.

2 **MR. O'HIGGINS:** Chairman, I am not sure that is a fair
3 characterisation of -- it's a matter for you
4 ultimately, but I don't think that is a fair premise to
5 build into a question as if it is an established fact. 14:38
6 It is much disputed.

7 **CHAIRMAN:** what is this?

8 **MR. O'HIGGINS:** Superintendent Cunningham's evidence
9 was that he intended to return to it. That is the
10 opposite of ignoring a letter. 14:38

11 **MR. MARRINAN:** Very well. I won't characterise it as
12 that.

13 639 Q. Superintendent Cunningham did not respond to a letter
14 that had been sent by Keara McGlone looking for a
15 meeting, you're aware of that evidence? 14:39

16 A. I am aware of it now, yes.

17 640 Q. Yes. We're then in a situation where Inspector Pat
18 O'Connell doesn't reply to an email that is sent by
19 Fiona Ward giving him details in relation to Eileen
20 Argue, for him to follow up an inquiry with the HSE, 14:39
21 and he says he didn't get the email?

22 A. Yes, I am aware of that now.

23 641 Q. You're aware of that now. We're then in a situation
24 where Chief Superintendent Sheridan, after the meeting
25 in Mullingar, is tasked to go and to contact the HSE 14:39
26 and arrange a meeting to find out what their strategy
27 is in relation to Maurice McCabe, and he doesn't follow
28 that up?

29 A. Yes. I got no subsequent report on that.

1 642 Q. And now we have heard evidence here today that you sent
2 a notification to Garda Headquarters with the incorrect
3 information contained in it, and never rectified that,
4 and that file sat in Garda Headquarters until indeed it
5 was disclosed to the Tribunal. 14:40

6 A. Yes.

7 643 Q. And again, all these bounces of the ball go against
8 Maurice McCabe, and a reasonable person might look at
9 that and say, well, there might be a conspiracy here to
10 do down Maurice McCabe. Can you assure the Tribunal 14:40
11 that that isn't the situation?

12 A. Yes, I can. Chairperson, I outlined my - 'opinion' is
13 not the word - my view on Sergeant McCabe. I have at
14 no time held any animosity or any bad feeling or malice
15 towards Sergeant McCabe. To this day, I don't. And my 14:41
16 reputation of 41 years speaks for itself. Absolutely
17 not would I engage in it, nor would I participate in
18 any other group that would engage in such behaviour.
19 It goes against everything that I stand for.

20 644 Q. You do appreciate that there are a series of either 14:41
21 errors or oversights in relation to Sergeant McCabe?

22 A. Yes, I do.

23 **MR. MARRINAN:** Thank you very much.

24 **CHAIRMAN:** Thank you.

25 A. Thank you, Chairperson. 14:41

26

27 **THE WITNESS THEN WITHDREW**

28

29 **MR. MARRINAN:** The next witness, sir, is Detective

1 Superintendent Frank Walsh, please. This is at page
2 3216 which is in Volume 11.

3

4 **DETECTIVE SUPERINTENDENT FRANK WALSH, HAVING BEEN**
5 **SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN:**

14:41

6

7 645 Q. **MR. MARRINAN:** Now, Detective Superintendent, I think
8 on the 23rd January 2012 you were appointed as private
9 secretary to the Commissioner, isn't that right?

10 A. That's correct, Chairman, yes.

14:42

11 646 Q. Would you just tell the Chairman what your duties would
12 include in that capacity?

13 A. I was the point of contact for the Commissioner's
14 office, point of contact for the Commissioner, first
15 line of contact, I suppose, for both external and
16 internal correspondence and calls. I was responsible
17 for diary management and for general office
18 administration.

14:42

19 647 Q. And I think that you held that role up until 18th July
20 of 2016?

14:42

21 A. That's correct, Chairman, yes.

22 648 Q. And during your tenure as private secretary and also in
23 your role as acting chief superintendent at the time, I
24 think that you had many dealings with Sergeant McCabe,
25 is that right?

14:43

26 A. I did, indeed.

27 649 Q. And I think that many of those meetings were on a
28 one-to-one basis, and several were by telephone
29 contact, is that right?

1 A. That's correct, Chairman.

2 650 Q. Now, I think there were -- you took up -- when you took
3 up your role, there was an initial review at the
4 Commissioner's office of various reports and alleged
5 wrongdoing by members of An Garda Síochána that had 14:43
6 been made by Sergeant McCabe held on file there, is
7 that right?

8 A. That's correct, Chairman. One of my responsibilities
9 as private secretary was, I had responsibility for the
10 administration of all confidential reporting and 14:43
11 protected disclosure files. So, yes, I would have
12 conducted a complete review of all of those once I took
13 up duty in the office.

14 651 Q. I think that you prepared a chronology for easy
15 reference of all the file entries, is that right? 14:44

16 A. That's correct.

17 652 Q. And the first entry relating to complaints that had
18 been made by Sergeant McCabe that were held at Garda
19 Headquarters, was from the 3rd December 2008, is that
20 right? 14:44

21 A. That's correct.

22 653 Q. I think the entire file that was held at Garda
23 Headquarters ran to approximately 3,500 pages?

24 A. That's correct, Chairman. The file -- our
25 correspondence register, what we would normally do is, 14:44
26 if a file arrives into the office, it's normally
27 answered, and when it goes back out of the office the
28 complete file is scanned electronically onto our file
29 system. The last time I referred to the file there

1 were three-and-a-half thousand pages in that particular
2 file, but there could have been a lot of duplication in
3 that. I wouldn't say they were all individual pages.

4 654 Q. And as far as you were concerned, the file was last
5 modified on the 12th June 2013, is that right? 14:45

6 A. I think -- yes, that is the last time it was modified,
7 yes.

8 655 Q. But in any event, attached to that file was a list of
9 issues in relation to Sergeant McCabe, is that right?

10 A. That's correct. 14:45

11 656 Q. And these are issues that had arisen over the years in
12 relation to him and his time as a garda and then as a
13 sergeant?

14 A. That's correct, Chairman.

15 657 Q. And included in that was a reference to an incident 14:45
16 involving a statement from a 14-year-old girl who
17 alleged that she had been sexually assaulted in 2006,
18 is that right?

19 A. Yes, that's correct.

20 658 Q. Now, in terms of what was contained on the file, was 14:46
21 there a reference and a brief summary in relation to
22 that --

23 A. That's correct, yes.

24 659 Q. -- that was contained on the file? And this will be 14:46
25 circulated to the parties, sir, it has only just become
26 available, but in relation to that, there was a note on
27 the file referring to the 4th November 2006. I think
28 that is an error, it should relate to the 4th December
29 2006.

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"Ms. D, 14 years, made a statement to Sergeant Denise Flynn and Detective Sergeant James Fraher. In the statement she alleges that when she was six years of age she was playing in the home of Garda McCabe. Ms. D was playing with member's children. During the day she alleges that Sergeant McCabe took hold of her from behind and began pressing against her. After a few minutes it ended. Statement does not contain any other details. Inspector Noel Cunningham appointed to investigate criminal aspects of matter. File on the matter was sent to the DPP. Not recommending prosecution. On the 24th August 2007 the DPP directed no prosecution. Chief superintendent Monaghan decided not to initiate discipline in the matter and the file was closed."

And that is the summary that is contained on the file, is that right?

A. That's correct.

660 Q. And was the actual investigation file from 2006/2007 on file in Garda Headquarters?

A. Not to my knowledge. I have certainly never seen it.

661 Q. Mmm?

A. I have never seen it.

662 Q. You have never seen it?

A. Not to my knowledge, no.

663 Q. So it was that summary which indicates that this was, at its highest, a minor sexual assault, isn't that

1 right?

2 A. Again, to my knowledge, that is as much as I have ever
3 seen in relation to it.

4 664 Q. Well, is there a difficulty in relation to that? I
5 mean, I am putting it to you, at its very highest what 14:48
6 is contained in the report disclosed an allegation of a
7 very minor sexual assault?

8 A. In that particular report, yes, absolutely.

9 665 Q. Yes. And that's all that Garda Headquarters had in
10 relation to it, is it? 14:48

11 A. Yeah. And just speaking for myself, I'm just saying
12 that's as much as I know. I have never seen anything
13 else.

14 666 Q. Well, is there any reason to suppose there's anything
15 else there? 14:48

16 A. No, not that I know of.

17 667 Q. So can we take it that in relation to Sergeant Maurice
18 McCabe, the only reference to the 2006/2007 allegation
19 of sexual assault is what I have just read out?

20 A. As far as I'm aware, yes. I have never seen the 14:48
21 investigation file. That's as much as I had seen.

22 668 Q. And in any event, I think that you then dealt with a
23 number of a matters of correspondence from Assistant
24 Commissioner Kieran Kenny from the Northern Region, is
25 that right? 14:49

26 A. That's correct.

27 669 Q. We will just go through these quickly. First of all,
28 at page 3225, this is from Karen Duffy:
29

1 *"I am directed by Assistant Commissioner Northern*
2 *Region to forward the attached correspondence for your*
3 *information."*

4
5 And then 3226, this is a report from Kieran Kenny that 14:50
6 we have opened, already opened. It concerns
7 *"Notification of suspected child abuse received by*
8 *Superintendent McGinn, Bailieboro, from Tusla."*
9 Do you see that?

10 A. I do, Chairman, yes. 14:50

11 670 Q. And then 3227, that is the report which was included
12 from the chief superintendent, isn't that right?

13 A. That's correct.

14 671 Q. And then 3228, which is the notification from Tusla,
15 isn't that right? 14:50

16 A. That's correct.

17 672 Q. No, sorry, that is not the notification. 3228 is the
18 report from Superintendent McGinn, who refers -- if I
19 can just refer you to, in paragraph 5 down:

20 14:50

21 *"The allegation was investigated --" sorry, I am going*
22 *too quickly. 3228.*

23

24 *"The allegation was investigated by Monaghan Garda*
25 *Station by then-Inspector Noel Cunningham, who is now* 14:51
26 *district officer at Monaghan."*

27 Do you see that?

28 A. I do.

29 673 Q. Then over the page at 3229 there is a recommendation

1 from Superintendent McGinn, which I won't go through
2 with you, and then over the page at 3230 is the
3 notification of suspected child abuse, and that was
4 also included, and it refers to a rape offence, isn't
5 that right? 14:51

6 A. That's correct.

7 674 Q. So this was received and filed, presumably, in Garda
8 Headquarters at the time?

9 A. A copy of this correspondence would have been put on
10 the file. 14:51

11 675 Q. Including the report?

12 A. Including the report, yes.

13 676 Q. Did anybody read this --

14 A. Yes.

15 677 Q. -- at that time? 14:52

16 **CHAIRMAN:** Mr. Murrinan, just so that he can have the
17 entire letters. Volume 11 is just there on top of the
18 thing, very top.

19 **MR. MARRINAN:** Yeah, it might help you.

20 **CHAIRMAN:** Yes. We're at 3230, just there. So I am 14:52
21 sorry, you were saying it was filed, is that it?

22 **MR. MARRINAN:** Yes. So this was filed, all this
23 together was filed in the Maurice McCabe file.

24 A. Yes. After the Commissioner -- after it would have
25 been seen and dealt with. 14:52

26 678 Q. Yeah. And I asked you did anybody read it?

27 A. Yes.

28 679 Q. Who read it?

29 A. I read it.

1 680 Q. You read it?
2 A. Yes.
3 681 Q. And did you not notice that it had incorrect
4 information in it?
5 A. No, I didn't. 14:52
6 682 Q. Did you reference the portion that I read out to you on
7 Garda McCabe's file in relation to the description of
8 the allegation that had been made by Ms. D in 2006?
9 A. No.
10 683 Q. You didn't reference that at all? 14:53
11 A. No.
12 684 Q. So you just took this at face value, that this was a
13 new referral that was coming in, is that it?
14 A. No. I believed, Chairman, at the time when I saw it, I
15 believed that it was the 2006 allegation all over 14:53
16 again.
17 685 Q. Right. And what led you to believe that was that
18 Superintendent McGinn had referred to the fact that
19 this matter had been investigated in his report?
20 A. No, I don't think so. I think it was, just in its 14:53
21 entirety, having read the complete seven or eight pages
22 involved in this report, I formed the opinion, to
23 myself, that this is the 2006 allegation rearing its
24 head again.
25 686 Q. Well, clearly, I mean, you had a fairly substantial 14:53
26 file on Garda McCabe in the Commissioner's office?
27 A. Mm-hmm.
28 687 Q. He had, and was continuing to make complaints in
29 relation to a wide variety of issues that concerned the

1 force, isn't that right?

2 A. That's correct.

3 688 Q. I suppose one of the matters that would have stood out,
4 leaving aside this, when reviewing his file, was that
5 an allegation was made against him in 2006 by another 14:54
6 member's daughter and that it had been investigated and
7 the DPP had directed that there should be no
8 prosecution?

9 A. Correct.

10 689 Q. I mean, that would have stood out in your mind, surely? 14:54

11 A. Yes, yeah, absolutely.

12 690 Q. So here you're receiving a notification and a report
13 from the assistant commissioner in the Northern Region.
14 And what led you to believe that this was the same
15 allegation, the earlier one having been what I 14:55
16 described as, at its very highest, a minor sexual
17 assault and this being one of rape?

18 A. As I said, Chairman, I had never seen the investigation
19 file. I didn't know the actual facts of the 2006
20 investigation. 14:55

21 691 Q. But surely you had seen the summary I've just referred
22 to?

23 A. To be honest, I don't know when I saw the summary,
24 whether it was after or before that. This was the
25 subject of a lot of talk at the time. And I am not 14:55
26 sure whether I learned of the 2006 allegation from the
27 summary or whether I was aware of it from the rumours
28 that were circulating at the time.

29 692 Q. Well, there was a report that was put together in the

1 Commissioner's office on Sergeant McCabe?

2 A. Yes.

3 693 Q. And that was for the information of the Commissioner,
4 is that right?

5 A. No, it was for my -- for my own -- 14:55

6 694 Q. All right, for your own information.

7 A. It's not a report; it's a chronology so that I could
8 easily access areas of the files that I needed to
9 access if I was asked particular questions in relation
10 to it. 14:56

11 695 Q. And this was a brief summary of the allegations that
12 had been made against Sergeant McCabe in 2006?

13 A. This, yes. That paragraph that you read earlier, yes.

14 696 Q. Was this prepared by you?

15 A. No. 14:56

16 697 Q. No. Who was it prepared by?

17 A. I tried to establish who it was prepared by. I believe
18 it may have been the human resources department, but I
19 couldn't establish that for definite.

20 698 Q. But in any event, it's on the file, and it's not just 14:56
21 simply part of the 3,500 documents, because it is
22 actually a report that deals in chronological order
23 with Sergeant McCabe's history in An Garda Síochána,
24 isn't that right?

25 A. It is. There are other -- 14:56

26 699 Q. Yes. And it occupies its own and prominent position in
27 2006, isn't that right?

28 A. I'm sorry, I don't follow the question.

29 700 Q. It occupies its own position in the report, in a

1 prominent position in 2006?

2 A. In the chronology?

3 701 Q. Yes.

4 A. Yeah, it's certainly there in the chronology, yes.

5 **CHAIRMAN:** It's fair to say, I think, that the summary 14:57
6 on the file is an accurate summary of the 2006
7 allegation.

8 **MR. MARRINAN:** Yes.

9 **CHAIRMAN:** I mean --

10 702 Q. **MR. MARRINAN:** So that is why I am wondering how it is 14:57
11 that you could have thought that what you were viewing,
12 having reviewed what had been sent to you by Assistant
13 Commissioner Kenny, how you could have thought, when it
14 outlines a rape offence, that this actually was a
15 reference to the 2006 allegation, which was, at its 14:57
16 very highest, a minor sexual assault - touching?

17 A. Yeah, again I don't know, Chairman, whether I was
18 basing that on the fact that I had read that particular
19 excerpt which is now in the chronology or whether it
20 was the fact that I had heard rumours circulating at 14:58
21 the time that some type of offence had taken place.
22 And I was not aware of the actual circumstances of that
23 offence.

24 703 Q. And then I think at page 3224, if I could have that up
25 on the screen, please, this is you writing to the 14:58
26 assistant commissioner:
27
28 *"I am directed by the Commissioner to refer to email
29 correspondence from your office of the 16th May 2014,*

1 *the content of which has been noted by the*
2 *Commissioner. It is noted that you are considering*
3 *this matter and that you will keep the Commissioner*
4 *informed of developments."*

14:58

6 Is that right?

7 A. That's right.

8 704 Q. So as far as matters are concerned then, do you recall
9 on the 16th May 2014 bringing the file to the
10 Commissioner's attention?

14:58

11 A. I do, yes.

12 705 Q. Will you tell us about that, please?

13 A. In the normal course of events I would get perhaps a
14 bundle of files, anything from 10 files, perhaps 30
15 files. I would decide which files would be of
16 significant importance, and I would, I suppose, list
17 them in order of importance and as soon as I got an
18 opportunity I'd bring them to the Commissioner's
19 notice. This being in relation to a confidential
20 reporter and also being as serious as it was, would
21 have been certainly at the top of the bundle, among
22 others. So at the first available opportunity I would
23 ask the Commissioner had she a moment to sit down and
24 talk through some files. The usual course of events,
25 and I can't remember every minute of that particular
26 day, 16th May 2014, but the usual course of events
27 would be, I would read the file, I would bring it, hand
28 it to the Commissioner. When I'm talking about the
29 file now, I'm only talking about the pages that are

14:59

14:59

14:59

1 here in this particular file. I wouldn't be bringing
2 in the three-and-a-half thousand pages every time. It
3 would be just the updates. I would bring it to the
4 Commissioner, hand her a copy of the file and I would
5 give her a brief summary of the relevant points of the 15:00
6 file that needed to be addressed if we needed to
7 address something in the file.

8 706 Q. And as far as you were concerned at this juncture, did
9 the Commissioner read the file?

10 A. She would have, yes. 15:00

11 707 Q. And you would also have given her a summary?

12 A. As she would be reading the file, I would say you will
13 note or you will see there that the superintendent is
14 saying or the chief superintendent was saying. If I
15 thought they were relevant important parts of it, I 15:00
16 would be highlighting them as she was reading from the
17 file.

18 708 Q. But you didn't reference to the report that was
19 contained in the Garda McCabe file?

20 A. I don't believe so. I believe my conversation with the 15:00
21 Commissioner at that time was in relation to, this
22 seems to be the 2006 allegation.

23 709 Q. Well, I'm just wondering, because this file was held at
24 Garda Headquarters on Sergeant McCabe. Had this
25 report, which was a summary of his history in An Garda 15:01
26 Síochána going back many years, and, as I have
27 indicated, one of the matters in 2006 was this
28 allegation that had been made against him of a criminal
29 offence, at that time that would have been referred to

1 the Commissioner's office, isn't that right? It ought
2 to have been?

3 A. In 2006, I would imagine it would have been. I'm
4 sorry, just if I could revisit that one. Possibly not
5 the fact that it was -- the file went to the DPP, who 15:01
6 directed no prosecution. But maybe it was. I
7 genuinely don't know the answer to that.

8 710 Q. Well, I'm just assuming, because the first thing that
9 Assistant Commissioner Kenny does when he receives this
10 is to notify the Garda Commissioner, and I'm just 15:02
11 making the assumption, maybe I am wrong to make that
12 assumption, that the first thing that would have
13 happened in 2006 is that the Garda Commissioner would
14 have been notified of an allegation of sexual assault
15 against a serving member? 15:02

16 A. I would imagine so, but I can't say that that did
17 happen here. Sometimes -- there was an assistant
18 commissioner in charge of the human resources
19 department, who would be the relevant commissioner to
20 report that to. 15:02

21 711 Q. We are told by Assistant Commissioner Kenny that he
22 didn't send it to human resources because he sent it to
23 the Commissioner's office on his understanding that the
24 Commissioner's office would then refer it to human
25 resources. 15:02

26 A. This is the 2016 allegation?

27 712 Q. Yes -- the 2014, yes.

28 A. Or, sorry, '14. My apologies. Yeah. And we would, if
29 we were writing back to -- if Assistant Commissioner

1 Kenny's report, as it arrived, finished with the fact
2 that he was considering the matter and he would report
3 further, if he had considered the matter at that stage
4 and had told us what he was doing with it at that point
5 in time, both myself and the Commissioner would have 15:03
6 discussed it and said, right, we need to go back to the
7 assistant commissioner and give him whatever direction
8 was needed, and we would also circulate it then maybe
9 over to the human resources people if there was
10 something for them to address at that point in time. 15:03
11 At this point in time, there was nothing to be
12 addressed insofar as the Commissioner -- the assistant
13 commissioner was still considering the matter.
14 713 Q. So this is of concern to you, you put it close to the
15 top of the agenda with the Commissioner because of the 15:03
16 factors that you have outlined, which was natural
17 enough. You give a summary, and that summary is based
18 purely on your reading of the referral from the
19 assistant commissioner. It doesn't reference any other
20 files or reference to files or summaries of the case, 15:04
21 is that what you are saying?
22 A. Yes, that's correct.
23 **CHAIRMAN:** Mr. Marrinan, could I just ask about a date,
24 please, if you don't mind, because I'm just -- as I
25 understand it, it went to Headquarters on the 16th May 15:04
26 2014. Could this meeting be on the 16th May 2014, as I
27 am told, or was it on the next day? And is there a
28 diary entry or anything like that? Because surely it
29 would have taken at least to the next day to get up

1 there.

2 A. It was, I just want to be clear I'm giving you the
3 right -- I think this was sent by email to my email
4 address on the 16th May.

5 **MR. MARRINAN:** It was sent by email. 15:05

6 **CHAIRMAN:** Yes. So it was email and attachments?

7 A. Yes.

8 **CHAIRMAN:** Right. Well, that clears the mystery up.
9 Thank you.

10 714 Q. **MR. MARRINAN:** So what was the Commissioner's reaction? 15:05
11 Did she say anything in relation to it?

12 A. I honestly don't recall, other than the minute that I
13 would come -- go back, which was just to the fact that
14 the Commissioner had noted the file and that the
15 assistant commissioner -- I was noting back that 15:05
16 Assistant Commissioner Kenny was considering the matter
17 and he was being asked to keep us updated on it.

18 715 Q. Well, I mean, did the Commissioner show surprise that
19 this was landing on her desk? Did she react in any
20 way? 15:05

21 A. I can't say she reacted in any way, no.

22 716 Q. Sorry?

23 A. I can't say that she reacted in any particular --

24 717 Q. Well, you can say if you have a recollection. Do you
25 have a recollection? 15:05

26 A. No, I don't have a recollection of her reacting in any
27 way strangely to it.

28 718 Q. I am not saying strangely. I am just wondering how she
29 reacted?

1 A. Yeah. I can't remember how she reacted. I don't know.
2 719 Q. Well, I suppose before this came in, she must have
3 accessed the file of Sergeant McCabe to brief herself
4 in relation to Sergeant McCabe's history in An Garda
5 Síochána. Did you brief her? 15:06
6 A. I briefed her, and she would have seen parts of the
7 file. I doubt if she ever sat down and read through
8 the entire file.
9 720 Q. I am not suggesting the entire file. I am suggesting
10 the summary of his career in An Garda Síochána that was 15:06
11 within the file. Do you understand?
12 A. I do, yes, yes.
13 721 Q. That summary is there for ease of reference for
14 somebody to look at it quickly and to see Sergeant
15 McCabe's history in An Garda Síochána, and it's there 15:06
16 for a purpose, isn't that right?
17 A. Just to explain. The summary -- the chronology of the
18 file and this summary are two -- were two separate
19 documents. When I created the chronology of the file,
20 it was purely as a ready reckoner to be able to quickly 15:07
21 go to page number 7 or page number 700 to find a
22 particular report.
23 722 Q. Yes.
24 A. Okay. Then a further report arrived in at some point
25 in time, I don't know when, which contained the summary 15:07
26 of Sergeant McCabe's issues, or whatever you might want
27 to call them.
28 723 Q. Issues, yeah.
29 A. Issues. I believe that came from the assistant

1 commissioner's office in the human resources
2 department.

3 724 Q. In human resources?
4 A. Yeah.

5 725 Q. Yes. 15:07
6 A. As I say, I tried to find that out, and I can't find
7 out exactly where they came from because it's not on
8 headed paper, as you will see.

9 726 Q. But it is there for easy reference?
10 A. Yeah, at some stage somebody copied that into -- 15:07
11 because in the same document as the chronology. So at
12 some stage some member of staff in the office, I
13 presume, copied it into the chronology.

14 727 Q. Yes. Detective Superintendent, I am just really trying
15 to get to the bottom of this. This was a document that 15:08
16 was in the file that was there for a purpose, isn't
17 that so?

18 A. Yes, yes.

19 728 Q. It was there for easy reference. And a quick reference
20 to Sergeant McCabe's history in An Garda Síochána, 15:08
21 isn't that right?

22 A. I'm not sure am I misunderstanding the question. The
23 chronology and the file you're talking about, the five-
24 or six-page document that you're talking about, are
25 two -- certainly were two. 15:08

26 729 Q. Just deal with the five- or six-page documents. Don't
27 worry about the chronology for the moment. Just deal
28 with the five-or six-page document, okay?

29 A. Okay.

1 730 Q. That is a report on the history of Sergeant McCabe in
2 An Garda Síochána, isn't that right?

3 A. I wouldn't say that is a good description of it. It is
4 a couple of issues in relation to Sergeant McCabe.

5 731 Q. All right. 15:09

6 A. It's not his history in An Garda Síochána, by any
7 means.

8 732 Q. Okay. It is a couple of issues that have arisen over
9 the years in relation to Sergeant McCabe?

10 A. Yes. 15:09

11 733 Q. In An Garda Síochána?

12 A. Mm-hmm.

13 734 Q. And one of the couple of issues is the allegation that
14 was made against him in 2006 --

15 A. That's correct. 15:09

16 735 Q. -- isn't that right? And the summary that I have read
17 out. And that's there for a purpose so that somebody
18 who wants to brief themselves on the history of
19 Sergeant McCabe can reference it and read it and read
20 about the allegation that was levelled against him in 15:09
21 2006, is that right?

22 A. If I can explain again, that document, whenever that
23 document arrived in, should go into the chronology as
24 document received from assistant commissioner human
25 resource management on whatever date it was, with a 15:09
26 very brief description of what the file contained.
27 That 's what the chronology is about.

28 **CHAIRMAN:** Okay. Mr. Marrinan, I don't know if it
29 would help me, do we have this document? I know it has

1 to be redacted and so it can't be circulated at the
2 present moment.

3 **MR. MARRINAN:** It does, sir. There was -- yes, sir.

4 **CHAIRMAN:** Do you have another copy of it?

5 **MR. MARRINAN:** We will get another copy of it, sir. We 15:10
6 will hand a copy to you, sir.

7 **CHAIRMAN:** well, I don't want to monopolise it if you
8 need to ask about it.

9 **MR. MARRINAN:** No, I am really just trying to get a
10 flavour of where this document appeared. I'll just, 15:10
11 because this will be circulated, a copy will be made
12 available to you, sir, and I will just try and
13 summarise it without any redaction.

14 736 Q. You're familiar with this document, is that right?

15 A. I am indeed, yes. 15:11

16 737 Q. And I hope it's presented to us in the same way as it
17 appears on the file. It stretches to 18 pages, isn't
18 that right? And it deals with more than a couple of
19 issues in relation to Sergeant McCabe, isn't that
20 right? 15:11

21 A. Yeah. I don't have it in front of me, but --

22 738 Q. It goes back to 1992 and it deals in the first instance
23 with a complaint to the Garda Síochána Complaints
24 Board, right? I am not going to go into the details of
25 any of these. Then it refers to another complaint in 15:11
26 2002 which is highlighted. And then it goes to 2006,
27 which is a Garda authorities' investigation and then a
28 summary of that investigation. And then it deals with
29 another complaint, I think, of a member of the public

1 and it goes to the Garda authorities' investigation and
2 again a summary of that. And then under "*Discipline*",
3 it refers to, as I have read out, this incident on
4 the -- it says "*4th November 2006, Ms. D, 14 years,*
5 *made a statement to Sergeant McCabe*", is that right? 15:12

6 A. Yeah, that's correct.

7 739 Q. And then it goes on to 2007, again highlighted a
8 discipline in relation to Sergeant McCabe; 2008,
9 dealing with a probationer guard, but again it is a
10 matter associated with Sergeant McCabe; and then a 15:12
11 summary of Sergeant McCabe's complaints which were
12 submitted on the 28th April 2008 to assistant
13 commissioner HRM, is that right? And a complete
14 summary in relation to the history of that. And then
15 there's what is referred to as a confidential report 15:13
16 and again a complete history and summary of that, which
17 stretches to four pages -- five pages in the report.
18 And then 2010, a complaint in relation to some wedding
19 photographs, and again a summary of that. And then
20 what's under a separate heading for 2008, 15:13
21 "*Supplementary Issues*", is that right?

22 A. That's correct, yes.

23 740 Q. And again there's a whole history in relation to the
24 confidential recipient --

25 A. That's the chronology. 15:14

26 741 Q. -- which I won't go through. And then, 2010, you have
27 what is called the chronology in relation to the
28 confidential report, is that right?

29 A. Yes.

1 742 Q. And then "*Supplementary Issues*" for 2011, and again
2 dealing with a number of complaints, not against
3 Sergeant McCabe but I think complaints that he had
4 made, I'm not sure, going through to 2012. And then
5 under a separate heading there's "*Sergeant McCabe* 15:14
6 "*Grievance Procedure*", and running right through up
7 until August 2012. So as I think I described, and I
8 think I described it fairly, that this, as it's put in
9 there, breach of discipline, is included in a report on
10 Sergeant McCabe that goes back to his early days in An 15:15
11 Garda Síochána up until 2013, isn't that right?

12 A. Yes, that's correct. Sorry, all I'm trying to do is
13 differentiate between the chronology and that report
14 that has the issues involved in it. I created the
15 chronology. The report is a separate report that just 15:15
16 should be included in the chronology as a reference,
17 not as part of the chronology.

18 743 Q. And really what I am just trying to look at and to see
19 is whether or not this was there for a purpose, for
20 easy reference for a reader, to read themselves into 15:15
21 Sergeant McCabe's history in An Garda Síochána?

22 A. The chronology, yes. The other report, no.

23 744 Q. But in any event, on the 16th May you gave a summary
24 without reference to that, to the Commissioner, and the
25 Commissioner appeared to read the file, is that right? 15:16
26 A. Yes, that's correct.

27 **CHAIRMAN:** And the point of that is, the Commissioner
28 read the false allegation.

29 **MR. MARRINAN:** Yes.

1 **CHAIRMAN:** Yes. And you assumed the false allegation
2 was the other allegation, which I'm not saying was
3 either false or not false, but was the 2006 allegation,
4 let us say the correctly reported allegation and the
5 incorrectly reported allegation, you assumed that one 15:16
6 was an amplification of the other?

7 A. That's correct, Chairman.

8 **CHAIRMAN:** And that's the kind of way which any
9 reasonable person would have picked it up, and
10 similarly, the Commissioner would have picked it up 15:16
11 that way, you assume?

12 A. I would say, yes.

13 **CHAIRMAN:** Unless you read the entire investigation
14 file, you wouldn't have said, well, everyone had their
15 clothes on, allegedly, it was on a couch, allegedly? 15:17

16 A. Yeah.

17 **CHAIRMAN:** It was a couple of steps away from other
18 people, allegedly, a game of hide and seek, allegedly,
19 and even if there was something sexual in anybody's
20 mind, it didn't come across as an external circumstance 15:17
21 of sexual conduct, so you read what came up on the 16th
22 May and there can't be any mistake about digital
23 penetration of two orifices?

24 A. Mm-hmm.

25 **CHAIRMAN:** But you thought they were the same, and so 15:17
26 did the Commissioner, I'm assuming?

27 A. When you say I thought they were the same, I didn't
28 think of the fact, I didn't say, wait now, I saw some
29 place before where this was, I think it's been

1 described as horseplay, as opposed to this is a rape.
2 **CHAIRMAN:** well, I never said 'horseplay', by the way.
3 But don't worry about the horseplay. It's a question
4 of, to say the least of it, a brief encounter on a
5 couch, if true, compared to the other thing which 15:18
6 everyone has said is a rape offence. You didn't think,
7 look, they can't be the same, because you had only the
8 briefest of summary?
9 A. That's correct, Chairman, yes.
10 **CHAIRMAN:** And sometimes summaries leave out details. 15:18
11 A. That's correct.
12 **CHAIRMAN:** Mr. Murrinan, is that a fair way of putting
13 it?
14 **MR. MARRINAN:** Except for the summary, which I will
15 read out again because I'm not entirely sure that you 15:18
16 could confuse it with a rape offence. The summary that
17 was then in Garda Headquarters, in the Commissioner's
18 office, the only reference on file in the
19 Commissioner's office, because you don't believe the
20 original report was there, was this three lines: 15:18
21
22 *"During the day she alleges that Sergeant McCabe took*
23 *hold of her from behind and began pressing against her.*
24 *After a few minutes it ended. Statement does not*
25 *contain any other details."* 15:18
26
27 That's the description of the offence that was then
28 known in Garda Headquarters.
29 A. If that was on the file at that particular time. I

1 don't even know whether it was or not. I did say to
2 you that it could have been that, it could have been
3 the rumours that were circulating at the time. I had
4 no idea what the offence was, the 2006 offence.

5 745 Q. What I just read out to you was on the file in the 15:19
6 Commissioner's office?

7 A. Is on the file in the Commissioner's office. I can't
8 say when it was on the file, but certainly is on the
9 file. I don't know when it went on the file.

10 746 Q. And you advised us that the file that you referred to, 15:19
11 and I led you through this evidence in the first
12 instance, was last updated in, I think it was April
13 2013?

14 A. What I am advised, if I can just -- can I refer to my
15 statement, Chairman? 15:19

16 747 Q. If you wouldn't mind, please. 3217. If you go to
17 3216, do you see there, if you are reading from the
18 hard copy, about 15 fifteen lines up from the bottom.

19 A. Yes.

20 748 Q. *"I'm not aware of the actual date on which the 15:20
21 chronology was created. However, I understand it was
22 last modified on the 12th June 2013."*

23 A. Yes, I see that, yes.

24 749 Q. Yes. So this report was on the file in 2014?

25 A. Yes, I accept that. 15:20

26 750 Q. Okay.

27 A. Yes.

28 751 Q. And so therefore, the only summary of the offence that
29 was available in the Commissioner's office was those

1 three lines that I have read to you? I won't read them
2 again.

3 A. Yes. Yeah, it would seem so, yes.

4 752 Q. So that would appear to be the position --

5 A. Mm-hmm. 15:21

6 753 Q. -- as of 2013 going into 2014. And in May of 2014,
7 insofar as Sergeant McCabe was concerned, the only
8 three lines -- the only description of the alleged
9 sexual assault is those three lines that I have read to
10 you contained in this report? 15:21

11 A. Yes.

12 **CHAIRMAN:** Your point, Mr. Marrinan, is that you
13 couldn't confuse that with the later allegation, is
14 that --

15 754 Q. **MR. MARRINAN:** If you had read it, you couldn't have 15:21
16 confused it, but you're not sure you read this?

17 A. I'm not sure I read this.

18 755 Q. Yes. And you're not sure whether the Commissioner
19 briefed herself on this document, even though it was
20 the only document then in existence in Garda 15:21
21 Headquarters that had a description of the incident
22 involving Sergeant McCabe?

23 A. I don't know whether the Commissioner read it.

24 756 Q. Mmm?

25 A. I don't know whether the Commissioner read that 15:21
26 particular document.

27 **CHAIRMAN:** But she definitely did read the later one?

28 A. I can only account for the ones, Chairman, that I
29 brought to her attention myself.

1 **CHAIRMAN:** And that was the one you brought to her?

2 A. Yes.

3 **CHAIRMAN:** And you didn't say to her, now contrast that

4 with page 580, or whatever it is?

5 A. I didn't, Chairman, no. 15:22

6 **CHAIRMAN:** No, that is fine, don't worry about it.

7 757 Q. **MR. MARRINAN:** So, in any event, then, were you

8 directed to respond to that?

9 A. To Assistant Commissioner Kenny, I was.

10 758 Q. Yes. And I think that you sent an email at 3224? 15:22

11 A. I sent a written response rather than an email.

12 759 Q. Yes, sorry, it was a written response --

13 A. Yes.

14 760 Q. -- to the Assistant Commissioner Northern Region:

15 15:22

16 *"I am directed by the Commissioner to refer to email*

17 *correspondence from your office on the 16th May 2014,*

18 *the content of which has been noted by the*

19 *Commissioner. It is noted that you are considering*

20 *this matter and that you will keep the Commissioner* 15:23

21 *informed of developments."*

22

23 And then on the 17th July, at 3233, I don't think that

24 you were kept abreast of developments, isn't that

25 right? 15:23

26 A. That's correct. I think I sent a reminder.

27 761 Q. And page 3234, if you don't mind. I'm sorry, I beg

28 your pardon.

29 **CHAIRMAN:** This is the 17th July letter, is it?

1 **MR. MARRINAN:** My chronology seems to be off here.

2 **CHAIRMAN:** I think it's 3232, is it, Mr. Marrinan?

3 It's the one of the 17th?

4 **MR. MARRINAN:** Yes, sorry, I beg your pardon, sir.

5 3232. We see:

15:24

6

7 *"I am directed by the Commissioner to refer to previous*
8 *correspondence from your office of 16th May 2014 in the*
9 *above and to inquire on the current status of the*
10 *matter."*

15:24

11

12 Do you know how that arose? Did the Commissioner
13 personally intervene in relation to the matter to be
14 kept updated?

15 A. Possibly, yes, but I can't say that definitely. I
16 would usually do a trawl of files every couple of
17 months to make sure that they were up-to-date and, time
18 allowing, I would review files to make sure that we had
19 the answers that we were looking for. This may have
20 been one of those occasions, but equally, I could have
21 been asked did you hear anything back on the file from
22 Assistant Commissioner Kenny.

15:24

15:24

23 762 Q. And then there's a response, 3233, from Assistant
24 Commissioner Kenny:

25

15:25

26 *"I refer to your correspondence of the 17th inst. On*
27 *16th July 2014 I held a meeting with Chief*
28 *Superintendent Sheridan, Cavan-Monaghan division, and*
29 *Superintendent McGinn, Bailieboro, in relation to this*

1 *matter. As a result of this meeting, I will be*
2 *consulting with Mr. Ken Ruane, Head of Legal Affairs,*
3 *in relation to this matter. Chief Superintendent*
4 *Sheridan will be liaising with the HSE to establish*
5 *what their intentions are in relation to the referral. 15:25*
6 *Developments will be reported."*

7
8 Were they reported?

9 A. No. Nothing was reported thereafter.

10 763 Q. And then at 3234 you respond: 15:25

11
12 *"I am directed by the Commissioner to refer to yours of*
13 *the 28th July 2014, the content of which has been noted*
14 *by the Commissioner."*

15
16 That would have been by her personally?

17 A. Yes.

18 764 Q. You would have drawn her attention to the letter, is
19 that right?

20 A. Absolutely. That is -- *"the content of which has been 15:26*
21 *noted by the Commissioner"* signifies to me that this is
22 one that I personally spoke to the Commissioner about.

23 765 Q. *"Please report further following consultations with the*
24 *Head of Legal Affairs and the HSE."*

25 A. Yes. 15:26

26 766 Q. And was there any report?

27 A. There was no subsequent report, to my knowledge.

28 767 Q. And that was the end of communication from the
29 assistant commissioner, is that right?

1 A. There were some further pieces of correspondence that I
2 had personally signed on behalf of the Commissioner,
3 going to the assistant commissioner, but not in
4 relation to this.

5 768 Q. No, that's in relation to GSOC? 15:26

6 A. It was in relation to, yeah, the difficulties that were
7 happening at Mullingar station.

8 769 Q. Yeah, but we're not concerned about that. But why
9 wasn't the matter pursued?

10 A. Well, I think it was a matter, and I set it out in my 15:27
11 statement, that it became extremely busy from that time
12 on in relation to my personal dealings with Sergeant
13 McCabe, I met him personally and had various meetings
14 with him and it was just an extremely busy time for me
15 personally, and that's the only thing I can say, that I 15:27
16 didn't personally follow up on it, I don't know whether
17 anybody else did or not.

18 770 Q. Well, I mean, you had been meeting, and you've set this
19 out, I'm not going to go through all the meetings that
20 you had with Sergeant McCabe, but it's all set out in 15:27
21 your statement at page 3219?

22 **CHAIRMAN:** Yes.

23 771 Q. **MR. MARRINAN:** But your diary entries indicate that you
24 spoke to Sergeant McCabe - 28th May, 29th May, 3rd
25 June, 18th June, you're writing to the assistant 15:28
26 commissioner in relation to seeking a report on actions
27 taken by Sergeant McCabe's management team. You're
28 then again, I think there's a meeting in August, is
29 that right?

1 A. Yes. A meeting in August.

2 772 Q. So, I mean, I'm not going to bring you through these.
3 They're there and we can see them, and you continued to
4 have meetings right up through October, I think. Was
5 any thought given by you or the Commissioner to 15:28
6 advising Sergeant McCabe that he was now the subject
7 matter of an allegation of a rape offence that had been
8 sent by the assistant commissioner to Garda
9 Headquarters?

10 A. No, and at a personal level it wouldn't be my place to 15:29
11 do that. The office I worked in then was extremely
12 sensitive and confidential matters that we deal with.

13 773 Q. Yes, I can understand, absolutely.

14 A. I wouldn't see it as my place to discuss that with
15 somebody who, you know, could have been accused of 15:29
16 something serious. I wouldn't see it my place to tell
17 the person that they were accused of that.

18 774 Q. So --

19 A. And can I say, equally, I wouldn't have formed any
20 opinions because I was aware that the DPP had 15:29
21 recommended no prosecution, or the DPP had directed no
22 prosecution, so it wasn't as though I was forming any
23 opinions about Sergeant McCabe.

24 775 Q. So as and from the 16th May of 2014, until what date
25 precisely did the allegation of rape remain uncorrected 15:29
26 in the Commissioner's office?

27 A. I'm 12 months out of the Commissioner's office, but up
28 to the time I left, certainly, I don't believe it had
29 been corrected. And I believe that, personally, it was

1 only when the Tribunal begun that I realised that that
2 had been completely shown to have been an error on the
3 part of whoever did the report originally.

4 776 Q. And have you any comment to make in relation to that
5 error? 15:30

6 A. Comment on which aspect of it? The fact that I wasn't
7 made aware?

8 777 Q. Were you surprised --

9 A. I was, actually.

10 778 Q. -- to find out -- 15:30

11 A. I was surprised, but I wouldn't say that it was
12 something that I was kind of thinking about every day,
13 I wonder did this happen? or anything.

14 779 Q. I am sure you weren't.

15 A. I was aware from the outset that this was a matter 15:30
16 that -- well, this was my thinking, was that the DPP
17 had directed no prosecution on this, there was no
18 evidence to support it, so it therefore wasn't
19 something that was exercising my thought process in any
20 great way. I only realised when I heard the Tribunal 15:31
21 was set up and heard the original error that was made
22 by the HSE, that was the first that I knew, that what I
23 had received back in May '14 was incorrect. That is
24 the first time it was officially corrected.

25 780 Q. So just to be very clear about this, up until your 15:31
26 departure in 2016, in terms of what was available in
27 the Commissioner's office in Garda Headquarters, in
28 respect of Sergeant McCabe and allegations of sexual
29 assault made by Ms. D, there were two documents that

1 were available: there was, firstly, a -- with a
2 description of abuse. There was the report that was
3 certainly there from 2013, which perhaps had been
4 compiled by HRM, which had a three-line description of
5 abuse, which indicated, at the very highest, a minor 15:32
6 sexual assault, that right?

7 A. Yes, that's correct.

8 781 Q. And that remained there on file in the Commissioner's
9 office until your departure in 2016?

10 A. That's correct. 15:32

11 782 Q. And then a report from Tusla, a referral from Tusla,
12 with a description of abuse alleging a rape offence.
13 And that also remained on file in the Commissioner's
14 office until your departure?

15 A. That's correct, Chairman, yes. 15:32

16 783 Q. So there were, in the Commissioner's office, two
17 totally inconsistent descriptions of the allegation
18 that was made against Sergeant McCabe in 2006, isn't
19 that so?

20 A. One was a summary, one was a description. 15:33

21 **MR. MARRINAN:** Okay. Thank you very much.

22 **CHAIRMAN:** Before you leave that, Mr. Marrinan, I just
23 wanted to ask, the meeting we've all heard about, where
24 Mr. Costello was there, Sergeant McCabe was there,
25 Assistant Commissioner Kenny was there, the 15:33
26 Commissioner was there, you weren't there, and Ken
27 Ruane was there.

28 A. I have a feeling, Chairman, that I was there, but I'd
29 need to get back into the notes to check that one. I

1 have a feeling I attended a lot of those meetings
2 because I was quite conversant with the file.

3 **CHAIRMAN:** Just the questions Mr. Marrinan has been
4 asking you, just they raise an important point, and it
5 seems to me to be this: you're a detective, so you 15:33
6 have a lot of experience of this area, and I think all
7 of us would agree that most allegations of sexual
8 assault are correct, even though they're denied. would
9 you tend to think that way?

10 A. That they're correct even if denied? 15:34

11 **CHAIRMAN:** Yes. They are most often denied, but the
12 vast majority of them are correct?

13 A. I couldn't say that with certainty.

14 **CHAIRMAN:** well, I mean, nobody can. But the way the
15 statistics -- I mean, how many false allegations have 15:34
16 you come across?

17 A. I would -- I don't have a huge experience of
18 investigating any sexual crimes. I have investigated
19 some, but not a huge experience.

20 **CHAIRMAN:** But the net result of that is you have the 15:34
21 Garda Commissioner sitting across from Maurice McCabe
22 at a meeting, thinking the allegation made against him
23 is the allegation that Mr. Marrinan has outlined to
24 you, namely digital penetration of two orifices. Did
25 you think that serious? 15:34

26 A. well, I thought --

27 **CHAIRMAN:** I mean, as a mistake?

28 A. I thought the Commissioner had the same information as
29 I had. And certainly any time I sat in front of

1 Sergeant McCabe, that wasn't how I was thinking about
2 it. I can't say how the Commissioner would have
3 thought about it. I think that's as far as I can put
4 that, Chairman. I certainly didn't think any less of
5 Sergeant McCabe. In my mind, I was aware that there 15:35
6 was insufficient evidence of him having done anything
7 to prosecute him. That's enough for me.

8 **CHAIRMAN:** Did you hear any talk in Garda Headquarters
9 about Maurice McCabe and how he was referred?

10 A. I heard talk in Garda Headquarters, sorry, about? 15:35

11 **CHAIRMAN:** Yes. You've talked about rumours.

12 A. Yes, there were rumours, there were rumours circulating
13 around Garda Headquarters, yes, there were.

14 **CHAIRMAN:** And what was being said about Sergeant
15 McCabe? 15:35

16 A. About this incident -- just generally about this
17 incident from 2006, that there was an alleged assault
18 on a young lady. Never got into any specifics about
19 it, as to whether, whether the rumour amounted to a
20 rape case, but it was -- it was commonly talked about, 15:36
21 yes, it was.

22 **CHAIRMAN:** Did people think it was true?

23 A. Em, I don't know. It was really idle chatter more so
24 than anybody trying to point fingers. People knew that
25 I was dealing with the confidential -- I would have 15:36
26 been known to have been in the role that I would be
27 dealing with confidential reporters, so very often I'd
28 be asked, have you met X, Y or Z; have you met this
29 particular person? Obviously, I would never talk about

1 it, but during exchanges like that you would hear
2 chatter about the rumour machine. The rumour machine
3 was in full flight around that time, and yes,
4 certainly, I had heard rumours, yes.

5 **CHAIRMAN:** Was any part of the rumour machine, given 15:36
6 that the allegation comes from a family also involved
7 in the Gardaí?

8 A. Yes, I heard that, yes.

9 **CHAIRMAN:** And was there any view about that?

10 A. No. I remember thinking myself - you know, I had 15:37
11 various thoughts on it - if that was right, maybe it
12 was trying to get back at Sergeant McCabe because of a
13 discipline issue. I mean, the stuff that I have heard
14 aired here at the Tribunal, yes, certainly, I had all
15 those thoughts myself about it, but, as I say, the 15:37
16 bottom line for me was, there was no prosecution on
17 this, there was no evidence there to substantiate any
18 charges, so therefore I was quite happy to deal with
19 Sergeant McCabe as I found him.

20 **CHAIRMAN:** Thanks. 15:37

21
22 **MR. GORDON:** Chairman, I don't know whether you wish me
23 to cross-examine the witness at this point. I know
24 that Mr. Marrinan, when examining the witness in chief,
25 made reference to materials that have not yet been 15:37
26 circulated. I don't know whether it is intended to
27 circulate the materials or not. If it is, I'd have to
28 see them, but I am obviously bound by any ruling that
29 you make in that regard.

1 **CHAIRMAN:** Yes. No, no. Well, the intention is, yes.
2 We don't want to keep anything back. We have no
3 interest. And anyone who wants to come to us and ask
4 for documents, please come and ask. We have sent
5 around everything that we think is relevant. 15:38
6 Obviously, there's a lot of stuff that have I looked at
7 it seems to me to be utterly irrelevant, such as a
8 whole load of GSOC files, just to take one example.
9 What do you want to do?

10 **MR. GORDON:** There is just one concern I have about the 15:38
11 materials before I ask the witness any questions.
12 There was repetitive reference in the document to
13 discipline and Maurice McCabe in the same sentence, and
14 I think it should be made clear, just for the record of
15 the proceedings today, that Maurice McCabe has -- 15:38
16 Sergeant McCabe has never ever been the subject matter
17 of any adverse findings so far as the discipline
18 regulations are concerned.

19 **CHAIRMAN:** Yes. Well, I think you can make that point
20 with some confidence, Mr. Gordon. I have read all the 15:39
21 files in GSOC in relation to Sergeant McCabe, and it
22 seems to me to be the kind of very normal stuff that
23 basically any officer who is serving at the frontline
24 would face, kind of allegations. Is it fair to say
25 that? 15:39

26 A. That is fair to say, Chairman, yes.

27 **CHAIRMAN:** That he didn't have a bad disciplinary
28 record. In fact, anyone who is actually out on the
29 streets and dealing with people, dealing with

1 incidents, you'd expect them to have these kind of
2 complaints coming in?

3 A. That's correct, Chairman, yes.

4 **CHAIRMAN:** And he certainly would be at the lower end
5 of that, but typical frontline type of file? 15:39

6 A. I'm guessing, Chairman --

7 **CHAIRMAN:** Yes.

8 A. -- but I would say yes. There's nothing extraordinary.

9 **MR. GORDON:** It's important just for the record of the
10 proceedings -- 15:39

11 **CHAIRMAN:** well, I mean, the witness has now said that.

12 **MR. GORDON:** -- he has a completely unblemished record.
13 His career commenced in August 1984.

14 **CHAIRMAN:** No, no, I think I can accept that. You are
15 entitled to make that point, Mr. Gordon. The plain 15:39
16 reality of it is, you can't be a garda on the frontline
17 without people making allegations against you.

18 **MR. GORDON:** I appreciate that.

19 **CHAIRMAN:** And there are some. They never went
20 anywhere, they were never proved. It was the usual 15:40
21 thing, who is kicking who, that kind of stuff, on the
22 street, where people were very drunk. I think that is
23 right, isn't it?

24 A. That's correct.

25 **CHAIRMAN:** Yes. 15:40

26 **MR. GORDON:** I would be about 15 minutes with the
27 witness.

28 **CHAIRMAN:** well, please go ahead then.

29

1 DETECTIVE SUPERINTENDENT WALSH WAS CROSS-EXAMINED BY

2 MR. GORDON:

3
4 784 Q. **MR. GORDON:** Good afternoon, Detective Superintendent.
5 Breffni Gordon is my name, and I am going to ask you 15:40
6 some questions on behalf of Maurice McCabe. I am one
7 of the barristers representing him in this case -- in
8 these proceedings.

9 I just want to firstly ask you about the compilation of
10 materials on the file. I think there was an electronic 15:40
11 file in the first instance, but obviously that was
12 generated from paper files that would have come into
13 your office?

14 A. That's correct.

15 785 Q. And I think there or thereabouts, there were, last time 15:40
16 you checked, about 3,500 documents on that file?

17 A. Approximately, yes.

18 786 Q. And I didn't quite catch the title of it or the
19 terminology that you used, but is it fair to refer to
20 it in these proceedings as the Maurice McCabe file? 15:41

21 A. Yeah, I suppose that's --

22 787 Q. I mean, just in office speak --

23 A. In office speak.

24 788 Q. -- where's the Maurice McCabe file?

25 A. Yeah. 15:41

26 789 Q. This is it?

27 A. Absolutely, yes.

28 790 Q. There's three -- you open it up and there are 3,000-odd
29 documents in there referable to him, isn't that so?

1 A. That's correct.

2 791 Q. Was that file, to your knowledge, ever brought to his
3 attention?

4 A. Was it ever brought to?

5 792 Q. Was that file ever brought to his attention? The fact 15:41
6 that there was a file, we'll call it, just for the
7 moment, a Maurice McCabe file, was in the
8 Commissioner's office and it extended to --

9 A. This is an electronic record.

10 793 Q. I appreciate that. It's a file on him? 15:41

11 A. Oh, it's a file, yeah, absolutely, yes. Was it ever
12 brought to his attention - I certainly didn't, no.

13 794 Q. Well, do you know whether that file was ever brought to
14 his attention?

15 A. Em, I don't know, to be honest. No, I don't know. 15:42

16 795 Q. I mean, in the structures of An Garda Síochána, I mean,
17 there's, I assume, a personnel file, that there would
18 be a file on each particular member of An Garda
19 Síochána that would be maintained in HR?

20 A. Yes. 15:42

21 796 Q. And on that file, obviously, the details in relation to
22 the individual garda would appear - for example, the
23 time that they enlisted or joined as a garda, perhaps
24 courses or commendations that they may have received?

25 A. That's correct, yes. Births, deaths, marriages, 15:42
26 everything, yes.

27 797 Q. Perhaps some medical information on it. That would be
28 a HR file, isn't that so?

29 A. Yes.

1 798 Q. But this was something that was quite distinct from a
2 HR file. Can I ask you, was there a copy of that file
3 given to the HR department or was it just exclusively
4 maintained in the Commissioner's office?

5 A. The Commissioner's office file wouldn't have been given 15:43
6 to anybody else. It would have been only in the
7 Commissioner's office, yes. If I can just
8 differentiate on a file. If any member of the public
9 writes to the Commissioner, I would normally
10 acknowledge the letter and say we need to do X, Y and Z 15:43
11 with this, that becomes a file. In reality, what it
12 is, it may be five sheets of correspondence, it may be
13 five replies going out to correspondence. That, in
14 Garda terminology, is the file. So it is a history of
15 correspondence. In Sergeant McCabe's case, it was 15:43
16 obviously much bigger than that. But when I talk about
17 a file, it's merely -- it's not my thoughts written
18 down every day and put into a file; it's a history of
19 correspondence about a member, in this case.

20 799 Q. When Mr. Marrinan questioned you about the file, he 15:43
21 referred to it as a history of Maurice McCabe in An
22 Garda Síochána.

23 A. That's why I was at pains and I was trying, I perhaps
24 didn't articulate it as well as I could, but I was at
25 pains to try and point out to Mr. Marrinan it's a 15:44
26 chronology that I was talking about, and the file that
27 he was talking about were two distinct things. They
28 weren't the same thing.

29 800 Q. To speed things along as it were, I can understand why

1 if there was a lot of correspondence coming in to the
2 Commissioner's office about Maurice McCabe that you
3 would open a file, that that file would receive all the
4 correspondence and that it would grow with the passage
5 of time and perhaps with the intensity of 15:44
6 correspondence at times around Maurice McCabe. And
7 that it may have been kept for that reason, for
8 convenience. Is that the type of file that was kept or
9 was it kept for any other reason, do you know? Was it
10 a dossier, for example on -- 15:44
11 A. Absolutely, no. No, no. I'm sorry, are you talking
12 about the collection of correspondence or the
13 chronology?
14 801 Q. I'm talking about the collection of correspondence.
15 A. No. 15:45
16 802 Q. The 3,000 plus documents, that file.
17 A. No. If you, Mr. Gordon, had written to the Garda
18 Commissioner 25 years ago and you asked us 'Do you have
19 a record of that?' I would be able to go back on the
20 system and say 'Yeah, you wrote, we wrote back, we 15:45
21 addressed the file' - is that a file or is it
22 correspondence? Well, in any event, we call that a
23 file. And yes, that file would still be there today.
24 803 Q. All right. So there was nothing secret or
25 surreptitious about this file? 15:45
26 A. No, absolutely not.
27 804 Q. It wasn't in a bottom drawer somewhere?
28 A. It was in a filing cabinet beside my desk for
29 confidentiality reasons. It came under the

1 confidentiality reporting system. Therefore,
2 everything that was in it -- everybody in the office
3 wasn't even privy to it, because it was a confidential
4 report.

5 805 Q. But I suppose around the time that we are discussing in 15:45
6 these proceedings that file would have come out on your
7 desk and indeed the Commissioner's desk with particular
8 regularity, wouldn't it?

9 A. With particular regularity? Yes. Absolutely, yes.

10 806 Q. Because there were lots of things coming in about 15:46
11 Maurice McCabe?

12 A. Yeah, yes.

13 807 Q. And perhaps from Maurice McCabe?

14 A. Yeah, absolutely, yeah. There would have been, yes.

15 808 Q. And from his solicitors' also? 15:46

16 A. Yes.

17 809 Q. And I mean it goes without saying that in the -- apart
18 from the office and the file, out there in the open the
19 media were extensively reporting on complaints that
20 Maurice McCabe had brought to public prominence -- 15:46

21 A. That's correct, yeah.

22 810 Q. -- isn't that right? And you would have been familiar,
23 broadly speaking, with what was going on there?

24 A. Yes.

25 811 Q. But you had the added advantage of knowing what was on 15:46
26 the file?

27 A. I did, yes.

28 812 Q. You had a specialist knowledge, if you would like to
29 put it that way?

1 A. I had pretty in-depth knowledge of it, yes.

2 813 Q. But you had to have, because you were yourself
3 compiling correspondence in relation to that file, you
4 were answering letters in relation to it on the
5 Commissioner's behalf. We see the example there where 15:47
6 you were corresponding with Assistant Commissioner
7 Kenny?

8 A. Yes.

9 814 Q. So, you had to have a fairly acute knowledge of what
10 you were dealing with -- 15:47

11 A. I accept that, yes.

12 815 Q. -- so far as that file was concerned?

13 A. Yes.

14 816 Q. I mean, did you -- I mean, I asked -- Assistant
15 Commissioner Kenny was asked this morning his views in 15:47
16 relation to Maurice McCabe. Did you have a particular
17 view about him?

18 A. A particular view on Maurice McCabe? I never knew
19 Maurice McCabe until I went to the Commissioner's
20 office and became involved with him and I was kind 15:47
21 of -- I suppose, the commissioner asked me would I be
22 happy to go and sit down with Maurice and meet him and
23 chat through some of the difficulties, and I did that.
24 I found him to be an upstanding guy. I didn't go to
25 make any value judgments as to what it was he was 15:47
26 telling me. Actually, I got him to show me how he
27 looked up various issues because I didn't know how you
28 could get the particular information that he did. We
29 sat down for a couple of hours. We had a long chat. I

1 think we had a cup of coffee. I've never had a problem
2 with Maurice. From the outset I gave him my office and
3 mobile telephone numbers that he could make contact
4 with me. I think I always encouraged him at any time
5 if he had any difficulties to ring me. Now that was as 15:48
6 conduit. That wasn't me trying to be his personal best
7 friend or anything like that. That was a conduit to
8 the Commissioner because the Commissioner had probably
9 asked me to do just that. And she said, you know, to
10 go and reassure him that we're there for him and we're 15:48
11 there to support him and, you know, will you be the
12 front face of the office here for that. So, I was.
13 How did I feel about him personally? I had absolutely
14 no problem with the man. He never said a bad word to
15 me, he never said a bad word about me as far as I'm 15:48
16 aware, he never said a bad word about anybody that I
17 know of, other than he used to give out sometimes about
18 maybe something the Commissioner had said or anybody he
19 thought the Commissioner had said, and we had an
20 exchange of views. We may have disagreed on what he 15:49
21 thought was the correct version of things. But we
22 never had a falling out. I have absolutely no problem
23 with Sergeant McCabe.

24 817 Q. How did you feel about what he was doing? That he was
25 bringing these things to attention, public prominence, 15:49
26 he was exposing incompetence, ineptitude, negligence,
27 problems, significant ones with investigation files;
28 how did you feel about that? Do you have a view?
29 A. I suppose, Chairman, I was quite relieved that I wasn't

1 part of any of the allegations that were made. There
2 was nothing being made about me. So, my first sense
3 would be one of relief. How did I feel? I never gave
4 it a huge amount of thought as to what he would do. It
5 was an approach that he took. In hindsight we 15:49
6 certainly couldn't disagree with a lot of what Maurice
7 highlighted. There was things there that shouldn't
8 have been happening and he highlighted them.

9 818 Q. Did you ever discuss Maurice with the Commissioner?
10 A. I'm sure, I'm sure I did. But I have no independent 15:50
11 note of that. But I am sure when correspondence would
12 come in, in relation to -- whether it would be
13 Mr. Costello, solicitor, or whatever, we may have had
14 discussions. The Commissioner wouldn't normally get
15 into nitty gritty discussions and certainly wouldn't be 15:50
16 giving me a personal opinion about anybody in any
17 discussions we might have.

18 819 Q. would she even as much as pass remark about him at any
19 time in your presence?
20 A. No. Not really, no. 15:50

21 820 Q. Not really?
22 A. I don't believe so.

23 821 Q. Not as much as a remark?
24 A. I don't believe so.

25 822 Q. well, you have told the Chairman about you view, how 15:50
26 you felt about him. We don't know too much yet about
27 how the Commissioner may have felt about him.
28 A. I'm sorry, I can't --

29 823 Q. You knew about the rumours. You knew about the

1 rumours. But you must also have known that quite an
2 amount of people would, to say the least, have had it
3 in for him?

4 A. I'm sorry, I couldn't hear what you were saying.

5 824 Q. You must have known that there was an animus there, 15:51
6 that a number of Gardaí would have had it in for
7 Maurice McCabe.

8 A. I certainly --

9 825 Q. Didn't like what he was doing, disagreed with what he
10 was doing, would have viewed him as somewhere between a 15:51
11 nuisance and a plague.

12 A. I'm sure that was there. It was something --

13 826 Q. would you have known that, that was public knowledge
14 also?

15 A. It was something that wasn't discussed with me possibly 15:51
16 because of the fact that I wouldn't discuss -- given
17 the position that I held I wouldn't discuss that with
18 members of An Garda Síochána.

19 827 Q. But the reason I am asking you these questions,
20 detective superintendent, is because you would have 15:51
21 been very close to the Commissioner, you would have had
22 a very close working relationship with her?

23 A. Yes.

24 828 Q. You sat down with her and you read passages from files,
25 you apprised her of the point to be made and you dealt 15:52
26 with the file. So you had a very close working
27 relationship, no question about that, with the
28 Commissioner.

29 A. Yes, I have no problem with that.

1 829 Q. And whilst you're able to say -- and you have your own
2 feelings about this, you didn't pick up any sense from
3 the Commissioner about how she felt about Maurice
4 McCabe?

5 A. I'm sorry, what was your last -- 15:52

6 830 Q. You didn't pick up anything from the Commissioner about
7 her view of Maurice McCabe at that time or how she felt
8 about him or what he was doing?

9 A. No.

10 831 Q. Nothing? 15:52

11 A. Nothing.

12 832 Q. This morning, I don't know whether you were here or
13 not, I asked -- were you here?

14 A. I was here, yes.

15 833 Q. You might recall then that I was asking Assistant 15:52
16 Commissioner Kenny about the correspondence that had
17 passed from his office into, can I call it your office
18 for the moment, and I made the point that what had come
19 up from him was effectively an allegation alleging
20 very, very serious misconduct on the part of Maurice 15:53
21 McCabe. We know it was uncorrected, it was an
22 allegation of rape. We know that hasn't in fact been
23 corrected last time you checked. But I was
24 highlighting the response back from the Commissioner's
25 office, which effectively amounted to 'we note what you 15:53
26 say, keep us apprised of developments'. And I was
27 making the point that that was, to say the least,
28 unusual or difficult to understand, bearing in mind
29 what was happening. Do you have anything to say about

1 that?

2 A. Are we talking about the minute of the 16th?

3 834 Q. Yes. That's one of them.

4 A. Okay. well, what that is referring to is the assistant
5 commissioner said he was considering the matter. So 15:53
6 the Commissioner would not involve herself in an
7 investigation -- unless there was something very, very
8 obviously wrong, and she would've said 'would you
9 consider doing X, Y or Z?' The assistant commissioner
10 was giving us a headsup at that particular point in 15:54
11 time, he was considering the matter and he would report
12 developments. That was an open and shut minute for
13 want of a better description of it. He was telling us
14 this is what I am being faced with, I am currently
15 considering it, when I have considered it I am going to 15:54
16 tell you more.

17 835 Q. Isn't that exactly the point though, that it doesn't
18 tell us very much?

19 A. Consideration is the point here, not anything else.
20 The assistant commissioner was considering the -- the 15:54
21 assistant commissioner has responsibility of
22 investigating this and coming to a conclusion on it, at
23 which stage he would tell us more. At that point in
24 time there's no point in asking a whole lot of
25 questions and he would say 'I told you I was 15:54
26 considering the matter'. We have been criticised in
27 the office on occasions for suggesting to very
28 experienced investigators 'Make sure you do this, that
29 and the other'. The attitude was 'Thanks very much for

1 the help but --'

2 836 Q. well, what about communicating with one another outside
3 of the chain of correspondence? I mean, would it have
4 been normal for an assistant commissioner to talk to
5 the Commissioner? 15:55

6 A. Assistant commissioners spoke to the Commissioner all
7 the time.

8 837 Q. And would it have been normal for the Commissioner, the
9 interim Commissioner she was I think at this particular
10 point in time -- 15:55

11 A. Mm-hmm.

12 838 Q. -- to have communicated regularly with Assistant
13 Commissioner Kenny perhaps over the phone or in the
14 course of meetings, over a cup of coffee?

15 A. Em, I couldn't say. There was a monthly management 15:55
16 meeting, but I don't think they were happening monthly
17 at the time because we had very few people in the
18 senior rank.

19 839 Q. Can I just help you here, superintendent: I assume
20 that when you become a chief superintendent you don't 15:55
21 take a vow of silence, you don't go around with your
22 hand over your mouth and I'm sure assistant
23 commissioners don't do that either and I'm sure the
24 Commissioner didn't do it. They must have discussed
25 operational matters with one another, otherwise the 15:56
26 organisation wouldn't have been in a position to
27 function. And you didn't limit communication among one
28 another to correspondence of the type that we see on
29 screen here this afternoon. What I am interested in

1 is: Do you know of any level of discussion between the
2 Commissioner and any other person in relation to this
3 matter, outside of the correspondence?

4 A. I think -- I'm sorry, but I just can't hear you very
5 clearly, what you are saying to me. 15:56

6 840 Q. I am sorry. That is perhaps my fault. Maybe it's the
7 microphone.

8 **CHAIRMAN:** well, let me summarise that. I am sorry, it
9 is getting late. Ms. Kelly, are you okay to go on
10 another five minutes? Yes, I am sorry about that. 15:56

11 **MR. GORDON:** I won't be much longer.

12 **CHAIRMAN:** what he is saying to you is this: Of course
13 there are the official channels, but there's the
14 unofficial channels, and when you reach such a high
15 rank surely you're entitled to pick up the phone to the 15:57
16 Commissioner and talk to the Commissioner as an
17 assistant commissioner to commissioner. I think, I
18 took you as agreeing to that --

19 A. Yes.

20 **CHAIRMAN:** -- although there was a formal structure, 15:57
21 such as a monthly management meeting.

22 A. Yes. Yeah. well, in relation to this particular file,
23 I don't know was that ever discussed. If you were to
24 say to me, Chairman, 'Did Assistant Commissioner Kenny
25 ring the Commissioner ten times in a month?' he 15:57
26 possibly did. Some of the times I might have picked up
27 the call and put it through to her, other times it
28 might have been a direct call, but I don't know is the
29 answer.

1 **CHAIRMAN:** So, if you're an assistant commissioner you
2 would have had a direct line to the Commissioner?
3 A. Absolutely, yes.
4 **CHAIRMAN:** Yes. So, you knew what the number was?
5 A. Yes, yeah. It would normally go through the Deputy 15:57
6 Commissioner but there wasn't a Deputy Commissioner at
7 the time.
8 **CHAIRMAN:** You could also ring her mobile I presume?
9 A. Yes, yeah.
10 841 Q. **MR. GORDON:** Just in relation to, and obviously you 15:57
11 can't discuss other files here, but in terms of
12 importance, and the priority that might attach to files
13 that would be passing through the office, maybe
14 maintained in the office, this was a particularly
15 important file at that time, wasn't it? 15:58
16 A. Yes, very much so.
17 842 Q. There is no question about that?
18 A. No question.
19 843 Q. I mean, it was red hot in fact?
20 A. Yeah. I made reference earlier that on a daily basis I 15:58
21 could have anything up to 30 files. I know that
22 because I did a work study at one time to try and
23 justify additional staff for the clerical end of
24 things. So, it could be anything up to 30 files. I
25 would have to say all of those 30 files would be 15:58
26 important. You wouldn't be just -- they'd be all ones
27 that I would need to show to the Commissioner.
28 **CHAIRMAN:** I'm going to take it as a fact that this is
29 a very important file. So nobody has to press that

1 point on me.

2 844 Q. **MR. GORDON:** One minute into the stenographer's time.
3 what is going on here is --

4 **CHAIRMAN:** It wasn't all for you, Mr. Gordon.

5 845 Q. **MR. GORDON:** Thank you, Judge. I will only take this 15:58
6 one minute.

7 **CHAIRMAN:** I took you at your word. Like builders and
8 barristers, they generally tend to underestimate,

9 846 Q. **MR. GORDON:** The mystery here is the absence of anybody 15:59
10 discussing this, telling the Tribunal that this was
11 being discussed outside of the correspondence, right.
12 And yet, there would have been members of An Garda
13 Síochána, even members of the organisation occupying
14 high rank who would have disagreed with the manner in 15:59
15 which Maurice McCabe was bringing matters to public, it
16 was obviously embarrassing management, it may have been
17 embarrassing the organisation, and you know there may
18 have been opportunities there to knock Maurice off his
19 perch, if you understand me.

20 A. I understand you, yes. 15:59

21 847 Q. And it just seems remarkable - in fact, bizarre - that
22 nobody when this thing came into the office discussed
23 it. You have raised your hand but you have to give a
24 verbal response for the record.

25 A. I'm not sure, is that a question? You're telling me 16:00
26 something.

27 848 Q. Is it remarkable? Is that all we should take from it,
28 that it was just remarkable nobody discussed this?

29 A. I can only answer a direct question. If you ask me

1 'Was this discussed by senior officers other than
2 through official correspondence?' I can only tell you
3 not in my presence.

4 **MR. GORDON:** I think I am on time now, Chairman.

5 **CHAIRMAN:** Thank you, Mr. Gordon. Are there any points 16:00
6 from the Garda Commissioner?

7 **MR. DIGNAM:** I have no questions.

8 **CHAIRMAN:** Really? All right.

9 **MR. MARRINAN:** Sir, there is just one matter. The
10 Tribunal doesn't like loose ends and the detective 16:00
11 superintendent has introduced some matters in his
12 evidence that are of assistance to the Tribunal. Some
13 of them will emerge later on in relation to other terms
14 of reference, and so the detective superintendent will
15 be recalled in relation to these matters. 16:01

16 **CHAIRMAN:** Yeah. So thank you very much for your help.

17 A. Thank you, chair.

18 **CHAIRMAN:** Right. So that is it. What is the sitting
19 tomorrow?

20 **MR. MARRINAN:** I think it is 11:00 o'clock tomorrow. 16:01

21 **CHAIRMAN:** Okay. So it's 11:00 o'clock. And then I
22 have to go back to the other place, so 11:00 to 1:00 or
23 1:30 and maybe we will sit again at -- what is in the
24 website, is it 3:00?

25 **MR. MARRINAN:** We will play it by ear tomorrow. 16:01

26 **CHAIRMAN:** No. Well, certainly it's 11:00 o'clock and
27 then we will go on as long as we can, and then there
28 will be an hours break, which will include
29 unfortunately time over 2:15 to about a quarter to

1 three, thank you. So, that is it for tomorrow. Thank
2 you very much.

3
4 **THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 26TH JULY**
5 **2017 AT 11:00AM**

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