

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

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

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

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 5TH JULY 2017 - DAY 2

2

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1 THE HEARING RESUMED ON WEDNESDAY, 5TH DAY OF JULY, 2017

2 AS FOLLOWS:

3
4 **MR. MCGUINNESS:** Sir, good morning. Before
5 Mr. McDowell commences his cross-examination, I need to
6 clarify a couple of small details with Ms. Brophy which
7 I think might be helpful. Could I ask Mr. Brophy to
8 return?

9
10 MS. LAURA BROPHY CONTINUED TO BE DIRECTLY EXAMINED BY

11 MR. MCGUINNESS AS FOLLOWS:

12
13 1 Q. **MR. MCGUINNESS:** Ms. Brophy, could I just clarify one
14 or two matters with you at this stage. I have asked
15 you about your handwritten notes of your telephone
16 conversations after your first appointment with Ms. D
17 and perhaps we could just look at those. They are at
18 page 963 of the documents.

19 A. Okay.

20 2 Q. And just in sequence - I hope it's on screen there, is
21 it? - the first telephone call appears to have been on
22 the 26th of July, is that correct?

23 A. That's right.

24 3 Q. And that reads "*I phoned Child Protection Team re*
25 *inquiring about a referring issue.*"

26 A. The reporting issue.

27 4 Q. The reporting issue. To -- "*No duty social worker*
28 *available. I gave my number for her to phone back.*"

29 A. That's right.

1 5 Q. Next one is: "30th of July. Phoned Social Work again
2 and explained case and..."
3 A. "Hypothetically".
4 6 Q. "... hypothetically to get more information on
5 procedures. Social work informed me they would want to
6 speak with client and could not guarantee that the
7 alleged wouldn't be informed of who made the
8 allegations."
9 A. That's correct.
10 7 Q. And I think is it after that date that you had your
11 second appointment with Ms. D?
12 A. That's correct.
13 8 Q. And Ms. Ward has noted in her supervision documents
14 that she recorded a slightly later date, that the
15 client was okay for the report to go in?
16 A. Okay.
17 9 Q. Presumably you must have informed Ms. Ward of that?
18 A. I would have done so, I imagine, yes.
19 10 Q. And presumably that was the case, Ms. D confirmed to
20 you that she would agree that the report could go in?
21 A. Well, it was -- I suppose it was what I would call an
22 informed disclosure, which I differentiate between
23 informed and consent, so I am not saying that she was
24 pleased about it going in, but I had said that I
25 wouldn't be able to unless the identity of the alleged
26 was given to me and that was then given to me on our
27 second appointment, so it's my understanding that she
28 was -- it was informed disclosure planned.
29 11 Q. Yes. But she had been reluctant to do it, as I

1 understand your evidence?

2 A. That's correct.

3 12 Q. The next entry then is the 8/8, is that correct?

4 A. That's correct.

5 13 Q. *"I phoned social work in Cavan to enquire if the*
6 *alleged had already been reported to them, but social*
7 *work was out and I left contact number to call me*
8 *back."*

9

10 And you don't appear to have got a call back that day?

11 A. No.

12 14 Q. And you phoned again the next day?

13 A. That's correct.

14 15 Q. The 9/8:

15

16 *"I phoned social work today and spoke with duty social*
17 *worker, Briege Tinnelly, who I informed about alleged*
18 *and concerns about the matter having been --"*

19

20 Is that "sent"?

21 A. *"-- and concerns about the report having been passed to*
22 *social workers ten years ago."*

23 16 Q. Okay. *"Ms. Tinnelly took contact details of client and*
24 *alleged and I agreed to follow this with a report."*

25 A. That's correct.

26 17 Q. Now, I just want to be clear what your concern was.
27 Were you concerned whether it was necessary to report
28 this at all?

29 A. Exactly.

1 18 Q. Okay. And you have said in your statement that
2 Ms. Tinnelly, I think, told you that it hadn't been
3 reported, is that right?

4 A. That was my understanding from the phone call, that
5 they didn't have a record of any such allegation.

6 19 Q. And is that the basis then upon which you have recorded
7 your agreement to send in the report?

8 A. That is why I felt compelled to send the report and it
9 was advised that I would send in a report.

10 20 Q. Can I ask you to look at Ms. Tinnelly's note?

11 A. Sure.

12 21 Q. It's page 410, which is volume 2 of the documents. Is
13 that on the screen before you?

14 A. I think it's at the end of the page, is it? Is that
15 what we are looking for?

16 22 Q. Yes.

17 A. Yeah. *"Details of Report."*

18 23 Q. There's a heading there in section 7:
19
20 *"Laura advised that she has a client at present called*
21 *Ms. D who is now 21. She self-referred to the service.*
22 *Ms. D told Laura that she was abused when she was six*
23 *or seven by Garda Maurice McCabe who was her father's*
24 *Garda partner at the time. Ms. D's father is a guard.*
25 *Maurice McCabe was stationed in Bailieboro at the time.*
26 *His two daughters were three and five at the time.*
27 *Ms. D blocked out the abuse and it came back to her*
28 *when she was approximately eleven when she had sex*
29 *education in school and reported it to gardaí, but*

1 *there was no prosecution from the DPP. The details of*
2 *the abuse is Ms. D was playing hide and seek in Maurice*
3 *McCabe's house when Maurice put her on the couch,*
4 *tickled her and touched her inappropriately whilst*
5 *gyrating on top of her with clothes on. Ms. D's phone*
6 *number is --"*

7
8 Blank, blacked out.

9
10 *"Laura agreed to send in standard notification form."*

11
12 Now, there doesn't appear to be any record of a
13 discussion there about your enquiry as to whether it
14 had been previously reported or whether it was
15 appropriate for you to send it in if it was a
16 ten-year-old case.

17 A. Right.

18 24 Q. Have you any comment to make on that?

19 A. No, I think the only reason I would have sent it in, I
20 wouldn't have sent in a report unnecessarily because it
21 can cause distress to both clients and other
22 implications, obviously. So if I didn't need to send
23 it in I wouldn't be wanting to send it in. I was under
24 the impression from my conversation with Briege
25 Tinnelly that they had no record and therefore I had to
26 send in what I knew.

27 25 Q. All right. Okay. Well, could I ask you to look at
28 another part of this form, at page 412?

29 A. Mm-hmm.

1 26 Q. Which is section B. It's heading number 12: *"Known to*
2 *social work department."* And there is a question
3 there:

4
5 *"Based on information known at this time is*
6 *child/family known to social work department?"*

7
8 And it appears to be ticked "No". Had you been aware
9 from Ms. D of her previous involvement with the social
10 work?

11 A. No.

12 27 Q. There is then a question:

13
14 *"If yes, what is the significance of previous*
15 *involvement/incidents to this referral and in*
16 *particular, but not, only make reference to any*
17 *previous notifications to CPNS Child Protection*
18 *Conferences Family Support Interventions."*

19
20 And there is a handwritten note there, I think it
21 reads:

22
23 *"Query previously known?"*

24 A. Mm-hmm.

25 28 Q. We will be hearing from Ms. Tinnelly and Ms. McGlone in
26 due course but would that indicate when this form was
27 completed perhaps that there wasn't certainty about
28 whether Mr. McCabe had been known or not known but it
29 was still an issue?

1 A. That is my understanding, yes.

2 29 Q. Well, can I ask you, did you see this intake form at
3 any previous time?

4 A. No, I only saw this when I got the discovery for the
5 Tribunal.

6 30 Q. It is headed "*Intake Form*". It's dated the 9 August
7 '13. It refers to "*Adult Maurice McCabe*" incorrectly
8 spelt. But did you understand when you were speaking
9 to Ms. Tinnelly that she was completing or was going to
10 complete an intake form?

11 A. No, I wasn't aware of that. It didn't come up, I
12 didn't ask.

13 31 Q. She records you as agreeing to send in standard
14 notification form there?

15 A. That's right.

16 32 Q. Did you not understand that she was in fact intending
17 to complete an intake record?

18 A. No. I was aware that she took the phone call. My
19 query, the purpose of my query was to see whether I
20 needed to send in a report. So the focus, I suppose,
21 was on my report that I was sending in. I didn't
22 realise what she was doing at her end bar checking to
23 see if I needed to or not. So when it was confirmed to
24 me that there didn't seem to be any prior information
25 relating to this allegation then I felt, all right, I
26 will complete the report and send it in.

27 33 Q. Okay. Well, is it the case, therefore, that you were
28 sending in the form in the knowledge or expectation
29 that they would decide what next step was necessary?

1 A. Yes.

2 34 Q. And that you did not know that there was an intake form
3 being completed on that day?

4 A. No.

5 35 Q. And was the form ever sent to you? you never saw it in
6 any capacity?

7 A. No.

8 36 Q. And would it be practice to be made aware of it?

9 A. No.

10 37 Q. You were thanked by Ms. McGlone in her letter of the
11 15th, and the tick on that letter says: *"will be*
12 *followed up within this service."*

13 A. Mm-hmm, that's correct.

14 38 Q. And what did you understand or expect might happen as a
15 result of that?

16 A. That is a standard response that I would get from
17 sending in reports. It's a template I have seen
18 before. And it just let's me know if they are going to
19 follow up or not. It gives me very limited
20 information. I don't know what they mean by that as
21 such and I can't extrapolate from that, but just that
22 they are taking care of it or that they are going to
23 look into it.

24 39 Q. Yes. Obviously, the verbal report which Ms. Tinnelly
25 has recorded there, that is a record of your
26 conversation?

27 A. Yes.

28 40 Q. And is there anything that you think is not included in
29 that that ought to be included?

1 A. I am actually on a different page now.

2 41 Q. I am sorry. If you go back to page 410. 410.

3 A. It's the bottom of that page, is it?

4 42 Q. Yes. In other words, is that entirely accurate or is
5 there anything omitted in it that you recall having
6 discussed with Ms. Tinnelly?

7 A. There is nothing omitted that I can see there. It's
8 certainly not -- it's not my phrasing that I used in my
9 report, so I can only imagine that she used the report
10 that she received to complete this one or perhaps her
11 understanding of our conversation.

12 43 Q. Yes. In Ms. Ward's supervision notes, the first
13 portion of which were completed between your first and
14 second interview and as part of your supervision, there
15 is reference to Sergeant McCabe being a whistleblower?

16 A. Mm-hmm.

17 44 Q. And do you recall mentioning that on the phone to
18 Ms. Tinnelly?

19 A. No, I don't -- I don't imagine so.

20 45 Q. It's not recorded there, in any event?

21 A. No. The purpose would really have been risk, it
22 wouldn't have been his position.

23 46 Q. Okay. In any event, there is no reference to Ms. Y
24 there or any allegation --

25 A. No.

26 47 Q. -- that Ms. Y has made?

27 A. No.

28 48 Q. And this phone call took place, therefore, before the
29 compilation of the written, the typed report that

1 contained the error you described yesterday?

2 A. Yes, I think so.

3 49 Q. Thank you.

4

5 MS. BROPHY, WAS CROSS-EXAMINED BY MR. MCDOWELL AS
6 FOLLOWS:

7 MR. MCDOWELL: Good morning.

8 50 Q. I am one of the barristers appearing for Sergeant
9 Maurice McCabe.

10 A. Good morning.

11 51 Q. Could I ask you at the outset, Ms. Brophy, when you
12 used the phrase "self-referred" in respect of Ms. D,
13 what did you mean by that?

14 A. She wasn't referred in by another professional. So
15 it's not a GP, she wasn't referred in by a psychiatrist
16 or anybody -- or a social worker.

17 52 Q. I see. And could I ask you, what difference would that
18 make?

19 A. Well, I suppose the difference it would make generally
20 was that if we were -- if a practitioner referred
21 somebody in, we would write to them when we are
22 offering in a placement to the client, so they would be
23 involved, I suppose, in a certain amount of
24 correspondence.

25 53 Q. I see. Well, could I then ask you to go to page 954?
26 And you will see "*Past Counselling Experiences*", and
27 under that it says:

28

29 "*Has there been past experiences of counselling?*"

1 *If yes, what was this like and how did this end?"*

2
3 And you wrote down:

4
5 *"Client was referred through AMH."*

6 A. Adult Mental Health.

7 54 Q. Yes. Was that correct?

8 A. That seems to be correct. I have written it down,
9 but as you can see up above, I think that was when she
10 was a minor or I think it was closed, it wasn't -- that
11 person -- she wasn't seeing that person ongoing, so I
12 wouldn't necessarily have had contact with them.

13 55 Q. I see. So she was self-referred to you?

14 A. Correct.

15 56 Q. But you are saying that in the past she was referred to
16 who through AMH?

17 A. I don't know.

18 57 Q. Well, maybe you'd give it a bit of thought; what could
19 it mean?

20 A. My understanding was that she would have attended maybe
21 some counselling as a minor but that she didn't engage
22 for very long but it wasn't part of the current -- I
23 suppose when I was filling in the assessment with her I
24 was -- it was something in the past, it was closed,
25 finished, was my understanding.

26 58 Q. But your understanding when you wrote that down was
27 that she had in the past been referred for counselling
28 through AMH?

29 A. Yes.

1 59 Q. And to whom would she have been referred?
2 A. I presume -- it could have been -- it could have been a
3 counsellor, it could have been a psychiatrist, a
4 psychologist.
5 **CHAIRMAN:** I don't know if the witness can see the
6 whole of this page.
7 **MR. MCDOWELL:** I can't.
8 **CHAIRMAN:** I don't know if you can either,
9 Mr. McDowell.
10 **MR. MCDOWELL:** No. It's been redacted.
11 **CHAIRMAN:** Just going up a bit there are some
12 references, it seems to me anyway, but they may be
13 irrelevant.
14 A. So, it says here she was attending, in the past there
15 was some contact with a Dr. Barry and I put here Adult
16 Mental Health. Now, I am actually not clear whether
17 that is Adult Mental Health that's written there, but I
18 am assuming it is. So it may have been in that
19 context.
20 60 Q. **MR. MCDOWELL:** I see. Well, Dr. Barry, His address is
21 AMH on the -- as far as I can read.
22 A. Right, yes.
23 61 Q. And that is your handwriting, is it?
24 A. It is my handwriting, yes.
25 62 Q. I see. Now, did you take notes on the meeting in July?
26 A. The first initial assessment?
27 63 Q. Yes.
28 A. Yes. These are my notes on this form.
29 64 Q. The form is your notes?

1 A. Yes.

2 65 Q. So, would you say that as you were talking to her, you
3 filled out this form, is that right?

4 A. Yes.

5 66 Q. And are we to take it then that you never took any
6 other notes other than what is on this form?

7 A. No.

8 67 Q. I see. And is that standard, would you say?

9 A. At an initial assessment, it would be in my practice.

10 68 Q. I mean, this was an Assessment of Counselling
11 document --

12 A. Mm-hmm.

13 69 Q. -- which was a record, and I am just, I am struck by
14 the proposition that you didn't take notes as you spoke
15 to her?

16 A. I did. I was filling in this as I was speaking to her.

17 70 Q. But you didn't take any separate notes?

18 A. Sorry?

19 71 Q. You didn't take any notes of any kind?

20 A. No.

21 72 Q. And you didn't take any notes of any kind on the 8th of
22 August either, is that right?

23 A. I didn't add to it, apart from the information that I
24 received, which was the identifying information of the
25 alleged at the time. I would have recorded phone
26 calls, I have made some notes, as you may have seen --

27 73 Q. Yes, I've seen them, yes.

28 A. -- of phone calls and correspondence and in my
29 supervision log with my supervisor. But no, other than

1 that.

2 74 Q. And as far as you were concerned, the entirety of your
3 dealings with Ms. D, your contemporary note is to be
4 found in those pages?

5 A. Yes.

6 75 Q. Is that right?

7 A. Yes, that is my understanding.

8 76 Q. And you don't keep a notebook of any kind as a
9 professional psychologist of what you are told, apart
10 from a form of this kind?

11 A. No, everything that is confidential pertaining to the
12 client has to stay in the file. So, if I wrote a note
13 in my supervision log I would never identify, it would
14 be maybe a query as to process or something to talk
15 about with my supervisor.

16 77 Q. Now, could I ask you, at the outset did you explain the
17 terms upon which Ms. D was going to do business with
18 you?

19 A. That is my understanding, yes. It would be my usual
20 practice.

21 78 Q. And is that the document -- did you obtain her
22 signature?

23 A. That's correct, that is my understanding.

24 79 Q. On page 952, is that right? I think your signature is
25 on it and --

26 A. I am just waiting for this, just to make sure it's the
27 same page we are talking about. Confidentiality in
28 Counselling form, yes, and at the bottom there is
29 Ms. D's, my signature, the date and a nominated

1 emergency contact person.

2 80 Q. I see, yes. And prior to asking her to sign that
3 document, did you have a conversation with her?

4 A. I would generally go through that document. So, I'd
5 kind of -- I would explain it and then offer it to them
6 to read through and then ask them to sign it and then I
7 would sign it.

8 81 Q. Yes. Well, did you have -- did you have a discussion
9 with her about confidentiality?

10 A. Well, yes, in relation to this form, I would explain --

11 82 Q. But apart from that form did you have a discussion in
12 relation to confidentiality?

13 A. When the issue came up that there was a possible
14 reporting issue I would have again spoken about my
15 need, if identifying information came up, to report.
16 So yes, it would have been part of our --

17 83 Q. Could I ask you to look at the note that was made at, I
18 think it's page 832 in the same volume? This was a
19 note of a meeting between yourself and --

20 A. Fiona Ward.

21 84 Q. -- Fiona Ward. And I take it that everything that
22 Fiona Ward put down on that piece of paper emanated
23 from information that you gave her?

24 A. Yes, that is my understanding.

25 85 Q. I see. And could we just go down through it, please?

26 A. Yes.

27 86 Q. It starts "*Seen for* --" is that one appointment or one
28 hour approximately?

29 A. I think that might be "*one appointment*". I know these

1 notes were typed up at some point, but --

2 87 Q. Yes. And the next thing is "*Child Protection Issues*"?

3 A. Yes.

4 88 Q. So she was coming to you in relation to child

5 protection issues, is that right?

6 A. No, she would have been coming to see me because of the

7 difficulties that she was having at the time, but child

8 protection issues were highlighted and that would be

9 something I would be drawn to.

10 89 Q. I see. And the next is, underneath that, is

11 "*21-years-old now*".

12 A. Mm-hmm.

13 90 Q. "*Game of hide and seek. He found her. Tickled her.*

14 "*Dry humped her*" on one occasion." Is that right?

15 A. That's correct.

16 91 Q. "*Alleged --*" something?

17 A. "*Age*".

18 92 Q. "*-- age six to seven*" I think that is, is that right?

19 A. Yes, that seems to be.

20 93 Q. "*Disclosure of age eleven and twelve,*" is that right?

21 A. Yes.

22 94 Q. And then it reads "*Father is a garda -- alleged garda*

23 *and father's male partner,*" is that right?

24 A. That's right.

25 95 Q. "*Statement made at the time, case didn't proceed.*"

26 A. Yes.

27 96 Q. So, in July, you knew that a statement had been made at

28 the time but that the case didn't proceed?

29 A. That's correct, to gardaí.

1 97 Q. Yes. So you knew in July that the gardaí were aware of
2 this incident or alleged incident?
3 A. That was my understanding, that they had been.
4 98 Q. And if we just stop there. You said yesterday that if
5 the gardaí already knew about it, there would be no
6 point in telling them again about it, isn't that right?
7 A. Can I clarify that because I am not sure that is
8 exactly what I said?
9 99 Q. Well, I don't want to put words in your mouth.
10 A. Okay. So, my concern wasn't about the gardaí knowing.
11 I am aware that there was information passed to the
12 gardaí and that she made a statement. My concern was
13 that she may not have had any contact with social
14 workers who would do a child assessment risk.
15 100 Q. Oh, I see.
16 A. Sorry, child protection assessment.
17 101 Q. And did you ask her that question --
18 A. I did.
19 102 Q. -- did you have contact with social workers?
20 A. Yes.
21 103 Q. And what did she answer you?
22 A. She couldn't recall.
23 104 Q. She couldn't recall whether she had contact with social
24 workers after the garda incident?
25 A. That was my understanding at the time.
26 105 Q. And did you note that down anywhere, that she couldn't
27 recall that?
28 A. I can't tell you off the top of my head without seeing
29 something referring to it, but my understanding was

1 that she hadn't -- that it wasn't clear to me and
2 therefore I had to check.

3 106 Q. well, it was an issue which occurred to you --
4 A. Yes.

5 107 Q. -- were social workers involved in this --
6 A. No, not to my knowledge at the time.

7 108 Q. No, it was an issue which occurred to you.
8 A. Sorry, it was.

9 109 Q. And you put it to her --
10 A. Yes.

11 110 Q. -- and you're saying she couldn't, she couldn't tell
12 you whether they were or were not?
13 A. That was my recollection, yes.

14 111 Q. And you made no note of that fact?
15 A. It's possible I didn't make any note of that.

16 112 Q. I see. Now, "*Garda moved out of area where he worked,*"
17 is that right?
18 A. That seems to be correct, yeah.

19 113 Q. So she was telling you at that point, as best you
20 understand it, that the alleged perpetrating garda of
21 this incident had moved out of the area where he
22 worked?
23 A. Mm-hmm, yeah.

24 114 Q. And then the next thing is: "*Case brought to the DPP*
25 *and said not enough evidence to proceed.*"
26 A. That's correct.

27 115 Q. So you were very clear at that point --
28 A. Mm-hmm.

29 116 Q. -- that there had been an interaction, there had been a

1 report to the Gardaí. The Gardaí were fully conversant
2 with this and your only issue was whether your own
3 service knew anything about this in the past, is that
4 right?

5 A. Well, not my own service, but yes, if you mean by the
6 HSE, the umbrella --

7 117 Q. HSE.

8 A. Social workers, yeah.

9 118 Q. Yes. Now, did you know that in 2006/2007, that the
10 Gardaí were obliged to inform the HSE of all such
11 incidents?

12 A. No, that was -- that was my confusion, that is what I
13 wanted to check.

14 119 Q. And did you ever -- did you ever ask anybody whether,
15 if an incident was reported to the Gardaí, whether it
16 would automatically be reported to the HSE?

17 A. That was my purpose for ringing social workers, to ask
18 them would it have been reported, and they said they
19 couldn't confirm so then I had to elaborate further.

20 120 Q. So if we go on to the next paragraph, there are two
21 short words that stuck out. What appears in the next
22 line there?

23 A. Sorry, you want me to read it?

24 121 Q. Yes.

25 A. Do you mean this one, where it starts "*Father a garda*"
26 that one? Or the previous paragraph?

27 122 Q. Sorry, the previous paragraph.

28 A. Okay. So, there's two words crossed out; "*she co*"

29 123 Q. Yes.

1 A. *"No something disclosed in the appointment --" No -- I*
2 *presume that is name, or -- "No name disclosed in the*
3 *appointment. In college. Questioning whether she*
4 *should attend." I can't make out the first word of*
5 *that. "Didn't --" I think "Didn't know of social*
6 *worker involvement or not."*

7 124 Q. I see.

8 A. So my apologies, that does actually answer your
9 previous question, yeah; I didn't know.

10 125 Q. So that was noted at the meeting of the 29/7?

11 A. Right.

12 126 Q. But you took no note of it at the time?

13 A. No, but I would have said it to Fiona obviously, or
14 that indicates that I did.

15 127 Q. Yes. And then the next paragraph is:
16
17 *"Father a garda. She wants to become a garda.*
18 *Concerned alleged perpetrator (now in his 40s) still a*
19 *garda, has two daughters of his own. Garda involved*
20 *in --" is that something "-- case of whistleblowing".*

21 A. Something, yeah, I don't know what that middle word is.
22 But yes, *"case of whistleblowing"*.

23 128 Q. Is that *"current case"*?

24 A. I can't be sure, that is Fiona's writing now, sorry.

25 129 Q. Now, did I understand your evidence yesterday to be
26 that she was concerned in case the man we now know she
27 claims was Sergeant McCabe would know that she was the
28 complainant in this matter?

29 A. That was my understanding, yeah.

1 130 Q. Did you discuss that with her?
2 A. Well, that was a query that she had at the time.
3 131 Q. So, in other words, whether she could make -- whether
4 she could seek counselling without him knowing it was a
5 concern of hers, is that right?
6 A. No, no. Because she could seek counselling without
7 disclosing the identity of her alleged perpetrator.
8 But she wanted to know -- my understanding and
9 recollection is that she wanted to know if it was
10 reported would she have to be identified to the
11 alleged. That was a specific query and that is a
12 specific query I put to social workers.
13 132 Q. So, your understanding was that it was a matter of
14 concern to her that any steps that were taken would
15 appear to have been initiated by her and that this
16 might become known to Sergeant McCabe, is that it?
17 A. Yes, that was my understanding.
18 133 Q. I see. Now, did you ask her about that concern?
19 A. I felt it was quite self-explanatory, and I suppose
20 just to elaborate a little on that: Many of my clients
21 express the same concern when they are reporting
22 allegations of abuse, they would be very concerned
23 about being identified.
24 134 Q. But in this case you knew that she had made a complaint
25 against Sergeant McCabe in respect of this precise
26 matter?
27 A. Yeah.
28 135 Q. And that it had been dealt with by the Gardaí and the
29 DPP?

1 A. Yes.

2 136 Q. So there couldn't have been any secret that she was a
3 person who had made a complaint about it?

4 A. I can understand what you are saying, I am just not
5 sure if it was something I just took as a personal
6 decision or it's something that she was anxious about
7 or just had been brought up again. She wasn't
8 necessarily keen on it being reported. I was the
9 person who said this may have to be reported.

10 137 Q. I see. Yes. And the next line is: "*Concerned about*
11 *impact of reporting to SW --*"

12 A. Social work.

13 138 Q. "-- *given she wants to join the Gardaí.*" Did you take
14 a note of that at the time?

15 A. I haven't taken a note of it on the assessment as such
16 but it was information that I must have passed on to
17 Fiona when we were discussing the client's concerns
18 about reporting.

19 139 Q. But she must have said that to you?

20 A. Yes, that is my understanding.

21 140 Q. So she was concerned not merely that Sergeant McCabe
22 might know that she was reviving this complaint --

23 A. Mm-hmm.

24 141 Q. -- but that reviving the complaint might, if it went to
25 social work, affect her prospects of being recruited as
26 a member of An Garda Síochána subsequently, is that
27 right?

28 A. Yes, that seemed to be a concern.

29 142 Q. I see. Now, you put down, the next thing is: "*Contact*

1 *social work department. Social work said --* Is that
2 need to --

3 A. *"-- need to have name and details and talk to the*
4 *client and Gardaí."*

5 143 Q. I see. So that is, by the 29th, you are telling
6 Ms. Ward that you had contacted them and that they had
7 told you that there would be a need to contact the
8 Gardaí, is that right?

9 A. I can see that it's written on that date, I am just not
10 sure that that is when I had the interaction but I can
11 see that it's written there.

12 144 Q. Well, I have got to suggest to you that it strongly
13 suggests that you had already dealt with social work by
14 that point --

15 A. Okay, yeah.

16 145 Q. -- and they had told you that they needed, they needed
17 the details and that they would need to talk to the
18 client if there was a disclosure --

19 A. Yes.

20 146 Q. -- and that they would need to talk to the Gardaí?

21 A. Yes, yes.

22 147 Q. And that that was clear on the 29th of July, isn't that
23 right?

24 A. Yes, that is what is written here.

25 148 Q. So I think the next line, and I don't want to break
26 privacy here and engage in unnecessarily public
27 discussion of her situation, but you were telling
28 Ms. Ward of fairly serious problems that she was facing
29 at the time, is that right?

1 A. That's correct.

2 149 Q. I see. And those problems would, if they came to
3 notice, very seriously affect her capacity to join or
4 be a member of An Garda Síochána, isn't that right?

5 A. I couldn't be a hundred percent sure of that, but yes,
6 it's my understanding that they would be concerning.

7 150 Q. I see.

8 **CHAIRMAN:** which line are you on there?

9 **MR. MCDOWELL:** Sorry, we are at the bottom line, Judge.

10 **CHAIRMAN:** Okay. No, I get it, thanks, I just
11 missed --

12 **MR. MCDOWELL:** I want to be --

13 **CHAIRMAN:** I know, and you are absolutely right.

14 151 Q. **MR. MCDOWELL:** But I mean, that combination of
15 circumstances would, by anybody's standards, make it
16 very unlikely that she would be admitted to An Garda
17 Síochána, isn't that right?

18 A. It would be concerning. I couldn't make that
19 judgement, it's not my area, but yeah.

20 152 Q. But these were real concerns that she had, isn't that
21 right?

22 A. Yes, my focus was on her entering counselling so that
23 would have been my remit.

24 153 Q. Could I ask you to go back up the page again, and the
25 reference to the "*garda involved in case of*
26 *whistleblowing*"?

27 A. Mm-hmm.

28 154 Q. who told you that?

29 A. To the best of my recollection, that would have been

1 said to me by the client.

2 155 Q. well, it couldn't have been anybody else who said it.

3 A. No. well, yeah.

4 156 Q. I mean, let's be clear about it, it couldn't have been

5 Fiona Ward --

6 A. Oh, no.

7 157 Q. -- because you hadn't identified the garda.

8 A. That's correct.

9 158 Q. So --

10 A. So, it would have come from my interaction with the

11 client and I would have passed that on to Fiona Ward

12 and she made a note of it here.

13 159 Q. Did you have any notes? is that anywhere in your

14 notes, that reference to the whistleblowing?

15 A. No.

16 160 Q. So, without making a note at the time, you did later

17 tell Ms. Ward that the alleged perpetrator was involved

18 in whistleblowing, is that right?

19 A. That that was what was told to me, yes.

20 161 Q. Yes. And in what terms -- I mean, what did you

21 understand by whistleblowing at the time?

22 A. To the best of --

23 162 Q. She is telling you that the alleged perpetrator was

24 involved in whistleblowing?

25 A. But that may have been something relevant to her

26 because clearly she wanted to be a guard, she was --

27 you know, she was talking about the Gardaí. I didn't

28 know a huge amount about what was going on internally

29 in the Gardaí at the time, so it didn't really register

1 with me as something to elaborate on or ask more
2 questions about.

3 163 Q. But you see, you said in evidence yesterday that the
4 whistleblowing remark didn't ring any bells with you or
5 words to that effect, is that right?

6 A. That's correct.

7 164 Q. And are you saying that you were -- I mean, I take it
8 you are a newspaper reader?

9 A. Em --

10 165 Q. I mean, you knew about the penalty points issue which
11 had been the subject of fairly significant debate at
12 the time?

13 A. Well, first of all, I wouldn't have been necessarily a
14 newspaper reader.

15 166 Q. I see.

16 A. And it wouldn't have been something I would have taken
17 an interest in and --

18 167 Q. But is it your evidence, I just want to be clear about
19 this, that she was -- having heard your warning about
20 confidentiality, that she was holding back the name or
21 were you asking her to hold back the name of the person
22 in question?

23 A. She hadn't disclosed the name. I was leaving it to her
24 to make that decision. That is why I arranged to meet
25 her again.

26 168 Q. Well, I presume you said 'Do you know who this man is?'

27 A. Well, I presumed she knew who he was.

28 169 Q. Yes. 'And, do you know where he lives?' would you
29 have asked those questions of her?

1 A. Well no, because I didn't have the name.

2 170 Q. She was giving you a picture --

3 A. Mm-hmm.

4 171 Q. -- that she was concerned about the perpetrator being
5 aware that she was even coming to talk to you, and I'm
6 asking you: Do you not consider that it's quite likely
7 you would have, first of all, asked her did she know
8 the identity of the alleged perpetrator of this
9 incident?

10 A. Yeah.

11 172 Q. And in that context, did the question as to whether or
12 not she was willing to disclose his name to you at that
13 point, did that arise for discussion between you?

14 A. Yes, yes. Sorry, I misunderstood your first question.

15 173 Q. Yeah.

16 A. So that was the issue in the first assessment; I was
17 concerned, I expressed my concern that somebody who
18 possibly had access to children and worked in public
19 capacity wasn't identified to social workers and may or
20 may not have been in contact with social workers when
21 originally reported. And I had told her the
22 implications of her informing me of the identity and so
23 there was concern around that, she didn't want to give
24 me the identifying details at the time.

25 174 Q. I see.

26 A. So that is why I said well -- do you know, we discussed
27 it a little bit more in terms of what were her concerns
28 about giving me the identity.

29 175 Q. Yes.

1 A. And we have talked about that and --

2 176 Q. And what were her concerns about giving you the
3 identity?

4 A. Well, I suppose as she could have mentioned previously,
5 and I have noted, that she wanted to be a guard
6 herself, she was concerned about being identified,
7 about it all coming back up again, was my --

8 177 Q. So she was concerned about the whole matter all coming
9 back up again, is that it?

10 A. That was my understanding of it. She thought because
11 the DPP had dealt with that it had been dealt with. My
12 understanding was, yes, from a Gardaí point of view
13 absolutely it may have been dealt with, but from a
14 child protection point of view I couldn't be certain.

15 178 Q. I see. And the phrase "*Concerned alleged perpetrator*
16 *now in his 40s, still a garda (has two daughters of his*
17 *own).*" who were you referring to? Was that your
18 concern?

19 A. They would have been my concerns.

20 179 Q. I see. And immediately after that: "*Garda involved in*
21 *case of whistleblowing.*" So, you told both of those
22 things to Ms. Ward, is that right, on the 29th of July?

23 A. That is my understanding, yeah.

24 180 Q. I take it you are not suggesting that the contact with
25 the social work department, or "*social work said they*
26 *needed to have name and details and to talk to the*
27 *client and Gardaí*", I take it you are not suggesting
28 that was added in later by Ms. Ward?

29 A. I don't have a note of that specific -- do you know,

1 that specific date, so I just -- I have a record of
2 when I made the phone call to social work, when I tried
3 to contact them, so I am just I suppose unclear about
4 that.

5 181 Q. Well then, if we could go to the note that you did make
6 of the meeting. As I understand your evidence, you are
7 saying that the -- Now, I am dealing with what appears
8 at page 954. That was the contemporaneous note of the
9 meeting with Ms. D?

10 A. Sorry, if I can draw your attention to the notes I made
11 after that, my handwritten notes.

12 182 Q. Yes. We will come to that in a moment. But that was
13 your contemporaneous note?

14 A. Oh, right. Yes.

15 183 Q. Yes. And afterwards, you made notes which are to be
16 found at page 963, is that right?

17 A. Yes, that's right. And you see the way here I have
18 "30/7/2013", so that doesn't match Fiona's account.
19 She has written her notes on the 29th --

20 184 Q. That is the point I was going to draw to your
21 attention.

22 A. Yes. Yes. And I suppose that is something that I have
23 been trying to figure out, because it either means that
24 I wrote it down afterwards, you know wrote down the
25 note the next day, or that perhaps Fiona add it to her
26 notes the next day. But I can't confirm either,
27 unfortunately, definitively.

28 185 Q. I see. Now, there are two interactions there recorded
29 on the 8th and 9th of August, where you attempted

1 unsuccessfully to make enquiries about whether it had
2 been reported to social work.

3 A. That's right.

4 186 Q. And you did so, you succeeded in making contact to talk
5 to Briega Tinnelly on the 9th of August?

6 A. Yes.

7 187 Q. Is that right?

8 A. That's correct.

9 188 Q. And in relation to that note, you are now saying
10 that -- it reads:

11

12 *"I phoned SW today and spoke with duty social worker,*
13 *Briega Tinnelly, who I informed about alleged and*
14 *concerns about the report having been passed to SW ten*
15 *years ago."*

16 A. Mm-hmm, yes.

17 189 Q. You say that you had concerns about the fact that it
18 was passed to them ten years previously?

19 A. My concern was that whether or not it had been passed
20 to them ten years previously.

21 190 Q. You see, the point is that if you knew that it had
22 been -- that they had it ten years ago, and the real
23 question that was in your head was, given that they
24 already know this, is there any further steps that are
25 appropriate at this stage, that note would be far more
26 easy to explain, isn't that right?

27 A. I am not sure I understand.

28 191 Q. I'm suggesting to you that you said, you said:
29

1 "-- who I informed about the alleged and concerns about
2 the report having been passed to SW ten years ago."

3
4 It doesn't say, you know, I wonder was it passed to
5 them? you were concerned about the fact that it had
6 been passed to them ten years ago.

7 A. Well, I suppose I was ringing to clarify that.

8 192 Q. Yes. *"Ms. Tinnelly took contact details of client and
9 alleged and I agreed to follow this with a report."*

10 A. Mm-hmm, that's correct.

11 193 Q. You don't record there that she went off and started
12 searching around the office to see was there any such a
13 file?

14 A. I don't know whether she went off around the office.
15 My understanding on the phone is that she was able to
16 check while she was speaking to me. I gave her the
17 name and --

18 194 Q. Desktop?

19 A. I can't speculate.

20 195 Q. And you are saying that -- I just want to be clear
21 about this because Ms. Tinnelly will be giving evidence
22 herself.

23 A. Yes.

24 196 Q. Are you saying that your impression was that she was
25 able to give you there and then on the phone from
26 sitting at her desk, an indication that, in her view,
27 Ms. D's case had not been referred to SW ten years
28 previously?

29 A. That was my understanding at the time.

1 197 Q. There and then, without difficulty, she was able to say
2 that to you?

3 A. Well, I suppose maybe I thought they would have had a
4 record of it on their system.

5 198 Q. I see. Now, could I ask you in respect of page 958,
6 before we leave your contemporary note -- Sorry, maybe
7 we should start at 957. *"Abuser --"* At the bottom of
8 page under the heading *"Context of Abuse and Duration"*,
9 *bullet-point:*
10
11 *"Abuser was colleague of her father."*

12 A. Mm-hmm.

13 199 Q. *Bullet-point: "Happened once when at his home with*
14 *parents around Christmastime."*

15 A. Yes.

16 200 Q. *Bullet-point: "was playing hide and seek with this man*
17 *and his daughters."*
18 *Bullet-point: "Client was only six or seven. Abuse*
19 *involved molesting and "dry humping me"."*

20 A. Yeah.

21 201 Q. *Next bullet-point: "Didn't come back to client until*
22 *she was 12 or 13 years of age."* Next paragraph:
23 *"Remembers getting really uncomfortable in primary*
24 *school."* Next bullet-point: *"This man was a garda in*
25 *Bailieboro but has since moved. "Forced out" when the*
26 *allegations came out."*

27 A. That's correct.

28 202 Q. Did you ask her about what she meant by that?

29 A. I don't think so. Which bullet-point are you referring

1 to?

2 203 Q. Well, sorry, the last one. She was representing to you
3 that Sergeant McCabe had been forced out of Bailieboro
4 when her allegations came out.

5 A. Yeah.

6 204 Q. Did that strike you at the time as a very interesting
7 statement by this young girl?

8 A. Well, it was her opinion.

9 205 Q. Yes.

10 A. I don't know whether he was -- this person was forced
11 out or if that was -- it was her account I was taking.
12 So I noted it, but --

13 206 Q. As I understand your evidence, is that that is the
14 contemporary note but that you left the following two
15 items - names, address and occupation - blank on the
16 day?

17 A. Yes, because I couldn't --

18 207 Q. And came back later and wrote that in?

19 A. That is my belief, yes.

20 208 Q. Can I just ask to you consider on what basis you say
21 that you came back to your own contemporary note and
22 put that in?

23 A. Well, I had seen her for an initial assessment, and I
24 would usually, as I said to you before, take all my
25 notes on the initial assessment form. So, because I
26 didn't get the identifying information and I had
27 concerns that she was talking about an alleged
28 perpetrator that it was of possible concern, I was
29 hoping that she would identify the information so I

1 could add it on, if necessary. She didn't at that
2 time, and we discussed it, and we agreed that I would
3 try and do a bit more information gathering in terms of
4 what would happen if it were to be disclosed to the
5 social workers and that we would meet again and she in
6 that time could make an informed decision as to whether
7 she wanted to disclose the identity.

8 209 Q. I see. But you did write down at the time "*has two*
9 *daughters at the time aged approximately three and five*
10 *years.*"

11 A. I can't be certain -- are you saying did I write that
12 afterwards or before -- you know, the first appointment
13 or the second appointment?

14 210 Q. You see the point is, you must have known that at the
15 time because on the 29th of July, Fiona Ward, you tell
16 her that?

17 A. Yes.

18 211 Q. And you tell her about your concerns.

19 A. Sorry, I just wasn't clear what you were asking. That
20 was...

21 212 Q. So I am just asking you, on what basis do you say that
22 you left the man's name and address, those two lines,
23 alone in this document, unfilled on the day?

24 A. The basis is that I wouldn't have needed to meet her a
25 second time, I wouldn't have needed to enquire with
26 social workers about what would happen because I would
27 have just completed the report and sent it in.

28 213 Q. Could it have been the case that you took it down at
29 the time and knew well at the time who it was?

1 A. Then I would have been obligated to send in a report
2 regardless of whether or not she consented.

3 214 Q. I see. Could it be that your subsequent contact with
4 social workers was to ascertain really whether there
5 was any obligation on you to recontact them because
6 they might have known it all already and there was no
7 need to bring up the whole thing again?

8 A. Well, that was one of the reasons I rang social
9 workers. Because I wouldn't duplicate a report if it
10 had already gone in to them.

11 215 Q. You see, I am suggesting to you that it was remarkable
12 indeed to leave those two lines blank when you were
13 being told about children at risk?

14 A. I wasn't leaving them blank. I had no choice, I wasn't
15 given the information.

16 216 Q. But you weren't -- why didn't you ask her 'who is this
17 man? Are there children at risk?'

18 A. I suggested to her that anybody who hasn't been
19 reported needs to be assessed in terms of risk --

20 217 Q. Yeah.

21 A. -- but I can't force somebody, it's not my job to
22 pressurise a client into telling me the identity.

23 218 Q. So let me be clear about this, because Ms. D is
24 proposing to give evidence, as I understand it, too,
25 but you are saying that she was holding back on the
26 name until you could give her further assurances?

27 A. Yes, that is my best recollection.

28 219 Q. And it isn't the case that you took the name and then
29 went to see whether any further action was necessary in

1 terms of reporting on?

2 A. No, that is not my belief.

3 220 Q. So you left those -- those two lines were left blank
4 and you later came back and put them back -- filled in
5 the information?

6 A. That is my belief, yes.

7 221 Q. And you must have written down that the man had two
8 daughters at the time, aged approximately three and
9 five years?

10 A. Yes.

11 **CHAIRMAN:** That is going back to '98, though, isn't it?

12 A. Yes, just to clarify. At the time of the incident --

13 **CHAIRMAN:** of the alleged incident.

14 A. -- he apparently had children that age.

15 222 Q. **MR. MCDOWELL:** well, I mean, the phrase -- she was
16 giving you a full and flowing account of what had
17 happened, a fluent account. Because she was alleging
18 to you, which appears to be totally untrue, that
19 Sergeant McCabe had been forced out of Bailieboro as a
20 result of her complaints.

21 A. That was what she communicated to me in the assessment.

22 223 Q. And that was the picture she was painting to you, isn't
23 that right?

24 A. That is my understanding.

25 224 Q. That this man had been forced out of a Garda station
26 because of the allegations that were made?

27 A. That is what I have noted down, yes.

28 225 Q. Yes. And that -- well, I mean, obviously -- did you
29 enquire as to the basis on which she was telling that

1 to you?

2 A. Not to my recollection.

3 226 Q. I see. Now, on the 9th of August at page 965, you
4 filled out a form, a retrospective disclosure of abuse
5 form.

6 A. That's correct.

7 227 Q. And that is the one with this catastrophic
8 transposition of information in it, is that right?

9 A. Yes, unfortunately, yes.

10 228 Q. And when you were asked for any additional information,
11 on page 965, you said:
12
13 *"Mr. Maurice McCabe was a member of the Gardaí at the*
14 *time of the incident, although he left Bailieboro where*
15 *he worked with Ms. D's father. It is not known if he*
16 *is still an active member of the Gardaí."*
17

18 where did you get all that from?

19 A. Well, that would have been information from the client.
20 I didn't know whether this person was a member of the
21 Gardaí any more or that they were still working.

22 229 Q. But, I mean, it was very, very pertinent to the
23 question of whether he was a risk to children, whether
24 he was still a member of An Garda Síochána, isn't that
25 right?

26 A. Well, I wouldn't agree with that, I'm afraid, because
27 if he had children of his own, or anybody who hasn't
28 been reported could have access to children. I don't
29 know, I am not in a position to make that assessment.

1 230 Q. And are you saying that, notwithstanding that she had
2 identified him in the interval to you, that she -- you
3 didn't inquire from her is he still a member of An
4 Garda Síochána?
5 A. I wasn't clear that she knew that information.
6 231 Q. Did you ask her?
7 A. I can't be sure that I did ask her, I am not sure.
8 232 Q. I think it's an undisputed fact in this matter that he
9 was not forced out of the garda station, but you had no
10 knowledge of that one way or the other?
11 A. No.
12 233 Q. That was the account she was giving you?
13 A. I was just taking it at face value.
14 234 Q. On the 13th of -- at page 967, on the 13th of August
15 2013, a letter was written by you to Ms. D, is that
16 right?
17 A. Mm-hmm. This is a standard template.
18 235 Q. Yes. And that is what I was going to put to you; that,
19 first of all, everybody got that?
20 A. Yes.
21 236 Q. And it was non-client-specific, is that right?
22 A. That's correct.
23 237 Q. And it stated:
24
25 *"As you are aware, you have been placed on our waiting*
26 *list for counselling. At this time I am unable to give*
27 *you an accurate time frame of when counselling will*
28 *start, but wish to assure you that you will be*
29 *contacted as soon as a place becomes available. whilst*

1 *waiting to start counselling, it may be helpful to*
2 *consider what you would like to get from counselling or*
3 *perhaps explore other supports or activities that may*
4 *be of help to you."*

5 A. Yes.

6 238 Q. And am I right in thinking that that was the last
7 communication you had with Ms. D in 2013 and right up
8 to April of 2014?

9 A. That is my understanding, yes.

10 239 Q. So this person who had come with all of the symptoms
11 that you saw, looking for counselling, self-referring,
12 was effectively being told that counselling would only
13 start at some indeterminate future date --

14 A. Mm-hmm, yes.

15 240 Q. -- is that right? And no counselling was given to her?

16 A. No, not by our service --

17 241 Q. Right up to the period where the transposition of
18 information in relation to Ms. Y became known to you,
19 no counselling was given to her?

20 A. No. There was an offer of counselling days before the
21 error was identified, but that was when a place had
22 become available.

23 242 Q. I see. And that counselling was to happen in Cavan,
24 was it?

25 A. That's correct.

26 243 Q. And you knew that she was studying in another part of
27 the country, did you not?

28 A. I knew that was a possibility. I don't know that it
29 was confirmed at the time, otherwise we possibly would

1 have transferred her earlier, so I think it was -- it
2 wasn't completely clear.

3 244 Q. I see. But in any event, her interaction with you,
4 effectively the sum total product for nine months after
5 it happened was that you made the report with this
6 catastrophic error in it to the social work department;
7 that was the entire result of her interaction with you?

8 A. That's correct.

9 245 Q. She got no other service or support from Rian during
10 that period?

11 A. She would have been told to contact the service if
12 anything arose, and there is a list at the end of this
13 page of alternative supports in the meantime.

14 246 Q. I see.

15 A. But, yes, it would have been several months before --

16 247 Q. Now, could I ask you to look at page 414, which is in
17 volume 2. This is -- you have that, have you? This is
18 a letter sent by Keara McGlone, who is described as a
19 social work team leader, to Superintendent Noel
20 Cunningham. And the date of it is --

21 A. 15/8/2013.

22 248 Q. Yes.

23 **CHAIRMAN:** It seems to be the 15th of August 2013.

24 249 Q. 15th of August. Now, it reads:

25
26 *"Dear Superintendent Cunningham,*
27 *Health Service Executive Child and Family Services have*
28 *recently received a referral from Rian, a therapeutic*
29 *counselling service for adult survivors of child sexual*

1 *abuse. The referral states that Ms. D, now aged 21,*
2 *has discussed during counselling sessions that she was*
3 *sexually abused during her childhood by an adult male,*
4 *M. McC."*

5
6 Right. Now, first of all, counselling hadn't, in fact,
7 started at this stage.

8 A. No.

9 250 Q. So that is not correct?

10 A. That's right.

11 251 Q. And M. McC, an adult, is -- clearly refers to Maurice
12 McCabe, isn't that right?

13 A. That is my understanding.

14 252 Q. And Ms. McGlone, on the 15th of August, is in a
15 position to say:

16
17 *"I note from the social work file that you conducted a*
18 *criminal investigation into these allegations in 2007.*
19 *However, it appears the alleged perpetrator was not met*
20 *with by Health Service Executive at that time."*

21
22 So you are saying that on the 8th of August or the 9th
23 of August, the impression they are giving you is that
24 there was no social work file available to them?

25 A. That was my understanding.

26 253 Q. And within a week of being notified they are in a
27 position to examine the file, examine its contents and
28 record the fact - we have dealt with it in evidence
29 here already in the Tribunal - that no contact had been

1 made with Sergeant McCabe arising from the earlier
2 activities of the social worker. So I am just
3 wondering, how could it be that you were told that
4 there was no evidence of a social work file on the 8th
5 or 9th of August in the course of a phone conversation,
6 when, a week later, people are examining its contents
7 and relying on its contents to contact Sergeant
8 McCabe -- or, sorry, Superintendent Cunningham?

9 A. Mm-hmm. I am not in a position to answer that
10 question, I don't know what --

11 254 Q. I see. I am suggesting to you, and I have to be blunt
12 about this and I hope it's not in any way unfair --

13 A. Yeah.

14 255 Q. -- that you were never told that there was no file,
15 because you would have written it down if you were told
16 that there was no file. You were making careful notes
17 of your phone conversations. That is what I am putting
18 to you. I am putting to you that as soon as the HSE in
19 Cavan were apprised of this, they knew there was a
20 file, they refer to the file, and you are asking us to
21 accept that in the course of a phone conversation,
22 without any search being done, you were told there was
23 no such file?

24 A. That's correct.

25 256 Q. And you made no note of that at the time?

26 A. I told Fiona, my supervisor, and she made a note of it.
27 No, I didn't know note it specifically. I followed up
28 on it.

29 257 Q. And it wasn't correct; it was misinformation given to

1 you.

2 A. I suppose I couldn't have known that at the time. It

3 was my understanding and my belief that what I was

4 being told on the phone was accurate.

5 258 Q. I see. You see, the message -- the note of the phone

6 conversation doesn't give that impression at all.

7 A. So I suppose I wouldn't have sent in a report if it

8 hadn't been necessary.

9 259 Q. You see, that is the whole point. I am wondering is

10 that the case, and I am putting to you that the reality

11 is that a report was going in on this occasion, no

12 matter what, and that your evidence, which is not

13 supportive on the paper, that you wouldn't have made --

14 you wouldn't have put in a report, it's not backed up

15 by any of the documentation, if you don't mind my

16 saying so.

17 A. Okay.

18 260 Q. It's -- I suggest to you, and I will let you answer it,

19 I am suggesting to you, in fairness to you, that this

20 is a retrospective justification of what happened, that

21 you are saying that you were told there was no such

22 file but otherwise you would have -- you would have

23 abstained from making any report?

24 A. Yes, that is my belief.

25 261 Q. And would it have been proper for you to make no

26 further report to social -- to the social workers in

27 the circumstance?

28 A. Well, the only situation where I could consciously not

29 submit a report is if the social worker had confirmed,

1 yes, we are already aware of that allegation, it has
2 been dealt with and there is no need for any further
3 report. Under those circumstances I could have said
4 fine, there is no need, but I would have documented
5 that. You know, if I didn't have to proceed I would
6 have documented the reason 'I am not proceeding is
7 because...'

8 262 Q. Yes, but you see the point is this: On your account,
9 Ms. D was very anxious not to revive the whole issue.
10 That is the account you are giving us.

11 A. Yes.

12 263 Q. And you are saying you were misled effectively by a
13 social work person in a conversation to believe that
14 there was no file on this matter at all?

15 A. Yeah, that was my understanding and my belief at the
16 time.

17 264 Q. And you didn't understand or you didn't -- it never
18 occurred to you that if a file had gone to the DPP in
19 2007, that there would have been reporting to the HSE
20 at the time?

21 A. That wasn't clear, so I had to check that.

22 265 Q. But did you believe that in the ordinary course of
23 events it would happen?

24 A. Not always.

25 266 Q. You thought it might or might not happen?

26 A. Well, I suppose I had experience of speaking with
27 people who would have maybe made a statement but not
28 necessarily been involved with social workers. And I
29 suppose legislation, child protection legislation had

1 changed so much in terms of our own policies in that
2 space of time, I felt it was prudent to check with
3 them.

4 267 Q. All right. And what you are saying is that,
5 effectively that we have two huge mistakes. Number
6 one: that this report was entirely redundant and the
7 fault for that was Ms. Tinnelly giving you
8 misinformation on the phone, is that right?

9 A. I am saying that there was mistakes made and I regret
10 my errors, but I can't place blame on anybody.

11 268 Q. No, what I am saying is, surely you couldn't -- if she
12 told you on the phone there is no such file --

13 A. I can only assume that was her understanding.

14 269 Q. If she told you in the course of a phone conversation
15 there was no such file, you can't be to blame for
16 that --

17 A. Okay.

18 270 Q. -- isn't that right?

19 A. Yes.

20 271 Q. But you are saying that in the course of a
21 conversation, without doing a search, she told you
22 that?

23 A. I can't confirm whether she did a search or not so I
24 suppose I can only tell you that my understanding from
25 our phone call was that she had no record or access to
26 any previous allegation in relation to my client or
27 Mr. McCabe.

28 272 Q. I see. Well, I mean, Ms. McGlone signed off a few days
29 later on a form which said that the matter was going to

1 be reported, isn't that right?

2 A. Mm-hmm.

3 273 Q. And she co-signed that document with Ms. Tinnelly,
4 isn't that right?

5 A. Are you referring to the letter that I received, the
6 template?

7 274 Q. No. I am saying that, at page 410, there is a
8 document, a social welfare -- or a social work
9 document, Child Welfare and Protection document?

10 A. Yes, I wouldn't have been ever privy to that
11 document --

12 275 Q. Yes.

13 A. -- but I can see it here in front of me.

14 276 Q. But it does appear that on the 9th of August of 2013,
15 from page 413, that Ms. Tinnelly and Ms. McGlone both
16 signed a document which, on page 412, had written in it
17 *"Duty to Garda notify and await allocation MTP"*.

18 A. Where is that now, sorry? Right.

19 277 Q. Does that not seem strange to you, that the day after
20 the event Ms. McGlone, Ms. Keara McGlone is -- the day
21 after you say you were misinformed --

22 A. Yes.

23 278 Q. -- they are signing that document?

24 A. I haven't seen this document until very, very recently,
25 but yes, I can see the passage there.

26 **CHAIRMAN:** Sorry, I am perhaps misunderstanding,
27 Mr. McDowell. Maybe you would just help. The document
28 is to what effect, that there should be a referral to
29 social worker?

1 **MR. MCDOWELL:** Yes, yes. And that there was an
2 identification -- I mean, the details are here;
3 Sergeant McCabe is mentioned on page 410.
4 A. Mm-hmm.
5 **CHAIRMAN:** Yes.
6 **MR. MCDOWELL:** Isn't that right? And the woman who, on
7 the 15th, is writing to inspector -- or, sorry,
8 Superintendent Cunningham, saying that she notes from
9 the file that he was previously involved, is saying
10 "*duty to Gardaí to notify and await allocation.*" And I
11 am just wondering how all of that could have happened?
12 **CHAIRMAN:** And forgive me, Mr. McDowell, but the
13 contradiction is what?
14 **MR. MCDOWELL:** The contradiction is that Ms. McGlone is
15 talking about the need to refer it to the Gardaí and
16 yet within days is in a position to tell Superintendent
17 Cunningham that she has a file.
18 **CHAIRMAN:** And that it has already been referred.
19 **MR. MCDOWELL:** Is the man who refers it.
20 **CHAIRMAN:** But what seems to be missing is the -- what
21 was spoken about yesterday was, on the one hand is it a
22 service, which is not really a very pleasant service --
23 **MR. MCDOWELL:** Yes.
24 **CHAIRMAN:** -- and then on the other hand the whole
25 notion of child protection; are there children at risk?
26 Admittedly here -- and it is an allegation only, you
27 are going back to 1998 and we are now in 2013, which is
28 15 years later.
29 **MR. MCDOWELL:** Yes.

1 **CHAIRMAN:** And is there still a danger? And what is
2 the danger?

3 **MR. MCDOWELL:** You see if we go to page 414, Judge, and
4 maybe I will be clear about this, Ms. McGlone, who
5 signed that document on the 9th, is telling
6 Superintendent Cunningham a number of things.

7
8 *"I note from the social work file --"*

9
10 So there obviously was such a file.

11
12 *"-- that you conducted a criminal investigation into*
13 *these allegations in 2007. However, it appears the*
14 *alleged perpetrator was not met with by the Health*
15 *Service Executive at the time."*

16
17 And she goes on to say:

18
19 *"I would like to meet with you to discuss the case*
20 *prior to making any contact with the alleged*
21 *perpetrator."*

22
23 And that is her state of mind --

24 A. Okay.

25 279 Q. -- a few days later.

26 A. Mm-hmm.

27 280 Q. Did anybody ring you back to say 'by the way, we gave
28 you misinformation --

29 A. No.

1 281 Q. -- there was a file here'?

2 A. No.

3 282 Q. Can I go back to that phone conversation again,
4 Ms. Brophy? You seem to say that there wasn't a gap in
5 it when she went off to search, that she was able to
6 inform you that there was no such file seated where she
7 was on the phone.

8 A. I can't recall how long it took her, whether it was a
9 few seconds or minutes or -- I can't recall
10 specifically, but I know I came away from that
11 conversation with the understanding that there wasn't.

12 283 Q. I see. And you didn't note that?

13 A. No.

14 284 Q. I see. And it would appear that the people to whom you
15 passed on this information were well aware of the
16 previous interaction with social workers on the issue,
17 isn't that right?

18 A. That seems to be the case, yes.

19 285 Q. And that they decided that they were, first of all,
20 going to contact the Gardaí about it --

21 A. Mm-hmm.

22 286 Q. -- and secondly, they were wondering -- they wanted to
23 talk to the Gardaí before they talked to Sergeant
24 McCabe about it. That was their approach to it. They
25 didn't say, look -- they didn't take your view, look,
26 this is all old stuff, we have heard this before, we
27 are stopping it. They are saying no, we have to now go
28 through the process of notifying the Gardaí and
29 approaching the perpetrator; is that right?

1 A. That seems to be the case, yes.

2 **CHAIRMAN:** But, Mr. McDowell, I think are we agreed

3 that as a matter of fact that back in 2006, 2007 there

4 was never any approach to Sergeant McCabe, save for an

5 interview in the hotel?

6 **MR. MCDOWELL:** That's right.

7 **CHAIRMAN:** And I am not saying 'save for' as in that

8 was a light way of approaching it, but social work

9 didn't get involved, didn't do an assessment of him or

10 his family.

11 **MR. MCDOWELL:** They never approached him and they never

12 assessed the credibility.

13 **CHAIRMAN:** No. And indeed they only thought of that,

14 bizarrely enough, in December 2015 by writing the

15 famous Barr letter. So it wasn't done back then at

16 all.

17 **MR. MCDOWELL:** That's right. We are agreed on that,

18 Judge.

19 287 Q. I am just saying, you are saying you would never have

20 raised this issue again only for the misinformation

21 that Ms. Tinnelly gave you? If she said yes, there is

22 a file here, you would have said, well, fair enough, I

23 will just book in Ms. D for counselling sometime next

24 year, whatever it was, and it would never have gone any

25 further?

26 A. That is my belief, yes.

27 288 Q. Now, could I ask you to look at page 756 in Volume 3.

28 Have you got that there?

29 A. It's the title of an article?

1 289 Q. Yes.
2 A. Okay.
3 290 Q. And it's an article which was published in The Irish
4 Times on February 20th, 2017 and it purports to be an
5 account, among other things, of Ms. D's interaction
6 with you, isn't that right?
7 A. So I believe, yes.
8 291 Q. Have you read it before?
9 A. I have scanned it, I didn't read many of the articles
10 related --
11 292 Q. Okay. Maybe we will read it then. It said:
12
13 *"Eleven years after she made an allegation of sexual*
14 *assault against Garda whistleblower Sergeant Maurice*
15 *McCabe, the woman whose complaint is at the centre of*
16 *the alleged smear campaign wonders when she can begin*
17 *the rest of her life.*
18
19 *In 2006 she made an allegation of sexual assault*
20 *against the Cavan based Garda which was investigated by*
21 *the garda.*
22
23 *A file was sent to the Director of Public Prosecutions*
24 *who decided no further action was necessary.*
25
26 *Struggling with anxiety, depression and other issues in*
27 *2013, she was encouraged by her mother to speak to a*
28 *Health Service Executive counsellor where she spoke*
29 *about the original allegations but only she says, when*

1 *she was asked to do so."*

2

3 Is that correct?

4 A. That I would have asked her was there an allegation of
5 sexual abuse, yes.

6 293 Q. *"When she was taking it down she said something, I
7 don't know her exact words, she said 'I will have to
8 refer this on'. The woman said 'I remember straight
9 away it got my back up. I was thinking refer what on?
10 This has been reported, this has been investigated and
11 the DPP said insufficient evidence, that is all, that
12 is that, there is nothing going to change, I have
13 accepted that'."*

14

15 Does that fairly reflect what was going on between the
16 pair of you?

17 A. My recollection is certainly that I would have informed
18 her that there may be a reporting issue here and that
19 we would have had to explore it further. I would have
20 expressed my concerns. I can't say how she felt about
21 it. My understanding was that we decided to meet for
22 another session so she could think about it.

23 294 Q. Well, maybe the next paragraph you could comment on.
24 *"'I remember coming out of the counselling session and
25 I was more annoyed than when I went in.'" "'... more
26 annoyed than when I went in'," all right?
27 "'I remember thinking, stirring up shit for what? I
28 knew by her she was going to report it whether I wanted
29 to or not', the woman said."*

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Now, just looking at that, is that a truthful account of your interaction with Ms. D?

A. I can only say that that is not my recollection of our meeting.

295 Q. And you never -- you never gave her to believe that you were going to report it whether she liked it or not?

A. Well, I didn't have the information to do that.

296 Q. I see. So can we take it that, in 2013, as far as you knew, she was absolutely intent, insofar as it could be done, to leave this matter in the past and not to reawaken the issue, is that right?

A. It was my understanding that she didn't see the point of going forward with it. I had to explain that I had child protection concerns and that was -- I suppose she was aware of that, but not necessarily interested in reporting it again.

297 Q. And your child protection concerns were that on the information you had then, this man had two children who were -- who would, by this stage, have been adults?

A. Mm-hmm.

298 Q. Was that the issue that you were worried about?

A. I suppose we had a policy, and we would have a policy, that you can't be guaranteed that anybody -- I don't know the whereabouts of any alleged perpetrator or what they are involved in or what their access to children is, it's not my position to establish that, but if there is an allegation made that there was concerning behaviour, I have to report that to social workers so

1 that they can make that assessment.

2 299 Q. I see.

3 A. So it's a duty of care.

4 300 Q. And was it because you believed that the man was in An
5 Garda Síochána or that he had, now, two adult children,
6 as far as you knew, that excited your concerns in
7 particular?

8 A. Irrespective of the fact that he was a member of the
9 Garda or that his children were grown up, I didn't know
10 that he didn't have grandchildren, I didn't know that
11 he wasn't coaching the local GAA, I can't make those
12 assumptions, so I have to just go on the information
13 that I have. And if there is any questions, they have
14 to be answered by --

15 301 Q. Does that not make it --

16 A. -- social workers.

17 302 Q. -- important for you to ascertain what the surrounding
18 facts are?

19 A. But I can't do that because the client mightn't have
20 that information or they mightn't give me that
21 information, so I pass it on to Tusla to do that. They
22 investigate so far as --

23 303 Q. So as far as you were concerned, unless -- unless you
24 were satisfied that they had already looked at this and
25 had already investigated this matter, you had to notify
26 them?

27 A. Yes.

28 304 Q. And you knew that would entail going to the Gardaí as
29 well?

1 A. Well, it had already been possibly dealt with by the
2 Gardaí, but social services certainly would have had to
3 be notified to make that decision.

4 305 Q. So when the -- when you were next contacted by Ms. D,
5 it was in connection with the fact that the report that
6 you had made was causing waves, is that right?

7 A. Yes.

8 306 Q. And that was in April/May of --

9 A. I believe it was May 14th 2014.

10 307 Q. May. And at that point, from what she said to you, you
11 were in a position immediately to recognise that you
12 must have made a mistake, is that right?

13 A. Yes, I knew immediately I had made an error when I saw
14 it in black and white. Initially when she said it on
15 the phone, I didn't believe it. I looked, I had to
16 look at the report myself to see, but yes, I had
17 actually --

18 308 Q. I see. And at that point I take it that you were
19 cognisant not merely of the fact that Ms. D was upset
20 with you, but that you had set in train an appalling
21 injustice as far as Sergeant McCabe was concerned --

22 A. Yes, yes.

23 309 Q. -- by your mistake?

24 A. Yes, I understand that, absolutely.

25 310 Q. And can you tell me, in relation to that matter, who
26 did you discuss -- who, apart from Ms. D and apart from
27 people involved in the HSE, did you discuss the matter
28 with? Did you at any stage speak to any member of An
29 Garda Síochána?

1 A. No.

2 311 Q. Well, you spoke to --

3 A. Sorry, I spoke to Leo McGinn.

4 312 Q. Superintendent McGinn, yes. And what was your
5 understanding, why were you speaking to Superintendent
6 McGinn?

7 A. So I had received a phone call to say that -- from
8 Ms. D, to say that the superintendent in Bailieboro
9 Garda Station, that there was knowledge of this report
10 in Bailieboro Garda Station, and that later I received
11 another phone call from her to say that this person
12 still didn't know, and I was extremely anxious that I
13 resolved the mistake I had made as soon as possible.

14 313 Q. Let's go through that. And you believed that that was
15 Superintendent McGinn didn't know?

16 A. That was my belief at the time, yes.

17 314 Q. And was it Superintendent McGinn?

18 A. There is some confusion on my part around that in terms
19 of, I was -- I felt the person that I needed to speak
20 to was this person, Leo McGinn, and he was aware of the
21 report and I did hear back from him but not aware of
22 the error.

23 315 Q. He know -- well, surely he brought it to the
24 attention -- we now know that he brought it to the
25 attention of Ms. D's father, isn't that right?

26 A. I can't confirm that. I don't know how she came to
27 know it.

28 316 Q. Oh, I see. She never explained to you how she knew
29 that this report was --

1 A. I can't recall, so I don't want to be definitive about
2 it.

3 317 Q. Well, who explained to you that the superintendent was
4 unaware, who gave you that --

5 A. Ms. D.

6 318 Q. Ms. D?

7 A. Yes.

8 319 Q. And on foot of that, what did you do?

9 A. So, on foot of that -- well, I think the first thing I
10 did was try to figure out how -- how -- what I needed
11 to do in order to try and resolve the matter, so it
12 would have meant contacting Fiona Ward, obviously
13 informing my own line manager, contacting social
14 services because they were who I sent the report to. I
15 wouldn't have immediately thought of contacting the
16 Gardaí, simply because I wasn't sure how they got my
17 report in the first place or how that happened and I
18 hadn't given it to them, so I had to establish how that
19 happened.

20 320 Q. Yes.

21 A. So there was a lot of phone calls between, I suppose,
22 myself, my line manager, trying to contact social
23 workers. Then there was obviously the agency that I
24 had referred Ms. D to as well.

25 321 Q. Who was your line manager?

26 A. Fiona Ward.

27 322 Q. Fiona Ward at the time?

28 A. Yes.

29 323 Q. And can you tell me, who thought that at that point you

1 should contact the Gardaí directly in this matter? I
2 mean, your report was not directed to An Garda
3 Síochána?

4 A. No.

5 324 Q. Your original report?

6 A. No, but I became aware that they had the information
7 that I had --

8 325 Q. From that report?

9 A. Yes, very specific.

10 326 Q. So who suggested to you that you, as opposed to
11 somebody in the -- in Tusla, should contact the Gardaí
12 directly by registered post, who came up with that
13 idea?

14 A. That was following my attempts to contact social
15 workers to ascertain who had the report, so it was
16 decided after a few days of not being able to --
17 because it was on the 16th that I heard that the
18 superintendent in Bailieboro still didn't know, and
19 that was very concerning, so at that point it was
20 agreed that I would --

21 327 Q. It was agreed between whom?

22 A. Well, I had told Fiona Ward that I would contact
23 Bailieboro Garda Station, establish who had the report
24 and request it back.

25 328 Q. But the records suggest that somebody suggested to you
26 that you should send a letter by registered post
27 addressed to the superintendent, isn't that right?

28 A. That's correct.

29 329 Q. Who suggested that it should be done by registered

1 post?

2 A. well, anything containing a report like that would be
3 sent usually by registered post, because there was --
4 the report was in it.

5 330 Q. Yes, but who suggested to you, because the account is
6 that you told your superior that it had been suggested
7 to you that you should do it by registered post. Was
8 it a member of An Garda Síochána or was it Ms. D? Who
9 suggested that that particular step should be taken by
10 you?

11 A. To the best of my recollection, it's my belief that I
12 would have discussed that with Fiona and we would have
13 decided that registered post would be the way to go.

14 331 Q. Oh, I think you informed your superior that it had been
15 suggested to you that you should go by way of
16 registered post. I think you wrote an e-mail, did you
17 not?

18 A. Mm-hmm.

19 332 Q. Or, sorry, your superior wrote an e-mail saying that it
20 had been suggested to you?

21 A. Yes, that could have been through our involvement
22 with -- I was also in contact with Anne Masterson, who
23 is in administration, and there was a concern around
24 data breach, so I suppose how to proceed from there on.

25 333 Q. Sorry, I just wanted to look at that for a second. You
26 wrote to an Eileen Armitage on the -- you sent her an
27 e-mail on the 2nd -- sorry, this is in material that
28 was made available to my solicitors by Tusla. Maybe if
29 I just read it to you. It's "*Hi Eileen, following our*

1 *conversation yesterday*" -- and it's addressed to Eileen
2 Argue, I think --

3 **CHAIRMAN:** This is an e-mail, Mr. McDowell, isn't it?

4 **MR. MCDOWELL:** Yes. *"Following our phone conversation*
5 *yesterday, I am contacting you to inform you that I had*
6 *another call in relation to the retrospective report,*
7 *which, as you are aware, contains a clerical error. I*
8 *was informed that the superintendent in the*
9 *jurisdiction referred to in the report was not yet*
10 *aware of the clerical error and has been asked to meet*
11 *with The Garda Commissioner"* -- and we understand that
12 could be an area commissioner -- *"in relation to the*
13 *case. I have agreed to send the superintendent the*
14 *amended and correct report by registered post today.*
15 *If you have any queries in relation to this matter,*
16 *please do not hesitate to call on me."*

17 So who -- with whom did you agree to send --

18 A. It's possible that I felt, given the circumstances and
19 the anxiety surrounding this, that it would be for the
20 best to send it by registered post to ensure that they
21 got the correct report.

22 334 Q. Well, can you tell us, who was it that told you that
23 the superintendent in the jurisdiction referred to in
24 the report was not yet aware of the clerical error?

25 A. That was from my conversation with Ms. D.

26 335 Q. So she was in a position to impart that information to
27 you?

28 A. That is my belief, yes.

29 336 Q. And did you agree with Ms. D that you would send the

1 letter -- that you would send the report to that
2 superintendent?

3 A. I am not clear if I said that in the phone conversation
4 but I certainly referred to it in my letter in updating
5 her as to what I had done to try and resolve the
6 matter.

7 **CHAIRMAN:** Mr. McDowell, I wonder could I just try and
8 clarify this in my own mind. We know the report goes
9 in, we know the report says digital abuse as opposed to
10 an encounter on a couch. By saying that the
11 superintendent wasn't aware of the error, I take it
12 what people are saying is that the superintendent was
13 aware of the allegation of digital abuse but wasn't
14 aware that it was an error?

15 **MR. MCDOWELL:** An error, that's correct.

16 **CHAIRMAN:** And that things had not been escalated;
17 that, in other words, no one had ever alleged this
18 against Sergeant McCabe.

19 **MR. MCDOWELL:** Well, nobody had ever made that --

20 337 Q. I mean, the error is the error that you have made,
21 isn't that right?

22 A. Yes, yes, and completely unrelated to Mr. McCabe, but
23 yes.

24 338 Q. And the superintendent was taking -- you were led to
25 believe he was taking the --

26 A. Erroneous allegation at face value.

27 339 Q. -- the digital penetration matter at face value, is
28 that right?

29 A. Yes.

1 340 Q. That was your impression?
2 A. Yes, that was my understanding and my concern.
3 341 Q. Yes. And were you aware that -- or did anybody tell
4 you that the matter was being investigated by Gardaí
5 from another area at the time?
6 A. I think that was referred to in the e-mails. I think I
7 was given that information.
8 342 Q. So, as far as you knew, your report containing
9 erroneous material about digital penetration, was now
10 the subject of a live Garda investigation?
11 A. Yes, that was my understanding.
12 343 Q. And you were -- you were attempting to redress that
13 wrong to Sergeant McCabe --
14 A. Absolutely, absolutely.
15 344 Q. -- by notifying the superintendent in Bailieboro, is
16 that right?
17 A. Yes, that's correct.
18 345 Q. By registered post?
19 A. That's correct, to ensure that he got the correct
20 report.
21 346 Q. And just as a matter of interest, you identified the
22 three sentences, is that right --
23 A. Yes.
24 347 Q. -- which you said were included in error?
25 A. That's correct.
26 348 Q. You don't understand how it happened?
27 A. No, unfortunately.
28 349 Q. There is a reference I think in Laura Connolly's
29 statement --

1 A. Mm-hmm.

2 350 Q. -- that -- and that the actual names of Ms. D and Ms. Y
3 were quite similar, is that -- I mean, I don't want to
4 know what Ms. Y's name is.

5 A. Right.

6 351 Q. But, I mean, is that correct?

7 A. One could say that.

8 352 Q. Could you confuse them?

9 A. I can't confirm whether that is how I made the mistake,
10 and I suppose I am at pains not to give any more
11 identifying information in relation to the two clients.

12 353 Q. No, no, I agree with you.

13 A. Yes.

14 354 Q. But --

15 A. But I can see how that -- yes, it's something that I
16 considered.

17 355 Q. You can see how that mistake would be made, is that
18 right?

19 A. It's something I considered at the time, yes.

20 **CHAIRMAN:** well, I mean, the names are what, as similar
21 as - and I don't want you to tell me - Charleton,
22 Chamberlain, Chalmers? But, I mean, they are all
23 different names, I mean, aren't they?

24 A. Along that -- yeah. I mean, they were still a mistake.
25 It doesn't change the fact, I suppose, that it should
26 have been picked up.

27 **MR. MCDOWELL:** A rose by any other name.

28 356 Q. But in any event, you identified three sentences --

29 A. Yes.

1 357 Q. -- to be removed --

2 A. Yes.

3 358 Q. -- as erroneous, isn't that right?

4 A. That's correct.

5 359 Q. When did you first learn that only two of those
6 sentences had been removed and that the -- the content
7 about threatening the father had been left on the
8 amended and improved report?

9 A. You are the first person to tell me that.

10 360 Q. I see. You have never been told that, in fact, the
11 correction that you proposed and the erroneous
12 material --

13 A. No.

14 361 Q. -- that one of the three sentences was still left
15 there --

16 A. No.

17 362 Q. -- at the end of all of your efforts to bring about a
18 correction?

19 **CHAIRMAN:** I am aware of this, Mr. McDowell, but it
20 might help to clarify was left there by whom exactly.

21 **MR. MCDOWELL:** Yes, that is another day's work. I am
22 just trying to work out did this witness ever learn
23 that her efforts to correct it were only partially
24 successful.

25 **CHAIRMAN:** The sentence which was carried over was the
26 sentence "*and in the event of a report, he is going to*
27 *kill her father,*" or words to that effect.

28 **MR. MCDOWELL:** Threatened her father.

29 **CHAIRMAN:** That sentence, for some reason, decided to

1 have a life of its own and continue on.

2 363 Q. **MR. MCDOWELL:** You weren't aware of that?

3 A. No.

4 364 Q. I see.

5 **MR. MCGUINNESS:** Sir, I think it's appropriate for the
6 witness to be told by Mr. McDowell at this stage, for
7 the public record at this point in time, that this was
8 not Ms. Brophy's error, it was an error made by the
9 Gardaí.

10 **MR. MCDOWELL:** well, I think I am making that quite
11 clear, that her efforts to retrieve the situation were
12 only partially successful.

13 **CHAIRMAN:** And I can appreciate how confusing things
14 are, I get confused myself, but it seems the situation
15 is as follows: that in terms of social work, the
16 errors were corrected, but for some bizarre reason in
17 December 2015 someone plucked out the wrong file,
18 notwithstanding your efforts, is that -- that seems to
19 be the situation, and hence the Barr letter from social
20 work to Sergeant McCabe.

21 **MR. MCDOWELL:** No, it's a different point. It's that
22 one of -- the threat piece --

23 **CHAIRMAN:** No, I know.

24 **MR. MCDOWELL:** -- is still left in the Garda -- in the
25 complainant's complaint to the Garda.

26 **CHAIRMAN:** Mr. McDowell, it's getting like a Celtic
27 decoration at this point.

28 **MR. MCDOWELL:** I accept that. Anyway, this witness was
29 unaware of this at --

1 **CHAIRMAN:** The point is, what you are putting to her
2 is, that when the Gardaí made their correction, they
3 left in the point about threatening the father.
4 **MR. MCDOWELL:** well, Tusla did -- when Tusla were asked
5 to correct it, they left in one of the three
6 sentences --
7 **CHAIRMAN:** All right.
8 **MR. MCDOWELL:** -- in their communication to the Gardaí.
9 **CHAIRMAN:** well, then, let's, if you wouldn't mind --
10 put it if you want --
11 **MR. MCDOWELL:** I will leave it at that.
12 365 Q. Can I ask you one other thing. In December of 2015,
13 Sergeant McCabe was written to with a Barr letter. Did
14 anybody come back to you in the intervening period --
15 A. No.
16 366 Q. -- in relation to these matters?
17 A. No.
18 367 Q. There is a Ms. O'Loughlen wrote to him -- on the 29th of
19 December 2016 alleging digital abuse of -- digital
20 penetration of Ms. D.
21 A. No, I thought it had been resolved.
22 368 Q. Did anybody, in the year-and-a-half which followed the
23 discovery by you of this catastrophic mistake, did
24 anybody ever come back to you about the matter?
25 A. No.
26 369 Q. And when were you first asked for an explanation as to
27 how it had happened?
28 A. At the time I discovered the error?
29 370 Q. Yes.

1 A. Around that time I would have met with my supervisor,
2 Fiona Ward, to debrief in terms of to try and ascertain
3 what might have happened - now, we were looking back
4 nine months - to ensure that it didn't ever happen
5 again. So that would have been the first time.

6 371 Q. There is one thing that Mr. McGarry reminds me. There
7 was -- a lot of effort was made about apologising to
8 Ms. D --

9 A. Mm-hmm.

10 372 Q. -- and drafting letters. Did anybody in the whole
11 process ever think of apologising to Sergeant McCabe
12 and his family for what had happened, to your
13 knowledge?

14 A. I can't speak for other people. I would welcome the
15 opportunity myself.

16 373 Q. I am not asking you now, because obviously I fully
17 appreciate that you understand the gravity of what
18 happened, and I know that if I asked you to apologise
19 you would, but there is no point in me asking you to do
20 that, to be honest with you. But did anybody in the
21 system ever ask you to participate in making some
22 redress to Sergeant McCabe?

23 A. Not that I can recall.

24 374 Q. And was it your impression from April/May of 2014
25 onwards that Sergeant McCabe remained entirely in the
26 dark about this?

27 A. I wasn't aware of what happened after that, whether he
28 was informed or not or -- but not by ourselves.

29 375 Q. You must have wondered as to what the reaction would be

1 if he was aware of it?

2 A. Yes, yes.

3 376 Q. So did you believe and/or hope that simply he was
4 wholly unaware of this catastrophe?

5 A. I suppose I was hoping that the impact of the error
6 that I had made had been resolved insofar as it may not
7 have been disclosed. I don't know.

8 **MR. MCDOWELL:** Thanks very much. Thank you very much
9 indeed.

10

11 **END OF CROSS-EXAMINATION BY MR. MCDOWELL**

12

13 **MR. MCGUINNESS:** Sir, just before any other parties
14 cross-examine Ms. Brophy, when I intervened there to
15 ask Mr. McDowell to clarify with Ms. Brophy that it
16 wasn't being suggested that it was her error that the
17 third sentence had been left in, I --

18 **MR. MCDOWELL:** I have done that several times.

19 **CHAIRMAN:** No, I know, but --

20 **MR. MCGUINNESS:** I want to correct my own error.

21 **CHAIRMAN:** All I am interested in is clarity. We know
22 where a lack of clarity goes.

23 **MR. MCDOWELL:** I have never suggested that she was
24 aware of the failure, the second failure.

25 **CHAIRMAN:** No. And I have read the documentation,
26 there is nothing to suggest that anyone ever brought
27 that to her attention.

28 **MR. MCGUINNESS:** I am not rebuking Mr. McDowell, I am
29 rebuking myself because I misstated the position

1 slightly in the sense that it was the Garda
2 notification that contained the error but it wasn't
3 compiled by the Gardaí. That was compiled by Tusla.

4 **CHAIRMAN:** It was Tusla to Garda.

5 **MR. MCGUINNESS:** And I am making that correction.

6 **CHAIRMAN:** Yes. Sorry, is it Mr. Cush, yes?

7 **MR. CUSH:** Chairman, I do have just a few questions for
8 the witness, but I was assuming that it would be
9 appropriate if I went second last, so if other parties
10 had questions.

11 **CHAIRMAN:** Does anybody have any other questions for --
12 Garda, for example?

13 **MR. O'HIGGINS:** Yes, Judge.

14
15 **MS. BROPHY WAS CROSS-EXAMINED BY MR. O'HIGGINS**

16 **AS FOLLOWS:**

17
18 377 Q. **MR. O'HIGGINS:** My name is Mícheál O'Higgins,
19 Ms. Brophy, and I am one of the barristers for the
20 Commissioner and certain senior gardaí. Can I start
21 with just dealing with matters of sequence in relation
22 to the revealing of the error and coming to your
23 attention that the very unfortunate error had been
24 made. The statement of Ms. D that has been provided in
25 the papers to the parties indicates that she was
26 contacted by her father - this now is in the run-up to
27 your telephone contact on the 14th of May with Ms. D
28 that you have spoken about already, all right - and it
29 indicates that she had been contacted by her father,

1 who had seen the HSE notification, all right, and he
2 told her that it referred to an allegation of digital
3 penetration, and he was questioning her about that.
4 And the statement of Mr. D, her father, indicates that
5 he was shown the notification by a colleague in the
6 station, a Superintendent McGinn, all right? And can I
7 ask you, would it tally with your understanding of
8 matters that when Ms. D made contact with you on the
9 14th of May to alert you to the error, that it would
10 make sense that she had spoken to somebody who had
11 seen -- who had seen the incorrect notification?

12 A. That was my understanding at the time.

13 378 Q. Right. And Superintendent McGinn confirmed that he had
14 shown the notification to her father, and the sequence
15 would appear to be that that was raised with Mr. --
16 Mr. D raised it with his daughter and then she becomes
17 aware from that the notification that had been received
18 by the Gardaí alleged digital penetration, and, broadly
19 speaking, that is something you are aware of in terms
20 of the sequencing?

21 A. That is my understanding, that she became informed
22 through somebody who had access to that report.

23 379 Q. Yes. And your evidence has been that Ms. D rang your
24 office and left a message, was it to be contacted by
25 you on the 14th of May?

26 A. Yes, that's correct.

27 380 Q. Right. I wonder, for the witness's benefit, if
28 document 1629 might be put up on the screen. And this
29 now is the statement of your client's father, Mr. D,

1 which actually starts at page 1624. It's an
2 interview -- a statement compiled following an
3 interview by Tribunal personnel with Mr. D. And
4 perhaps, actually, for the witness's benefit, if what
5 is put up on screen is page 1629 of the materials,
6 which are within folder number 4. That may not assist,
7 but in any event, it's page 1629, for Mr. Kavanagh's
8 benefit. Do you see about three lines from the bottom,
9 Ms. Brophy, of that statement, and I haven't brought
10 you to the beginning of it but this is the context,
11 three lines from the bottom it reads:

12 *"The next time I knew anything about this, I was in*
13 *work in Bailieboro in May 2014."*

14 Have you located that?

15 A. Where is that now? Sorry, just give me a moment.

16 381 Q. Three lines from the bottom of page 1629.

17 A. Oh, sorry, I see it now, yes, yes.

18 382 Q. Page 1629. And this is Mr. D's statement, and he
19 continues: *"Early May, my superintendent, Leo McGinn,*
20 *asked me did I have a minute. I went into his office.*
21 *He handed me a HSE referral form and asked 'is that*
22 *your lassie? I said 'yeah, that is her'. I saw the*
23 *detail of the allegation, digital penetration. I*
24 *couldn't believe it. I got a fierce shock. I couldn't*
25 *think straight. I felt had she told the counsellor*
26 *this and not told us. Had this actually happened. She*
27 *had maybe told the counsellor but had not told us. I*
28 *was sick to my stomach. I couldn't wait to get out of*
29 *the office."*

1 And then he says: "*I didn't say anything to Leo McGinn*
2 *as I didn't know what was going on.*"
3 All right.
4 A. Okay.
5 383 Q. Now, and it indicates then: "*I went home and Mrs. D*
6 *was at home.*" And then there is his description of
7 making contact with his daughter, which is dealt with
8 later on on the same page. And my question is, am I
9 right in my understanding that Ms. D, and indeed I
10 think you may have given evidence to this already,
11 Ms. D, as well as phoning your office on the 14th of
12 May, followed up with further calls both on the 14th of
13 May and I think subsequently?
14 A. Yes, that's correct.
15 384 Q. And would you accept that that is consistent with
16 different parties acquiring an increasing area of
17 information about what had happened and then her coming
18 back to you with accumulated information after further
19 discussions she may have had with other people, would
20 that be fair?
21 A. I hadn't considered that. Yeah, that is possible, I
22 suppose.
23 385 Q. Just in terms of, it is correct, isn't it, that, for
24 instance, on the 14th of May she did have a number of
25 different contacts with you?
26 A. That's correct.
27 386 Q. And she was concerned about the error -- or about the
28 reference in the notification because it was something
29 she had never said?

1 A. That's correct.

2 387 Q. And she wanted something done about it?

3 A. Yes.

4 388 Q. And you did your level best to do something about it
5 and took the various steps you described?

6 A. Yes.

7 389 Q. Could I ask you, and perhaps Mr. Kavanagh could assist
8 with this as well, would you mind turning to page 980
9 of the materials, which is, I think, the incident
10 report form, Ms. Brophy, that you -- actually, sorry,
11 ahead of that, I think to set it in context, we might
12 just look at the notification itself that kick-started
13 this entire thing, and that is at page 1716. Perhaps I
14 should have started with this, really. Do you have
15 that there?

16 A. I do. I can see that in front of me.

17 390 Q. And this is a notification of suspected child abuse
18 referral from, looking at the right-hand side, the
19 Child and Family Agency in Monaghan, is that right?

20 A. Yes, I can see that there.

21 391 Q. And it's addressed to the superintendent in charge of
22 Bailieboro Garda Station.

23 A. That's right.

24 392 Q. And looking at the right-hand -- underneath the
25 addressee on the right-hand top corner, it bears a
26 date, isn't that right? Do you see that?

27 A. That's correct, the 2nd of May 2014.

28 393 Q. Right. And I think to the left of that there is what
29 looks like a Garda receipt of date-stamp -- excuse me,

1 a Garda date-stamp indicating the date it was received?

2 A. Okay, yeah.

3 394 Q. And that appears to be received in the superintendent's

4 office on the 7th of May.

5 A. Right.

6 395 Q. And I am correct, amn't I, that this is -- it isn't

7 your document, but it is the incorrect document that

8 issued on foot of the unfortunate error, isn't that

9 right.

10 A. It would seem so, yes.

11 396 Q. And we know that because if one looks down into the

12 body of it, it records -- you might just --

13 A. Oh, yes, I see there. Did you want me to read that?

14 397 Q. Yes, would you mind?

15 A. Okay. *"Laura Brophy, counsellor with Rian Counselling*

16 *Service reported the following information to the Child*

17 *and Family Agency in August 2013. Ms. D is attending*

18 *counselling with Rian. During the course of*

19 *counselling, she alleged that she experienced sexual*

20 *abuse in childhood, that this abuse involved digital*

21 *penetration, both vaginal and anal. This abuse is*

22 *alleged to have occurred on one occasion in 1998 to*

23 *1999. Ms. D reports being aged six or seven years old*

24 *at the time of this alleged abuse. Ms. D alleges that*

25 *the alleged perpetrator of this abuse threatened her*

26 *father if she said anything. Ms. D alleges that this*

27 *incident of alleged abuse occurred whilst she and her*

28 *parents were visiting the home of the alleged*

29 *perpetrator. Mr. D alleges that her parents and the*

1 *alleged perpetrator's wife were in another part of the*
2 *house, that she was playing hide and seek with the*
3 *alleged perpetrator and his two daughters, who were*
4 *then aged approximately 3 years and 5 years of age.*
5 *Ms. D identified the alleged perpetrator as Mr. Maurice*
6 *McCabe/a specific address for Mr. McCabe was not*
7 *provided. Ms. D reports that Mr. McCabe resides in*
8 *County Cavan. Mr. McCabe and Ms. D's father were work*
9 *colleagues, both members of An Garda," it says here.*

10 398 Q. Right.

11 **CHAIRMAN:** would you just, Mr. O'Higgins, just give me
12 the page, please, for that.

13 **MR. O'HIGGINS:** That is 1716.

14 **CHAIRMAN:** And the question you wanted to ask then was?

15 399 Q. **MR. O'HIGGINS:** This is the -- this is, as it were,
16 the -- this is the flag, this is the bombshell that
17 arrived in the guards.

18 A. Mm-hmm.

19 400 Q. And it is based upon, unfortunately, the error?

20 A. Mm-hmm.

21 401 Q. And it is that that resulted ultimately in Ms. D, the
22 mention of that to Ms. D in making contact with you on
23 the 14th of May, isn't that so?

24 A. I understand that to be the case now, yes. I hadn't
25 seen this before, but, yes.

26 402 Q. Right. So now moving then to the steps you took to,
27 doing your best to undo the difficulty, I think you
28 compiled an incident report on the 14th of May which
29 tracks your initial efforts to deal with the matter,

1 isn't that so?

2 A. That's correct, yes.

3 403 Q. And you might take a look at that. It's page 979 of

4 the materials. And this is headed "*Incident Report*

5 *14th of May, 2014*," and I think we have already

6 examined this document to a certain extent.

7 A. Yes.

8 404 Q. This is your document, isn't that right?

9 A. That's correct.

10 405 Q. And just locating it in time, the 14th of May I believe

11 to have been a wednesday. Do you know that to be the

12 case?

13 A. I will have to take your word for it.

14 406 Q. I don't intend it as a quiz but --

15 A. Sorry.

16 407 Q. I can tell you the calendar indicates it's a wednesday.

17 A. I accept that.

18 408 Q. Which would mean that the 16th of May would have been a

19 Friday, which is when you had --

20 A. Correct.

21 409 Q. -- the conversation with Superintendent Leo McGinn, and

22 also is the date of the letter you sent to

23 Superintendent McGinn, isn't that so?

24 A. That's so.

25 410 Q. And that is the document, again just looking at the

26 sequencing, that is the document that was sent by

27 registered post?

28 A. That's correct, yeah.

29 411 Q. So if that be a Friday, it would presumably follow that

1 that would have been received by An Garda Síochána
2 sometime after the weekend?

3 A. Monday, possibly, was my anticipated -- I had hoped
4 that they would receive it by Monday.

5 412 Q. Yes. Right. Well, in any event, just returning to
6 this document for a moment, it indicates, perhaps three
7 paragraphs down, it says: "*When I spoke to Ms. D*
8 *today...*"
9 It says "X", but that is Ms. D, isn't that right?

10 A. Yes.

11 413 Q. "*... upon realising my error I apologised and informed*
12 *her that I would contact the social work service in*
13 *Cavan to inform them of the error. I also informed*
14 *Ms. D that I would immediately correct this error on*
15 *the report and put in the correct information and give*
16 *this to the social work service in Cavan.*"
17 And that was your first thought in terms of fixing it?

18 A. Yes.

19 414 Q. And then I think towards the bottom of the same page,
20 you record that you received another call from Ms. D,
21 isn't that so?

22 A. That's correct.

23 415 Q. And I think your note indicates that "*I then*
24 *received*" -- this is the last paragraph: "*I then*
25 *received another call from Ms. D to clarify the mistake*
26 *in the report as she wondered if the erroneous*
27 *allegation in the report was from another client but*
28 *intended for the same alleged perpetrator. I informed*
29 *Ms. D that the error was entirely my own and from a*

1 *completely different report unrelated to hers. Ms. D*
2 *then asked if I would contact the superintendent in the*
3 *Garda station that had a copy of the report to inform*
4 *them of the error."*

5 A. Yes.

6 416 Q. And am I correct in my understanding that that perhaps
7 was why you contacted -- it perhaps wasn't the normal
8 procedure, is that right --

9 A. That's correct.

10 417 Q. -- for you yourself as a counsellor to make contact
11 with the guards?

12 A. That's correct, yes.

13 418 Q. But you were in something of a, I won't overstate it,
14 but something of a crisis mode?

15 A. Yes, absolutely.

16 419 Q. You were making efforts to arrest the error that had
17 occurred?

18 A. Yes.

19 420 Q. And in that context as well, the client herself had
20 made a request that you contact the guards?

21 A. That's correct, yes.

22 421 Q. And you did contact the guards?

23 A. I did, yes.

24 422 Q. Well, continuing with the sequencing then, would you
25 mind turning to the document at 987, please. And this,
26 now, is, if you have it there, Ms. Brophy --

27 A. This is an e-mail.

28 423 Q. -- this is an e-mail from yourself to your line
29 manager, Fiona Ward?

1 A. That's correct.

2 424 Q. And it's dated the 15th of May, which, if I am correct
3 about the calendar, is the Thursday?

4 A. That's correct.

5 425 Q. It's the day after Ms. D has made contact with you to
6 alert the error?

7 A. Yes, I think so.

8 426 Q. And you indicate in this e-mail that: "*Hi Fiona, I
9 just wanted to update you of my contact with Eileen
10 Argue*" -- if that's the correct pronunciation -- "*team
11 leader in the Cavan Social Work Service.*"
12 And you indicate you had some difficulty getting a hold
13 of Ms. Argue, so it was just minutes ago you were able
14 to speak with her directly. Does that accord with your
15 recollection?

16 A. Yes, yes.

17 427 Q. And you indicate that "*Ms. Argue informed me that she
18 had contacted the chief superintendent in charge of
19 this investigation and he informed her that the alleged
20 has not yet been contacted in relation to the case as
21 they were just beginning to look into the report.*"
22
23 *So -- "the report from social services yesterday."*

24 A. Yes.

25 428 Q. And Ms. Argue informed him of the error on the report?

26 A. Mm-hmm.

27 429 Q. Could I take it from that that are you -- you are
28 knowledgeable, or are you knowledgeable, about Garda
29 structures and ranks, and so forth?

1 A. No, and I suppose I wasn't aware who she was referring
2 to, so I thought when I got a call back from Bailieboro
3 Garda Station that Leo McGinn was the person that
4 possibly she had been in contact with. There was
5 confusion around that.

6 430 Q. So can we take it from that that insofar as the notes
7 of this time make reference to particular, whether it's
8 superintendent or the superintendent or even chief
9 superintendent, there may be a degree of inaccuracy in
10 that?

11 A. It's possible, yes.

12 431 Q. All right. At any rate, you yourself didn't have a
13 phone conversation with a chief superintendent or do
14 you know?

15 A. I hadn't at that point. I think I had attempted to
16 contact but I hadn't heard back.

17 432 Q. I see. All right. Now, the note does indicate at any
18 rate that, insofar as it's correct, that Eileen Argue
19 had been on to the chief superintendent or he had been
20 on to her?

21 A. Yes.

22 433 Q. Isn't that right?

23 A. Yes.

24 434 Q. And it indicates that, again if we take it at face
25 value, the information she was given was that it says
26 "*The Gardaí were just beginning to look into the report*
27 *from social service.*" Do you see where it says that?

28 A. Yes.

29 435 Q. It says --

1 A. *"They were just beginning to look into the report from*
2 *social services yesterday."*

3 436 Q. Yes. Now, of course, that would be the original
4 incorrect notification, isn't that right?

5 A. That's correct, yes, that was my understanding.

6 437 Q. Because at this point in time, this being the 15th of
7 May, the Thursday, you hadn't sent your --

8 A. No.

9 438 Q. -- your correcting letter, as it were?

10 A. Yeah, with the accompanying correct report, yes, that's
11 right.

12 439 Q. With the accompanying correct report. So that must
13 refer to the one we have looked at a few moments ago --

14 A. That is my belief, yes.

15 440 Q. -- on page 176 containing the incorrect information?

16 A. That is my belief, yes.

17 441 Q. And this note indicates that the Gardaí, and sorry for
18 labouring it now, but the Gardaí were just beginning to
19 look into the initial incorrect report?

20 A. Yes, that was my understanding.

21 442 Q. Yes. And Ms. Argue, it seems, had indicated to you,
22 that you were able to record it here, that she
23 mentioned something about keeping the original report
24 along with the updated report may be what is going to
25 happen?

26 A. Can you just repeat that, sorry.

27 443 Q. Certainly. Do you see there towards the end of the
28 note, *"Ms. Argue informed me that he mentioned*
29 *something about keeping the original along with the*

1 *updated report. If you have any questions about this,*
2 *I am on the mobile."*

3 A. Yes, yes.

4 444 Q. So there was mention perhaps, insofar as you understood
5 the position, that it had been said to Ms. Argue that
6 somebody within An Garda Síochána would keep the
7 original report along with the updated report?

8 A. That was my understanding, yes, yeah.

9 445 Q. Once she had pointed out there was some class of error?

10 A. Yes.

11 446 Q. Would you mind turning then to page 988, which is the
12 next page over, and this again is a note that assists
13 in tracking the efforts you were making to arrest the
14 situation, isn't that right?

15 A. Yes.

16 447 Q. And this is a note from yourself again to Fiona --

17 A. Ward.

18 448 Q. -- Fiona Ward, and it's the 16th of May, which is the
19 Friday?

20 A. That's correct.

21 449 Q. Is that correct in the sequence?

22 A. Yes.

23 450 Q. And you were updating her and you say: "*Just a quick*
24 *update. I tried Eileen Argue but unfortunately she is*
25 *out of the office today so I sent her an e-mail. I*
26 *received a call back from the superintendent and he*
27 *informed me that he had not been told about the error*
28 *so I explained the issue to him."*

29 A. Yes.

1 451 Q. Now, again, subject to the frailty that that may not be
2 the superintendent, but it's a member of An Garda
3 Síochána --
4 A. Right.
5 452 Q. -- it seems that -- would it be correct that, whichever
6 guard you were speaking to was indicating he hadn't
7 received the notification?
8 A. He hadn't received the notification of the error.
9 453 Q. Of the error?
10 A. But he was in possession of the erroneous report.
11 454 Q. Yes.
12 A. That was my understanding, so --
13 455 Q. And then you did your best to explain the error to him?
14 A. That's correct.
15 456 Q. Right. And do you see further on it says: "*He told me*
16 *the matter has now been given over to the*
17 *Commissioner.*" My understanding of matters from the
18 Garda records and my instructions, that, in fact, the
19 original incorrect notification was sent, in fact, to
20 the Assistant Commissioner?
21 A. Okay.
22 457 Q. Again, might it be that you are simply not --
23 A. I wouldn't have been aware that there was more than one
24 or that there was different levels of Commissioner.
25 458 Q. All right. So that is perhaps subject to the same
26 possible frailty in relation to precisely to whom it
27 was sent?
28 A. That's possible.
29 459 Q. And then over the page then, page 989, there is your

1 letter to Superintendent McGinn of the 16th of May,
2 page 989. Do you have that there?

3 A. That's right, yes.

4 460 Q. And this records, doesn't it, that just in the first
5 line of it: "*Following our telephone conversation*
6 *today, I am writing to confirm...*"

7 A. Yes.

8 461 Q. So are you satisfied that you spoke with Leo McGinn?

9 A. On the 16th, yes.

10 462 Q. On the 16th?

11 A. Yes, that is my understanding.

12 463 Q. Which is the Friday?

13 A. Yes.

14 464 Q. And again, continuing with your efforts to take formal
15 steps to arrest the difficulty, you followed that
16 conversation that you had with him with this written
17 letter?

18 A. And the accompanying corrected report.

19 465 Q. Yes.

20 A. Yes, by registered post.

21 466 Q. And you say in the letter: "*Following our conversation*
22 *today, I am writing to confirm that a report I made to*
23 *the social work service in Cavan on the 9th of August*
24 *'13 contained an administrative error which I wish to*
25 *address. On page 1 of the original report I sent on*
26 *behalf of Ms. D under the title 'Description of Abuse',*
27 *the sentence which begins with 'Ms. D informed me' and*
28 *ends with 'she said anything' is incorrect information*
29 *and should be disregarded. I have amended the report*

1 to include the correct information as given to me by
2 Ms. D and I have enclosed the correct report with this
3 letter."

4 And it's your recollection that you did that?

5 A. It's my recollection that I did that.

6 467 Q. And I think you have told the Tribunal this was a
7 letter you sent by registered post?

8 A. Yes.

9 468 Q. And that is perfectly normal, I imagine, is it?

10 A. Yes, given that there was a report in it, yes.

11 469 Q. And it was your intention that An Garda Síochána would
12 receive that sometime Monday or Tuesday?

13 A. Yes, yes, that is my understanding.

14 470 Q. Now, you may not be aware of this, in fact I imagine
15 you aren't, but Garda records indicate that, upon
16 receipt of this document dated the 16th of May, the --
17 on the Tuesday -- on the Tuesday the 20th of May,
18 the -- Superintendent McGinn forwarded the corrected
19 notification to his, as it were, line manager, the
20 chief superintendent?

21 A. Okay.

22 471 Q. Did you know that?

23 A. No, I was hoping that anybody who had access would have
24 been informed, but...

25 472 Q. All right. And you are aware, are you, that, on foot
26 of those steps being taken in An Garda Síochána, on
27 foot of your corrected notification, Gardaí
28 subsequently made efforts to clarify what had occurred
29 and also to clarify whether or not the notification was

1 one and the same as the complaint that was originally
2 made back in 2006. Are you, broadly speaking, aware of
3 that?

4 A. No.

5 473 Q. All right. Well, could I ask for your assistance then.
6 You might -- if Mr. Kavanagh could bring up page 1725.

7 A. So this is correspondence between Fiona Ward and --

8 474 Q. And this is correspondence, yes, so it's from James
9 Sheridan, Chief Superintendent, to Fiona Ward, your
10 line manager?

11 A. Right, yes.

12 475 Q. And this is dated the 9th of June.

13 A. Mm-hmm.

14 476 Q. And it's addressed to Ms. Ward referring to her
15 correspondence of 22nd ult., which would have been of
16 May, isn't that right?

17 A. That's correct, yes.

18 477 Q. All right. In fairness, this may be more for --

19 A. For Fiona's.

20 478 Q. -- for her, but just to assist you with the sequencing.

21 A. Sure, yes.

22 479 Q. And I am going to ask you if this corresponds with your
23 understanding of matters. This letter indicates that:
24 *"In order to progress your request, can you provide*
25 *clarification on the following points: does the*
26 *referral in question relate to a previous disclosure*
27 *which was investigated by An Garda Síochána in 2006*
28 *that subsequently resulted in the submission of a file*
29 *to the Director of Public Prosecutions, or does it*

1 *relate to a new further disclosure which requires*
2 *investigation by An Garda Síochána?"*
3 Do you see that there?
4 A. I do, yes.
5 480 Q. And, broadly speaking, are you aware from Fiona Ward
6 that that clarification was sought?
7 A. Only more recently when we were preparing for the
8 Tribunal. I wasn't aware of it at the time because she
9 had taken over at that point in terms of correspondence
10 with Gardaí.
11 481 Q. All right. You became aware of it subsequently?
12 A. Subsequently, yes.
13 482 Q. And then I think the second clarification that was
14 sought, the second bullet-point down says: "*I would*
15 *appreciate clarification on how the administrative*
16 *error referred to occurred and came to light which*
17 *resulted in your letter dated 22nd of May 2014."*
18 And again, was that something that came up between --
19 in your contacts with Fiona Ward?
20 A. We would have discussed that, yes. Not necessarily --
21 not this letter, but in the course of trying to
22 understand how the error occurred in my personal
23 supervision with Fiona, we would have had a discussion
24 about what might have happened that led to this error
25 and how we could prevent it ever happening again, so...
26 483 Q. Yes.
27 A. Does that answer the question?
28 484 Q. So I suppose it would be natural and reasonable, I
29 would imagine, that, on foot of the request for

1 clarification being sent by the Gardaí, that would have
2 triggered, perhaps, if it wasn't going to happen
3 anyway, that would have triggered your discussion with
4 your line manager in relation to the request?

5 A. My understanding -- that wasn't my understanding at the
6 time, but that is maybe where it came from, but my
7 understanding was that, because I made an error, it had
8 to be addressed with my line manager, and, do you know,
9 that it was something that we had to look into as a
10 service.

11 485 Q. Certainly.

12 A. Yes.

13 486 Q. And can we take it, therefore, that you -- there is
14 nothing controversial in this, but you and Fiona Ward
15 would have had a number of discussions around the issue
16 at this time in an effort (a) to arrest the difficulty;
17 and (b) to provide information as sought by the persons
18 to whom information had been sent?

19 A. Yes, that is my belief.

20 487 Q. And that included An Garda Síochána?

21 A. Mm-hmm.

22 488 Q. So just in terms then of the resting place of where
23 things were, and obviously the Tribunal will be looking
24 at further documents in greater detail as the weeks
25 progress, but if we bring it up to date of -- certainly
26 of June, on foot of your efforts we can say the initial
27 HSE notification, it was communicated to the relevant
28 parties, that is a mistake?

29 A. That was my belief, yes.

1 489 Q. A genuine mistake had occurred?
2 A. That had been completed, yes.
3 490 Q. And, if you like, the incorrect particulars as to the
4 alleged incident were effectively withdrawn or
5 indicated they were wrong --
6 A. Mm-hmm, yes.
7 491 Q. -- Ms. D never said that?
8 A. Absolutely, yes.
9 492 Q. But nonetheless, a corrected notification still stood
10 as a referral, isn't that right?
11 A. That's correct, yes, that there was an original
12 referral, yes, with the correct information on it.
13 493 Q. With the correct information?
14 A. Yes.
15 494 Q. And this was a referral which was a notification of
16 suspected child abuse?
17 A. That's correct.
18 495 Q. And this was a referral which still stood as a referral
19 that the Gardaí were expected to deal with?
20 A. Well, it was my understanding that the Gardaí had dealt
21 with it already and that it hadn't been accepted, but
22 that my intention was that HSE were looking into it. I
23 didn't realise that the Gardaí would take an interest
24 in the original allegation again.
25 496 Q. But this was -- insofar as this came from the HSE to
26 the guards, it was something that had to be dealt with?
27 A. That's my understanding. That was their decision, yes,
28 the social work team. I wouldn't have had any part in
29 that.

1 497 Q. When you say it was their decision, you mean it was the
2 social work team?

3 A. That is exactly it, yes. They are now Tusla; they were
4 the HSE.

5 **MR. O'HIGGINS:** Thanks very much.

6

7 **END OF CROSS-EXAMINATION BY MR. O'HIGGINS**

8

9 **MS. BROPHY WAS CROSS-EXAMINED BY MR. CUSH AS FOLLOWS:**

10

11 **MR. CUSH:** Chairman, if Ms. Brophy could be directed to
12 the document at page 963, please.

13 Ms. Brophy, if you have that document, it records a
14 number of your telephone conversations, isn't that so?

15 A. That's right.

16 498 Q. And the last of them is the 9th of August of 2013, and
17 is referable to your telephone conversation with Briege
18 Tinnelly?

19 A. That's correct, yes.

20 499 Q. And the fourth line of your note refers to concerns
21 about the report having been passed to social work ten
22 years ago, do you see that?

23 A. That's correct, yes, I see that.

24 500 Q. And Mr. McDowell suggested to you that that part of the
25 note is easier to explain if you knew that it had been
26 passed ten years ago, whereas I understand you to be
27 saying that your concern was to ascertain whether it
28 had been passed ten years ago because you didn't know?

29 A. That is -- yes, that's correct. That was the purpose

1 of that phone call.

2 501 Q. Could I ask you then to look to page 832. This
3 document, as we have seen, is Ms. Ward's note of her
4 conversation with you on the 29th of July, isn't that
5 so?

6 A. That's correct.

7 502 Q. Just some days prior to your telephone conversation
8 with Ms. Tinnelly?

9 A. Yes, that's my understanding.

10 503 Q. And this is a -- I think you have told the Tribunal
11 that what she has written here must have come from you?

12 A. Yes, that's correct.

13 504 Q. And if you can see the line just above halfway on the
14 page, I will read it and you can correct me if I am not
15 reading it accurately: "*Don't know if social worker*
16 *involved or not.*"

17 A. That's correct.

18 505 Q. And is that, therefore, a note of what your
19 understanding was as of that date?

20 A. Yes.

21 506 Q. I understand you to say that either your understanding
22 now or your recollection is to the effect that Briege
23 Tinnelly, on that call on the 9th of August, gave you
24 to believe that they didn't have a record and that that
25 was the reason you sent in your report?

26 A. That was my understanding, yes.

27 507 Q. So could I ask you just to look then to the document on
28 page 410. This, as we will see from page 413, is a
29 document signed by Briege Tinnelly and Keara McGlone on

1 the 9th of August 2013, but it's a standard intake
2 record, isn't that so?

3 A. I have never seen that before, but -- as in we don't
4 have one of those, but yes, I believe so.

5 508 Q. We can see that it is a standard form?

6 A. Yes, yes.

7 509 Q. It begins on page 410 of the book, and if we look to
8 Section 12 of this form, on page 412, do you see there
9 is there what is really a question: "*Known to social*
10 *work department.*" Do you see that?

11 A. "*Query previously known?*" Yes. And it's ticked "No".

12 510 Q. If you look at the typewritten section first: "*Known*
13 *to social work department,*" and the entry there is
14 "*No*". And in handwriting somebody raised the question:
15 "*Query previously known?*"

16 A. Yes.

17 511 Q. Could I ask you then to look to page 1300. This is an
18 extract from the statement of Briege Tinnelly.

19 A. That's correct.

20 512 Q. And if we can see just a little below halfway, she is
21 referring to Section 12 of that report form.

22 A. At section 12 I ticked "*no*", is that what you are
23 talking about?

24 513 Q. Yes, that he, Mr. McCabe, was not known to the social
25 work department.

26 A. Yes.

27 514 Q. Can I ask you to look to page 1315. This is an extract
28 from the statement of Keara McGlone. And just above
29 halfway, she says: "*When the duty social worker takes*

1 a call a check will be made to see if the family is
2 already known to social work. The box on section 12 in
3 this case is ticked 'no' which means there wasn't an
4 existing record for Maurice McCabe." Do you see that?

5 A. Yes.

6 515 Q. Now, that form itself and those two statements, are
7 they consistent with your understanding of what Briega
8 Tinnelly told you on the telephone?

9 A. Yes, that was my belief.

10 MR. CUSH: Thank you, Ms. Brophy.

11
12 **END OF CROSS-EXAMINATION BY MR. CUSH**

13
14 MR. MCGUINNESS: Nothing further, sir.

15 CHAIRMAN: I just have a few questions for you, if you
16 don't mind, Ms. Brophy.

17
18 **MS. BROPHY WAS THEN QUESTIONED BY THE CHAIRMAN:**

19
20 516 Q. CHAIRMAN: First of all, by way of clarification, I
21 don't want you to tell me anything outside this
22 question. I appreciate that Ms. D was having
23 difficulties, let's say ordinary coping difficulties.

24 A. Mm-hmm.

25 517 Q. CHAIRMAN: But was it the case that she told you that
26 there had been a mention of Sergeant McCabe in a
27 lecture where she was attending college?

28 A. No, no, I have no recollection of that.

29 518 Q. CHAIRMAN: All right. That didn't come up at any

1 stage?

2 A. No.

3 519 Q. **CHAIRMAN:** In other words, that he had been in some way
4 held up as an example of how to do things in Irish life
5 and she was taking a contrary view?

6 A. No.

7 520 Q. **CHAIRMAN:** That never came up?

8 A. No.

9 521 Q. **CHAIRMAN:** Okay. The second thing is, and that is by
10 way of clarification, I don't know, because one of the
11 things I am confused about is when did Sergeant
12 McCabe's name, if you like, become a household name in
13 this country, and the dates that I seem to have would
14 indicate it seems to be late 2014.

15 A. Mm-hmm.

16 522 Q. **CHAIRMAN:** But I will just have a look at that, if you
17 don't mind. Your reading of the newspapers is perhaps
18 a bit unusual, is it, or what is your habit in that
19 regard?

20 A. I suppose I don't tend to read newspapers. I would
21 listen to the news when driving and sometimes I would
22 look at on-line.

23 523 Q. **CHAIRMAN:** Yes. well, my note is December 2013/early
24 2014 Sergeant McCabe is beginning to receive media
25 attention as a Garda whistleblower.

26 A. Right.

27 524 Q. **CHAIRMAN:** So back in, we are back in August 2013,
28 would his name have impacted on you at all?

29 A. No.

1 525 Q. **CHAIRMAN:** And the whole notion of whistle-blowing,
2 PULSE records, Commissioner O'Mahony's report, anything
3 like that which comes later, would they have meant
4 anything at all to you?

5 A. No, I don't think they were mentioned or referred to.
6 I think that the word "whistleblower" is used but I
7 don't know in what capacity she meant.

8 526 Q. **CHAIRMAN:** Yes. When did you first become aware that
9 Sergeant Maurice McCabe was a central figure in
10 relation to pointing out Garda irregularities?

11 A. Well, it became more apparent in the -- when I
12 discovered the error and when I went to resolve the
13 error, the magnitude of the error, because this person
14 was somebody in the media.

15 527 Q. **CHAIRMAN:** So you were aware of it then?

16 A. Yes.

17 528 Q. **CHAIRMAN:** And we are talking then about May 2014?

18 A. 2014, yes.

19 529 Q. **CHAIRMAN:** Yes.

20 A. Mm-hmm.

21 530 Q. **CHAIRMAN:** And that would seem to correspond with that.
22 Just going back to what was happening, let us say, when
23 the error occurred, you perhaps would not be aware of
24 this, but you will be aware that there was, among other
25 things, an investigation into the disappearance of a
26 computer in relation to an allegation of -- in the
27 northern part of the country relating to a particular
28 individual who was abusing children and as to the
29 custody of that computer, for instance, and that an

1 investigation of a disciplinary kind had been commenced
2 against Sergeant McCabe. Did you know anything at all
3 about that?

4 A. No.

5 531 Q. **CHAIRMAN:** Because there is kind of a curious
6 coincidence of the report in error going in or around
7 the time when, if it was deliberate, and please park
8 that for the moment --

9 A. Yes.

10 532 Q. **CHAIRMAN:** -- it could be regarded as causing maximum
11 trouble?

12 A. Mm-hmm.

13 533 Q. **CHAIRMAN:** In other words, escalating something into
14 something that it was not, with a view to doing
15 somebody down, if you get my drift?

16 A. Yes, I can see what you are saying.

17 534 Q. **CHAIRMAN:** Yes. Do you have, you may have been asked
18 this already and I can't recall, do you have any
19 relations or friends in the Gardaí?

20 A. No. I said in my statement that, yeah, there was one
21 or two people I had come across in terms of a
22 landlord's partner that I know was a member of the
23 Gardaí, and my father-in-law's brother, who is in his
24 80s, I think at one point was a garda, but, no, other
25 than that, no.

26 535 Q. **CHAIRMAN:** And were you at any stage contacted by any
27 members of the Garda Síochána in or around this time in
28 relation to anything to do with Ms. D, anything to do
29 with Sergeant McCabe?

1 A. No.

2 536 Q. **CHAIRMAN:** Did you have any contact of any kind
3 whatsoever?

4 A. I may have had contact in relation to other cases in
5 terms of making a statement, do you know, as in a
6 client of mine at the time was looking to make a
7 statement, but I don't -- I would have to check that,
8 but it would have been in an official capacity. It
9 wouldn't have been in any way related to Ms. D or this
10 case.

11 537 Q. **CHAIRMAN:** If you just consider the dates, and this is
12 what I want to ask you about. On the 21st of June 2013
13 in relation to this case concerning a computer, it's
14 called the Molloy case, it's in the public domain, I am
15 entitled to mention, it's also in the O'Higgins Report,
16 it concerns a sexual abuse, but it just so happens that
17 a computer on which perhaps other records might have
18 been stored went missing out of Garda custody. You
19 appreciate that when something as evidence is brought
20 into Garda custody, that it's kept there for the
21 purpose of the case, and even if somebody wants a
22 computer for their teenage nephew, or whatever, it
23 still remains Garda property until the absolute end of
24 the case?

25 A. Yes.

26 538 Q. **CHAIRMAN:** That went missing, and a disciplinary
27 interview had taken place on the 21st of June 2013 with
28 Sergeant McCabe in relation to the missing computer.

29 A. Okay.

1 539 Q. **CHAIRMAN:** And it so happens that on the 18th of July
2 2013 Ms. D was referred to Rian, the counselling
3 service, and then the plan was for you to meet her,
4 which you did, on the 24th of July 2013 --
5 A. Yes.

6 540 Q. **CHAIRMAN:** -- and the 7th of August 2013. And then on
7 the 24th of July, in the Molloy case, this is the
8 missing computer, Sergeant McCabe was notified by
9 Detective Superintendent Maguire that he was not in
10 breach of discipline in relation to the missing
11 computer, and allegation that he was in charge of the
12 exhibits having been resolved in his favour, that he
13 wasn't?
14 A. Okay. And was that in the media at the time?

15 541 Q. **CHAIRMAN:** No, it was not in the media, but it is a
16 coincidence of circumstances that are happening
17 somewhere else at that time.
18 A. Okay.

19 542 Q. **CHAIRMAN:** which would appear to indicate that if you
20 were so minded, and please, I have underlined the word
21 'if', by making this error deliberately, it would have
22 caused an enormous amount of trouble and perhaps
23 supported those in the Gardaí who were against Sergeant
24 McCabe, do you appreciate that?
25 A. I can appreciate that, absolutely, yes.

26 543 Q. **CHAIRMAN:** And I am looking at other coincidences that
27 are happening as well.
28 A. Yes.

29 544 Q. **CHAIRMAN:** And it's nothing to do with you, nothing you

1 would necessarily be aware of, but many of them are
2 mentioned in the O'Higgins Report.

3 A. Okay.

4 545 Q. **CHAIRMAN:** So in the light of all of that, how would
5 you countenance doing such a thing deliberately for
6 whatever motive against somebody; in other words,
7 making the error that you made but instead of it being
8 an error it being deliberate?

9 A. Okay.

10 546 Q. What is your view on that, what is your feeling on that
11 in terms of how would you consider approaching that if
12 anyone had ever asked you to do that?

13 A. Oh, my -- there is no way I would consider doing
14 something like that. It's defamation of character.
15 Well, I mean, it is really unfortunate, and I can see,
16 I absolutely can appreciate the magnitude of the error
17 and the implications it had. I had no idea there was
18 actually another -- the case you are talking about with
19 the computer going missing or that Mr. McCabe was being
20 asked about, it was something else. But yes, I can see
21 how that would be catastrophic, but that certainly
22 wouldn't have been my -- I would never be complicit in
23 something like that. That is the only thing I can say.

24 547 Q. **CHAIRMAN:** And it never entered your head?

25 A. No.

26 548 Q. **CHAIRMAN:** Okay. The other thing I wanted to ask you
27 about was this: People use templates. It's a
28 well-known thing. I think you can't survive in the
29 modern world without being able to type and being able

1 to word-process and using templates as well. Do you
2 believe you had ever made a similar error to this in
3 relation to any other case or any kind of a slip-up? I
4 know my colleagues are always pointing out to me
5 idiotic mistakes I make, but they are usually using the
6 wrong word or --

7 A. Yeah, it's possible smaller mistakes like the one you
8 are talking about, like a typo, but I specifically
9 checked, I suppose, to make sure that I didn't -- and I
10 changed my practice to make sure that I wouldn't make
11 that mistake again, that that particular mistake
12 couldn't be made. So to the best of my knowledge, no.

13 549 Q. **CHAIRMAN:** And your level of word-processing knowledge,
14 was it a question that you actually went and did a
15 course, got training?

16 A. No.

17 550 Q. **CHAIRMAN:** So is it a question of, like a lot of
18 younger people nowadays, basically working it out by
19 trial and error?

20 A. Yes, I wouldn't be very proficient at computers.

21 **CHAIRMAN:** Okay. That is it, basically. Thank you.
22

23 **THE WITNESS THEN WITHDREW**

24
25 **CHAIRMAN:** I don't know -- I don't know whether this is
26 a point where -- it is actually, I see, just 12:00.
27 Would you like to take a break for half an hour and
28 then come back? I have got to leave about five
29 past/ten past two. So can we say half past twelve,

1 please. All right.

2
3 **THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED**

4 **AS FOLLOWS:**

5 **MR. MARRINAN:** Sir, the next witness is Fiona Ward,
6 please. Her interview with the investigators is to be
7 found at page 769, she is involved in three.

8
9 **MS. FIONA WARD, HAVING BEEN SWORN, WAS DIRECTLY**
10 **EXAMINED, AS FOLLOWS, BY MR. MARRINAN:**

11 551 Q. **MR. MARRINAN:** Thank you for coming. Would you just
12 indicate to the Chairman what your professional
13 qualifications are and your work experience, please?

14 A. My current role is I am Director of Counselling with
15 the HSE. My professional qualifications are as a
16 counselling and clinical psychologist. I am a
17 Chartered Clinical Psychologist with the PSI,
18 Psychological Society of Ireland. I qualified as a
19 clinical psychologist in 1993 and have worked with the
20 public health service since that time, for a year in
21 the Northwestern Health Board, subsequently the North
22 Eastern Health Board, from 1994 and in 2000 I took up
23 the role of Director of Counselling with the National
24 Counselling Service, which is part of the HSE.

25 552 Q. I think that is commonly known as Rian?

26 A. Rian Counselling Service, that's correct.

27 553 Q. Would you just explain what Rian is?

28 A. Rian Counselling Service, that is a name that is used
29 to cover the northeast; Meath, Louth, Cavan and

1 Monaghan. We are part of ten services that were set up
2 in the health boards at the time. It's a counselling
3 service for adults who have experienced childhood
4 abuse.

5 554 Q. And I think it was set up following the Commission to
6 Inquire into Child Abuse?

7 A. That's correct.

8 555 Q. Into institutional abuse, is that right?

9 A. That's correct. It was set up following the concerns,
10 the setting up of the Committee to address abuse of
11 people who had lived in institutions as children. The
12 service also has a remit to provide counselling to
13 adults who experienced abuse in other settings, for
14 example, in their own families, or by members, people
15 in their own community.

16 556 Q. Now in terms of clients coming to Rian, are they
17 referred there or is it self-referral?

18 A. The service accepts self-referrals and referrals from
19 other professionals. Approximately 60% of clients
20 would self refer to the service and approximately 40%
21 would be referred by other professional, mainly GPs and
22 members of mental health services.

23 557 Q. I think that it is a localised service that is
24 provided, and it's called Rian to give it a sense of
25 identity within --

26 A. That's right, as an identifying service within the
27 Meath/Louth/Cavan/Monaghan area. Services across the
28 country would have different names. For example, in
29 the southeast the service is referred to as CORE.

1 558 Q. I think it's also a free service to make it accessible,
2 isn't that right?

3 A. That's correct, yes.

4 559 Q. And I think it aims to be confidential, isn't that
5 right?

6 A. That's correct. But obviously there are within
7 limitations.

8 560 Q. We will return to that in a moment.

9 A. Yeah.

10 561 Q. Now, I think that you provided some documentation to
11 the Tribunal investigators, which is very helpful but I
12 don't intend to go into it in any great detail. But
13 the first document is at page 800 which is described as
14 NCS Government Structure Organisation Chart.

15 A. Mm-hmm.

16 562 Q. And is that a chart that you prepared to show the
17 structure of Rian, is that right?

18 A. I prepared that chart in the context of my own line
19 manager at the time, it would have been in
20 approximately 2013/2014 I think, and it was due to a
21 change in line management at the time. But it was to
22 explain the governance structure for the National
23 Counselling Service. So, it refers to, it shows the
24 role of the Director of Counselling and the people who
25 would report to me in terms of clinical governance and
26 then what the reporting lines would be in the
27 organisation. So my line management reporting
28 relationship at that time, 2013/2014, would have to be
29 a the aerial manager in Louth, with responsibility for

1 mental health. We would have had, the kind of clinical
2 governance for me individually with my peer group would
3 have to be the National Counselling Services, Directors
4 of Counselling Group which meet on a monthly basis and
5 consider clinical issues, and we would have had a
6 strategic relationship with the National Director of
7 Mental Health in terms of the development of the
8 service.

9 563 Q. Okay. But in relation to the chart I think it is
10 fairly easy to follow, if one looks at the right-hand
11 side --

12 A. Yes.

13 564 Q. -- one has at the bottom there "*Administrative Staff*"
14 and then it goes up to a "*Grade* --

15 A. *Yeah.*

16 565 Q. -- *6 Section Officer*". It moves then up to an NCS
17 counsellor, in this instance that would have been Laura
18 Brophy, is that right?

19 A. That's correct yes.

20 566 Q. And then to you as the Director of Counselling, is that
21 so?

22 A. That's correct.

23 567 Q. And then you were reporting to your Area Manager, is
24 that right?

25 A. That's correct.

26 568 Q. Who was at that time?

27 A. That would have been Dermot Monaghan.

28 569 Q. And then he was reporting to the Head of Operations,
29 who was that at the time?

1 A. Well, to the best of my recollection that would have
2 been Jim Ryan.

3 570 Q. And then he was reporting in turn to the National
4 Director of Mental Health, is that right?

5 A. That's correct.

6 571 Q. And it is under that general department that you come
7 in?

8 A. We are within the Mental Health Division, that's
9 correct.

10 572 Q. Now in terms of the Cavan-Monaghan district in 2013 and
11 2014, can you tell us how many counsellors or
12 therapists there were?

13 A. There were two counsellors working Cavan and Monaghan
14 and five other counsellors that covered Louth and Meath
15 working in full- and part-time capacities.

16 573 Q. The two counsellors that were covering Cavan and
17 Monaghan, were they full-time or part-time?

18 A. One was full-time, one was part-time, four days.

19 574 Q. Is that Laura Brophy being the full-time?

20 A. Laura Brophy full-time, yes.

21 575 Q. And who was part-time?

22 A. The only counsellor would have worked four days a week.

23 576 Q. Do you recall her name?

24 A. Her name is Essie Brennan.

25 577 Q. And then in Meath I think there were five
26 counsellors-therapists covering Louth and Meath, is
27 that correct?

28 A. That's correct, yes.

29 578 Q. And there were three full-time and two part-time. And

1 in Dublin there were ten to 12 counsellor-therapist, is
2 that right?

3 A. That's correct. Maybe if I just clarify role in
4 relation to Dublin. So from 2000 I was Director of
5 Counselling for what was then the North Eastern Health
6 Board, which subsequently merged with the Health Board
7 in Dublin, the old Northern Area Health Board, forming
8 the Dublin Northeast Region. In 2012 the Director of
9 Counselling covering the Dublin area left the post and
10 I was given the responsibility for the Dublin service
11 as well. So that covers Dublin North and North City.
12 And I still have that responsibility.

13 579 Q. Now, I think that in 2013 you had in place policies for
14 counsellors, is that right?

15 A. That's correct, yeah. There was a data national policy
16 in place relating to the National Counselling Service
17 for dealing with child protection concerns and risk
18 management.

19 580 Q. If you would just be shown page 801, please. This is a
20 document that you provided to the Tribunal and it's
21 headed: *"National Counselling Service for adults who
22 have experienced childhood abuse. Guidelines on risk
23 management and child protection in the context of
24 counselling/therapy."*

25
26 Is that correct?

27 A. That's correct.

28 581 Q. The document that you handed to the investigators
29 refers to it as being a final draft in December 2012,

1 is that the actual policy document --

2 A. This is the actual policy document.

3 582 Q. -- that was published?

4 A. Yes. I think there is a document which has "*Approved*

5 *Draft*" on it but this is the one I could locate, but it

6 is exactly the same as the one that is currently in

7 use.

8 583 Q. And these were guidelines that were issued, would they

9 have been issued to the therapists and counsellors, is

10 that right?

11 A. That's correct, yes.

12 584 Q. And also they would have been issued to yourself

13 obviously as line manager?

14 A. They were. They were drafted and drawn up by the

15 National Counselling Service itself by the Directors

16 Group in consultation with others. And approved by the

17 Directors of Counselling Group and then going forward

18 they should have been used by counsellors working

19 within the service.

20 585 Q. Just in relation to that, when you say that the

21 document was drawn up with consultation with others,

22 would the others, would that have included HSE, Tusla?

23 A. No, it wouldn't have. No. Not at the time.

24 586 Q. Even though you had an interaction with them?

25 A. I suppose these were guidance to guide our practice in

26 relation to how to respond to clients, primarily in

27 relation to issues of child protection concern. So at

28 that time that the guidelines were drawn up we didn't

29 consult with Tusla at the time, they wouldn't have been

1 in place at that time. And as far as I recall there
2 wasn't a formal link with the HSE social work in
3 relation to it.

4 587 Q. We just might return to that in a moment, but if we can
5 just go through this document, just I would like your
6 comments in relation to some aspects of it. If you
7 could be shown page 803, I think it deals with
8 confidentiality under paragraph 4 there. And 4.01:

9
10 *"Client needs to be made aware at the outset of the*
11 *initial assessment meeting of the limitations of*
12 *confidentiality and the potential implications of*
13 *disclosing certain identifying information."*

14
15 A. That's correct.

16 588 Q. Is that right?

17 A. Yes.

18 589 Q. And we will come in a moment to the circumstances where
19 that could be invoked. We then go down to 4.1:

20 *"Disclosure of information to a third party."* We have
21 4.11:

22
23 *"wherever possible disclosure of personal information*
24 *to a third party will only be given with the full*
25 *knowledge and consent of the client."*

26
27 Is that right?

28 A. Correct.

29 590 Q. 4.12:

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"where the disclosure of confidential information is necessary then the need to know principle must apply, i.e. only those who need to know should be given the relevant information."

A. Mm-hmm.
591 Q. 4.1 3:

"where a client does not consent to disclosure of information but such disclosure is required the client's refusal should be clearly recorded."

A. Mm-hmm.
592 Q. And then 4.14:

"The client should be notified in writing of this decision and provided with a copy of the information that has been disclosed."

If we could then just go on to page 804, please. Under 5.1, this is under a heading *"Procedures for responding to client disclosures,"* is this the situation that we are actually dealing with in these hearings, is it?

A. *"Current Risk"* would relate to a child who is currently known to be currently at risk, not to a historical report. So I think it's the next section that relates to cases of historical or retrospective abuse.

1 593 Q. So 5.1 deals with the current risk posed by an alleged
2 perpetrator --

3 A. Mm-hmm.

4 594 Q. -- is that right?

5 A. That's correct.

6 595 Q. If we could just deal with this, if we go four lines
7 down:

8

9 *"In effect this means that where an alleged perpetrator*
10 *is identified to the service this constitutes a*
11 *disclosure and this information needs to be forwarded*
12 *to the Children and Family Social Work Services for*
13 *assessment of any current/potential risk."*

14

15 A. That's correct. That's in line with the Children First
16 Guidance that we were working under and that we
17 continue to work under.

18 596 Q. So it is a situation where any alleged perpetrator is
19 identified?

20 A. That's correct.

21 597 Q. Is that right?

22 A. That's correct, yes.

23 598 Q. And it's mere identification of that person?

24 A. Yes. Any identifying information. So that would refer
25 to situations where, for example, a person's name and
26 identifying information, for example address, is
27 provide, that we are required to pass that information
28 on for assessment by social work services.

29 599 Q. So then under 5.12 we have:

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"At first contact with the client counsellor-therapist should take sufficient time to clarify carefully with the client that it is the responsibility of the NCS under Children First to inform Children and Family Social Work Services regarding any potential risk to children by an alleged perpetrator. This information should be reiterated again at the commencement of therapy so that the client fully understands the implications of identifying their alleged perpetrator."

A. That's correct.

600 Q. Is that right?

A. That's correct, yes.

601 Q. And what is envisaged in those circumstances? How should that be explained to somebody who comes --

A. That is referring to two different stages in the process. So, first contact would generally be the initial assessment with the client and emphasising the importance that the counsellor-therapist makes the client aware of our duties under Children First in relation to passing on any information of concern, or risk or identifying information as disclosed. And also that this is again discussed with the client when the client commences therapy, because often there may be a gap between the time of initial assessment and the time the therapy commences because there is a waiting list for counselling places.

602 Q. 5.13:

1
2 *"The counsellor-therapist should raise with the client*
3 *the implications of disclosing clear identifying*
4 *information regarding any alleged perpetrators of*
5 *abuse. Clients who have anxieties about*
6 *confidentiality can consider the information in the*
7 *light of their own situation and make decisions*
8 *accordingly, so that any information they do impart is*
9 *given freely and with full and informed consent."*

10
11 That is again the policy, is it?

12 A. It is. And it is referring, I suppose, to the
13 importance of making clients aware before they provide
14 us with information of the implications of identifying
15 individuals who they identified may have abused them,
16 that we would have a responsibility to pass that
17 information on. So it's giving them the opportunity to
18 consider whether they wish to provide that information
19 to us.

20 603 Q. We then go on to 5.2, which is page 805, please. It's
21 *"Current Risk to Identified Children."* And it reads:

22
23 *"where a client provides clear identifying information*
24 *that gives reasonable grounds for concern that an*
25 *identifiable child/children may be currently at risk of*
26 *abuse the counsellor-therapist will complete a*
27 *Notification of Abuse form in cooperation with the*
28 *client outlining the issues of concern."*

1 A. That's correct.

2 604 Q. And then 5.22:

3

4 *"This notification will be forwarded to the local*
5 *principal social worker/duty team leader as*
6 *appropriate."*

7

8 Now if you just go to 5.25:

9

10 *"The Director of Counselling should be involved in all*
11 *decisions regarding reports and the Director of*
12 *Counselling will take responsibility to maintain a*
13 *central record of all such reports."*

14

15 A. That's correct. So it's the counsellors' duty to bring
16 to my attention any child protection concerns that come
17 to their, that come up in the course of counselling or
18 initial assessments or discussion, and I would maintain
19 a central record of any reports that are submitted to
20 Social Work Services.

21 605 Q. And if we move on to 5.3, the same page:

22

23 *"Informing clients about joint protocol between HSE and*
24 *Gardaí.*

25

26 *5.3.1 Counsellors-therapists should inform the client*
27 *of the joint protocol between the HSE and Gardaí*
28 *regarding notification of reports of child abuse and*
29 *that the Gardaí may likely notify the HSE of complaints*

1 *made to them regarding child abuse."*

2
3 A. That's correct. So the expectation there is that the
4 counsellor-therapist in discussion with the client
5 regarding our child protection procedures should make
6 them aware that if a report is submitted to the HSE
7 Social Work Department at that time, currently Tusla,
8 that it is possible that that information would be
9 passed onto the Gardaí. Similarly, that if they make a
10 statement to the Gardaí that that information may be
11 notified to the Social Work Services.

12 606 Q. So there are really two aspects that may be relevant
13 there to our inquiry. The first aspect is that if a
14 client discloses the identity of an abuser or alleged
15 abuser, there is a duty on Rian to notify Tusla, is
16 that right?

17 A. That's correct, yes.

18 607 Q. And then also highlighting the fact that where a report
19 is made to the Gardaí more often than not that report
20 would be communicated to the HSE, isn't that right?

21 A. That is correct.

22 608 Q. We then move on to 6 which deals with "*Reporting*
23 *Procedures*" and then "*Procedure for Managing Child*
24 *Protection Reports*". Can I just refer you there to
25 6.12:

26
27 "*Contact should be made with the local duty social work*
28 *team leader/principal social worker regarding every*
29 *referral with child protection concerns to clarify*

1 *procedures and appropriateness of the referral."*

2
3 And then 6.13:

4
5 *"Reports regarding retrospective abuse should be made*
6 *using the NCS retrospective reporting template form."*
7

8 A. Yes, that's correct. So in relation to point 6.12, the
9 general practice is that counsellors make contact with
10 the relevant social work department to clarify what the
11 procedures would be in relation to making a report.
12 The purpose of this really is to be clear in what they
13 can provide to the client around what will happen when
14 the report is submitted to the social work department.
15 Sometimes this will be done without providing the
16 client's names or details, because it's to find out
17 what the procedures would be. And that would be the
18 general practice. The purpose of it really is to be
19 able to clear with the client what will happen when the
20 report is submitted

21 609 Q. I wonder whether it goes a little bit further than
22 that, Ms. Ward. If you look at 6.12 again:

23
24 *"Contact should be made with the duty social work team*
25 *leader/principal social worker regarding every referral*
26 *with child protection concerns to clarify*
27 *procedures --"*

28
29 which you've just outlined there.

1 A. Mm-hmm.

2 610 Q. But then also " -- *and the appropriateness of the*
3 *referral.*"

4
5 A. That's correct. In some cases we may have a query as
6 to whether a referral needs to be made, and we would
7 seek the advice of the social work department as to
8 whether it needs to be submitted or not.

9 611 Q. Move on to 7.1:

10

11 *"Directors of Counselling and/or designated*
12 *counsellor-therapist should liaise with local principal*
13 *social workers regarding NCS reports and reporting*
14 *procedures as required."*

15

16 Is that the position?

17 A. That's the position as -- I will just take a minute to
18 read that.

19 612 Q. Then if we could just move on to 6.2: *"The NCS model*
20 *for responding to information/allegations of*
21 *retrospective abuse."* It says:

22

23 *"Each NCS area should establish a formal process for*
24 *reviewing client cases where information relating to*
25 *current or past abuse is provided by a client. This*
26 *process should encompass clinical discussion at team*
27 *level, formal consultation with relevant social work*
28 *service, direct referral to Child Protection Social*
29 *Work Services, were appropriate."*

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And then it says:

"See model below."

A. Mm-hmm.

613 Q. And if one turns over then one can see the figure there, but before we come to that it says:

"A monthly/bi-monthly meeting/consultation, as appropriate, should be established with the duty team leader or principal social worker of a designated social work service for the area. The purpose of the consultation meeting is to bring all new cases where there is a lack of clarity as to what, if any, action under Children First is required. Following discussion of such cases the agreed course of action should be formally recorded. A template for recording such decisions in relation to each case discussed is attached. Client identifying information remains confidential unless a formal report to SW services is initiated."

So what is envisaged here is some sort of sharing information, is it not?

A. It is in certain cases. I suppose this was a model that was recommended at the time in 2012 and in our own area we would have established meetings between Meath and Louth, and I think there was one meeting with

1 Cavan, to discuss the processes in which we would work
2 in relation to making referrals. However, ongoing
3 meetings weren't maintained and what has evolved in
4 practice is liaison with the social worker related to
5 individual cases as reports arise.

6 614 Q. Well, it's a matter I might return to later on in your
7 evidence, perhaps at a more appropriate time, towards
8 the conclusion of your evidence. But if we look at
9 figure 1 there, we have the first action is that the
10 NCS team have a clinical discussion in relation to the
11 case, is that right?

12 A. That's the recommended model that would happen in some
13 cases, but it isn't a formal practice that we have in
14 relation to specific child protection reports. That
15 tends to happen at individual supervision with the
16 counsellor.

17 615 Q. Well, it was anticipated that it would be something
18 that would be formalised because under bullet-point 2
19 there is it says:

20
21 *"Central record maintained of clinical discussion and*
22 *agreed decisions."*
23

24 A. That's correct, yes.

25 616 Q. But in any event in 2013 and more particularly in July
26 of 2013 this wasn't in place?

27 A. This wasn't the practice that we had in our service,
28 no.

29 617 Q. Though this document had been published in 2012?

1 A. That's correct, yes.

2 618 Q. Well, is there an explanation as to why it wasn't in
3 place?

4 A. Em, we did initiate some meetings that would have taken
5 place in 2012. And certainly we have a monthly meeting
6 where we discuss cases and issues that arise, we
7 certainly do discuss cases but I couldn't say that we
8 discuss all cases where child protection issues arise.
9 That would not necessarily be relevant. We discuss
10 that at team level. So I would say that is relevant
11 cases, rather than all cases.

12 619 Q. Very well. Well, after what had anticipated would be a
13 procedure where there would be a clinical discussion in
14 relation to the retrospective abuse allegation, it then
15 goes on to a joint consultation between effectively
16 Tusla and Rian, isn't that right?

17 A. That's correct. That was the intention. And some
18 meetings did take place. However, I think pressure of
19 work on both sides, it was difficult to maintain
20 regular meetings. So what evolved in practice was
21 liaison in relation to individual cases. Also, there
22 would have been a team leader social worker appointed
23 in some of the areas with specific responsibility for
24 historical abuse cases. That would have been the
25 natural liaison there. So we have had meetings with
26 social work to discuss our practices and procedures and
27 how we work jointly together. However, these wouldn't
28 have been on as regular a basis as might have been
29 envisaged in these guidelines in 2012.

1 620 Q. So what appears to have happened in this particular
2 instance is both the first clinical discussion hasn't
3 taken place and there hasn't been a joint consultation,
4 but there has been a skip to a formal referral to the
5 social work, Tusla, is that right?

6 A. That's correct. I suppose the piece that does happen
7 prior to the formal referral is the consultation with
8 social work in relation to the referral prior to the
9 formal referral. And also discussion in supervision
10 related to all cases.

11 621 Q. Yes. So you have also then provided some --

12 A. Sorry, I think --

13 622 Q. -- further documentation which I may as well go
14 through. Sorry, did you want to add something?

15 A. If I could read the last part of that table, I think it
16 says something about cases where there is a lack of
17 clarity. If you notice there on the last paragraph:

18

19 *"It's recognised that there may be locally specific*
20 *challenges to implementing this model in full and the*
21 *Director of Counselling is responsible for making*
22 *appropriate adjustments as to how consultation occurs*
23 *with Child and Family Services. And it is expected*
24 *liaison with social work in relation to cases where*
25 *lack of clarity exists will form part of the process."*

26

27 So I suppose there is a recognition in these guidelines
28 being drawn up that there would be different local
29 challenges in relation to regular and ongoing meetings

1 with social work services.

2 623 Q. Very good.

3 A. That certainly is the case in our area.

4 624 Q. Thank you for pointing that out. You also provide us
5 with some other documents. At page 813, this is a
6 Child Protection and National Counselling Service
7 Information for Clients, we have already had that
8 referred to. Then at page 814 you provided us with a
9 template for the NCS Clinical Case Discussion Child
10 Protection Issues. And that is a client record form,
11 is that right?

12 A. That's correct, yes.

13 625 Q. That wasn't utilised in this particular case?

14 A. Not in this particular case, no.

15 626 Q. You then provided the Tribunal with a number of other
16 templates, which is very helpful. At page 818 you
17 provided us with a Frequently Asked Questions form
18 dealing with clinical issues, which is again very
19 helpful, to that have information. I don't intend to
20 go through it all or indeed any of it with you at the
21 present time. Then if we come to page 821, this is a
22 template again that you provided to the Tribunal which
23 is a notification to Tusla, is that right?

24 A. That's correct. This is the standard form that we use
25 for making referrals of historical abuse to Tusla. So
26 as far as I am aware this is the most current version
27 that is in use.

28 627 Q. Yeah. This has been revised and --

29 A. This has been revised since 2013, yes, that's correct.

1 628 Q. -- and updated. And I think that part of a
2 recommendation arising out of what occurred in this
3 case was that the form should be reviewed by the
4 client --
5 A. That's correct.

6 629 Q. -- with the counsellor to ensure that the information
7 is correct, is that right?
8 A. That's correct, yes.

9 630 Q. I see. And that they consent to the information being
10 sent to Tusla, is that right?
11 A. That's correct. There are situations where clients
12 don't consent, which I think that's recorded at the
13 end. We've also differentiated in this form, it's also
14 whether the client is willing to be contacted in
15 relation to the report. Sometimes the client will
16 consent to the report being submitted but isn't willing
17 to speak to social work about the report. So there is
18 a differentiation there. That would be different on
19 this form to the previous form in operation in 2013 and
20 2014.

21 631 Q. Then if we can turn to page 823 --
22 **CHAIRMAN:** Just before you go there, Mr. Marrinan.
23 **MR. MARRINAN:** Yes.
24 **CHAIRMAN:** I take it whether the client consents or
25 not, as I understand it once they give information 'the
26 abuser is AB, living at such and such a place' --
27 A. That's correct.
28 **CHAIRMAN:** -- it's irrelevant whether they sign that
29 Client Consent Information at the end or not.

1 A. That's correct. I suppose we're recording the position
2 that the client is giving in relation to whether they
3 will be willing to be contacted by social work in
4 relation to the report from a Tusla point of view.
5 From what I am aware that is quite important for them.
6 **CHAIRMAN:** And I take it the whole point of this is
7 apart from your duty to disclose statutorily, it
8 doesn't take too much of a deduction that if somebody
9 from social work goes to a particular person and says
10 'Did you abuse so and so?' clearly information has to
11 have come from so and so.

12 A. Sorry, I'm not quite clear what your question is.
13 **CHAIRMAN:** If somebody turns up at the house of AB and
14 says 'Didn't you on such and such a day abuse so and
15 so?' well, they know that the information came from so
16 and so.

17 A. In some situations they would, particularly if it was
18 in a family context. But in some situations that
19 wouldn't necessarily be the case, that the person would
20 be identified. For example, if it was somebody who had
21 abused them in the context of being involved in a
22 sporting organisation, for example.
23 **CHAIRMAN:** Yeah, if it was multiple abuse in a school
24 or something like that.

25 A. Yes.
26 **CHAIRMAN:** But apart from that, yeah. Sorry for
27 interrupting, Mr. Murrinan, there you go.

28 632 Q. **MR. MARRINAN:** At 823, if that could be shown to you,
29 this is National Counselling Service Information for

1 Clients About Child Protection and Confidentiality.
2 That covers the issues that we have already dealt with.
3 Then at page 824 you provide us with a document which
4 is headed "*Model of Service*", is that right?

5 A. That's correct yes.

6 633 Q. And that shows a referral leading to an initial
7 assessment, which is to take place within four weeks.
8 And it asks the question:

9
10 "*Is the service suitable for the client's needs at the*
11 *time?*"

12
13 And then you've highlighted an area which may be
14 relevant here:

15
16 "*Client ready to engage and service is suitable.*"

17
18 And then:

19
20 "*The client is placed on a waiting list for ongoing*
21 *counselling.*"

22
23 Is that right?

24 A. That's correct. So this would be the client flow
25 through the service. So the initial assessment is
26 where it's identified whether our service is
27 appropriate or suitable for the client, and if the
28 service is suitable and the client is able to engage
29 they will be placed on the waiting list for a

1 counselling place. For some clients they may need
2 immediate sessions for support in relation to current
3 coping issues, in which case they will be offered a
4 short-term contract. And for some clients the service
5 would not be suitable, so their case would be closed
6 and they would be referred on to other services.

7 634 Q. And I think that normally a referral or six sessions
8 would be had with a counsellor is what is desired,
9 isn't that right?

10 A. That would be for a short-term contract, yeah. In most
11 cases clients who progress into counselling would
12 attend for more than six sessions and sometimes they
13 attend for long-term contracts which can be over
14 extended periods of time, depending on their needs.

15 635 Q. In terms of the volume of work that is going through
16 your department, could you give us some idea in 2013
17 the number of reports that would have gone through your
18 section?

19 A. Excuse me, in 2013 there would have been 37
20 notifications to Child Protection Services from the
21 service in Rian.

22 636 Q. So they are 37 reports in total that are similar to the
23 reports that would have been sent in here in relation
24 to retrospective child abuse, is that right?

25 A. That's correct. There would have been some who may
26 have related to current cases, were current children,
27 but the majority would have related to historical
28 allegations, yes.

29 637 Q. So if we could just turn to page 825 while we're on it,

1 this is -- I think that you have your own database, is
2 that right?

3 A. So, this document here is a central excel spreadsheet
4 which is maintained for all reports that are submitted
5 to Social Work Services by the Rian service and a
6 similar template is maintained in each of the NCS
7 services. So they're not linked up databases but each
8 service maintains an excel spreadsheet in this format.
9 And the purpose of it is to keep a log of referrals
10 that are made, so that we know how many referrals we
11 have made in a year.

12 638 Q. And this, are you the only person who has access to
13 this?

14 A. That's correct, yes.

15 639 Q. And just so that we know how to read the document, at
16 page 825?

17 A. Do you want me to go through the headings and the
18 sections?

19 640 Q. Well, it's headed "*NCS Child Protection Reports 2013*".
20 It has the month, the number, the date of report, the
21 name of client, the area, the nature of the report, who
22 it was reported to, and then "*allegation against*" and
23 then if one goes over to page 826 I think this is a
24 continuation across the spreadsheet, is that right?

25 A. That's correct, yes.

26 641 Q. It has the name of the counsellor, the person
27 potentially at risk, if known, additional information,
28 response from the social work/Gardaí, and client
29 willing to speak to the social work and then garda

1 involvement. Can I just stop is there? What garda
2 involvement could there be, could you anticipate?

3 A. In some cases when a client presents to our service
4 they may have already been to the Gardaí and made a
5 statement. So this is recording whether or not -- the
6 number of clients who would already have made
7 statements to the Gardaí. So the client might report
8 that to the counsellor when they attend. So that is
9 what they are referring to.

10 642 Q. Sorry, it then continues on in relation to garda
11 involvement. If one goes to page 827, it's just the
12 way that the document is presented, that has the date,
13 the name of the client, the area being Cavan, the
14 nature of the report being CSA retrospective?

15 A. That record there is in relating to Ms. D. That is
16 record number 21. So it's a redacted version of the
17 record I would have recorded in relation to Ms. D.

18 643 Q. Yeah. And it goes on to record: *"Reported to the*
19 *duty --"*

20 A. Team leader.

21 644 Q. *"-- Cavan"* and then *"allegation against"* and it has
22 *"father's work colleague"*. It has the name of the
23 counsellor who we know to be Laura Brophy. And then
24 *"persons potentially at risk, if known"* and written
25 there is *"unclear"*?

26 A. That's correct.

27 645 Q. Is this something that you would have put on the --

28 A. This information would have been taken from the report
29 form.

1 646 Q. And then *"Additional information: Alleged perpetrator*
2 *was a garda"* and then *"Response from social work*
3 *Gardaí: No details. Client willing to speak to the*
4 *social work?"* That is answered "yes". And then *"Garda*
5 *involvement. Statement made to Gardaí in approximately*
6 *2005. File sent to the DPP. Insufficient evidence to*
7 *proceed."* So you were aware of the information that
8 was contained there, isn't that right?
9 A. That's correct.

10 647 Q. And one would assume that you would have gleaned from
11 that information that there had been a prior report to
12 the Gardaí?
13 A. That's correct.

14 648 Q. And that the matter had been investigated, is that
15 right?
16 A. That's correct, I was aware of that, yes.

17 649 Q. And that a file had been sent to the Director of Public
18 Prosecutions?
19 A. That's correct.

20 650 Q. And the Director of Public Prosecutions had directed no
21 prosecution?
22 A. That's correct.

23 651 Q. So in those circumstances would it not have been
24 reasonable to infer that in fact in 2006/2007 that the
25 Gardaí would have complied with their obligation to
26 notify HSE Tusla?
27 A. That would be the expectation, but the practice is
28 always to report to Social Work Services the
29 information that we receive. In some cases information

1 has not in the past been passed between the Gardaí and
2 social work and our practice would be always to refer
3 to social work when we receive identifying information.
4 Also, the allegation related to a period of time which
5 was a long time ago, circumstances may have changed.
6 And I suppose there's a differentiation between a
7 criminal prosecution in relation to a matter and the
8 child protection issue, which has, I suppose, different
9 standards of proof and also there's a different role
10 that's undertaken. One is to prosecute a crime, the
11 other is to evaluate whether any risk relates to any
12 children. So our responsibilities under Children First
13 are to report on any identifying information we receive
14 so that the Tusla or social work department can assess
15 whether any risk exists.

16 652 Q. Okay. At page 829, this is the cover of a paper file
17 that you have provided to our investigators, isn't that
18 right?

19 A. That's correct. That's the front cover of the standard
20 file that we maintain.

21 653 Q. And in terms of that is the file at Rian -- that is
22 held at Rian a paper file?

23 A. A paper file, that's correct. Hard copy paper file.

24 654 Q. Sorry, if I can just go back to the spreadsheet that I
25 was referring you to. That is available to you and I
26 understand it's for the purpose of statistics more than
27 anything else?

28 A. It is a statistical record that is maintained so that
29 we can identify how many reports are made in the clear.

1 So, yes.

2 655 Q. Is that forwarded to anybody else?

3 A. No. That document isn't forwarded to anyone else. But

4 I would collect information from it and report to my

5 line manager how many reports were made in the year and

6 I would also, at the national level, with the national

7 directors, would also audit how many reports are made

8 in the year and what category of reports they are. So,

9 for example, whether it was retrospective sexual abuse,

10 whether it related to neglect, physical abuse or any

11 current reports. But in identifying information it's

12 not forwarded to anybody else from that record.

13

14 And you'll also note on that excel spreadsheet that the

15 client's name is recorded but the name of the alleged

16 perpetrator is not recorded. So there is no

17 identifying information on that record sheet relating

18 to persons who are alleged to have abused others.

19 656 Q. It's identified nevertheless that he is a garda and

20 that he is in Cavan, isn't that right?

21 A. I think it said member of the Gardaí, I can't see it,

22 it's not up here at the moment. It just says that the

23 alleged perpetrator was a garda.

24 657 Q. Thank you. Now I think that your administrator at the

25 time was Pauline Johnson, is that right?

26 A. That's correct, yes.

27 658 Q. She would have been responsible for retaining the file,

28 is that right?

29 A. She would have maintained the client paper file, she

1 wouldn't have had any responsibility in relation to
2 this spreadsheet.

3 659 Q. I think that you also keep what you call a supervision
4 record of your meetings with various counsellors, is
5 that so?

6 A. That's correct. I take notes during supervision
7 sessions which I maintain on a file relating to each
8 individual counsellor. Their individual files.

9 660 Q. And you have made those available to us and they deal
10 with your interactions which I will come to shortly
11 with Laura Brophy --

12 A. That's correct, yes.

13 661 Q. -- in relation to this case, isn't that correct?

14 A. That's correct.

15 662 Q. Now you have also provided us with some documentation
16 in relation to policies in relation to files, policies
17 in relation to supervision, internal supervision and
18 external supervision. I don't intend to open those
19 documents to you, all right.

20 A. That's correct.

21 663 Q. So we will just proceed on to deal with your dealings
22 with Laura Brophy on the 14th May 2014, when you were
23 first alerted to the error that had been made by her.

24 A. So do you want me to just talk through what occurred on
25 that occasion?

26 664 Q. Yes. Will you tell us in your own words what happened?

27 A. So I would have received -- maybe if I could have my
28 notes up from that day as well, I'm not sure what page
29 that is.

1 665 Q. You want to be assisted by your notes?
2 A. Yes.

3 666 Q. Page 830, please.
4 A. Thank you. So on the 14th May she would have phoned me
5 to inform me of the error. So I would have taken these
6 notes as I was speaking with Ms. Brophy on the phone
7 call. Sorry, this isn't the correct note, actually,
8 the one that's up. It should be dated 14/5. That is a
9 different note.

10 667 Q. Just bear with me for one moment and we will try and
11 locate it. I am sorry, we are just having some
12 difficulty Ms. Brophy [sic] trying to isolate it. We
13 had all noted that this was one at page 830. But
14 perhaps, yes, if we can go to page 845 please. These
15 are your general notes in relation to the matter. I
16 was referring you specifically to your supervision
17 notes.

18 A. Right, sorry. This is the note that I took --

19 668 Q. If we go to 845 it may be of assistance to you.
20 A. Yes. This will be the record that I took while I was
21 speaking to Ms. Brophy when she phoned me in relation
22 to the error. So this would be separate to a
23 supervision note.

24 669 Q. All right. We will just proceed on the basis of this.
25 A. Sure.

26 670 Q. If you can tell us what happened and what you were told
27 by Laura Brophy.
28 A. So Laura phoned me on the 14th May 2014 to inform me of
29 the error. She gave background, that is what the notes

1 at the start of the document refer to. So she was
2 referring to the client who had transferred to the
3 southeast, in Waterford, to the NCS service in the
4 southeast. She was saying that a report had been made,
5 it related to CSA, which refers to child sexual abuse,
6 in relation to a colleague of her father and he is
7 named on this note here as Maurice McCabe; that a
8 statement had been made at the time of the disclosure
9 when she was 12 and that she said that he was moved at
10 the time; the report was re-submitted by us to the
11 social services and when making the report it included
12 incorrect details on the report, including another
13 client's name. So the note here is referring to the
14 error that occurred and the nature of the error.

15 671 Q. Could I just, can I just stop you there for a moment?
16 You are just reading out of your note.

17 A. Yes.

18 672 Q. This is your recollection as well --

19 A. Yes.

20 673 Q. -- of what took place. I mean, we have been looking
21 into this for some time now, was it apparent to you
22 immediately what had happened or did you have to ask
23 her to perhaps stop and explain what she is talking
24 about?

25 A. In terms of the error or --

26 674 Q. Yes.

27 A. Well, it was clear that information that shouldn't have
28 been on the original report that was submitted to Tusla
29 was included there, that shouldn't have been. That was

1 apparent, yes.

2 675 Q. It was apparent?

3 A. It was apparent --

4 676 Q. Yes.

5 A. -- that there was information on the form that should

6 not have been on the form, yes.

7 677 Q. And the consequence of hearing that as far as you were

8 concerned, did you realise how serious this was

9 potentially?

10 A. Yes. Certainly the counsellor was very concerned, I

11 was very concerned in terms of both the nature of the

12 information that was inaccurate, because it was very

13 different to the information that the client had

14 disclosed to the counsellor, also in terms of the

15 impact of that for the person who the allegations had

16 been made against, and the fact that the report had

17 already been -- had some months prior been sent to

18 social work. So that the information was outside of

19 our service. So there was a huge concern in terms of

20 ensuring that the information be corrected, because of

21 the impact of that information on the parties involved.

22 678 Q. I suppose there was, there were a number of aspects to

23 this. First of all, were you aware of the fact that

24 the notification had been sent by Laura Brophy in

25 August of 2013?

26 A. I was aware of that, yes.

27 679 Q. You were aware of that?

28 A. Yes.

29 680 Q. At that time were you aware that Tusla had sent a

1 notification to the Gardaí in May 2014?

2 A. I wasn't aware of that, no.

3 681 Q. So one would have gleaned from that that Laura Brophy's
4 information that she sent in August 2013 in fact had
5 been in circulation, if I can put it that way, since
6 2013?

7 A. Certainly it would have been in the social work
8 department, yes, since 2013.

9 682 Q. But also with the Gardaí because you didn't know when
10 the Gardaí --

11 A. We didn't know that, no.

12 683 Q. You didn't know that?

13 A. No.

14 684 Q. So at that time we're in a situation for several
15 months, for nine months, this information would have
16 been in Tusla and also with the Gardaí?

17 A. I suppose that was our concern, that we weren't aware
18 the information was until we had sight of it, and the
19 concern was that given the gravity of the error that
20 that should be corrected.

21 685 Q. The information concerned a number of stakeholders, if
22 I can put it that way.

23 A. Mm-hmm.

24 686 Q. I mean, in the first place there was Ms. Y who had
25 absolutely nothing to do with this --

26 A. That's correct, yes.

27 687 Q. -- and all of a sudden has her name out there
28 associated with an allegation that in fact she had made
29 but had made in confidence.

1 A. Mm-hmm.

2 688 Q. Isn't that right?

3 A. That's correct, yes.

4 689 Q. And then of course there was Ms. D who now an
5 allegation is being attributed to, who hadn't made that
6 allegation at any time.

7 A. That's correct, yes.

8 690 Q. And there's also Sergeant McCabe --

9 A. That's correct.

10 691 Q. -- who is unaware of all of this, but allegations have
11 been made in writing concerning him not only to Tusla
12 but also apparently to the Gardaí indicating that there
13 had been a complaint that had never been made against
14 him?

15 A. That's correct.

16 692 Q. And a very serious complaint of penetrative abuse,
17 isn't that right?

18 A. That's correct, yes.

19 693 Q. So was the full magnitude of this brought home at that
20 time to -- first of all, did you appreciate how serious
21 this was?

22 A. I would say that, yes, we both did and were very
23 concerned about it and concerned to do something
24 immediately. And for that reason Laura would have
25 taken action on the day in terms of amending the
26 report, submitting it by hand to the social work
27 department. Also, compiling an incident report which
28 we then submitted, which I, then forwarded on an
29 incident report to the Director of Consumer Affairs.

1 we sought advice from the data protection section of
2 the HSE, because we were concerned about the data --
3 potential data breach that might have related to the
4 Ms. Y. So I would say, yes, we were very aware of the
5 gravity and very concerned about it.

6 694 Q. Well, I wonder, because one might have expected you, as
7 Laura Brophy's supervisor, perhaps to take over the
8 running of the case, as it were, at that stage that
9 such a serious error had been made. I mean, there
10 could have been -- we know that subsequently, and this
11 isn't your fault, but we know that subsequently there
12 were many twists and turns, if I can put it that way --

13 A. Mm-hmm.

14 695 Q. -- that perhaps could have been avoided if you, for
15 instance, had have spoken to Ms. Eileen Argue who was
16 then the team leader in Tusla or indeed had spoken to
17 directly to the local superintendent --

18 A. Mm-hmm.

19 696 Q. -- or perhaps had met both --

20 A. Mm-hmm.

21 697 Q. -- to try and resolve the issue?

22 A. Mm-hmm.

23 698 Q. Do you understand?

24 A. I see what you mean, yes.

25 699 Q. Was any consideration given to perhaps adopting that
26 approach of saying well, this matter, we need to
27 clarify this, we need to see has this gone any further?
28 Was any consideration given to that?

29 A. I think at the time our understanding would have been

1 that the report would have been submitted to Tusla and
2 we wouldn't have had knowledge of their internal
3 procedures. So my understanding would have been that
4 the actual report that we submitted was forwarded on to
5 the Gardaí. I wasn't aware that social work would have
6 completed a notification of abuse form. I have only
7 seen that since the disclosure of the documents. So
8 our priority was really to ensure that the actual
9 record with the information written down was corrected
10 and amended and that the incorrect information was
11 retrieved. I was of the understanding that I would
12 need to retrieve the actual forms that had been
13 submitted or circulated. So that was the approach that
14 we took at that time.

15 700 Q. In hindsight would you have taken a different approach?

16 A. In hindsight I think from what you are saying, you
17 know, you are saying that perhaps I should have taken
18 the actions in terms of linking with the social worker
19 directly or linking with the Gardaí, perhaps that would
20 have been more appropriate. I certainly followed up
21 with the Gardaí at a later stage and would have
22 followed up with letters to the Eileen Argue and to the
23 Chief Superintendent, having had advice from the data
24 controller, the Director of Consumers Affairs. So I
25 would assume that I was involved in following up on the
26 matter. The counsellor was best placed in terms of
27 being in the local office, for example, to deliver the
28 actual amended report form, which we did on the day
29 that the error came to light. So that would have been

1 a priority.

2 701 Q. Thank you. I am sorry, I interrupted you and went off
3 on a tangent there when you were dealing with a phone
4 call that you had with Laura Brophy, if I can go back
5 to that at page 845.

6 A. Okay.

7 702 Q. The notes will come up there.

8 A. Do you want me to go through the notes?

9 703 Q. Yeah. I think you got down as far as the clients --
10 the other client's name, includes the other client's
11 name and then we were dealing with --

12 A. Yes.

13 704 Q. -- I think Ms. D was very distressed, is that right?

14 A. Ms. D was distressed about the error that had come to
15 light. Then I have a note here that *"there was a phone*
16 *call to social services to inform them of the error"*.
17 So that was referring to Laura phoning the social work
18 department to inform them of the error. And that the
19 correct report was to be submitted. I have a note here
20 *"her father saw the report because he is in the*
21 *Gardaí"*. So I would have been writing down what Laura
22 said to me, and that would have been how the error came
23 to light from our understanding. I have a note then
24 relating to Ms. D saying she was okay about the error,
25 that would have been in relation to the fact that Laura
26 was following up on it and was responding. Not that
27 she was okay about an error having occurred, but that
28 she was satisfied that Laura was following up on it.
29 The next note relates to considering the implications,

1 for example, for the other client, Ms. Y, whose details
2 were on the form. And I have a note here, because
3 obviously Laura was telling me what was on the error,
4 that there were no details, except for one line that
5 referred to Ms. Y not to Ms. D. So that is referred to
6 the section of the report where the inaccuracy was.

7
8 The next line on the report refers to data protection
9 breach. So this was an issue we needed to clarify, and
10 then a note of the actions that were to be followed up.
11 So, the correct form to be sent to social work, to the
12 Gardaí and to the client. An action letter to the
13 client with an apology letter to the Social work
14 Services and with the correct data. And there's a line
15 at the bottom there that is not clear but I recall from
16 my notes that that refers to sending the correct report
17 to the NCS services in the southeast.

18 705 Q. Okay. There's just two matters that I would like to
19 deal with. The first matter is: In August 2013 when
20 Laura Brophy was sending in her notification to
21 Tusla --

22 A. Mm-hmm.

23 706 Q. -- you as her supervisor, you reviewed that
24 notification, did you?

25 A. I wouldn't have reviewed the form. I would have
26 discussed with her the nature of the report that she
27 was going to submit. All the counsellors who work with
28 the NCS service are designated officers under the
29 Protection of Persons Reporting Child Abuse Acts. So

1 they would have responsibility for notifying reports
2 directly themselves.

3 707 Q. The other thing that I wanted to ask you was, what we
4 are going to deal with now shortly in relation to how
5 you dealt with this with Laura Brophy: I think it fair
6 to say that Laura Brophy put her land up immediately in
7 relation to this --

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

9 708 Q. -- and told you about her responsibility for it --

10 A. That's correct.

11 709 Q. -- and her error?

12 A. Yes.

13 710 Q. And then you took over from there by giving direction
14 to Laura Brophy as to how she should go about
15 rectifying the error, is that right?

16 A. That's correct.

17 711 Q. But part of that involved contacting the Gardaí and
18 sending a fresh report to the Gardaí --

19 A. Mm-hmm.

20 712 Q. -- is that right?

21 A. That's correct, yes.

22 713 Q. What led you to believe that Laura Brophy's report to
23 Tusla had made its way to the Gardaí?

24 A. I suppose my understanding would have been that, I
25 think what we understood from the client in terms of
26 their information that they had informed us about, was
27 that the error had come to light through the Gardaí.
28 So we were aware that the client had come to notice of
29 the error through the Gardaí. It's in the notes that

1 she had been -- her father works in the guards and
2 that's how she had understood the error came to light.
3 That is how she became informed of the error. So from
4 that, I presumed that our report, our physical original
5 report was actually with the Gardaí. I wasn't aware
6 that there was a notification form which recorded the
7 information we had submitted.

8 714 Q. Were you not aware of that procedure whereby the
9 notification is sent by Rian?

10 A. I'm aware that Tusla and social work would inform the
11 Gardaí about reports, but I wasn't aware that they
12 completed a separate form in relation to that
13 procedure.

14 715 Q. Did you make an assumption that they would just merely
15 have sent on Laura Brophy's report?

16 A. That was my assumption, yes.

17 716 Q. You were acting on that assumption, were you?

18 A. That's correct, yes.

19 717 Q. So from this moment onwards what you are trying to do,
20 a decision has been made to try and retrieve the
21 report --

22 A. That's correct.

23 718 Q. -- that was sent to the Gardaí.

24 A. That's correct.

25 719 Q. You believe that it is Laura Brophy's report that you
26 are trying to retrieve?

27 A. That is correct, yes.

28 720 Q. You know that that is not the situation?

29 A. I know now that that is not the case --

1 721 Q. Yes.

2 A. -- but that's only since seeing the documents as part
3 of the discovery, yeah.

4 722 Q. Now I think that you -- having discussed the matter
5 with Laura Brophy what directions did you give?

6 A. So the actions that we agreed were that she would write
7 a letter to the client with an apology; that a letter
8 would go to the social work department accompanying the
9 corrected report; that there would be a letter to the
10 Gardaí -- sorry, that the correct form would be sent to
11 the Gardaí and that the correct form would be sent to
12 the NCS service in the southeast.

13 723 Q. If we could please have 846 brought up on the screen.
14 This is an email sent from Laura Brophy to you, isn't
15 that correct?

16 A. That's correct.

17 724 Q. On the 14th May 2014 at 18:05. She says:
18
19 *"Hi Fiona*
20 *I was just talking to Anne. She informed me about her*
21 *contact with data protection and my need to write an*
22 *account. I hope this is sufficient as I have not yet*
23 *been able to follow up with social work in relation to*
24 *the Gardaí. Thank you again for all your support*
25 *today."*
26
27 And then she attaches an incident report. That
28 incident report is on the following page, at page 847.
29 A. That's referring to the fact that she was in contact

1 with Anne Masterson, who is the section officer who
2 works in our office, who I had asked to contact the
3 Department of Consumer Affairs to clarify what the
4 procedure would be if there was a data protection
5 breach.

6 725 Q. And then over at page 847 and 848, that's the report
7 entitled "*Incident report 14th May 2014*" that Laura
8 Brophy sent you, isn't that right?

9 A. That's correct, yes.

10 726 Q. I think she has already given evidence in relation to
11 this and I don't want to go over the report with you,
12 but it is a very full report --

13 A. That's correct, yes.

14 727 Q. -- in relation to her involvement in the case, is that
15 correct?

16 A. That's correct. And what steps had been taken to date,
17 to that time, which was on the 14th May.

18 728 Q. And again you are obviously not happy with what had
19 happened, but were you happy at that stage with Laura
20 Brophy's response?

21 A. I was certainly very satisfied that Laura was
22 undertaking everything that she could to address the
23 error. Obviously there were -- on that day, that was
24 14th when it came to light, so we were addressing the
25 immediate issues. Obviously some actions hadn't been
26 fulfilled at that point, because that was the day it
27 occurred. But yes, I was very satisfied that she took
28 every action that she could on that day.

29 **CHAIRMAN:** Mr. Marrinan, can I just stop you for a

1 second, just one thing that occurred to me. I take it
2 you did get advice that there was a data protection
3 breach?

4 A. The advice that we got in relation to it was that
5 because the name of Ms. Y was her surname only and was
6 not identifiable in any other way that that didn't
7 constitute a data protection breach. That was the
8 advice back that we received. It's later on in some of
9 the documents that have been submitted.

10 **CHAIRMAN:** And if the name was Jane Smith but didn't
11 have address would that be not a data protection
12 breach?

13 A. I can't comment on that because that wouldn't
14 necessarily be my area of expertise. But that was, if
15 you see there's a letter from Rosalie Smyth-Lynch, who
16 is the Director of Consumer Affairs and her response,
17 she wouldn't have received a copy of the report, we
18 would have described to her the error and informed her
19 that the information that was included incorrectly
20 included the surname of Ms. Y.

21 **CHAIRMAN:** It's personal information though, so it's at
22 the highest level of data protection regulation.

23 A. That's correct.

24 **CHAIRMAN:** I don't understand that, but that's what you
25 were told.

26 A. That's what I was informed of at the time, yes.

27 729 Q. **MR. MARRINAN:** Yeah, we will be coming to that in a
28 little bit more detail in due course. Now I think that
29 at page 849, again later on, on the 14th May 2014, you

1 sent an email.

2 A. Yes. This is the person -- sorry, this is the person I
3 was just referring to. This is Rosalie Smyth-Lynch who
4 she is the Director of Consumer Affairs. So I
5 completed a report based on the information from Laura
6 which I submitted to her, outlining the concerns and in
7 it you will see I have said "*Please find attached a*
8 *report relating to a data breach which came to the*
9 *light in the service of --*" I had made the assumption
10 that it was a data breach and Rosalie then responded
11 back to me, both by phone and in letter.

12 730 Q. If you could go over to page 850, this is the report.

13 A. So this is the report that I drafted, or that I wrote
14 up based on what Laura had reported to me in her
15 reporting and in our conversations, and this is what I
16 submitted to the Director of Consumer Affairs. Do you
17 want me to read through it or --

18 731 Q. Yeah, would you mind. It's the first time it has been
19 produced. Thank you.

20 A. Okay, so. So the first section is the summary. So it
21 is dated 14/5/2014 and it was submitted by email on the
22 14/5/2014.

23

24 "*A report regarding allegations of past abuse made by a*
25 *client of the service which contained inaccurate*
26 *information about the nature of abuse experienced by*
27 *the client was sent to the Child and Family Social Work*
28 *Services in August 2013. This error came to light*
29 *following a phone call from the client to their*

1 *counsellor-therapist on the 14/5/14. Steps were taken*
2 *immediately to resolve the issue."*

3
4 The next heading is:

5
6 *"Nature of the incident.*

7 *A counsellor-therapist working in the Rian office in*
8 *Cavan was contacted by client on the 14th May. The*
9 *client stated it had come to their attention as a*
10 *result of a recent contact with Gardaí that a written*
11 *report drafted by the counsellor-therapist with the*
12 *consent of the client detailing allegations of past*
13 *abuse experienced by the client and submitted by the*
14 *counsellor-therapist to the Child and Family Social*
15 *Work Service on the 9th August 2013 contained*
16 *inaccurate information regarding the nature of abuse as*
17 *reported by the client.*

18
19 *On review of the report submitted to the social work*
20 *service it has been determined that as a result of an*
21 *administrative error, the information which was*
22 *recorded in the section of the report entitled*
23 *"Description of Abuse" was incorrect. The information*
24 *in this section of the report pertained to another*
25 *client of the service. The information on the report*
26 *referred to the client by surname only. No other*
27 *identifying details were contained and this client is*
28 *not identifiable from the information in the report.*
29 *The remainder of the report is accurate.*

1
2 *This report has also been forwarded to the Gardaí in*
3 *Cavan by the social work service as per HSE Child*
4 *Protection Policy. The client requested that a copy of*
5 *the correct report be provided to the Gardaí. A copy*
6 *of this report has also been sent as part of the*
7 *client's file to the Waterford branch of the HSE*
8 *National Counselling Service as the client had recently*
9 *moved to live in that part of the country."*

10
11 So then the next section is just:

12
13 *"Steps Taken to Address the Data Breach.*
14 *The counsellor-therapist apologised immediately to the*
15 *client for the error and informed her that the*
16 *information in the report would be corrected*
17 *immediately and that the social work service and Gardaí*
18 *would be informed of the inaccuracy and issued with a*
19 *corrected report."*

20
21 And then there is a list of other points.

22
23 *"A letter is being drafted and will be sent to the*
24 *client apologising for the inaccuracy outlining the*
25 *steps taken to correct the error and enclosing a*
26 *corrected version of the report.*

27
28 *Counsellor-therapist phoned the social work service and*
29 *informed them verbally of the error.*

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A corrected version of the report was provided to the social work services as soon as this error came to light on the 14/5/2014.

social work have been asked to retrieve and shred the previous inaccurate report and place the inaccurate report on the client file.

A letter has been drafted and will be sent to the Gardaí informing them that the report they hold contains an inaccuracy and asking that they return this report to the service so that it can be destroyed. A copy of the correct report will be provided to the Gardaí.

The NCS service in Waterford were informed that the report they hold on file is inaccurate. They have been asked to remove this report from the file and shred it. A copy of the correct report will be furnished to the NCS in the southeast."

It is dated 15/5/14. That date actually is inaccurate because the report was sent on the 14/5/14.

732 Q. Yes. You made just a typographical error in relation to that, isn't that so? So that was sent off by you, is that right?

A. That's correct, by email, yes.

733 Q. Now did Laura Brophy then draft a letter to Ms. Eileen

1 Argue in Tulsa?

2 A. She did. That's correct, yes. And that letter then
3 was sent on the 14th, was hand-delivered with the
4 corrected report on the 14th May 2014.

5 734 Q. And I think if that can be shown at page 853. We have
6 already had this letter in evidence yesterday. I don't
7 intend to go through it again. But this letter was
8 copied to you for your approval, is that right?

9 A. This letter was copied to me. We had agreed the
10 wording of it as far as I can recall over the phone,
11 but I wouldn't have seen it before it was sent. It was
12 copied to me after it had been sent.

13 735 Q. Copied to you, but you had agreed?

14 A. Yes.

15 736 Q. Did you then have cause at any stage to inspect the
16 documents yourself?

17 A. Yes. When the error came to light I would have looked
18 at the incorrect form and the other form where the
19 information had come from.

20 737 Q. And these were available for your inspection on the
21 file, is that right?

22 A. On the central file, yes. Relating to referrals for
23 2013, that's correct.

24 738 Q. So did you also instruct Laura Brophy to do a Draft
25 Amended Retrospective Disclosure of Abuse Form?

26 A. That's correct, yes.

27 739 Q. And this was with a view to replacing the original one
28 that had been sent, is that right?

29 A. That's correct, yes.

1 740 Q. Now if you could just look at page 854, please. This
2 is headed "*Amended Report*" dated 14th May 2014.

3 A. That's correct. This is the report that would have
4 been submitted to the social work department on the
5 14th May and subsequently to the Gardaí on the 16th
6 May.

7 741 Q. And under "*Description of Abuse*" --

8 A. Yeah.

9 742 Q. -- it reads:

10

11 *"Ms. D informed me that there was a single incident of*
12 *sexual abuse. At the time of the incident Ms. D and*
13 *the alleged were fully clothed and the incident*
14 *involved inappropriate contact as the alleged rubbed*
15 *himself up and down against Ms. D in a sexual manner."*

16

17 Is that right?

18 A. That's correct, yes.

19 743 Q. And in terms of that description of abuse, did you
20 discuss that with Laura Brophy as to the exact
21 terminology that would be used in describing the
22 description of abuse or did she just simply put that in
23 herself?

24 A. I can't recall exactly what conversation would have
25 taken place, but I know that she would have referred
26 back to the initial assessment form and the details
27 that were contained in that in putting that information
28 into the amended form.

29 744 Q. And then on page 2 of that, at page 855, it says, if we

1 go down two paragraphs:

2
3 *"Details of any current risk to children (if known).*
4 *Ms. D is currently unaware of the alleged whereabouts*
5 *and whether he has access to children."*
6

7 Then there is a question mark:

8
9 *"Garda statement has been made."*
10

11 And it is ticked "Yes", is that right?

12 A. That's correct yes.

13 745 Q. And then *"Date and Details"* and we have *"Ms. D*
14 *remembered the abuse when she was approximately 11/12*
15 *years. Informed her parents. Ms. D made a statement*
16 *to the Gardaí at this time."* And the file was sent to
17 the DPP. *"However Ms. D was later informed --"* and
18 then that has been redacted, taken out. You had
19 accessed to the unredacted form?

20 A. That's correct. And as far as I know that document in
21 its unredacted -- that part of the document has also
22 been provided to the Tribunal in an unredacted form.
23 It refers to the DPP's decision.

24 746 Q. Yes. If you just go forward to page 856, which is the
25 second page of this report in its unredacted form.

26 A. That's correct, yes.

27 747 Q. And then if we go to that passage we see that the file
28 was sent to the DPP, however Ms. D was later informed
29 that there was insufficient evidence to proceed any

1 further, is that right?

2 A. That's correct, yes. So just to clarify, that all of
3 that information would have been contained correctly in
4 the original report, that the only incorrect
5 information was section described as "*Description of*
6 *Abuse*" on the previous page.

7 748 Q. Now I think that there was a follow up in relation to
8 the issue of the data breach from Rosalie Smyth-Lynch?

9 A. That's correct, yes. There's a note of a phone call I
10 think.

11 749 Q. Page 860. Have you got that? We have the email that
12 we have already referred to of the 14th May 2014, from
13 you to Ms. Lynch, and then she responds:
14
15 *"Dear Fiona*
16 *Tried to contact you to discuss. This is not a DP*
17 *breach, but refers to inappropriate administrative info*
18 *provision. Please contact me to discuss suggested*
19 *actions."*
20

21 A. That's correct, yes. So I would have subsequently
22 spoken to Rosalie, I think it was the 19th May. I
23 tried to contact her. I think it was 19th May.

24 750 Q. Yes.

25 A. There's a record of that.

26 751 Q. I think if you look at page 862, there is a note of
27 your conversation there with Ms. Lynch --

28 A. That's correct.

29 752 Q. -- is that right?

1 A. That's correct yes.

2 753 Q. If you just wouldn't mind going through that please?

3 A. Okay, I will read it out. So:

4

5 *"Spoke with Rosalie Smyth-Lynch, data controller.*
6 *Rosalie stated that as it is not possible to identify*
7 *the person in the report who is in the section with the*
8 *incorrect information that it is not a data breach but*
9 *an administrative error. Rosalie advised that all*
10 *incorrect reports should be retrieved and correct*
11 *reports sent to relevant personnel. I advised Rosalie*
12 *that garda stated they needed to keep the original*
13 *report on the file. Rosalie stated that there would be*
14 *no reason for this and that I should write to the chief*
15 *superintendent for his address only and request the*
16 *original incorrect report back. Similarly, incorrect*
17 *report should be retrieved from all parties who*
18 *received the originals."*

19

20 And I agreed to follow up on same.

21 754 Q. And then I think the following day, 16th May 2014, at
22 page 863 Ms. Lynch wrote to you?

23 A. That's correct. That's the letter that she would have
24 sent which I received, I think it's on the 19th May,
25 I'm not sure -- or, sorry, 22nd May. So I got the
26 letter some time after it was sent, but I have spoken
27 to her in the meantime.

28 755 Q. And she says:

29

1 *"Having examined the detail of the report I can confirm*
2 *that this incident is not a data protection breach."*

3
4 That was in her view.

5 A. That's correct.

6 756 Q. She was confirming the conversation that she had had
7 with you, is that right?

8 A. That's correct, yes.

9 757 Q. *"As you have indicated, the surname of the person*
10 *concerned is the only identifier which was released in*
11 *error, therefore it would not be possible to associate*
12 *the data to any particular individual as sufficient*
13 *identifiable information has not been forwarded as*
14 *indicated in your communication. On that basis it will*
15 *not be necessary to write to the clients concerned and*
16 *it would be impossible to identify them from the detail*
17 *as explained in your correspondence."*

18
19 Then:

20
21 *"It will, however, be necessary to retrieve the reports*
22 *from the Social Work Service, An Garda Síochána and the*
23 *National Counselling Service and to have same shredded*
24 *accordingly. Please note that the shredding of the*
25 *report should not be undertaken by NCS service in the*
26 *southeast. However, the report should be returned to*
27 *your service for appropriate shredding disposal."*

28
29 And then she signed off on that.

1 **CHAIRMAN:** Now I actually don't know whether she is
2 right or wrong, but I would have thought if the name
3 was, for instance, Mac Giolla Mhaoil Seachla, and that
4 was the surname well then -- but clearly I don't know
5 one way or the other.

6 A. Yeah, I understand.

7 **MR. MCDOWELL:** Not to mention data protection issue in
8 respect of my client.

9 **CHAIRMAN:** Yeah. Yeah. Sorry that is a point,
10 Mr. Murrinan.

11 **MR. MARRINAN:** It may be an appropriate time.

12 **CHAIRMAN:** Is it? Could we do that? Mr. McDowell has
13 mentioned a point; what about Sergeant McCabe? I mean,
14 was any advice sought -- and this is a query, I don't
15 know.

16 **MR. MARRINAN:** Yeah, that is a perfectly valid point,
17 yes.

18 **CHAIRMAN:** Yeah. Could the witness perhaps help us on
19 that and then we might break?

20 **MR. MARRINAN:** I think ultimately it's going to be a
21 matter for Ms. Smyth when she comes to give evidence.

22 **CHAIRMAN:** But was advice sought in relation to the
23 fact that -- I mean, okay, there's a number of things
24 here.

25 A. Sure.

26 **CHAIRMAN:** Yeah. Here's an allegation made which
27 nobody ever made, Ms. Y made it against someone and she
28 may have named that person, I don't know, but it seems
29 she didn't because I don't see any notification going

1 to anybody, but perhaps I am unaware of that because we
2 have asked not to get those documents, it's not none of
3 our business, but the allegation was made not just by
4 allegedly Ms. D incorrectly, it was also made in
5 relation to a person, namely Sergeant McCabe, so what
6 concern was there in relation to that? Because that is
7 data. That is saying that he digitally abused a child.
8 That is incorrect. So was there any kind of targeting
9 that?

10 A. I don't recall. My recollection is that there wasn't a
11 specific direction around Mr. McCabe's information and
12 whether there was any data protection breach in
13 relation to Mr. McCabe. Now the director, Rosalie
14 Smyth-Lynch, would not have been aware of any of the
15 names. We wouldn't have provided those to her. They
16 would have maintained confidentiality. She would have
17 been aware of the nature of the report but not have
18 seen a copy of the report, or even a redacted copy.
19 And I suppose the focus was on ensuring that the
20 correct information was provided back to social work,
21 so I have to acknowledge that I didn't discuss that
22 with Rosalie Smyth-Lynch from what I can recall.

23 **CHAIRMAN:** And nobody raised it on the other end?

24 A. It wasn't raised with me that I can recall, no.

25 **CHAIRMAN:** Yeah, they didn't raise it with you?

26 A. No.

27 **CHAIRMAN:** All right. I understand. Thank you very
28 much. So tomorrow I am afraid we have to start at two.
29 And I hope there's going to be lots and lots of clear

1 days in this month, but we will do our best. Thank you
2 very much.

3
4 THE HEARING THEN ADJOURNED UNTIL THURSDAY, 6TH JULY
5 2017 AT 2PM
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