

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

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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 THURSDAY, 5TH OCTOBER 2017 - DAY 32

32

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 5TH  
2 OCTOBER 2017 AT 1:30PM:

3  
4 MR. MCGUINNESS: Chairman, we are in a position to  
5 proceed, and I think Mr. Harty is in a position to 13:35  
6 continue his cross-examination of Superintendent  
7 McGovern. However, I should just clarify a number of  
8 matters arising from yesterday. In accordance with the  
9 wishes of the Tribunal, Superintendent McGovern,  
10 Superintendent McLoughlin and Chief Superintendent 13:35  
11 McGinn have furnished additional statements which do  
12 deal with the issue concerning the note. And an  
13 inquiry has been made with the former Assistant  
14 Commissioner Kenny, who is on the far side of the  
15 world, and has no, as I understand it, no recollection 13:36  
16 of the phone call. But searches are being made as to  
17 whether any notes might exist in the regional office.  
18 Mr. Dignam has explained that.

19  
20 Insofar as the note of Chief Superintendent McGinn is 13:36  
21 concerned, I should just say that obviously, as a  
22 matter of precaution, I asked Ms. Leader to check  
23 yesterday with Chief Superintendent McGinn about the  
24 issue of notes, and I should say, of course, that Chief  
25 Superintendent McGinn furnished the note immediately to 13:36  
26 Ms. Leader and did so obviously in the belief that the  
27 material had, in fact, already been furnished to the  
28 Tribunal, and I can say that, in fact, Chief  
29 Superintendent McGinn, through Sergeant Duffy, made

1 available to the Tribunal for inspection and for the  
2 possession of the Tribunal for such period as was  
3 necessary, the volume of materials that Chief  
4 Superintendent McGinn had submitted through the  
5 northern office to HQ. It does appear, and I think it 13:37  
6 is accepted, that Chief Superintendent McGinn submitted  
7 the note from her diary to Headquarters and it had  
8 reached there, and I don't say this in any way as a  
9 criticism of Mr. Power, who is acting on behalf of  
10 Chief Superintendent McGinn, he told the Tribunal that 13:37  
11 he believed that the chief superintendent had submitted  
12 it to the Tribunal. It didn't, in fact, reach the  
13 Tribunal, as such, and we didn't receive it in June.  
14 And that's obviously what the purposes of our searches  
15 were yesterday, to confirm whether that was so. We did 13:37  
16 confirm, having thrice searched our papers, that it is  
17 not, was not then within the Tribunal's papers.

18  
19 I have been given a very clear explanation by  
20 Mr. Dignam as to how it got separated from the 13:38  
21 documents that were forwarded. They were being  
22 categorised into the categories that the Tribunal had  
23 sought and, on its face, it didn't appear to relate to  
24 the HSE or Tusla, as such, and it didn't get forwarded  
25 in that context. Mr. Dignam has obviously assured me 13:38  
26 that a review is being taken of any material, lest  
27 there be any other matter at all, and he has obviously  
28 paid heed to the Tribunal's remarks yesterday and is  
29 renewing, obviously, his pledge of complete cooperation

1 and assistance in that regard, and we are obviously  
2 very grateful to get that.

3  
4 Subject to anything anyone else may wish to say, I  
5 think Mr. Harty is in a position to proceed and I was  
6 going to recall Superintendent McGovern for that  
7 purpose. 13:38

8 MR. POWER: Chairperson, could I just make a comment to  
9 the Tribunal, please? First of all, I want to  
10 apologise to the Tribunal for a statement that I made 13:39  
11 yesterday, suggesting, in fact very clearly stating,  
12 that the document in question had been provided to the  
13 Tribunal in June of 2017. I apologise for that,  
14 Tribunal.

15 CHAIRMAN: Mr. Power, there's no need to apologise. 13:39

16 MR. POWER: It was incorrect.

17 CHAIRMAN: Counsel act on their instructions, I  
18 completely understand that, that is what you were told,  
19 and I actually don't think it is a big deal and there's  
20 no need to say anything about it, but thanks. 13:39

21 MR. POWER: My client, of course, Chief Superintendent  
22 McGinn, also apologises in that regard. Thank you,  
23 Chairperson.

24 MR. DIGNAM: Chairman, might I just also express my  
25 gratitude to Mr. McGuinness for having explained the 13:39  
26 situation to the Tribunal and also express the deep  
27 regret on this side of the house, if I can put it that  
28 way, for the error in relation to the documentation.  
29 We are very conscious that that led to an interruption

1 in the work of the Tribunal yesterday and inconvenience  
2 to all concerned, including you, Chairman, and the  
3 other parties, and, as I say, that is very much  
4 regretted. We have heard and taken on board your  
5 remarks yesterday and your reminder, Chairman, as to 13:40  
6 the necessity for cooperation and assistance, and as  
7 Mr. McGuinness has outlined and explained to the  
8 Tribunal team, the review of our processes in order to  
9 ensure that there isn't this type of error again in the  
10 future which leads to any inconvenience or difficulty 13:40  
11 for the parties or indeed for the work of the Tribunal.  
12

13 I might just also take the opportunity, Chairman, to  
14 say that the members of An Garda Síochána who were  
15 dealing with the discovery and disclosure process acted 13:40  
16 at all times bona fides and there's no question of  
17 concealment, or anything like that. I just think that  
18 is important to say, Chairman.

19 CHAIRMAN: Well, I think as I said yesterday, I believe  
20 I'm going to go for the chaos theory before the 13:40  
21 conspiracy theory, and the reality of this is, we are  
22 inundated with documents and it's bound to be case that  
23 something will fall through the cracks. Now, it could  
24 be something is going to be made of it, but Mr. Harty  
25 is entitled to do that in the event that something 13:41  
26 emerges that he feels is important. So I think we will  
27 just carry on. I'm not viewing anyone as being either  
28 uncooperative or deceitful. It's just one of these  
29 things.



1 MR. DIGNAM: Thank you, Chair.

2  
3 SUPERINTENDENT EUGENE MCGOVERN CONTINUED TO BE  
4 CROSS-EXAMINED BY MR. HARTY:

5  
6 1 Q. MR. HARTY: Good afternoon, Superintendent. Now, we  
7 were dealing yesterday when this issue arose with the  
8 decision to make the referral to GSOC. Now, can I ask,  
9 who made the decision to make the referral to GSOC and  
10 on what basis? 13:41

11 A. I think, Mr. Chairman, I explained, yesterday, on the  
12 day the rationale and the decision-making process, I  
13 explained that fully, and --

14 2 Q. Sorry, I'm not talking about rationale --

15 A. In relation to the second part of the question, it was 13:41  
16 a decision that was made after joint discussion between  
17 myself and Chief Superintendent McGinn.

18 3 Q. And I take it that the person who made the final  
19 decision in those circumstances would have been Chief  
20 Superintendent McGinn? 13:42

21 A. The decision was -- the decision was reached and I was  
22 assigned with the responsibility of making the 102  
23 referral because of the fact that the relevant  
24 incidents that related to the actual referral had taken  
25 place in my district. 13:42

26 4 Q. I understand. In relation to that, because An Garda  
27 Síochána would not be making, strictly speaking, a  
28 section 85 referral, it was certainly decided between  
29 yourself and Chief Superintendent McGinn that it would

1 be a section 102 referral, isn't that correct?

2 A. That was the decision that we came to in relation to  
3 the referral of the matter and the referral was made in  
4 accordance with section 102. As I explained,  
5 Mr. Chairman, the decision, if it had been reached, not 13:42  
6 to make the referral, then a rationale was -- I had a  
7 responsibility to make a rationale in relation to why I  
8 didn't make the referral also.

9 5 Q. Okay. You referenced yesterday Circular, HQ Directive  
10 10/10. And I think we now, in fact, have received a 13:43  
11 copy of HQ Directive 10/10, which is at page 2484.  
12 Now, just from the point of view of background, this is  
13 a directive that is coming out in 2010 in respect of a  
14 part of the Act which came into force on the 9th May  
15 2007. That is recited at the top of the document. And 13:43  
16 then at paragraph (a) of that, it recites first, yet  
17 again, the coming into force of the Act. It then says:

18  
19 "Section 102(1) of the Act requires the Garda  
20 Commissioner must refer any matter to the Garda 13:44  
21 Síochána Ombudsman Commission when he forms a certain  
22 view, namely that the matter appears to indicate that a  
23 conduct of the member of An Garda Síochána may have  
24 resulted in the death of or serious harm to a person."

25  
26 He then recites section 102. And then on the next  
27 page:  
28

29 "The Commissioner has delegated his function under

1 section 102(1) of the Act to members of superintendent  
2 rank. The Commissioner is empowered to delegate his  
3 functions under the Act by virtue of the provisions of  
4 section 31 of the Act.

5  
6 The Act provides at section 82 that conduct includes  
7 both acts and omissions. The death or serious harm  
8 must be the result of the conduct of a member of the  
9 Garda Síochána. Therefore, there is no obligation to  
10 refer a cause of death or serious harm that occurs  
11 prior to Garda contact, nor is there a duty to refer in  
12 a case of death or serious harm that occurs after the  
13 death of the dead or injured person has had contact  
14 with the Garda Síochána but where such a death or  
15 injury is in no way related to the conduct of the  
16 member. The provision speaks of the conduct having  
17 resulted in rather than caused death or serious harm.  
18 The person killed or seriously harmed may be a civilian  
19 or a garda. The garda whose conduct forms the basis of  
20 a section 102(1) referral may be on or off duty."  
21

22 It then goes on to say:

23  
24 "The definitive interpretation of any of these  
25 provisions is a matter for the courts. However, the  
26 following is the agreed position of the Garda  
27 Commissioner and the Ombudsman Commission as to the  
28 state of the law. Serious harm is defined in section  
29 82 as follows:

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29

Creates a substantial risk of death, causes serious disfigurement, causes substantial loss or impairment or mobility of the body as a whole or the function of any particular bodily member or organ. This definition reflects the conduct of serious harm for the purposes of the Non-Fatal offences Against the Person Act 1997 (the 1997 Act). There is established case law in the definition of serious harm for the purpose of the act, including the judgment of Mr. Justice Kearns in *The People (DPP) v. Kirwin*, Court of Criminal Appeal, 28th October 2005. Loss or impairment of mobility encompasses the effects of long and short duration. Disfigurement is defined as meaning to spoil the experience of, including scarring. The gender, age, etcetera, of the person disfigured is inconsequential. One may be disfigured on a location of the body that is usually covered by clothing. Disfigurement connotes an outcome rather than a consequence of a short duration."

13:45

13:46

13:46

13:46

It goes on to discuss the '97 Act. But if we then move on to the next paragraph:

"However, for the purposes of section 102(1) of the 2005 Act, all that is required to activate the Garda Commissioner's duty to refer is that he forms a view that the conduct of the member may have resulted in serious harm. Therefore, the threshold of knowledge that is required to activate the duty is rather lower

13:46

1 than the context of the 1997 Act. A superintendent who  
2 has to consider a referral under section 102(1) makes  
3 the assessment of whether serious harm may have  
4 occurred at the time that the circumstances of the  
5 matters comes to his or her attention. One does not 13:47  
6 have to await the outcome of medical assessment or  
7 intervention to assess the quality of recovery. The  
8 decision to refer a matter rests solely with the Garda  
9 Commissioner. The Ombudsman Commission does not and  
10 cannot have an involvement in that decision. The Act 13:47  
11 requires that the Garda Commissioner must refer a  
12 matter where he forms a certain view, namely the matter  
13 that appears to him to indicate that the conduct of a  
14 member of An Garda Síochána may have resulted in death  
15 or serious harm; in other words, the duty to refer 13:47  
16 exists from the time the view is formed. Likewise, the  
17 decision not to refer a matter is solely for the Garda  
18 Commissioner. The duty to refer and any subsequent  
19 action of the Garda Síochána Ombudsman Commission staff  
20 are, in law, two separate and distinct, though 13:47  
21 unrelated, issues. By this, it is meant the decision  
22 to refer is one for the Garda Commissioner. The Act  
23 makes no provision for a provisional or courtesy  
24 referral. Either the matter is referred or not.

25  
26 The Garda Síochána Ombudsman Commission receive section  
27 102 referrals. There is no question of the  
28 Commissioner pulling in the Garda Síochána Ombudsman  
29 Commission staff. The actions of Garda Síochána 13:47

1 Ombudsman Commission on foot of a Section 101(2)  
2 referral is prescribed by the provisions of the Act.  
3 The reaction of the Garda Síochána Ombudsman Commission  
4 to a section 102 referral is a matter for the Garda  
5 Síochána Ombudsman Commission and its investigation 13:48  
6 staff, having regard to the provisions of the Act.  
7 When a matter comes to the attention of a  
8 superintendent and he/she deems it appropriate to  
9 consider the matter in the context of a section 102 of  
10 the 2005 Act, he must complete the form attached at 13:48  
11 Annex 1 entitled 'Decision made in consideration of the  
12 provisions of section 102(1) of the Garda Síochána Act  
13 2005'. This form must be completed once the decision  
14 is made to either refer the matter or not refer the  
15 matter to the Ombudsman Commission. The Garda 13:48  
16 Commissioner is of the view that in each individual  
17 case at the time of the taking of the decision, a  
18 superintendent who acts reasonably and reaches a  
19 decision in good faith not to refer has done all that  
20 can be expected of him or her." 13:49

21  
22 There's then further matters to deal with specific  
23 categories in relation to the discharge of weapons, I  
24 understand. It is evident from that directive that  
25 distress is not covered by the definition of serious 13:49  
26 harm, isn't that correct?

27 A. The word 'distressed' is not mentioned, yes, in the  
28 actual directive.

29 6 Q. Because it requires -- would you charge, and are you

1 telling this Tribunal that you would charge somebody  
2 with an offence of assault causing serious harm in  
3 respect of no physical injury having occurred?

4 A. Mr. Chairman, that wouldn't be a decision that I would  
5 be in a position to make. That would be a matter for 13:49  
6 the Director of Public Prosecutions. So to relate this  
7 to a particular criminal investigation, this is a  
8 situation where I may refer the matter on the day in  
9 relation to a decision in relation to a criminal  
10 charge, that's a matter that is referred to the DPP and 13:50  
11 the DPP makes decisions in all those particular types  
12 of situations.

13 7 Q. Is it the practice in the Donegal division to seek  
14 directions for [sic] the DPP in respect of assault  
15 causing serious harm under the Non-Fatal Offences 13:50  
16 Against the Person Act where no physical injury has  
17 occurred?

18 A. Mr. Chairman, it's a sort of a hypothetical situation.  
19 Where incidents have occurred where injuries have been  
20 sustained and a decision needs to be made in relation 13:50  
21 to which section under the Non-Fatal Offences Against  
22 the Person Act somebody requires to be charged, that  
23 matter will be referred to the DPP, and the decision is  
24 for the DPP's office to make.

25 8 Q. Where injuries have been sustained. Where no injuries 13:51  
26 have been sustained, you accept that if they were to  
27 charge somebody under the Non-Fatal Offences Against  
28 the Person Act, it would be a section 2 assault because  
29 there would be no harm?

1 A. But there are also sections under the Non-Fatal  
2 Offences Against the Person Act that don't require  
3 injuries to be sustained, and those matters are also  
4 required to be referred to the Director of Public  
5 Prosecutions. 13:51

6 9 Q. But not in respect of an assault charge causing serious  
7 harm, nobody would think that an assault causing  
8 serious harm could involve distress --

9 A. Yes, but --

10 10 Q. -- as its constituent factor? 13:51

11 A. But a criteria in relation to this particular referral,  
12 what was set out in the actual statement of complaint  
13 that was provided, it was validated and it presented,  
14 as far as I was concerned, and in consultation between  
15 myself and Chief Superintendent McGinn, it created a 13:51  
16 substantial risk of death and it's part of the actual  
17 definition of serious harm. As far as we were  
18 concerned, what was presented on the day presented, it  
19 creates a substantial risk of death. We were happy  
20 that what was presented to us created a substantial 13:52  
21 risk of death for Ms. Simms in relation to what was  
22 alleged.

23 11 Q. What substantial risk of death was there?

24 A. In relation to the threats that were actually made, or  
25 that she alleged were made. 13:52

26 12 Q. Can you explain to me, Superintendent McGovern, what  
27 function GSOC has in respect of crime prevention?

28 A. This was not an exercise in crime prevention. The  
29 referral of this matter to the Garda Ombudsman



1 Commission was for them to do an evaluation in relation  
2 to whether they deemed it subject of an investigation  
3 at their level. It was -- this matter referred to the  
4 conduct of a serving member of the Garda Síochána. The  
5 Garda Ombudsman Commission are an independent authority 13:52  
6 for investigating complaints involving members of An  
7 Garda Síochána, and, for that reason, this matter was  
8 referred to them to evaluate and to make a decision in  
9 relation to how this matter should proceed by way of an  
10 investigation. 13:53

11 13 Q. Because there was a serious and substantial risk of  
12 death?

13 A. Or harm on the day to the actual person who made the  
14 complaint in this matter and her children, Ms. Simms.

15 14 Q. Yes. And you say that in order to protect Ms. Simms 13:53  
16 and her family, her children, you were referring the  
17 matter to GSOC?

18 A. No, I didn't say I was referring the matter to GSOC to  
19 protect her. I said I was referring the matter to GSOC  
20 to make a determination in relation to the 13:53  
21 investigation that required to be undertaken because of  
22 the fact that the allegations were made against a  
23 serving member of An Garda Síochána.

24 15 Q. Are you telling me that if there is a situation where a  
25 guard is standing outside a building with a loaded gun, 13:53  
26 threatening to shoot somebody inside, that the  
27 appropriate response for Gardaí up the ranks is to call  
28 GSOC?

29 A. Yes. The matter would be referred to GSOC. Yes.

1 16 Q. And wait until such time as the GSOC man arrives, and  
2 if the garda goes into the building and shoots the  
3 person, as he has threatened to do, so be it?

4 A. I think that is a totally different situation where you  
5 are dealing with a fluid and active situation. Of 13:54  
6 course there would have to be some action to prevent  
7 that particular situation progressing to a crime.

8 17 Q. This was a fluid and active situation. This was very  
9 serious. This involved a meeting that required two  
10 superintendents, a chief superintendent, an inspector, 13:54  
11 a detective inspector and a garda. It had to be called  
12 at short notice. It was very urgent. The threats to  
13 kill were very serious. The domestic abuse issues were  
14 very serious. This is why you were all there, because  
15 it was so urgent. This is perhaps why nobody took any 13:54  
16 notes, because you were so busy dealing with the  
17 situation on the ground.

18 A. There were also issues in relation to threats to kill  
19 that took place over that particular weekend, and those  
20 situations on the day were the subject of assessments 13:54  
21 and crime prevention plans in place. And as I said  
22 previously, that is the reason why Detective Inspector  
23 O'Donnell was present at that particular meeting.

24 18 Q. Where were the crime protection plans in respect of  
25 Marisa Simms and her children? 13:55

26 A. In relation to Marisa Simms, the protection plan for  
27 her children was the referral of the matter to Tusla.

28 19 Q. Yet again, and I am just clarifying you with this, that  
29 if a guard is standing outside a building with a gun,

1 saying he's about to go in and shoot somebody, the  
2 appropriate response from An Garda Síochána is to call  
3 Tusla?

4 A. No, that's not what I said. You asked me what the  
5 protection plans were in place for Marisa Simms and her 13:55  
6 children and I said the referral of the matter to Tusla  
7 was the protection plan --

8 20 Q. Was the protection plan?  
9 A. -- in relation to her children. Ms. Simms at this  
10 moment in time was no longer resident at the actual 13:55  
11 address where the allegations were made. She was now  
12 living at a substantial geographical distance away from  
13 this particular --

14 21 Q. We've already discussed this, Superintendent; we both  
15 know that geographical distance is no protection 13:55  
16 against domestic abuse. We dealt with this evidence  
17 yesterday.

18 A. No, but --

19 22 Q. She wasn't safe if these threats were real, and you  
20 know that and I know that. 13:56  
21 A. Ms. Simms had already been provided with appropriate  
22 crime prevention advice. We were aware of the location  
23 at this stage where she was residing and crime  
24 prevention measures were in place. We would have known  
25 where she was and she would have been in a position to 13:56  
26 make contact with a Garda member if she required  
27 immediate assistance.

28 23 Q. Who gave her the crime prevention advice?  
29 A. She was given crime prevention advice in relation to

1 the initial incidents that were reported by her.

2 24 Q. By whom?

3 A. Well, at the time -- she was given them by Sergeant  
4 Gillespie at the time of the initial reports that she  
5 made.

13:56

6 25 Q. Oh, the earlier year, is it?

7 A. Yeah, well, she would have been aware of what the  
8 appropriate crime prevention requirements for herself  
9 were in relation to those particular incidents.

10 26 Q. It was urgent, Superintendent McGovern, because of the  
11 seriousness of the situation on the ground, that you  
12 all met and discussed this. There's no question that

13:56

13 was your evidence. And what you did in relation to  
14 protecting Marisa Simms from threats to burn, which you  
15 say you took seriously, is, you made a referral to GSOC

13:57

16 so they could perhaps initiate criminal proceedings  
17 against Garda Harrison, or disciplinary proceedings,  
18 and you sent a referral to Tusla. Well, anybody would

19 expect, if you took those threats seriously, that you  
20 would do something about them yourselves. And the  
21 reason why I am asking these questions is, I want to

13:57

22 know what you did?

23 A. The matter was referred to the Garda Ombudsman  
24 Commission for a decision to be made in relation to  
25 what level of investigations they proposed to undertake

13:57

26 in relation to the matter because a serving Garda  
27 member was involved. As I've indicated yesterday,  
28 there were other urgent matters that required to be  
29 followed up in relation to it and in accordance with

1 our requirements under section 89 of the Act, and they  
2 were being undertaken. In relation to the threats that  
3 had taken place in relation to Garda Harrison,  
4 Detective Inspector O'Donnell -- there had been  
5 measures already put in place the previous weekend and 13:58  
6 Detective Inspector O'Donnell was in charge of that  
7 particular investigation. But there was a significant  
8 crime prevention plan in place in relation to the  
9 address at which --

10 27 Q. What was the crime prevention plan in respect of Marisa 13:58  
11 Simms?

12 A. Marisa Simms was not residing at the address with --

13 28 Q. What was the crime prevention plan in respect of Marisa  
14 Simms?

15 A. She would have been given crime prevention advice. 13:58

16 29 Q. No, you said there was a significant crime prevention  
17 plan. I want to know what it was?

18 A. It was at Garda Harrison's address in relation to the  
19 threats --

20 30 Q. So if Marisa Simms walked up to -- went to Garda 13:58  
21 Harrison's address in order to get herself burnt by  
22 Garda Harrison, you would have been able to deal with  
23 it then. What plan was put in place in respect of  
24 protecting Marisa Simms from these threats which you  
25 were expecting us all to believe you took so seriously? 13:58

26 A. The --

27 31 Q. What plan was put in place? I just want an answer to  
28 that one question. Tell me what plan you took, put in  
29 place to protect Marisa Simms of the threats that you

1 were expecting us all with straight faces to accept you  
2 believed?

3 A. The threats already had been made at this particular  
4 stage of the actual investigation. It was now the  
5 subject of an investigation. 13:59

6 32 Q. Simple answer to the question: Did you put any crime  
7 prevention plans in place in respect of protecting  
8 Marisa Simms from the threats of Garda Keith Harrison?

9 A. Ms. Simms would have been provided with crime  
10 prevention advice in relation -- 13:59

11 33 Q. Yes or no?

12 A. Yes, in relation to her own self-protection.

13 34 Q. When?

14 A. When she would have spoke to the members at Letterkenny  
15 Garda Station, she would have been given crime 13:59  
16 prevention advice at that particular stage.

17 35 Q. No, she wasn't.

18 A. Well, I understood --

19 36 Q. Inspector Sheridan was in the room with you on the 8th  
20 October. She never said she gave her any crime 13:59  
21 protection advice.

22 A. It would be normal --

23 37 Q. Sergeant McGowan never said she gave her any protection  
24 advice. It would have been normal -- this is a 14:00  
25 situation where you are all -- you are expecting us to  
26 believe these threats were definitely made seriously  
27 and were taken seriously by An Garda Síochána. The  
28 first thing I would expect An Garda Síochána to do, if  
29 a threat, death threat is made against me, is, I would

1 expect them to take steps to make sure it isn't carried  
2 out.

3 CHAIRMAN: Mr. Harty, just on a point of clarification,  
4 it may help, but, then again, I actually may be wrong  
5 about this because I didn't pay a huge amount of 14:00  
6 attention, but I thought that after the first incident  
7 which we have minimised because there was two  
8 interpretations possible, that is to say the distressed  
9 husband --

10 MR. HARTY: Yes. 14:00

11 CHAIRMAN: -- that there was some advice given --

12 MR. HARTY: There was at that stage.

13 CHAIRMAN: -- in relation to that. I thought that was  
14 what the superintendent was actually referring to in  
15 saying the earlier incident. I didn't think he meant 14:00  
16 thinking in August or September.

17 MR. HARTY: He did.

18 CHAIRMAN: I thought he was going back to - this is  
19 2011, isn't it?

20 MR. HARTY: This is the 2012 incident, February 2012. 14:00

21 CHAIRMAN: Yes, it's May 2012, that's right.

22 MR. HARTY: He did, but he then changed his position  
23 further to say that she was given the advice in  
24 Letterkenny Garda Station.

25 CHAIRMAN: All right. well, you're entitled to ask him 14:01  
26 about that.

27 38 Q. MR. HARTY: And I am asking, who gave him that advice  
28 and how do you know that advice was given -- gave her  
29 that advice?

1 A. I certainly gave Marisa Simms no advice. As the  
2 Chairman has indicated, I explained the situation in  
3 relation to the 2011, 2012 situation. She was given  
4 crime prevention advice. The crime prevention sergeant  
5 on the day was put in place in relation to that 14:01  
6 particular situation, so she was fully aware of the  
7 actual crime prevention measures that were there for  
8 her own personal safety.

9 39 Q. What crime prevention --

10 A. And we were now aware of the location that she was 14:01  
11 residing at. She had the contact details of Garda  
12 members in that there, and in particular Inspector  
13 Sheridan in relation to the matter, and any cause for  
14 concern that she would have had, she would have been in  
15 a position to make immediate and urgent contact with a 14:01  
16 member of the force if a threat were to be evident to  
17 her at any stage into the future.

18 40 Q. Did you tell her, or who told her what she was to do if  
19 approached by Keith Harrison?

20 A. I certainly didn't tell her anything in relation -- 14:01

21 41 Q. That would be standard crime prevention advice in  
22 respect of threats that are taken seriously, wouldn't  
23 it?

24 A. Well, unfortunately, I cannot speak for what she was  
25 told by Inspector Sheridan or Sergeant McGowan in 14:02  
26 relation to that particular aspect when she made the  
27 statement. But certainly on the day, the fact on the  
28 day that she was in Letterkenny Garda Station on the  
29 6th October making a substantial statement of complaint



1 in relation to the matter, I would certainly on the day  
2 be of the view that she would be well aware of her  
3 situation in relation to approaching or contact with  
4 Garda Harrison into the future, subject to the  
5 completion of the actual criminal investigation. 14:02

6 42 Q. And just so we are clear on that, are you telling this  
7 Tribunal that if somebody has death threats, that the  
8 appropriate mechanism for An Garda Síochána is to deal  
9 with the matter -- to any external body that can  
10 possibly deal with it except An Garda Síochána, and 14:02  
11 assume that the person who has received the death  
12 threats has sufficient information to deal with their  
13 own safety, is that what you are telling the Tribunal?

14 A. No, I'm not, I'm not telling the Tribunal that. Crime  
15 prevention advice is provided to victims of 14:03  
16 threat-related incidents.

17 43 Q. Just advice? Just advice? Is that how you deal with a  
18 potential criminal act - you give advice to the person  
19 who might potentially be affected?

20 A. We certainly do. And -- - 14:03

21 44 Q. What else do you do, ordinarily? Let's take an  
22 ordinary case.

23 A. There's a responsibility on them to take and put  
24 measures in place for their own personal safety.

25 45 Q. If you ordinarily know of the person who has made a 14:03  
26 threat to kill which you or the person to whom it has  
27 been communicated takes seriously, do you simply give  
28 that person advice, is that all you do?

29 A. We pay their location passing attention in relation to

1 a situation that may possibly occur into the future.  
2 We put in place a catalogue of information in relation  
3 to that particular person.

4 46 Q. What sort of catalogue of information do you put  
5 together?

14:04

6 A. Where they are residing, give them contact details for  
7 the actual -- their local station or whatever the  
8 actual district station, that they can get immediate  
9 contact, we provide them on the day with crime  
10 prevention advice, we provide them with the services of  
11 the crime prevention officer, who in Donegal is  
12 Sergeant Wallace.

13 47 Q. Okay. So when was Marisa Simms given the contact  
14 details for Sergeant Wallace after these threats?

15 A. I can't answer the question in relation to that  
16 specific incident because I didn't do the evaluation of  
17 that particular threat.

14:04

18 48 Q. You were the one who apparently decided that the Gardaí  
19 were not going to take any further steps in the  
20 investigation of this at a meeting on the 8th October.  
21 You have now told this Tribunal that everything that  
22 was done on the 8th October in relation to further  
23 investigation had to do with preserving evidence under  
24 section 89 of the Act, isn't that correct? That has  
25 been your evidence. The Gardaí were going to take no  
26 further steps?

14:04

14:05

27 A. No, I didn't, I didn't, I didn't say that,  
28 Mr. Chairman. There were further steps taken to  
29 preserve evidence in the event of awaiting a decision

1 by GSOC in relation to what investigations they  
2 proposed to take in relation to a referral.

3 49 Q. And aside from that, your evidence is the Gardaí were  
4 not going to investigate any further until you heard  
5 from GSOC? 14:05

6 A. There were investigative measures put in place into the  
7 future to preserve evidence in relation to this  
8 particular case, and, as I indicated yesterday,  
9 Mr. Chairman, one of those specific measures was the  
10 actual securing and dumping of Ms. Marisa Simms' phone, 14:05  
11 which was of significant importance to this particular  
12 Tribunal.

13 50 Q. In relation to the serious risk of death which you have  
14 said was going to be caused by Keith Harrison, future  
15 tense, making allowances for a reading of section 102 14:06  
16 that allows for future crime, what steps did you take  
17 to prevent this future crime?

18 A. To save repeating what I've said already, Ms. Simms was  
19 given crime prevention advice in relation to the  
20 situation between herself and Mr. Harrison. She was 14:06  
21 also advised --

22 51 Q. No, she wasn't. Nobody gave her that advice. So  
23 that's simply not true.

24 A. Okay, well --

25 52 Q. That never happened. Nobody said that it happened 14:06  
26 before. I'm asking you what you do when somebody is at  
27 serious risk of a threat, which apparently you tell me  
28 you all took so seriously. Because I am horrified to  
29 think that, in Donegal, if there are threats which the

1           Gardaí take seriously and believe seriously, nobody  
2           does anything about them. So can you confirm that that  
3           is the case?

4           A.    No, that is not the case, Mr. Chairman. All threats  
5           that come to our attention are assessed. 14:07

6    53    Q.    And if you take them seriously, what do you do?

7           A.    We require statements of complaint from the actual  
8           parties involved, the matter is the subject of a  
9           criminal investigation and is referred to the Director  
10          of Public Prosecutions for decision in relation to 14:07  
11          prosecution.

12   54    Q.    Because that is the way you should deal with it, isn't  
13          that right?

14          A.    And that was the plan that was put in place in relation  
15          to this particular situation, as well. Other than the 14:07  
16          fact that the matter was referred initially on the day  
17          to the Garda Ombudsman Commission because there was a  
18          serving Garda member the subject of the allegations,  
19          for a decision to be made in relation to what measures  
20          they proposed to put in place, what actions they 14:07  
21          proposed to put in place in relation to the  
22          investigation.

23   55    Q.    Superintendent, you know and I know that what you would  
24          do after you have evidence in relation to this, you  
25          would gather together your necessary evidence and, if 14:08  
26          you take the threat seriously, the next thing you would  
27          do is arrest the suspect offender and bring them in.  
28          That's precisely what you would do, isn't that correct?

29          A.    If this investigation was an investigation where a

1           Garda member was not involved in the actual  
2           allegations, we would investigate the matter and a  
3           decision would be made thereafter in relation to an  
4           arrest and interview situation.

5   56   Q.    Yes.  There would be an arrest? 14:08

6           A.    On this occasion, this was a different situation.  
7           Unfortunately, there was a serving Garda member  
8           involved in this particular allegation.  As a result,  
9           refer the matter to the Garda Ombudsman Commission for  
10          them to make a decision in relation to what course of 14:09  
11          investigations they proposed or wished to take in  
12          relation to the matter.  That was always going to  
13          affect how we dealt with it in the immediate aftermath  
14          of the actual complaint.

15   57   Q.    I hadn't read into the missing sentence, but clearly 14:09  
16          you were able to read into Marisa Simms' statement,  
17          which was that Garda Harrison said he was going to bury  
18          and burn Marisa Simms after GSOC had an opportunity to  
19          consider whether or not it would admit the  
20          investigation.  I didn't realise that the threat 14:09  
21          somehow was going to disappear while GSOC had time to  
22          carry out its investigation.  Is it there somewhere?

23          A.    The threat and the investigation are two totally  
24          different things.  The investigation, the criminal  
25          investigation and the evaluation of the threat are two 14:09  
26          different situations.

27   58   Q.    They are.  They are entirely.  And the point is that  
28          you did nothing about evaluating the threat?

29          A.    The threat was evaluated, and crime prevention --

1 59 Q. By who?  
2 A. By ourselves.  
3 60 Q. By yourselves?  
4 A. Yes.  
5 61 Q. And crime prevention measures were put in place. What 14:10  
6 were they?  
7 A. Ms. Simms was given crime prevention advice in relation  
8 to it.  
9 62 Q. Not at the time, not at the time. And I'm asking you  
10 what you say was done by way of crime prevention. 14:10  
11 Because if you believed these threats were serious,  
12 that's what you would have done, or at least that is  
13 what I hope you would have done. Perhaps I'm wrong.  
14 But I would certainly hope that senior officers in  
15 Donegal division don't simply leave people wandering 14:10  
16 the street with a likely and serious death threat  
17 hanging over their heads. But you didn't do it, did  
18 you? And I have to put it to you that the reason why  
19 you didn't is because nobody ever said that there was a  
20 serious chance that these threats were either meant 14:11  
21 seriously or taken seriously. Because had you believed  
22 that, I have no doubt, Superintendent McGovern, that an  
23 officer of your calibre would have done something about  
24 it. But you didn't, did you?  
25 A. We did, Mr. Chairman. The matter was referred to the 14:11  
26 Garda Ombudsman Commission on the 8th and 9th October  
27 for the purposes of an evaluation in relation to what  
28 level of criminal investigation they proposed to take  
29 in relation to the matter. Their decision was always

1 going to be a determination for what we done. In  
2 relation to the --

3 63 Q. And their decision had no function, purpose, power,  
4 ability, or anything else, in respect of crime  
5 prevention? 14:11

6 A. I've never represented to the Tribunal, Mr. Chairman,  
7 that the Garda Ombudsman Commission had any function in  
8 relation to crime prevention. I have never represented  
9 that position.

10 64 Q. The Garda Ombudsman wouldn't be in a position to 14:12  
11 ensure, for example, that routine checks are made with  
12 the local Garda station with Marisa Simms, would they?  
13 They wouldn't have any ability to do that?

14 A. It wouldn't, it wouldn't be a function of the Garda  
15 Ombudsman Commission. 14:12

16 65 Q. No, the Garda Ombudsman Commission wouldn't be in a  
17 position to inspect Marisa Simms' home to make sure  
18 that it is safe from the point of view of an intruder  
19 and give advice on maintaining an alarm, installing a  
20 panic button, the usual things you would advise 14:12  
21 somebody in these circumstances, would they?

22 A. No.

23 66 Q. The Garda Ombudsman Commission wouldn't even have the  
24 power to arrest somebody if they saw an offence being  
25 committed, would they? They don't have powers of 14:13  
26 arrest. If the Garda Ombudsman Commission decided to  
27 sit outside Marisa Simms' home to make sure that  
28 nothing happened, they wouldn't have been in a position  
29 to; they have no power of arrest to stop Keith Harrison

1 from going into that house, would they?

2 A. No.

3 67 Q. They have no crime prevention powers, functions or  
4 anything else, so what I want to know from you,  
5 Superintendent, in these threats that you're expecting 14:13  
6 this Tribunal to believe, you believed, what did you do  
7 to protect the victim?

8 A. The victim returned to Garda Harrison a short time  
9 after the statement of complaint was made. The threats  
10 that were made to Mr. Harrison were at a particular 14:13  
11 location in the actual Churchill sub-district. That  
12 was the subject of a significant threat assessment. It  
13 was receiving ongoing passing patrols, including armed  
14 patrols, at that particular location. Ms. Simms was  
15 now back at that particular location. So the threat in 14:14  
16 relation to Garda Harrison and any threat on the day in  
17 relation to Ms. Simms would have been evaluated and was  
18 actually -- it was actually site-specific to one  
19 location at that particular time.

20 68 Q. And therefore, I take it there was ongoing evaluation 14:14  
21 after your meeting of the 8th October?

22 A. There was ongoing crime prevention measures in place in  
23 relation to Garda Harrison.

24 69 Q. In relation to Ms. Simms?

25 A. Ms. Simms returned to Garda Harrison and was residing 14:14  
26 at that address.

27 70 Q. Can I be just clear on this, are victims of domestic  
28 violence safer in the presence of their abuser or when  
29 they are away from their abuser?



1 A. Of course they're safer away from their actual abuser,  
2 but unfortunately --

3 71 Q. So the threat increases when Ms. Simms is back with  
4 Garda Harrison --

5 A. But -- 14:15

6 72 Q. -- if you believe the threat is real?

7 A. -- we cannot prevent Ms. Simms on the day from  
8 returning to reside with the partner on the day that  
9 had made the threats against her. We cannot stop that  
10 situation. We can only give people advice. 14:15  
11 Ms. Simms --

12 73 Q. What advice did you give to Ms. Simms when she went  
13 back with Garda Harrison?

14 A. I certainly didn't provide her with any advice.

15 74 Q. Nobody did. 14:15

16 A. She would have been aware of her entitlements under the  
17 domestic violence legislation in relation to  
18 application for orders.

19 75 Q. A safety order?

20 A. Yes. 14:15

21 76 Q. Which is not a barring order?

22 A. No.

23 77 Q. A safety order, which simply says to somebody 'don't  
24 watch and beset my house', if I live in a house, and  
25 'if I live in a different dwelling and I could live in 14:15  
26 the same dwelling as you, you are not to abuse me'?

27 A. Well, it's --

28 78 Q. In terms of somebody being burnt to death, which was  
29 the serious threat which you all thought was so serious

1 and so genuine, I'm not entirely sure that a safety  
2 order will work in respect of a cohabitee?

3 A. Mr. Chairman, that was a decision that Ms. Simms had to  
4 make for herself. She made the decision in this  
5 particular situation to return to reside with Garda 14:16  
6 Harrison.

7 79 Q. You see, in respect --

8 A. We couldn't prevent -- with respect, we couldn't  
9 prevent Ms. Simms from returning to reside with Garda  
10 Harrison. She made that decision herself. She can 14:16  
11 only be provided with the relevant information. She  
12 can only be provided with information in relation to  
13 whatever protection measures she can put in place to  
14 protect herself. We cannot force her or make her to do  
15 that. 14:16

16 80 Q. You could protect the children, couldn't you?

17 A. Well, we referred the children to the HSE, to Tusla,  
18 for evaluation in relation to the actual allegations  
19 that were contained in the statement of complaint.

20 81 Q. No, that is not correct. 14:16

21 A. It is correct, Mr. Chairman.

22 82 Q. No, it isn't correct. The statement of complaint was  
23 never given to them, and what they were told was that  
24 there was a row which was witnessed by the children  
25 where there had been physical contact which one of the 14:17  
26 children may have seen.

27 A. That is --

28 83 Q. That is what they were told. They were never told that  
29 the children were potentially at risk of a seriously

1 taken, seriously intended threat to burn. They were  
2 never told that, and they're very clear on that.

3 A. Yes. That is the -- that is the actual evidence that  
4 Tusla have given to the Tribunal, Mr. Chairman.  
5 Nevertheless, Sergeant McGowan, the district liaison 14:17  
6 manager with Tusla, has given contradictory evidence to  
7 this Tribunal as far as she is aware, and she is more  
8 than one hundred percent happy that she provided Tusla  
9 with the actual information that was contained within  
10 the actual statement of complaint in relation to the 14:17  
11 alleged threats that were perpetrated in front of the  
12 children, and I refer to children plural, that is what  
13 was contained in the statement of complaint as made by  
14 Marisa Simms.

15 84 Q. The situation is, is that I would have thought that if 14:18  
16 the Gardaí were seriously of the view that there was a  
17 serious death threat, seriously intended, that they  
18 would have made sure that Tusla acted instantly?

19 A. Tusla received an immediate referral in relation to the  
20 matter. 14:18

21 85 Q. For emotional abuse?

22 A. And that's the criteria for which we were entitled to  
23 make the referral. Once we make the referral to Tusla,  
24 the responsibility then transfers to Tusla to carry out  
25 an evaluation in relation to the alleged abuse or the 14:18  
26 alleged emotional abuse in relation to the actual  
27 children. And Sergeant McGowan is the district liaison  
28 manager, and, as has been represented on the referral  
29 form that went to Tusla, Sergeant McGowan was

1 identified as the person on the day to be contacted to  
2 update Tusla in relation to the referrals in relation  
3 to both children, and that occurred. And we have heard  
4 evidence in relation to the meeting that  
5 Sergeant McGowan had with Tusla, the update that she 14:19  
6 gave them in relation to the matter and the strategy  
7 meeting that was held on the 21st October 2013 in  
8 relation to those particular allegations.

9 86 Q. And nowhere in your referral does it say the children  
10 are at risk from immediate threats? 14:19

11 A. The referral document is limited in what was supplied  
12 to Tusla, and that was done for a particular reason; it  
13 was done for the particular reason that we do not  
14 supply, we do not supply statements of evidence to  
15 Tusla. We identify the member on the actual referral 14:19  
16 form who is in a position to brief the relevant social  
17 worker in Tusla in relation to the level of allegation  
18 that's there in relation to the children that are  
19 referred. And that is what took place in this  
20 particular case: Sergeant McGowan was identified as 14:19  
21 the district liaison manager to liaise with Tusla in  
22 relation to the matter, and she done that, and she  
23 subsequently held a strategy meeting with Tusla in  
24 relation to it --

25 87 Q. We will come back to all of that, and there's no need 14:20  
26 to go into it right now, because I was really  
27 fundamentally concerned about what you were or weren't  
28 doing yourselves in relation to the GSOC referral, the  
29 criminal investigation. Now, section 89 of the Act,

1 can you tell me what that says? Just so we are all  
2 clear of precisely what you've said you had to do.  
3 Section 89 of the Act, Garda Síochána Act, says:

4  
5 "He Garda Commissioner:-

6 (a) shall ensure that members of the Garda Síochána, on  
7 becoming aware of a complaint, take any lawful measures  
8 that appear to them to be necessary or expedient for  
9 the purpose of obtaining and preserving evidence  
10 relating to the conduct that is the subject matter of  
11 the complaint, and

12 (b) may postpone notifying a member of the Garda  
13 Síochána whose conduct is the subject matter of the  
14 complaint until those measures are taken."  
15

16 Now, can you explain to me why it was necessary or  
17 expedient to take a statement of evidence from Andrew  
18 Simms or Emma -- I think it is Emma Roulston, on the  
19 day of the 8th October, and why it couldn't have been  
20 done by GSOC? We're not talking about preserving the  
21 scene of crime here.

14:21

22 A. I'm not in an a position to answer that question,  
23 Mr. Chairman. I didn't make any decision in relation  
24 to who should or shouldn't be interviewed in relation  
25 to the actual follow-up Garda investigation. I didn't  
26 make any decision as to who should or shouldn't be  
27 interviewed.

14:21

28 88 Q. Oh! Because, you see, Inspector Sheridan's notes from  
29 the meeting make it clear that certain people are to be

1 interviewed.

2 A. Yes.

3 89 Q. Three people were named: Andrew Simms, Emma Roulston  
4 and Paula. It also is noted beside those names that  
5 Brigid McGowan was to carry out two of the interviews 14:21  
6 and Paula was on honeymoon. So can you explain to me,  
7 because you have made some considerable play on a  
8 section of the Garda Act which isn't referred to in the  
9 notes, section 89, you said that's why investigative  
10 steps were done. Those were the only investigative 14:22  
11 steps, so can you explain to me why those investigative  
12 steps had to be done?

13 A. Well, in relation to the first question you asked me,  
14 you do not see my name referenced there on those  
15 particular notes as the person who made that decision. 14:22

16 90 Q. You told me, when I was asking you questions, that  
17 insofar as the Gardaí took any steps afterwards, it was  
18 to preserve evidence under their obligations under  
19 section 89 of the Act. That was the evidence -- sorry,  
20 do you accept that that is what you told me, 14:22  
21 Superintendent?

22 MS. LEADER: Sorry, sir, just before Superintendent  
23 McGovern replies, it may be that the microphones are  
24 sensitive, but it does appear that voices are getting  
25 raised at the moment and I don't think anybody is doing 14:22  
26 it on purpose or anything, but --

27 MR. HARTY: I am sorry.

28 CHAIRMAN: We could perhaps turn down the microphones a  
29 little bit then.

1 91 Q. MR. HARTY: You told me in your own evidence that  
2 insofar as any investigative steps were taken as a  
3 result of that meeting, it was to preserve evidence  
4 under section 89. Do you accept that you gave this  
5 answer? 14:23

6 A. And I gave that answer and made specific reference to  
7 the fact on the day of securing of Ms. Simms' phone and  
8 the dumping of the data that was contained on that  
9 phone and the significance that it had into the future  
10 in relation to the actual investigation. 14:23

11 92 Q. That wasn't decided at that meeting?

12 A. I believe there is a remark on that particular document  
13 dump.

14 93 Q. Yes.

15 A. Yes. Well, that is what that refers to, the dumping of 14:23  
16 a phone.

17 94 Q. That was decided two days earlier between Inspector  
18 Sheridan and Ms. Simms, that Ms. Simms would drop in a  
19 phone on that day?

20 A. That may be the case. I don't wish to ask a question, 14:23  
21 but are you suggesting to me that the notes that have  
22 been presented to the Tribunal by Inspector Sheridan  
23 were prepared over a number of days as opposed to --

24 95 Q. No.

25 A. -- at the meeting of the 8th? Well, that word that is 14:24  
26 on that particular document in relation to dump, that  
27 is something that was discussed and agreed at that  
28 particular management meeting.

29 96 Q. And you accept that the taking of statements,

1           therefore, from Emma Roulston, Andrew Simms and Paula,  
2           was also discussed at that meeting?

3           A.    If -- yes, there was a discussion at the meeting in  
4           relation to statements that required to be taken. I  
5           have no notes in relation to who should or should not     14:24  
6           be interviewed at the earlier stage of the  
7           investigation because I didn't form part of that  
8           decision-making process or I wasn't assigned any  
9           responsibility in that regard, so I didn't make any  
10          notes about that. All I have -- you have the notes of     14:24  
11          Inspector Sheridan, she has made notes in relation to  
12          who should be interviewed, and those decisions were  
13          made at that particular meeting.

14       97 Q.   They were made. And the point is that those interviews  
15          serve no purpose under section 89 because this is not     14:25  
16          evidence that is ephemeral or likely to be affected by  
17          a couple of days passing, and if the Gardaí had  
18          difficulty in investigating it themselves, that  
19          evidence would have been better taken by GSOC,  
20          according to your version of events?                     14:25

21          A.    Well, any decision to take a statement or any decision  
22          to preserve evidence, it was made in good faith at that  
23          particular meeting. And I cannot comment in relation  
24          to what the criteria was for those particular  
25          statements to be taken earlier rather than other     14:25  
26          statements, but if Inspector Sheridan has a note that  
27          those statements were designated to be taken, then I  
28          have no difficulty with that note, that decisions were  
29          made at that particular meeting.



1 98 Q. And what I have to put to you is that that decision was  
2 made because ostensibly there was still to be a  
3 criminal investigation, isn't that correct?  
4 A. At that stage, Mr. Chairman, a decision had not been  
5 reached by GSOC in relation to what level of 14:26  
6 involvement or investigation they proposed to take in  
7 relation to the actual referral that they had received.  
8 99 Q. Well, we will come to your notes at 2462. Top of the  
9 page:  
10  
11 "Spoke to Sergeant McGowan. Update re Keith Harrison  
12 to assist Inspector Sheridan re taking of statements."  
13  
14 So you actioned that matter yourself, because Sergeant  
15 McGowan had to be directed by you, you were her 14:26  
16 district officer, you were the person to tell her.  
17 CHAIRMAN: Is this the 8th now? It is?  
18 MR. HARTY: 8th October. It is four hours after the  
19 GSOC referral.  
20 A. Yes. I made an entry in my journal at 4:26pm on 8th 14:27  
21 October 2013. That is a phone call I received from  
22 Sergeant McGowan, not a phone call I made to Sergeant  
23 McGowan. Sergeant McGowan made me aware in relation to  
24 the Keith Harrison investigation that she had been  
25 tasked to assist Inspector Sheridan in the taking of 14:27  
26 statements.  
27 100 Q. Who tasked her to do that?  
28 A. I cannot answer that question, Mr. Chairman. All I  
29 know is that Sergeant McGowan --

1 101 Q. I take it Inspector --  
2 A. Please. All I'm saying is that Sergeant McGowan told  
3 me at 4:26pm on 8th October 2013 that she had been  
4 tasked to assist Inspector Sheridan in taking  
5 statements. 14:27

6 102 Q. Can I just get a line of command clear in my head.  
7 Inspectors in one district don't task sergeants in  
8 other districts to do things. That would ordinarily be  
9 within the district line chain of command, isn't that  
10 correct? 14:27

11 A. That would be correct, Mr. Chairman, yes.

12 103 Q. And you are the superintendent; you didn't task her to  
13 assist Inspector Sheridan in taking statements, so can  
14 I take it that the only person with authority to  
15 instruct Sergeant McGowan to take statements would have 14:28  
16 been Chief Superintendent McGinn?

17 A. That may well have been the situation in relation to  
18 this phone call that I have received, but I cannot give  
19 a definitive answer to the Tribunal as to who tasked  
20 Sergeant McGowan to take the statements. All I know is 14:28  
21 that Sergeant McGowan made me aware that she had been  
22 tasked to assist Inspector Sheridan in the taking of  
23 statements, and that is the note that I made in  
24 relation to it. It was a phone call I received, not a  
25 phone call that I made to give an instruction or a 14:28  
26 direction.

27 104 Q. No, and that is of immense assistance, because it's the  
28 first time that I learned that Chief Superintendent  
29 McGinn must have been the person to give a direction to

1 Sergeant McGowan to take statements, because it didn't  
2 come from your district?

3 A. I didn't say that, that Chief Superintendent McGinn  
4 gave that direction. I cannot say that Chief  
5 Superintendent McGinn gave that direction, but I know 14:29  
6 that --

7 105 Q. Who else could have? You're the superintendent in her  
8 district.

9 A. I didn't, I didn't give her a direction --

10 106 Q. No. 14:29

11 A. -- to assist in the taking of statements.

12 107 Q. And your notes --

13 A. She made me aware from -- and it may well have  
14 materialised from the meeting that took place earlier  
15 on on that day, on the 8th October, that Sergeant 14:29  
16 McGowan would be tasked with assisting Inspector  
17 Sheridan in the taking of statements. That's all the  
18 help I can give in relation to that aspect of it.

19 108 Q. But you certainly took no part in that decision-making  
20 process? 14:29

21 A. No, I didn't, I didn't task Sergeant McGowan to assist  
22 Inspector Sheridan in the taking of follow-up  
23 statements in relation to the matter, Chairman.

24 109 Q. And you accept as a matter of Garda --

25 A. Yeah. 14:29

26 110 Q. -- line of command, that that can only have come from  
27 somebody superior to your rank if it came from outside  
28 your district? Would I be wrong in that? But I  
29 understand that superintendents in one district aren't

1 supposed to task people in other districts to carry out  
2 investigations?

3 A. But we can't really say to the fact that Sergeant  
4 McGowan was already involved in this investigation.  
5 She already had been assisting Inspector Sheridan in 14:30  
6 the taking of the original statement of complaint on  
7 the 6th October, and I suppose this was follow-up  
8 notification to me that she had been tasked to assist  
9 Inspector Sheridan in taking --

10 111 Q. She had been involved much more than that; she had been 14:30  
11 involved in the passing on of the anonymous letter, she  
12 was involved in the Pulse complaint, she had been  
13 involved in much more than simply the investigation.  
14 She was the person who advised you the previous week  
15 about the involvement of the issue. She was well aware 14:30  
16 of all of the issues and all of the detail. But you  
17 were not the person who assigned her to take statements  
18 from Inspector Sheridan. And that simply -- I want  
19 your confirmation that the only person with authority  
20 to assign her would have been superior to you, because 14:31  
21 no one within your district did it, isn't that correct?

22 CHAIRMAN: I must say, Mr. Harty, I was wondering about  
23 that myself and just thinking about just a few pages  
24 previously where I think what happened was that  
25 Sergeant McGowan went to Superintendent McGovern and 14:31  
26 got permission, isn't that right?

27 MR. HARTY: That's correct. That's what happened in  
28 the earlier case.

29 CHAIRMAN: Oh, was that on the -- that might have been

1 on the 3rd?  
2 MR. HARTY: On the 3rd October she went and informed  
3 Superintendent McGovern that a meeting had been  
4 arranged with Marisa Simms to take a statement on the  
5 6th October. 14:31  
6 CHAIRMAN: Yes.  
7 MR. HARTY: And she requested permission.  
8 CHAIRMAN: Yes. And he gave permission.  
9 MR. HARTY: And he gave permission, and that would be  
10 logical. 14:31  
11 CHAIRMAN: Yes. And that was for Sunday the 6th. But  
12 I would have -- perhaps I'm wrong in thinking that  
13 perhaps this was a continuation of that investigation;  
14 am I wrong?  
15 MR. HARTY: I understood that the purpose was, and 14:32  
16 Sergeant McGowan's own view in relation to it, her own  
17 evidence, was that she was there to assist and nothing  
18 more. It was Inspector Sheridan's investigation.  
19 CHAIRMAN: Yes, well, I suppose when you start, you  
20 finish, to use the time-honoured phrase, but I don't 14:32  
21 know.  
22 MR. HARTY: Perhaps.  
23 112 Q. In any event, there were decisions made to take  
24 additional statements at that meeting, isn't that  
25 correct, on the 8th October? 14:32  
26 A. Yes, there was, Mr. Chairman.  
27 113 Q. And there is no clear explanation from you as to why  
28 that was necessary under section 89 of the Garda  
29 Síochána Act?

1 A. Statements were identified to be taken in relation to  
2 the ongoing investigation. But also, part of the  
3 actual investigation was also the threats that had been  
4 made in relation to Garda Harrison, and that was the  
5 reason why Detective Inspector O'Donnell was present at 14:32  
6 that particular meeting. So some of the statements  
7 that were to be taken, also related to the actual  
8 threats that were made in relation to Garda Harrison.  
9 114 Q. Okay.  
10 A. So some of the actual follow-up jobs that were required 14:33  
11 to be undertaken related to that particular situation  
12 as well.  
13 115 Q. Okay. Sorry, I just want to be clear on that. I  
14 accept that relations were not good between Paula  
15 McDermott and Garda Harrison, but no one is suggesting 14:33  
16 that Paula McDermott was involved in the death threats  
17 on Garda Harrison, are they?  
18 CHAIRMAN: Well, I think, Mr. Harty, I mean, the  
19 situation vis-à-vis the anonymous letter, I think, as I  
20 have commented, you read newspapers nowadays and 14:33  
21 sometimes they suffer from capital-letter disease,  
22 everything is the name of a pub, it's like as if we are  
23 speaking German and nouns have to have a capital  
24 letter. This is, in fact, a very articulate letter and  
25 it doesn't have any capital-letter disease. But I 14:33  
26 don't think any of us have a notion as to who might be  
27 involved, and I am not sure --  
28 MR. HARTY: I'm not talking about the anonymous letter,  
29 sir.

1 CHAIRMAN: No. I'm not sure there is any point in  
2 speculating it could have been so-and-so, because then  
3 we'll have to bring them in and ask them or --  
4 MR. HARTY: No, the reason why I'm asking is that the  
5 superintendent has said that insofar as people were 14:34  
6 being identified for interview and taking of  
7 statements, it was in respect of death threats on Garda  
8 Harrison, but I'm just pointing out to him that three  
9 of those people, Emma Roulston, Paula McDermott and  
10 Andrew Simms, were in respect of the threats allegedly 14:34  
11 made by Garda Harrison, isn't that correct?  
12 A. That would be correct.  
13 CHAIRMAN: Sorry, I thought you were referring to the  
14 anonymous letter --  
15 MR. HARTY: No. 14:34  
16 CHAIRMAN: -- which I don't think made any reference to  
17 death threats. It made reference to a strain --  
18 MR. HARTY: Yes.  
19 CHAIRMAN: -- on a particular individual and worry in  
20 relation to the children. So that seems to be a very 14:34  
21 concerned kind of a letter.  
22 MR. HARTY: Yes.  
23 CHAIRMAN: So maybe we're talking about something  
24 different.  
25 MR. HARTY: what I'm talking about is that 14:34  
26 Superintendent McGovern had suggested that the people  
27 who were listed for interview were in relation to the  
28 death threats on Garda Harrison, and that is correct,  
29 but at a later page in the notes, so on page 906 of

1 Inspector Sheridan's notes -- if we go down to the next  
2 section, just there. That is perfect, thank you.

3  
4 "Interview Emma Roulston, Paula, Andrew. Phone  
5 dumped." 14:35

6  
7 And all of that was in relation to the alleged serious  
8 death threats made by Garda Harrison, isn't that  
9 correct?

10 A. As I've said, Mr. Chairman, there were jobs identified 14:35  
11 to be carried out in relation to two different  
12 investigations that were under discussion --

13 116 Q. Yes. I'm asking what job did this have a relation to?  
14 Simple question, simple answer.

15 A. I can't answer that, Mr. Chairman. I don't know 14:35  
16 actually on the day what each of the actual jobs that  
17 were assigned or the statements being taken, what  
18 specifically they relate to in relation to the  
19 investigation. The people that were --

20 117 Q. Are you seriously telling this Tribunal that people in 14:35  
21 that room thought that Emma Roulston, Paula McDermott  
22 or Andrew Simms were involved in the anonymous death  
23 threats made against Garda Harrison? Is that your  
24 evidence? And yes or no to that evidence.

25 A. It's no. I'm not saying that. I never said that. 14:36

26 118 Q. Well then, why are these people listed as being  
27 required for interview by An Garda Síochána if you say  
28 it has nothing to do with the other element? There are  
29 people listed at other stages in respect of the death



1 threats against Garda Harrison, but in respect of the  
2 statement made by Marisa Simms these are obviously the  
3 witnesses that are to be interviewed. Do you accept that?  
4 A. They are names that Inspector Sheridan wrote on her  
5 sheet that required statements to be taken from. 14:36  
6 119 Q. Was that discussed?  
7 A. It was discussed, yes. The statement was discussed at  
8 the actual meeting and what immediate steps needed to  
9 be taken in relation to interviewing certain parties.  
10 And they're the names that Inspector Sheridan wrote 14:36  
11 down on her sheet as jobs that I understand she was  
12 assigned to do.  
13 120 Q. Well, in fact she --  
14 A. There were two separate, there were two separate  
15 entities going on at that particular meeting, there 14:37  
16 were two separate investigations under suggestion.  
17 There was the session in relation to the actual  
18 statement of complaint as made by Marisa Simms, but  
19 there was also the issue in relation to the death  
20 threats that were received by Garda Harrison. And, 14:37  
21 Mr. Chairman, if you want to refer to my notes that in  
22 relation to the same date that I spoke to Sergeant  
23 McGowan and she made me aware she was assisting  
24 Inspector Sheridan, if you look at an entry that I made  
25 on that same day at 8:24am it reflects on a follow-up 14:37  
26 inquiry or part of the investigation that was assigned  
27 to Inspector Sheridan on that particular day. A  
28 follow-up that she carried out in relation to a job  
29 that she was assigned at that particular meeting or

1 conference.

2 121 Q. Yes?

3 A. So it reflects that there was other jobs assigned not  
4 just simply in relation to the statement of complaint  
5 and the referral, to GSOC, there was also urgent jobs 14:37  
6 to be done in relation to the actual threats that were  
7 received by Garda Harrison, and my entry of 8:24pm  
8 reflects on one of those urgent inquiries or  
9 investigation that was required to be followed up on.

10 122 Q. And she told you she texted the chief superintendent, 14:38  
11 is that correct?

12 A. She told me she had updated Chief Superintendent McGinn  
13 in relation to the outcome of that particular  
14 investigation or inquiry that she had undertaken.

15 123 Q. What discussion was made in respect of Martin McDermott 14:38  
16 at that meeting of the 8th October?

17 A. He was discussed as a person of interest in relation to  
18 the death threats that had been made in relation to  
19 Garda Harrison.

20 124 Q. Was there any other discussion in relation to him? 14:38

21 CHAIRMAN: I'm not sure because -- okay, I understood  
22 if we go back to May 2012, I think it was in July 2012  
23 he got the eight year sentence for manslaughter of the  
24 unfortunate Garda McLoughlin, and then I understood  
25 that about a year later he had escaped and was perhaps 14:39  
26 living in Londonderry --

27 A. Yes.

28 CHAIRMAN: -- is that right?

29 A. That's correct, yes.

1 CHAIRMAN: And then there was either some extradition  
2 process or something else that happened?  
3 A. That's correct, Chairman.  
4 CHAIRMAN: But I don't know, was he at large at that  
5 stage? 14:39  
6 MR. HARTY: No, he was in Portlaoise Prison at this  
7 stage.  
8 A. No, he was in Portlaoise Prison at that particular  
9 stage. There was an issue in relation to where the  
10 actual threatening phone call had originally been made 14:39  
11 and an investigative inquiry required to be carried out  
12 in relation to the prison and the entry at 8:24pm on  
13 that particular date was the outcome of the inquiry  
14 that was undertaken or investigation undertaken by  
15 Inspector Sheridan. 14:39  
16 CHAIRMAN: Yes. Well, you can make a phone call in a  
17 prison, isn't that right, but you have to get  
18 permission and I think you have to use a box, in other  
19 words a landline, isn't that right?  
20 A. Well, unfortunately on the day there had -- and it 14:39  
21 was --  
22 CHAIRMAN: Well, I know about budgies and mobile phones  
23 in prison.  
24 A. Yes.  
25 CHAIRMAN: And I think there were incidents of people 14:39  
26 having both.  
27 A. Yes.  
28 CHAIRMAN: Which are not allowed.  
29 A. And on this occasion, Mr. Chairman, that situation

1           arose in relation to this and a particular item was  
2           seized as a result of the search that was carried out  
3           by our colleagues in the prison service in relation to  
4           the inquiry that we done.

5           CHAIRMAN: Yeah. So that was presumably a mobile 14:40  
6           phone. I mean, that presumably proved nothing?

7           A. I can't answer that question, Mr. Chairman.

8           CHAIRMAN: It was right to follow it through --

9           A. Yes.

10          CHAIRMAN: -- but that was as far as it went? 14:40

11          A. Yes.

12          CHAIRMAN: All right.

13 125 Q. MR. HARTY: Was any other discussion had at that  
14          conference in relation to the relationship between  
15          Martin McDermott, his family and An Garda Síochána? 14:40

16          A. I'm going to say no, Mr. Chairman, because I don't  
17          really know what I'm being asked. No, there was no --  
18          if it's derogatory discussion that is implied,  
19          absolutely not. There was no discussion in relation to  
20          the relationship between Marisa Simms, her brother, 14:41  
21          Garda Harrison, the Garda organisation. No. This  
22          meeting was not for that particular purpose. It wasn't  
23          motivated in any way towards churning up any derogatory  
24          background or otherwise in relation to Garda Harrison,  
25          Marisa Simms or her connection to Martin McDermott. 14:41

26          The discussion in relation to Martin McDermott related  
27          to the actual death threats that were received by Garda  
28          Harrison and, as I say, the entry I made in my journal  
29          reflects on the follow-up that was carried out by

1 Inspector Sheridan in relation to that particular  
2 meeting.

3 CHAIRMAN: Just, I'm sorry, Mr. Harty, to interrupt,  
4 but you appreciate, superintendent, all the questions  
5 that Mr. Harty is obliged to ask you in relation to 14:41  
6 this are as to whether this meeting was in effect an  
7 ill-motivated meeting in relation to Garda Harrison as  
8 opposed to a genuine investigation and you'll  
9 appreciate that that is the line. So, it's perhaps not  
10 necessary to necessarily go into a great deal of detail 14:42  
11 in relation to matters if you feel it's not absolutely  
12 necessary.

13 126 Q. MR. HARTY: I take it nobody indicated that there was  
14 any problems at that meeting taking statements from  
15 Rita Bogle, or McDermott, or Paula McDermott? 14:42

16 A. Not to my recollection, Mr. Chairman.

17 127 Q. Nobody indicated that there was any bad blood between  
18 Rita McDermott, Paula McDermott and An Garda Síochána?

19 A. Not to my recollection, Mr. Chairman.

20 128 Q. Is there a situation in your mind that it was discussed 14:42  
21 at the meeting that there was a conflict of interest  
22 between An Garda Síochána and the McDermott family due  
23 to Martin McDermott's conviction?

24 A. It was never suggested there was any conflict of  
25 interest between An Garda Síochána and the connection 14:43  
26 between Martin McDermott and Marisa Simms and Garda  
27 Harrison.

28 129 Q. Sorry, I am reading --

29 CHAIRMAN: I'm sorry, Mr. Harty, I'm just wondering, I

1 mean let's suppose there was and let's suppose they  
2 didn't like Martin McDermott, it would be perfectly  
3 natural, wouldn't it? But I mean there's nobody else  
4 to carry out an investigation, it has to be the Gardaí,  
5 even though one of their members has unfortunately been 14:43  
6 the victim of a homicide. I am not sure that is going  
7 to help.

8 MR. HARTY: I am reading verbatim from Chief  
9 Superintendent McGinn's statement which I received this  
10 morning. 14:43

11 130 Q. But you're satisfied that that was never raised at the  
12 meeting?

13 CHAIRMAN: I am not sure -- what was?

14 MR. HARTY: A conflict of interest between An Garda  
15 Síochána and the McDermott family. 14:43

16 CHAIRMAN: Well, there may be some people who might be  
17 better off not being on the investigation, but that is  
18 not quite the same thing.

19 MR. HARTY: There's always a conflict of interest  
20 between people who are being investigated for crimes. 14:43

21 A. Well, I don't -- it's not -- it wasn't that there was a  
22 conflict of interest. It was suggested at that  
23 particular meeting, and it was agreed, that these  
24 particular allegations would be best investigated by an  
25 independent authority. 14:44

26 131 Q. Why? Why is there a conflict of interest? Rita  
27 McDermott has apparently gone to An Garda Síochána of  
28 her own volition and that appears to be common case;  
29 Paula McDermott has gone to An Garda Síochána willingly

1 of her own volition and apparently common case; in  
2 respect of Marisa Simms there is a conflict as to how  
3 voluntary it was, but certainly she did arrive in  
4 Letterkenny Garda Station under her own steam - and how  
5 could anybody have said that the McDermott family, that 14:44  
6 there was a conflict of interest between An Garda  
7 Síochána and the McDermott family due to previous  
8 interactions between An Garda Síochána and Martin  
9 McDermott? And just so we can complete chief  
10 superintendent's sentence from her statement that she 14:45  
11 decided to type up last night, and that there was --

12  
13 "Due to previous interactions between An Garda  
14 Síochána and Martin McDermott --"

15  
16 And never missing an opportunity, God bless Chief  
17 Superintendent Sheridan [sic].

18  
19 "-- who was at the time was serving a sentence for the  
20 manslaughter of Garda Gary McLoughlin, and the fact 14:45  
21 that the persons close to Martin McDermott were  
22 identified by Garda Harrison as possible suspects for  
23 the 999 threats and the domestic circumstances of Garda  
24 Harrison were associated with the threats, it was  
25 agreed that the matter should be referred to GSOC in 14:45  
26 accordance with section 102 of the Garda Síochána Act."

27  
28 Your initial recollection was that conversation never  
29 took place and it's only when I said to you that it was

1 contained in the statement of Chief Superintendent  
2 McGinn that you thought that it might have been  
3 discussed.

4 A. I don't think I ever denied to this Tribunal that one  
5 of the purposes for referring the section 102 referral 14:45  
6 was that we felt that it required an independent  
7 investigation. And an independent investigation, the  
8 authority for investigating members of An Garda  
9 Síochána who are involved in criminal related matters  
10 is the responsibility of the Garda Síochána Ombudsman 14:46  
11 Commission. I already said that to the Tribunal.

12 132 Q. Would the McDermott family think that because they were  
13 related to Martin McDermott that An Garda Síochána  
14 would not investigate the alleged threats made by Garda  
15 Keith Harrison? Is that what you are saying? 14:46

16 CHAIRMAN: I honestly didn't pick up anybody as saying  
17 that.

18 MR. HARTY: That's what is -- I'm looking at page 2469.

19 CHAIRMAN: No, no, Mr. Harty, it's fine. But honestly,  
20 I mean that would be a strange thing. It's like 14:46  
21 saying, you know, if prisoners want to stab and kill  
22 each other, let them at it. I don't think -- I'd be  
23 shocked to think the Gardaí would take any such  
24 attitude.

25 MR. HARTY: The statement which we received, the first 14:46  
26 ever account of this meeting on the 8th October from  
27 Chief Superintendent McGinn, which was drafted last  
28 night after listening all day to Superintendent  
29 McGovern's evidence, has this reference added into it



1 and I want to confirm with Superintendent McGovern, who  
2 prior to me indicating that it was in Chief  
3 Superintendent McGinn's statement said that it didn't  
4 happen --

5 CHAIRMAN: Yes, I see, that Mr. Harty. But perhaps I'm 14:47  
6 not getting the correct, I suppose, meaning or  
7 direction of the questions.

8 MR. HARTY: Sorry, the direction of the question is --

9 CHAIRMAN: No, no, no, if I get it wrong please correct  
10 me. 14:47

11 MR. HARTY: Yes. Perhaps if we read --

12 CHAIRMAN: Just hang on a minute. I don't necessarily  
13 want to read that.

14 MR. HARTY: Yes.

15 CHAIRMAN: But is the idea that Chief Superintendent 14:47  
16 McGinn was taking the view that it is better that  
17 somebody from outside investigate the matter?

18 MR. HARTY: That's -- apparently, and I'm asking --

19 CHAIRMAN: Yes.

20 MR. HARTY: Well no, this was apparently the discussion 14:47  
21 had. And one of the elements of that, which Chief  
22 Superintendent McGinn is suggesting was discussed at  
23 the time, was that Martin McDermott had been involved  
24 in the death of Garda Gary McLoughlin, and that was  
25 discussed at the time. 14:48

26 CHAIRMAN: All right. Well, fine. Do you recall any  
27 such discussion as to whether it should be Gardaí in  
28 Donegal or perhaps another division who might be  
29 involved? It does sometimes happen, doesn't it, that

1 another division will investigate something?

2 A. Yeah. It was the view of Chief Superintendent McGinn  
3 that it would be appropriate that the matter would be  
4 investigated outside of the Donegal division. I  
5 represented the situation here yesterday. And as a 14:48  
6 result she requested the regional assistant  
7 commissioner to appoint an independent investigator  
8 from outside of the division to carry out the  
9 investigation.

10 CHAIRMAN: And just help me, did that ever happen? 14:48

11 A. At that time he decided on the day that that wasn't the  
12 appropriate way to deal with the matter and he  
13 subsequently appointed me to investigate it. This was  
14 after we had received a decision from GSOC that they  
15 didn't propose to advance it. That didn't -- it didn't 14:49  
16 happen. He indicated that I should be the person  
17 appointed.

18 CHAIRMAN: Right.

19 A. I was subsequently appointed. Internal Affairs decided  
20 that it wasn't appropriate due to the fact that I had 14:49  
21 made the section 102 referral. And Superintendent Mary  
22 Murray of Sligo Garda Station was subsequently  
23 appointed to carry out the actual --

24 CHAIRMAN: Yes, I knew she'd come into it. So, it  
25 eventually did happen that someone from outside the 14:49  
26 division came in?

27 A. Yes, Mr. Chairman. It did eventually get to the point  
28 where there was somebody independent.

29 CHAIRMAN: But she sent an initial letter and then I

1 think there was litigation or something like that.

2 MR. HARTY: She was appointed in February and she sent

3 a letter identifying --

4 CHAIRMAN: In December.

5 MR. HARTY: In December. 14:49

6 CHAIRMAN: Yes.

7 MR. HARTY: She was appointed in February, just after

8 the Tusla investigation.

9 CHAIRMAN: Okay. Those facts help. And if you want to

10 ask a question about that, Mr. Harty, then please do. 14:49

11 133 Q. MR. HARTY: The situation is that, I have to put it to

12 you, because no one mentioned this at any stage, it's

13 in nobody's notes, nobody mentioned this at any stage

14 until Chief Superintendent McGinn wrote her statement

15 last night, having sat here for two and a half hours, 14:50

16 in relation to this matter, that there was no such

17 discussion about Martin McDermott and the death of a

18 garda in Buncrana?

19 A. Like --

20 134 Q. You didn't need to be reminded about Martin McDermott 14:50

21 and the death of a garda in Buncrana, I take it?

22 A. I didn't unfortunately, Mr. Chairman.

23 135 Q. No.

24 A. I was the superintendent on call on the weekend that he

25 was sadly killed, even though I wasn't stationed in the 14:50

26 district at the time. No, nobody at that meeting would

27 have -- maybe Inspector Sheridan, in all fairness to

28 Inspector Sheridan who was there, she was new to the

29 division, she wasn't in the division when this

1 particular incident occurred. But everybody else that  
2 was there would not have needed to be reminded in  
3 relation to the actual tragedy that had occurred to  
4 Garda McLoughlin.

5 136 Q. There was no need for discussion? 14:50

6 A. No. No. I mean, Martin McDermott also came up at this  
7 particular meeting --

8 137 Q. Yes.

9 A. -- in relation to the actual allegations or the alleged  
10 threats that were made to Garda Harrison on the weekend 14:51  
11 of the wedding.

12 138 Q. And the Gardaí in Donegal were more than able to  
13 investigate those, weren't they?

14 A. Well, they formed part of the discussion at that  
15 particular meeting. There were preliminary inquiries 14:51  
16 to be carried out. Detective Inspector O'Donnell was

17 carrying out investigations and inquiries in relation  
18 to those particular alleged threats. That was one --  
19 excuse me, that was one avenue of inquiry that he was  
20 embarking on. Chief Superintendent McGinn was always 14:51  
21 of the view, and I have never said otherwise, that an

22 independent investigation was the most appropriate  
23 investigation to be carried out in relation to this  
24 matter, bearing in mind that there was a serving guard  
25 in the Donegal division allegedly involved in the act 14:51  
26 of criminality that was alleged by Ms. Simms and she  
27 was always of the view --

28 139 Q. Superintendent, I have to stop you. Chief  
29 Superintendent McGinn in her statement to the Tribunal,

1 which she wrote yesterday evening, makes it clear that  
2 central to bringing in GSOC was the fact that Martin  
3 McDermott was involved in the death of a Garda Síochána  
4 and therefore there might be issues with the McDermott  
5 family and Gardaí in Donegal investigating it, but 14:52  
6 there was no difficulty with Gardaí in Donegal  
7 investigating Martin McDermott in respect of the death  
8 threats against Garda Keith Harrison, isn't that the  
9 case? Yes or no. There was no difficulty. I take it,  
10 Detective Inspector O'Donnell remained stationed in 14:52  
11 Letterkenny while he carried out his inquiries?  
12 CHAIRMAN: Mr. Harty, would you mind just clarifying  
13 the point for me please? What is the point?  
14 MR. HARTY: The point is, is that the latest  
15 justification for the GSOC referral, which is contained 14:52  
16 in the freshly minted statement of Chief Superintendent  
17 McGinn, is that it was done because of potential views  
18 of conflicts of interest between An Garda Síochána and  
19 the McDermott family, because of Martin McDermott's  
20 involvement in the death of Garda Gary McLoughlin some 14:53  
21 number of years previously, and that, therefore, the  
22 Gardaí in Donegal could not be seen or could  
23 potentially be seen to be prejudiced and biased. And  
24 why I say that couldn't be the case is because there  
25 was no difficulty for Gardaí in Donegal to investigate 14:53  
26 Martin McLoughlin -- Martin McDermott, excuse me, that  
27 was perhaps an unforgivable slip of the tongue --  
28 Martin McDermott in respect of the death threats  
29 against Garda Harrison, if such sensitivities were

1 being observed it would have been perfectly easy for  
2 somebody in the midlands division, where Portlaoise is  
3 situated, to carry out those inquiries and  
4 investigated.

5 CHAIRMAN: Well now, I understand somebody did carry  
6 out some inquiries in Portlaoise Prison, but -- well  
7 first of all, do you remember a discussion about look,  
8 is it better for us to investigate or is it better for  
9 somebody from outside the division to investigate? Do  
10 you remember any such discussion at all,  
11 superintendent? 14:54

12 A. Certainly there was a discussion in relation to the  
13 independence of the actual investigation.

14 CHAIRMAN: All right. So you thought there was a  
15 discussion? 14:54

16 A. But it wasn't one of the -- it wasn't a criteria that I  
17 used for making the section 102 referral, which is  
18 possibly being implied.

19 CHAIRMAN: Yes.

20 A. That is not the reason why the section 102 referral was  
21 made. It may well have been a point that was raised at  
22 the actual meeting, and I mean it was a fair point.  
23 There was concern maybe that we wouldn't be seen to be  
24 impartial because of the fact on the day that there may  
25 well be issues of conflict in relation to the  
26 possibility, because of Garda McLoughlin's death and  
27 the possibility of Martin McDermott's connection to  
28 actually Garda Harrison. Nevertheless it's not one of  
29 the reasons that I used to make the section 102 14:54

1 referral.

2 CHAIRMAN: Okay. I understand your position then,  
3 thank you.

4 140 Q. MR. HARTY: And in fact up until that point there had  
5 been no problem with members of the Donegal division  
6 investigating, isn't that correct? 14:55

7 A. Investigating which?

8 141 Q. Investigating the complaints of -- the alleged  
9 complaints of Marisa Simms, there was no problem up  
10 until that meeting on the 8th October? 14:55

11 A. Unfortunately we didn't actually have a statement of  
12 complaint from Marisa Simms in relation to any of the  
13 allegations until 6th October 2013 so --

14 142 Q. How did it become fortunate that you did get the  
15 statement of complaint from Marisa Simms? How did that  
16 unfortunate situation become fortunate? 14:55

17 A. Ms. Simms decided to make complaints in relation to the  
18 actual allegation that had been represented to us, not  
19 just indirectly by her but by members of her family in  
20 relation to situations that were ongoing. Ms. Simms at  
21 this stage decided to make a statement of complaint in  
22 relation to the matter. 14:55

23 143 Q. And what was fortunate about the fact that Ms. Simms  
24 had decided to make a statement? How did that change  
25 the course of things for the better? 14:56

26 A. Well, it changed the course of things in the sense that  
27 we had a statement of complaint at that stage, we were  
28 in a position to investigate allegations of  
29 criminality.

1 144 Q. And how did that become fortunate? Because nobody  
2 investigated, nobody investigated. Superintendent, do  
3 you accept that nobody from October 2013 to December  
4 2014 took a single step to investigate the complaint of  
5 Marisa Simms? 14:56

6 A. Steps were taken, Mr. Chairman, to carry out those  
7 particular investigations. I cannot account for the  
8 obstructions that took place in relation to preventing  
9 those investigations taking place but steps and  
10 measures were put in place to carry out, carry out 14:57  
11 those particular investigations.

12 145 Q. What instructions were taken in respect of any member  
13 of An Garda Síochána in speaking to Garda Keith  
14 Harrison between October -- I was careful, I said  
15 December 2014, I am not saying that the Garda Síochána 14:57  
16 are responsible for not investigating after December  
17 2014. What steps were taken by any member of An Garda  
18 Síochána in any division to interview Garda Keith  
19 Harrison in respect of the statement of complaint of  
20 Marisa Simms? 14:57

21 A. Again, Mr. Chairman, the matter was referred to the  
22 Garda Ombudsman Commission for a decision in October  
23 2013.

24 146 Q. And they rejected it within hours effectively.

25 A. No. 14:57

26 147 Q. They said it was not a section 102 referral.

27 A. No, no. That is not correct, Mr. Chairman. They may  
28 well have indicated their dissatisfaction in relation  
29 to the referral of the matter under section 102 when



1 they felt on the day it would have been more  
2 appropriate to have been referred in accordance with  
3 section 85. That nevertheless didn't stop GSOC from  
4 carrying out inquiries in relation to the matter. The  
5 matter -- and there's evidence provided to the Tribunal 14:58  
6 from Mr. O'Doherty in relation to the matter from the  
7 Garda Ombudsman Commission, he was assigned  
8 responsibility and as a result he made contact with  
9 Ms. Simms and she declined to cooperate with the Garda  
10 Ombudsman Commission in relation to any investigation 14:58  
11 that they considered appropriate. And as a result they  
12 subsequently decided to take no further action in  
13 relation to the matter. So it was referred back to the  
14 Garda organisation at that stage.

15 148 Q. Superintendent, firstly, you're incorrect. Nobody 14:58  
16 asked Marisa Simms to cooperate with an investigation  
17 by GSOC. Nobody. Okay. So will you please accept  
18 that? Nobody asked Marisa Simms would she cooperate  
19 with an investigation by GSOC. That was nobody's  
20 evidence, would you accept that? 14:59

21 A. It is my understanding that Ms. Simms was contacted by  
22 Mr. O'Doherty on behalf of the Garda Ombudsman  
23 Commission and she declined to cooperate with any  
24 inquiries or investigations that were being undertaken  
25 by the Garda Ombudsman Commission. 14:59

26 149 Q. He asked her did she wish the statement to be  
27 investigated by GSOC and she said no. That is not to  
28 say that somebody is declining to cooperate. She was  
29 asked a question had she ever -- she'd never submitted

1 a complaint to GSOC and when she was contacted about  
2 it, she said no, she didn't want them to investigate  
3 it. It is not --

4 CHAIRMAN: Sorry, as I understand the chronology, on  
5 the 11th October certainly there was a conversation 14:59  
6 between Mr. O'Doherty and Marisa Simms where she asked  
7 could she in fact decline to have her statement  
8 investigated.

9 MR. HARTY: No, she asked was -- she asked --

10 CHAIRMAN: Yes. 14:59

11 MR. HARTY: She said it hadn't been submitted. She  
12 would need to speak about it with her mother, because  
13 it was the first time she learnt of her mother's  
14 statement, and then she rang them back on the 15th I  
15 think to say that she did not wish GSOC to have 15:00  
16 anything to do with the matter.

17 CHAIRMAN: Yes. Email to stop GSOC is the 15th  
18 October. Yes.

19 MR. HARTY: Yes.

20 CHAIRMAN: And then it was 6th November that Mr. Wright 15:00  
21 rang Superintendent McGovern to inform him of that.

22 MR. HARTY: So the 6th November --

23 CHAIRMAN: But I mean, the question on this is? I am  
24 wondering, the question on this is what??

25 MR. HARTY: The question on this is that apparently 15:00  
26 Superintendent McGovern says the only reason this  
27 wasn't investigated was because apparently blocks kept  
28 being put in their way and that's why the investigation  
29 didn't take place. The first legal block put in your

1 way, superintendent, was in December 2014. Marisa  
2 Simms had made it clear that she did not wish GSOC to  
3 investigate in October at the very latest, the middle  
4 of October 2013. What other steps did the Garda  
5 Síochána take to investigate it?

15:01

6 A. Mr. Chairman, when the Garda Ombudsman Commission  
7 declined to involve themselves further in relation to  
8 the actual referral and in the lack -- with the lack of  
9 cooperation by Ms. Simms in relation to the matter it  
10 was referred back to the Garda organisation. At that  
11 particular point, Chief Superintendent McGinn again  
12 requested the appointment of an independent  
13 superintendent from outside the division to carry out  
14 the investigation, and the investigation of the  
15 allegations that were contained in the statement, as  
16 the Garda Ombudsman Commission had now indicated,  
17 because due to a lack of cooperation by Ms. Simms, they  
18 were not having any further involvement in relation to  
19 the matter. And as I have already indicated, the  
20 regional assistant commissioner on the day decided to  
21 appoint me to take charge of the investigation at that  
22 particular point. Subsequently, Garda Internal Affairs  
23 in Garda headquarters decided that it wasn't  
24 appropriate that I should be the investigating member  
25 in relation to the matter because of the fact that I  
26 had been involved in the section 102 referral and as a  
27 consequence Superintendent Murray from Sligo Garda  
28 Station was appointed to take charge of the actual  
29 investigation. All I'm saying, that's the process of

15:01

15:01

15:01

15:02

1           how the investigation --

2           CHAIRMAN: Can I just clear up the dates before you go

3           on, Mr. Harty? What date in February was

4           Superintendent Mary Murray appointed? Can you help me

5           on that? 15:02

6           MR. HARTY: 10th February, I think.

7           CHAIRMAN: Was it? And then the date of the letter in

8           December 2014 from Superintendent Murray?

9           MR. HARTY: Was the 2nd December, I think was the first

10          notification. 15:02

11          CHAIRMAN: Do you think that is correct? I just don't

12          want to write down the wrong date.

13          MR. HARTY: Sorry, it was 1st December was the letter.

14          CHAIRMAN: Yes. Is the letter in the materials? It is

15          I presume. 15:02

16          MR. HARTY: It is.

17          A. All I can help you with is --

18          MR. HARTY: 2094.

19          A. -- on the dates; the 7th January 2014 was the date that

20          I was appointed to investigate the matter. 15:03

21 150 Q. 7th January. And just for the Tribunal's information,

22          it wasn't that it was inappropriate because of any

23          sensitivity, it's just not lawful under the Garda

24          Síochána discipline regulations for somebody to be

25          involved in investigation of an affair where they 15:03

26          have --

27          A. Yes.

28 151 Q. -- disciplinary investigation where they have engaged

29          in a previous -- in the matter previously, isn't that

1 correct?

2 A. Yeah. On the 22nd January 2014 my appointment was  
3 subsequently terminated.

4 CHAIRMAN: So you didn't last long. That's not in any  
5 way pejorative, as if you were in a football match for 15:03  
6 only five minutes.

7 A. No, Chairman.

8 CHAIRMAN: But, it was just, you were subject to what  
9 they were telling you to do.

10 A. Yes, Chairman. 15:03

11 CHAIRMAN: And am I correct in thinking that the first  
12 protected disclosure by Garda Keith Harrison under the  
13 relevant legislation or under the administrative  
14 measures then in place was the 9th May 2014?

15 A. I can't say, I can't assist. 15:03

16 CHAIRMAN: It was, I think. And that included also a  
17 bullying claim as well.

18 MR. HARTY: Officially I think it was made on the 15th  
19 May. But there may have been some discussion. But I  
20 think the official making of the protected disclosure 15:04  
21 was 15th May.

22 152 Q. In relation to that, the disciplinary --

23 CHAIRMAN: Are you sure? The 9th May there was  
24 discussion and it was actually made on the 15th?

25 MR. HARTY: I think that is it. 15:04

26 CHAIRMAN: All right.

27 153 Q. MR. HARTY: The situation is, Superintendent McGovern,  
28 that you in fact were perfectly capable of  
29 investigating the criminal matter, it's just a bar in

1 respect of the Garda Síochána discipline regulations  
2 that meant you couldn't investigate the disciplinary  
3 side of it, isn't that right? There's no bar on you  
4 being involved in the criminal investigation, the only  
5 bar was on you being involved in the disciplinary 15:04  
6 investigation, isn't that correct? Yes or no will do  
7 fine, superintendent.

8 A. Well, I am going to say no is not the right answer and  
9 yes is not the right answer. Unfortunately in these  
10 particular scenarios, the appointment is a double -- 15:04

11 154 Q. No, it isn't.

12 A. It's a double appointment. The appointment is to carry  
13 out both a disciplinary and a criminal investigation.

14 155 Q. There is no provision in respect of a particular  
15 appointment under law any way, shape or form for the 15:05  
16 criminal investigation of a Garda -- a member of An  
17 Garda Síochána. There is no provision. There is no  
18 section. The only people who are governed by specific  
19 sections in that regard are GSOC. There is no law  
20 which says that a particular guard may or may not 15:05  
21 investigate another guard. Do you accept that?

22 A. I accept that, Mr. Chairman.

23 156 Q. There is a restriction in respect of the Garda  
24 disciplinary regulations that the person appointed to  
25 investigate disciplinary matters may not have been 15:05  
26 involved -- may not be a person who has been involved  
27 in an earlier aspect of the same case, isn't that  
28 correct?

29 A. Yes, Mr. Chairman.

1 157 Q. So the answer is: If An Garda Síochána were seriously  
2 believing there was criminal matters here to be  
3 investigated it was entirely open to An Garda Síochána  
4 to appoint you to carry out that criminal  
5 investigation, isn't that correct? Isn't that correct? 15:06  
6 CHAIRMAN: Yes, but what point are you making,  
7 Mr. Harty, out of that? I mean he could be, he might  
8 not be. It has come up, by the way, in relation to a  
9 previous matter, as to an inspector who indicated I'm  
10 not happy to investigate this because I know the two 15:06  
11 individuals involved and there was a ruling on that and  
12 there was also a GSOC ruling much later which said  
13 well, that may not be entirely desirable, but there was  
14 nothing wrong with it. Which I suppose is the point  
15 you're making, yes. 15:06  
16 MR. HARTY: Yes.  
17 CHAIRMAN: But your point is?  
18 MR. HARTY: My point is very simple: The Gardaí didn't  
19 believe the threats. They didn't believe that they  
20 were made seriously. 15:06  
21 CHAIRMAN: Okay.  
22 MR. HARTY: They didn't believe they were made  
23 honestly.  
24 CHAIRMAN: All right.  
25 MR. HARTY: Or they didn't believe that Ms. Simms 15:07  
26 believed them or that Garda Harrison believed them.  
27 CHAIRMAN: All right.  
28 MR. HARTY: Because if they had they would have  
29 investigated them.

1 CHAIRMAN: I thought that he rang her while she was at  
2 the wedding to say there's just been a death threat.  
3 MR. HARTY: No, this is the criminal investigation of  
4 Garda Harrison.  
5 CHAIRMAN: Yes. But I thought that he rang her at the 15:07  
6 wedding and said someone has threatened to shoot me.  
7 MR. HARTY: No, no, these aren't the threats to Garda  
8 Harrison, these are the threats allegedly made by Garda  
9 Harrison --  
10 CHAIRMAN: Oh! 15:07  
11 MR. HARTY: -- to Marisa Simms.  
12 CHAIRMAN: Well, we may be getting mixed up. I could  
13 have been getting mixed up there, Superintendent  
14 McGovern. So maybe --  
15 A. As I previously indicated, my appointment was to carry 15:07  
16 out both the criminal and the disciplinary aspects of  
17 the allegations against Garda Harrison.  
18 MR. HARTY: Garda Harrison, yes.  
19 A. And that is the way the appointment was made. So as a  
20 result, my involvement was terminated. So they 15:07  
21 terminated both my appointment in relation to the  
22 disciplinary and criminal aspects of it. And  
23 Superintendent Murray was subsequently appointed in the  
24 same fashion.  
25 158 Q. And Superintendent Murray didn't do anything in respect 15:08  
26 of that appointment until December 2014. So a high  
27 level conference is convened in Letterkenny Garda  
28 Station on the 8th October because of the seriousness  
29 of the threats made and the domestic violence carried



1 out by Garda Keith Harrison. As a result of that  
2 meeting a reference is made to GSOC which Garda  
3 Headquarters, within 20 minutes or so, knows is an  
4 invalid reference, which GSOC contacts you, Chief  
5 Superintendent McGinn, within a matter of hours to say 15:08  
6 it's an invalid reference. Within five days of that --  
7 Now, at that same meeting a variety of people were  
8 given jobs to carry out by way of investigation and  
9 statements to be taken. At that meeting, four days  
10 later, five days later I should say, it is clear that 15:09  
11 GSOC will not be investigating. It takes a further two  
12 months for a disciplinary investigation to be  
13 commenced, to be led by yourself, when you are a person  
14 who cannot carry out the disciplinary investigation,  
15 instead of carrying on with the criminal investigation 15:09  
16 it all goes back to Headquarters, Superintendent Murray  
17 is appointed and she does nothing from December 2014.  
18 During the course of all this, this high level, vitally  
19 important, must be done quickly meeting, it's so  
20 important it's the subject-matter of a section 102 15:09  
21 referral to GSOC, must go to HSE, everybody must act  
22 now and ye did nothing at all.

23 CHAIRMAN: In other words, the question is: Was this a  
24 complete charade, is the meaning of the question?

25 A. I would suggest, Mr. Chairman, that we done everything 15:10  
26 in our power to carry out the investigations in a  
27 timely and speedy fashion. But as has been represented  
28 here today the --

29 159 Q. MR. HARTY: who stopped you carrying out your

1 investigations?

2 CHAIRMAN: I think he ought to be able to finish there.

3 So you were saying, the question is: Was this a

4 complete charade, the whole thing?

5 A. No, Mr. Chairman. Every effort was made to investigate 15:10

6 this matter. It was referred to the Garda Ombudsman

7 Commission initially, when they decided not to take it

8 on board and Chief Superintendent McGinn requested an

9 independent superintendent to carry out the inquiries

10 or investigations. I subsequently was appointed. My 15:10

11 appointment was subsequently terminated. A new

12 superintendent was appointed in relation to it. Every

13 effort was being made to carry out the investigation in

14 relation to the matter.

15 160 Q. MR. HARTY: What effort was made by Superintendent 15:11

16 Murray between February and December 2014?

17 A. With respect, Mr. Chairman, I can't answer that

18 question.

19 161 Q. Well then, don't say that every effort was made.

20 A. I'm talking about the Donegal divisional involvement in 15:11

21 relation to the matter.

22 162 Q. Okay. In relation to the Donegal divisional

23 involvement, you knew that day that the section 102

24 referral was being queried and it was not going to go

25 ahead as a section 102, didn't you? You were awaiting 15:11

26 for a decision on it, but it was looking likely it

27 wasn't going to go ahead, isn't that correct?

28 A. It was being evaluated in accordance with section 102,

29 the Garda Ombudsman Commission on the day were obliged

1 to come back with a decision in relation to the 102  
2 aspect of it, nevertheless, I explained yesterday, the  
3 criteria in relation to section 102, the criteria in  
4 relation to section 85, the outcome was going to be no  
5 different. Marisa Simms decided not to cooperate with 15:12  
6 any inquiries or investigations that were being --

7 163 Q. Marisa Simms --

8 A. -- undertaken by GSOC in relation to the matter, and as  
9 a result they terminated their involvement in relation  
10 to the matter. Irrespective of whether the referral 15:12  
11 was made under section 102 or made under section 85 the  
12 outcome would have been exactly the same.

13 164 Q. Section 85 of the Act, superintendent, you are a very  
14 bright man, I have no doubt, and you know full well  
15 that section 85 of the Act is about the forwarding of a 15:12  
16 complaint made under section 83 by a person who is  
17 intending to make a complaint under section 83, isn't  
18 that correct?

19 CHAIRMAN: All right. Well, that could be so, it's a  
20 matter for legal argument. One of the things that is 15:12  
21 on my mind: If somebody comes in, let's say it's a  
22 domestic violence situation, just leave this out of  
23 account altogether and just say a garda happens to be a  
24 bit deranged and is beating up his wife and then she  
25 says, having made a statement, no, I'm not going ahead 15:13  
26 with that, can that be sent by the Gardaí under section  
27 85 --

28 MR. HARTY: Yes.

29 CHAIRMAN: -- or section 83 to GSOC or are you limited

1 in fact in sending things on to section 102?

2 A. We're obliged, where any complaint is made in relation  
3 to a member of An Garda Síochána we're obliged to refer  
4 it to the Garda Ombudsman Commission irrespective of  
5 the fact of whether an investigation has been 15:13  
6 undertaken in relation to it. And it's a matter then  
7 thereafter for the Garda Ombudsman Commission to make a  
8 decision as to whether in fact they involve themselves  
9 in relation to it.

10 CHAIRMAN: But if it is a situation, let's say, of 15:13  
11 domestic violence and you refer it, do you have to  
12 refer under section 102 or could you refer under  
13 section 85?

14 A. You can refer under section 85. I suppose an example 15:13  
15 of it, Mr. Chairman, is a member of the public writes a  
16 letter to my office where it implies that a member of  
17 the force on the day has not carried out their duties  
18 to a requisite standard, they're not actually making a  
19 complaint, but that letter will automatically be  
20 referred to the Garda Ombudsman Commission because it 15:14  
21 contains some form of complaint in relation to the  
22 actual actions or the actual duties of a member of An  
23 Garda Síochána.

24 CHAIRMAN: And that would go under section 85, would  
25 it? 15:14

26 A. That would go under section 85.

27 CHAIRMAN: Oh, I see. All right. So yes, you can do  
28 that. But then if the member of the public says oh,  
29 forget it, we were neighbours and we were just having a

1 tiff or whatever, that is the end of it?

2 A. The Garda Ombudsman Commission will make contact with  
3 the person who wrote the letter and they will ask them  
4 whether they wish to make a complaint or they wish them  
5 to follow-through in an investigation in relation to 15:14  
6 conduct of that particular member, if they say no, then  
7 the Garda Ombudsman Commission will terminate their  
8 involvement in the matter forthwith.

9 CHAIRMAN: And there's nothing they can do about it  
10 basically? 15:14

11 A. No, Chairman.

12 CHAIRMAN: Okay.

13 MR. HARTY: Sorry, sir, perhaps I should clarify it in  
14 relation to it. The decision to make a complaint to  
15 the Garda Síochána Ombudsman Commission is a decision 15:14  
16 made by the complainant. And that is under section 83.  
17 They can make that complaint to the Garda Síochána  
18 Ombudsman Commission by making it in a Garda station.  
19 But that is a person wishing and wanting to make a  
20 complaint to An Garda Síochána Ombudsman Commission. 15:15  
21 That is then forwarded by the Garda commissioner under  
22 section 85. When I say commissioner I mean the  
23 delegated function down through the ranks in relation  
24 to that. It is then forwarded under section 85. Once  
25 it has been forwarded -- and if the person has wished 15:15  
26 to make a complaint there is no reason for contact.  
27 The practice has grown-up in GSOC whereby it is not  
28 clear whether or not the person who is ostensibly the  
29 complainant in fact wishes to make a complaint, the

1 practice has grown-up in GSOC to be sure to be sure to  
2 contact people to ask them did they in fact intend to  
3 make a complaint to GSOC.

4 CHAIRMAN: All right. I understand. Thank you,  
5 Mr. Harty. I understand that. But what the 15:15  
6 superintendent seems to be saying is this: Let us  
7 suppose a garda and someone who is not a garda are  
8 neighbours and a complaint is that the garda is  
9 releasing rats into their premises, if that complaint  
10 is made to the superintendent he has to forward it to 15:16  
11 GSOC because it is conduct in relation to a garda.

12 MR. HARTY: No, that's not correct.

13 CHAIRMAN: Am I right in thinking that?

14 A. You are correct, Mr. Chairman.

15 MR. HARTY: No, you're not. 15:16

16 A. We're bound by a directive to forward it to the Garda  
17 Ombudsman Commission and a copy to Internal Affairs of  
18 any complaint that is made to us to suggest on the day  
19 inappropriate behaviour by a member of the force.

20 MR. HARTY: That is not GSOC -- 15:16

21 CHAIRMAN: Whether they are on duty or off duty?

22 A. Yes, whether they are on duty or off duty.

23 CHAIRMAN: So, it just could be a question of people  
24 living side by side, as happens, people taking extreme  
25 dislike to each other and just causing mischief, again 15:16  
26 you've got to refer it?

27 A. Yeah, if the actual, if the complaint reflects on the  
28 actual behaviour of the person as a member of An Garda  
29 Síochána yes is the answer.

1 165 Q. MR. HARTY: Sorry, sir, I have to interject there.  
2 You're not correct in that, superintendent. There is  
3 no obligation on anybody to inform GSOC in respect of  
4 that sort of behaviour. That is not an obligation.  
5 There is an obligation undoubtedly within the Gardaí's 15:17  
6 own system. Can you tell me what directive there is  
7 saying that where a complaint is made by a member of  
8 the public in respect of the actions of a member of An  
9 Garda Síochána off duty, that where it comes to the  
10 attention of the Garda commissioner it must be 15:17  
11 forwarded to GSOC? There is none.  
12 A. The conduct of a member --  
13 166 Q. Sorry, can you just answer me that: Is there such a  
14 directive?  
15 A. There is such a directive. Where we were made aware of 15:17  
16 a complaint by a member of the public in relation to  
17 the conduct of a member of the force irrespective of  
18 whether they wished to or don't wish us to investigate  
19 that particular allegation we refer that matter to the  
20 Garda Ombudsman Commission for their attention. 15:17  
21 167 Q. Under what section?  
22 A. Under section 85.  
23 168 Q. Under section 85?  
24 A. Section 85 referrals.  
25 169 Q. Can I read you section 85? And this is entering into 15:18  
26 the realm of the surreal at this stage.  
27  
28 "When the Garda Commissioner or a member of An Garda  
29 Síochána receives a complaint under section 83(2) he or

1 she shall immediately:-  
2 (a) record the complaint and the date and time of its  
3 receipt,  
4 (b) provide the complainant with a written  
5 acknowledgment of its receipt, and 15:18  
6 (c) forward to the Ombudsman Commission a copy of the  
7 complaint or if the complaint is not made in writing a  
8 copy of the record of the complaint."  
9

10 Now, are you telling me that if somebody goes into a 15:18  
11 Garda station to complain about their neighbour guard  
12 that you issue them with a receipt acknowledging that  
13 they have made a complaint to the Garda Síochána  
14 Ombudsman Commission even where that person has said  
15 they don't want it to be investigated? 15:18

16 A. Yes, we refer allegations or complaints against members  
17 of the force to the Garda Ombudsman Commission. We  
18 refer them in accordance with section 85 and in  
19 accordance with our HQ Directive --

20 170 Q. Okay. So you issue -- 15:19

21 A. Headquarters Directive 50/2013 is the instruction to us  
22 in relation to the referrals of matters on the day that  
23 come to our attention, to the Garda Ombudsman  
24 Commission, in accordance with section 85.

25 171 Q. And you say that that is under section 85? 15:19

26 A. Well, the referral is in accordance with section 85.

27 172 Q. I will have a look at that in a moment. But firstly, I  
28 take it you issue them with a receipt in accordance  
29 with section 85?



1 A. what I do as the district officer in my area, when I  
2 receive such correspondence generally it will be by way  
3 of written correspondence, when a member of the public  
4 comes into the Garda station their complaint will be  
5 recorded or otherwise on what we have, a form, a GSOC1, 15:19  
6 which is the actual official complaints form that we  
7 use for referring matters to the Garda Ombudsman  
8 Commission. where the letter is received from a member  
9 of the public, I will acknowledge that letter, I will  
10 reflect on the fact that it appears to contain an 15:19  
11 allegation in relation to a member of the force and  
12 that I'm referring the matter to the Garda Ombudsman  
13 Commission for whatever attention they deem appropriate  
14 in relation to the matter. That is my policy in  
15 relation to it and in accordance with the instructions 15:20  
16 that I have been issued on HQ Directive 50/2013.

17 173 Q. In section 85 you are obliged to issue a written  
18 receipt.

19 A. I comply with the requirements as set out in HQ  
20 Directive 50/2013. 15:20

21 174 Q. I'm talking about the law. You're required to issue a  
22 written receipt.

23 A. Yes. And I always issue a written receipt. It is a  
24 GSOC1. The copy is provided to the complainant if it  
25 is made in that fashion. In relation to a letter that 15:20  
26 is received at the Garda station, I notify the party in  
27 writing that I have referred that particular letter to  
28 the Garda Ombudsman Commission for whatever attention  
29 they deem appropriate. It may well not require any

1 further follow-up or investigations by me other than to  
2 carry out the inquiry or to clarify for the person  
3 making the complaint as to what's the particular  
4 situation in relation to their complaint.

5 175 Q. In relation to circular 20th May 2013 -- 15:21  
6 CHAIRMAN: Do we have that?  
7 MR. HARTY: I've just received a copy of it now.  
8 MS. LEADER: Sorry, sir, a copy will be circulated but  
9 I gave a copy to Mr. Harty's junior once I received it.  
10 MR. HARTY: Yes. 15:21  
11 MS. LEADER: It was referred to yesterday during the  
12 course of Superintendent McGovern's evidence.

13 176 Q. MR. HARTY: That doesn't even describe what a complaint  
14 is, does it?  
15 A. That there is an instruction, a direction to members of 15:21  
16 the force in relation to receipts of complaints and  
17 it's an instruction as to what I am required to do as a  
18 district officer in the event of the receipt of a  
19 complaint in accordance with the provisions as set out  
20 in that particular directive. And I have explained how 15:21  
21 I deal with it as the district officer in my area.

22 177 Q. It doesn't even cover whether or not a complaint is an  
23 admissible complaint?  
24 A. That is a decision for the Garda Ombudsman Commission  
25 to make following receipt of the actual documentation. 15:21  
26 And also a copy of it is always supplied to Internal  
27 Affairs in relation to it.

28 178 Q. Let's assume that that -- I notice it doesn't say you  
29 should comply with the provisions of section 85, it

1 doesn't say you should issue a receipt, advise the  
2 person that you are forwarding it to the Garda  
3 Ombudsman Commission?

4 A. I always notify the actual -- the person from whom I  
5 have received the actual documentation, I notify them 15:22  
6 in writing of the receipt of the actual document and I  
7 notify them also that I have referred the matter to the  
8 Garda Ombudsman Commission for whatever attention they  
9 deem appropriate in relation to it, the complaint, what  
10 they perceive to be alleged complaint in relation to 15:22  
11 the conduct of a member of the force.

12 179 Q. So what notification did you send to Marisa Simms?

13 A. I didn't deal with this matter in accordance with  
14 section 85. I dealt with this matter in accordance  
15 with section 102, which does not require a notification 15:22  
16 to the party who has made the complaint.

17 180 Q. Why did you not notify Marisa Simms that this was going  
18 to GSOC?

19 A. Mr. Chairman, I made the referral in accordance with  
20 section 102 and I complied with the requirements that 15:23  
21 were placed on me in relation to 102 and the actual  
22 person the subject of the actual complaint.

23 181 Q. That meeting went on, on the 8th October, what  
24 discussion was made as to what was to be done with  
25 Garda Harrison now? 15:23

26 A. It was my understanding that Chief Superintendent  
27 McGinn was to have contact on the day with Internal  
28 Affairs in relation to that particular situation.

29 182 Q. And what was to be done?

1 A. That was, that was a decision that required to be made  
2 into the future. I made, I made, I made no decision in  
3 relation to what should or shouldn't happen in relation  
4 to Garda Harrison. I engaged in no conversation in  
5 relation to what should or shouldn't -- 15:23

6 183 Q. Nobody discussed it?

7 A. I have no note, I have no note in relation to any  
8 discussion that took place in relation to what should  
9 happen to Garda Harrison in relation --

10 184 Q. You've no notes about that meeting at all. You only 15:24  
11 have a note about who attended.

12 A. I have a note in relation to what my function was, and  
13 that was the section 102 referral.

14 185 Q. Yeah. I am asking you, because you seem to be quite  
15 clear as to other matters that were discussed, can you 15:24  
16 tell me what was decided that would be done with Garda  
17 Harrison?

18 A. I don't recall, Mr. Chairman, what specifically was  
19 discussed in relation to what happened --

20 186 Q. I would ask you to try to recall. 15:24

21 A. -- what was going to happen to Garda Harrison.  
22 Mr. Chairman, it was not my decision to make in  
23 relation to what should or shouldn't happen to Garda  
24 Harrison. He wasn't in my district. I had never had  
25 any involvement with Garda Harrison before. I have 15:24  
26 never met him since, until such time as we have come  
27 here before the Tribunal. I had no engagement with him  
28 and it was not my decision as the district officer in  
29 Milford at that given time to make any decision as to

1           what should or shouldn't happen to Garda Harrison in  
2           relation to these particular allegations.

3 187 Q.    was it not discussed at all, or was it?

4           A.    I cannot say definitively whether it was or wasn't  
5           discussed.  But I certainly would imagine and I would 15:25  
6           be happy that it would have been discussed, what the  
7           consequences would be in relation to the -- if the  
8           allegation contained in the actual statement of  
9           complaint of Marisa Simms were true.

10 188 Q.   If the allegation contained in the statement of Marisa 15:25  
11           Simms on the basis of the fact that it required two  
12           superintendents, an inspector, a detective inspector, a  
13           Garda Síochána and a chief superintendent, I'm assuming  
14           that Garda Harrison's employment problems would be the  
15           least of his worries, if he was convicted, if you were 15:25  
16           all taking it so seriously.  So can you tell me what  
17           was to be done if it wasn't convicted of him?

18           A.    I hadn't fulfilled -- as I said, Mr. Chairman, I  
19           fulfilled no role in making the decision in relation to  
20           what should or shouldn't happen to Garda Harrison in 15:25  
21           relation to the matter.  That was that Chief  
22           Superintendent McGinn was responsible for.

23 189 Q.    what were the consequences if the investigation were  
24           carried out and the allegations were found to be true  
25           and that there were in fact credible threats to kill 15:26  
26           which were made with the intention that they would be  
27           believed?  What was to happen?

28           A.    If the investigations upheld the actual criminal  
29           allegations that were made by Marisa Simms -- these are

1 hypothetical situation unfortunately, Mr. Chairman --  
2 if the matter was referred to the Director of Public  
3 Prosecutions and prosecutions were directed in relation  
4 to the matter then a decision in relation to Garda  
5 Harrison and his employment situation that was a 15:26  
6 decision that would have to be made by Internal  
7 Affairs.

8 190 Q. Were you surprised to know that almost immediately  
9 after this meeting Chief Superintendent McGinn is  
10 writing to Internal Affairs to deal with his employment 15:26  
11 situation there and then?

12 A. I am aware that Chief Superintendent McGinn wrote to  
13 Garda Headquarters in relation to Garda Harrison's  
14 position as a serving member in the Donegal division,  
15 yes. 15:27

16 191 Q. Did you know that she was going to do that when you  
17 were at that meeting on the 8th October?

18 A. I would have to say, Mr. Chairman, yes is the answer to  
19 that.

20 192 Q. That's what I have been asking you. 15:27

21 A. No. Well, I am saying I wasn't involved in any  
22 discussion in relation to the matter. That's the  
23 question --

24 193 Q. How did you know that there was an intention to deal  
25 with his employment in the Donegal division? 15:27

26 A. There would have been a significant responsibility on  
27 Chief Superintendent McGinn, being aware of the  
28 allegations that were contained in the statement as  
29 presented by Marisa Simms, to bring those particular

1           allegations and the consequences of them to the  
2           attention of her superiors. I would have been under no  
3           illusion but that Chief Superintendent McGinn --  
4 194 Q.    You went further than that. I didn't -- nobody said --  
5           you did not say that Chief Superintendent McGinn would 15:27  
6           bring it to the attention of the assistant  
7           commissioner, you said that you were aware that there  
8           would be consequences for Garda Harrison in respect of  
9           his employment in the Donegal division as a result of a  
10          conversation that you had at the meeting. So I am 15:28  
11          asking you, what conversation was had in respect of the  
12          future employment of Garda Harrison or the continued  
13          employment of Garda Harrison in the Donegal division at  
14          that meeting?  
15          A.   I don't think, Mr. Chairman, I said what Mr. Harty is 15:28  
16          saying I said. I explained on the day what the  
17          situation would be in the event of the investigation of  
18          the matter, the subsequent decision by the Director of  
19          Public Prosecutions and a follow-up, if required, would  
20          require to be made by Internal Affairs at Garda 15:28  
21          Headquarters. A follow-up question was put to me in  
22          relation to Chief Superintendent McGinn's  
23          responsibility in relation to the matter and I have  
24          expressed my opinion in relation to that situation as  
25          well and I'm going to reiterate I did not involve 15:28  
26          myself in the decision-making process in relation to  
27          what should happen to Garda Harrison. Chief  
28          Superintendent McGinn of course had responsibility on  
29          the day to bring these matters to the attention of her

1 superiors and decisions required to be made based on  
2 the content of the statement that was made by Marisa  
3 Simms. That would be a mandatory requirement on Chief  
4 Superintendent McGinn. And yes, she did forward a  
5 report in relation to those particular matters. 15:29

6 195 Q. And did you discuss this at all at that meeting?

7 A. I certainly can't say definitively, Chairman, if that  
8 issue was discussed at that particular meeting. Yes, I  
9 was aware, having spoken to Chief Superintendent McGinn  
10 I was aware of the fact on the day that these matters 15:29  
11 on the day were being referred to Garda Headquarters in  
12 relation to the content of what --

13 CHAIRMAN: Do you mind if I interrupt? I understand  
14 you've had some unpleasant thing like root canal  
15 treatment or something, am I wrong? 15:29

16 A. No.

17 CHAIRMAN: I thought you had an appointment for 3:30.  
18 MR. HARTY: That is another witness I understand.

19 CHAIRMAN: I may have picked up things in the wrong  
20 way. Ms. Leader what was -- or Mr. McGuinness. I 15:29  
21 clearly got things wrong. I'm sorry to accuse you of  
22 that superintendent.

23 A. I'd be in pain, all right.

24 MR. MCGUINNESS: The position, Chairman, is that we  
25 were notified a couple of days ago that Chief 15:30  
26 Superintendent McGinn had a personal medical  
27 appointment.

28 CHAIRMAN: Oh yes, sorry, I didn't mean to go into  
29 that. I mixed up the chief superintendents. So we can



1 go on.

2 MR. MCGUINNESS: Yes.

3 CHAIRMAN: Or do we have some other witness who has a  
4 problem?

5 MR. MCGUINNESS: No, no. Certainly as far as I 15:30  
6 understand it we can proceed with Superintendent  
7 McGovern and Chief Superintendent McGinn I think won't  
8 be reached this afternoon, and were Mr. Harty and all  
9 others to finish with Superintendent McGovern I had  
10 intended to interject the evidence of Garda Campbell 15:30  
11 who had made a statement at short notice and is  
12 available. If we can't reach him today he's not  
13 available tomorrow and it would be proposed to have his  
14 evidence on Monday, if that were suitable. So I think  
15 we should proceed and see where we get to. But it's 15:31  
16 not my intention to call and start Chief Superintendent  
17 McGinn today.

18 CHAIRMAN: Okay. I am sorry, I obviously got that --  
19 picked it up entirely the wrong way. And Garda  
20 Campbell I presume is in volume 7, is he? 15:31

21 MR. MCGUINNESS: Yes.

22 CHAIRMAN: What page is he at, just so I can see? Is  
23 he at the very end?

24 MR. MCGUINNESS: He's I think 2464, it's five  
25 statements from the end. 15:31

26 196 Q. MR. HARTY: Superintendent McGovern, can I put it this  
27 way: Leaving that meeting on the 8th October, did you  
28 believe that Garda Keith Harrison would be returning to  
29 work at the end of his leave period over the following

1 number of days?

2 A. I certainly was aware that Chief Superintendent McGinn  
3 proposed on the day to refer the matter to Garda  
4 Headquarters Internal Affairs section and I have seen  
5 the report that she sent in relation to it. I have 15:32  
6 seen the report that Chief Superintendent McGinn  
7 prepared and sent in relation to the actual situation.  
8 I have.

9 197 Q. And you weren't involved in any decision-making process  
10 in relation to that? 15:32

11 A. It wasn't, it wasn't my decision to make. I couldn't  
12 make a decision in relation to what should or shouldn't  
13 happen to Garda Harrison. It was not my  
14 responsibility. Not my decision. Chief Superintendent  
15 McGinn prepared her report in relation to the matter. 15:32  
16 She may well have consulted me in relation to the  
17 matter, yes, but not in relation to any decision in  
18 relation to Garda Harrison. I had no decision-making  
19 ability in relation to that. I made no decisions. She  
20 prepared her documentation in relation to the matter 15:33  
21 and she referred that documentation to Internal Affairs  
22 and it was a decision to be made thereafter.

23 198 Q. And that document was a document calling for the  
24 immediate suspension of Garda Harrison, isn't that  
25 correct or alternatively a transfer out of the Donegal 15:33  
26 division?

27 A. I cannot --

28 199 Q. Perhaps go to 1629. This is the last sentence.  
29 CHAIRMAN: What is the date of it?

1 MR. HARTY: This is 10th October. This is the initial  
2 sally. Very last sentence:

3  
4 "An alternative to suspension --"

5  
6 CHAIRMAN: Sorry, you said Chief Superintendent sally? 15:33

7 MR. HARTY: Chief superintendent -- I'm not sure what I  
8 said. Chief Superintendent McGinn signed this on the  
9 10th October. Sent it on the 10th October.

10  
11 "An alternative suspension would be to transfer Garda 15:33  
12 Harrison to another division."

13  
14 And that was conclusion of it; it was a request for  
15 suspension or in the alternative out of Donegal. 15:34

16 A. Yes, Mr. Chairman, I seen this report, yes.

17 200 Q. And the point about it is, is that Garda Harrison on  
18 the 10th October, it's being requested that he be  
19 either suspended or out of Donegal. And still that  
20 suspension would have been dependent on the 15:34  
21 investigation then, wouldn't it, being completed?

22 A. The request to chief superintendent --

23 201 Q. He was going to be suspended until the criminal  
24 investigation was completed?

25 A. Yeah, the request to the Chief Superintendent Internal 15:34  
26 Affairs by Chief Superintendent McGinn would have been  
27 based on the statement of complaint as presented by  
28 Marisa Simms on 6th October.

29 202 Q. And he would have been suspended until the

1 investigation was completed, isn't that correct?

2 A. I can't answer that, Mr. Chairman. I don't know what  
3 decision --

4 203 Q. In your experience where members are suspended during  
5 the course of a criminal investigation those members 15:35  
6 remain suspended until the conclusion of the criminal  
7 investigation, isn't that correct?

8 A. Well, where a decision is made to suspend a member  
9 certainly initially it would, there would be a certain  
10 timeframe put on the actual suspension notice. 15:35

11 CHAIRMAN: Can I just stop there? We might try and go  
12 on for a bit, should we, Ms. Kelly, change  
13 stenographers now?

14 STENOGRAPHER: No, it is fine.

15 CHAIRMAN: Well, if you are here for another hour, it  
16 might be a good idea.

17

18 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

19 AS FOLLOWS:

20 204 Q. MR. HARTY: Superintendent McGovern, I think you left 15:46  
21 the meeting on 8th October, you had been certain that  
22 what was decided at that meeting would have  
23 consequences for Garda Harrison's employment in the  
24 short-term and could potentially have consequences for  
25 Garda Harrison's employment in the long-term, isn't 15:47  
26 that correct?

27 A. Based on the reports as presented on the 10th October  
28 2013, yes, there were consequences identified in that  
29 report for Garda Harrison.

1 205 Q. Yes. And did you see that report of the 10th October?  
2 A. I seen that report. I cannot tell the Tribunal when I  
3 seen that report, but I certainly seen that report.  
4 I've looked at the report again and I have certainly  
5 have seen that report, yes. 15:47

6 206 Q. You see, what I have to put to you is not only did you  
7 have an obligation to Marisa Simms to investigate her  
8 complaints, you also had an obligation to Garda  
9 Harrison to investigate the complaints because this  
10 hanging out there in relation to him, had immediate 15:47  
11 consequences for his employment, isn't that correct?  
12 A. Yes, the statement of complaint as made by Marisa  
13 Simms, if the content of it were factual, yes, it had  
14 consequences for Garda Harrison.

15 207 Q. Even if the consequences weren't factual, it had 15:48  
16 immediate consequences for Garda Harrison because the  
17 chief superintendent wrote to have him suspended or  
18 moved division, and it came back that an alternative  
19 was suggested by internal affairs which was that he was  
20 to be kept on station duties only. So, this 15:48  
21 investigation had consequences immediately for Garda  
22 Harrison, whether the contents of the statement were  
23 true or false, you accept that?  
24 A. Yes, Mr. Chairman.

25 208 Q. So you had an obligation in An Garda Síochána to 15:48  
26 investigate that, both for Ms. Simms and for Garda  
27 Harrison, isn't that correct?  
28 A. That is correct.

29 209 Q. Now, after that meeting, you contacted the chief

1 superintendent in respect of the GSOC referrals, isn't  
2 that correct, on 9th October, isn't that correct? From  
3 your notes -- or your notes read: "Chief  
4 superintendent re GSOC, no response."

5 A. That would be correct. That is simply a note I made on 15:49  
6 9th October. I would have spoken to chief  
7 superintendent Letterkenny and at that stage I had  
8 received no decision or response from GSOC in relation  
9 to the actual referral, the section 102 referral.

10 210 Q. And then the chief superintendent received 15:50  
11 correspondence in relation to it from chief  
12 superintendent Anthony McLoughlin, isn't that correct?  
13 Because that correspondence was forwarded to you I  
14 think at page 1714.

15 15:50  
16 "With reference to the above and previous  
17 correspondence... dated 10th October, the content of  
18 which is noted, your recommendations have been  
19 considered. Having read the accompanying attachments I  
20 am of the view that in the circumstances as outlined in 15:50  
21 the attached statement --"

22  
23 Etcetera.

24  
25 "-- the more appropriate action in this matter 15:50  
26 available to local Garda management is for the member  
27 concerned to be confined to indoor duties. From the  
28 details contained in the correspondence received at  
29 this office to date it is unclear why this matter was

1 deemed suitable for referral to the Garda Síochána  
2 Ombudsman Commission pursuant to the provisions of  
3 section 102 of the Garda Síochána Act, as amended, I am  
4 therefore to seek your views and those of the district  
5 officer in this regard.

15:51

6  
7 Report in early course please."

8  
9 And that was dated 21st October. And it appears to be  
10 forwarded to you on page 1782 by Chief Superintendent  
11 McGinn:

15:51

12  
13 "I refer to the above matter and attached  
14 correspondence from Chief Superintendent, Internal  
15 Affairs, which is forwarded for your information and  
16 report please."

15:51

17  
18 And you were required to explain to the head office as  
19 to why this section 102 referral was made, isn't that  
20 correct?

15:52

21 A. That is correct, Chairman.

22 211 Q. And you replied to that on page 1781:

23  
24 "The section 102 referral in this case was based on the  
25 content of the statement of complaint made by Marisa  
26 Simms and follow-up briefing, as provided by Inspector  
27 Goretta Sheridan, who had met with and recorded the  
28 criminal complaint by Ms. Simms. For your information  
29 please."

15:52

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Page 1780 is Chief Superintendent McGinn's response, and she says:

"On 8th October a case conference was held to assess and analyse all the available information regarding the alleged assaults and threats to Marisa Simms by Garda Harrison. After analysis and consideration of the seriousness of the incidents, including the threat to Ms. Simms and her children and the threats against Garda Harrison, it was determined that the behaviour of Garda Harrison created a substantial risk of death or serious harm to Ms. Simms and her children. Consequently it fell within the remit of section 102 of the Act and therefore the referral was made by the district officer in Milford, the area where most of the serious alleged offences took place."

That's correct, isn't it, that is what she wrote? Did you see that letter?

A. I believe so, Mr. Chairman. No issue arises in relation to the content of it.

212 Q. Except that in fact you had two different reasons as to why you were making the complaint. Your letter doesn't set out a reason, but if we go to page 1612, which is from the report of Darren Wright, senior investigating officer at GSOC, and if we go down to the action taken, that paragraph, thank you.



1 "It is clear from the available information that the  
2 matter should have been notified to GSOC pursuant to  
3 section 85 of the Act on receipt of the complaint from  
4 Ms. Simms. It has not been done. It is also clear  
5 that the matter should not have been the subject of a  
6 section 105 referral as there is no death or serious  
7 harm.

15:54

8  
9 Two different rationales have been provided for the  
10 referral from the superintendent and the chief  
11 superintendent concerned. The superintendent stated it  
12 was due to the psychological harm element of the  
13 incident; the chief superintendent has stated the  
14 referral was made as they believe there is the chance  
15 that Harrison may cause death or serious harm to Simms  
16 at some point in the future."

15:54

15:54

17  
18 So they were in fact different justifications for the  
19 section 102 referral, isn't that correct?

20 A. I acknowledge that, Mr. Chairman. I made my  
21 submissions and Chief Superintendent McGinn made hers  
22 and I have put on the section 102 referral my  
23 definitive reasonings for referring the matter in the  
24 first place, when I referred it on the 8th and 9th  
25 October.

15:54

15:54

26 213 Q. But in any event, you were aware from the letter sent  
27 by Anthony McLoughlin on page 1714, which is dated 21st  
28 October 2013, that because of the matters raised in the  
29 section 102 referral, Garda Harrison was to be confined

1 on indoor duties, isn't that correct?

2 A. Yes. That was the decision that was made by Internal  
3 Affairs in relation to the matter.

4 214 Q. And the fact of the matter is, nobody investigated the  
5 complaint because fundamentally the matter had given 15:55  
6 rise to Garda Harrison being put on indoor duties and  
7 nobody in Donegal division saw that there was any  
8 reason to progress the matter any further?

9 A. Mr. Chairman, bar going back over the reasonings I have  
10 already given in relation to what investigative 15:56  
11 measures was put in place in the Donegal division in  
12 relation to the referral of the matter and the  
13 follow-up attention it got I cannot add anything  
14 further on the day in relation to the actual matter,  
15 Chairman. 15:56

16 215 Q. And you left Garda Harrison stuck in mandatory station  
17 duties until he went out sick the following summer.

18 A. Mr. Chairman, I didn't do that. I wasn't responsible  
19 for making those decisions.

20 216 Q. And you never went to Garda Harrison and asked him what 15:56  
21 his version of events was, did you?

22 A. I've never spoken to Garda Harrison in relation to the  
23 matter. I wasn't physically investigating the actual  
24 criminal complaints that were contained in the actual  
25 statement made by Marisa Simms on 6th October 2013. 15:57

26 217 Q. Did you suggest to Sergeant McGowan that she or  
27 Inspector Sheridan, or the two of them combined, should  
28 put the statement of Marisa Simms to Garda Harrison?

29 A. I didn't do that, Chairman. It wasn't my

1 responsibility to do that.

2 218 Q. Do you accept that he could have expected that at least  
3 where he was being kept on station duty by reason of  
4 apparently a serious criminal complaint, he could have  
5 at least expected to be asked for his version of 15:57  
6 events?

7 A. Yes, Mr. Chairman, that course of action was planned  
8 and, again, as I explained in relation to why that  
9 course of action never took place.

10 219 Q. No, it didn't -- it was never planned. 15:58

11 A. It was, Mr. Chairman.

12 220 Q. No. Your plan was that it would go to GSOC and they  
13 might deal with it. I am asking you about senior  
14 members of the force in Donegal, which one of you  
15 planned to put the matters to Garda Harrison to see 15:58  
16 whether they were true, false, exaggerated,  
17 understated, whatever, so that Garda Harrison could  
18 return to normal policing duties, what plan was done  
19 for that?

20 A. When the Garda Ombudsman Commission decided not to 15:58  
21 pursue the matter any further, then again, to save  
22 repeating myself, Chairman, Chief Superintendent McGinn  
23 requested the appointment of an independent  
24 superintendent from outside the division to carry out  
25 the particular investigations. I was appointed 15:58  
26 subsequently. My appointment on the day was cancelled.  
27 Superintendent Murray was appointed thereafter in  
28 relation to the matter and I think the Tribunal is  
29 familiar with what the outcome of that particular

1 situation was.

2 221 Q. By the time Superintendent Murray had acted, it was 15  
3 months -- I want to be fair to her, 15 months from the  
4 date of the original -- receipt of the original  
5 complaint. Do you think a member of An Garda Síochána 15:59  
6 should be permitted, allowed, caused, required to sit  
7 on station duties for 15 months without anyone putting  
8 an allegation to him?

9 A. Mr. Chairman, it's a situation that --

10 222 Q. Yes or no. 15:59

11 A. No, I cannot answer that question, Mr. Chairman. It  
12 was a situation that outside my control. So when it  
13 was outside of my control then there is no point in me  
14 making -- providing a view or otherwise to the Tribunal  
15 in relation to it. 16:00

16 223 Q. Have you ever found yourself where you have been  
17 confined to station duties for 15 months because of an  
18 allegation made against you?

19 CHAIRMAN: well, maybe first of all have you ever been  
20 working just in a station like desk duties for a year 16:00  
21 and a bit?

22 A. On the direction of a senior officer?

23 CHAIRMAN: well, I presume you would be there because  
24 of a senior officer says what you are going to do for  
25 the next while is this or you are there -- 16:00

26 A. No, Mr. Chairman.

27 CHAIRMAN: Okay.

28 224 Q. MR. HARTY: I take it you wouldn't like it?

29 A. I've been lucky that I have never had that experience,

1 Mr. Chairman.

2 225 Q. And the situation is that, I take it you would expect  
3 if somebody had made an allegation against you that  
4 your superiors had somehow used, firstly to seek your  
5 suspension, secondly to seek your movement from a 16:01  
6 division and then thirdly to keep you on station duty  
7 for 15 months, I take it you would agree with me that  
8 the least you would expect is somebody would come and  
9 ask you for your version of events? Would you  
10 expect -- would you expect it or not, superintendent? 16:01  
11 It's not a hard question.

12 A. It was always intended that the actual allegations that  
13 were contained in this particular statement would be  
14 put to Garda Harrison at some stage during the course  
15 of the investigations, irrespective of who was carrying 16:01  
16 out the investigations.

17 226 Q. And would you expect them to take 15 months to do that?

18 A. Some investigations take longer periods of time than  
19 others. Some are smooth running, some are presented  
20 with certain difficulties on the day that prevent 16:01  
21 issues or concerns in relation to those particular  
22 investigations advancing in a significantly fast and  
23 timely fashion. These situations were presented in  
24 this particular investigation and the timeframes in  
25 relation to what they are, what happened and how they 16:02  
26 occurred is very, very clear and it's been presented  
27 before the Tribunal.

28 227 Q. And had you investigated it and had you believed that  
29 the allegations were serious, I take it -- I would put

1 to you, you would have investigated it, had you  
2 investigated it this could all have been dealt with in  
3 October 2013?

4 A. It's a hypothetical situation, Mr. Chairman. I was not  
5 appointed to investigate it. I cannot answer that 16:02  
6 particular situation. It was -- it was the intention  
7 of the referral to the Garda Ombudsman Commission that  
8 it would have received an investigation by an  
9 independent investigating authority at that particular  
10 time. That didn't happen. It may well have been the 16:02  
11 same situation, like, Marisa Simms did not cooperate  
12 with the Garda Ombudsman Commission in relation to that  
13 particular investigation, she also withdrew her  
14 criminal complaint to An Garda Síochána in relation to  
15 the matter, so the situation was always going to be 16:03  
16 presented with a difficulty in relation to the  
17 investigations. -

18 228 Q. The statement wasn't withdrawn by Marisa Simms until  
19 January. The Garda Síochána Ombudsman Commission had  
20 indicated they weren't going to be able to proceed with 16:03  
21 the matter, they knew that by the middle of October.  
22 The next thing that is done is a letter is written to  
23 get somebody from outside the division, and that is  
24 sent in November to investigate the matter. That  
25 appointment doesn't come out until January. You quite 16:03  
26 rightly say I can't do the disciplinary investigation.  
27 And then two weeks later Superintendent Murray is  
28 investigating it. But GSOC led to precisely one week's  
29 delay in the investigation of this matter, every other

1 delay in the investigation of this matter falls at the  
2 feet of An Garda Síochána.

3 A. All I can say, Mr. Chairman, I wasn't involved in  
4 delaying the investigative process.

5 229 Q. And then if we come back to your notes at 2462. And 16:04  
6 sorry, I should say before I come to that, you do  
7 accept that allegations of this nature hanging over a  
8 member of An Garda Síochána on their personnel file and  
9 insofar as his dealings with his colleagues is  
10 concerned, they are serious matters left hanging out 16:04  
11 there, isn't that correct?

12 A. The allegations that were contained in the statement as  
13 made by Marisa Simms on 6th October were extremely  
14 serious in nature.

15 230 Q. Yes. But not so serious that anyone felt they needed 16:04  
16 to investigate it in Donegal?

17 A. Mr. Chairman, I have already answered that particular  
18 situation. I cannot advance it any further.

19 231 Q. And you accept, would you wish if such allegations were  
20 made against you, that they would be investigated 16:05  
21 promptly?

22 A. I think everybody would hope that allegations made  
23 against them would be investigated and a conclusion  
24 would be reached.

25 232 Q. And you accept that Garda Harrison didn't get that? 16:05  
26 A. Marisa Simms, by withdrawing her statement of complaint  
27 in relation to the matter, certainly prevented the  
28 substantive investigation of the matter.

29 233 Q. That was three months later and it didn't prevent the

1 substantive investigation of the matter, in fact two  
2 weeks later Superintendent Mary Murray was appointed to  
3 investigate it, and did nothing for a further ten  
4 months.

5 A. Ms. Simms failed to cooperate with the Garda Ombudsman 16:05  
6 Commission in relation to the matter. She subsequently  
7 withdraw her statement of complaint. Superintendent  
8 Murray was appointed to carry out certain

9 investigations in relation to the matter, but her  
10 investigation, she would have been presented with 16:06  
11 difficulties bearing in mind that there was a lack of  
12 cooperation at this particular time by Marisa Simms in

13 relation to the matter due to the fact that she had  
14 withdrawn her statement of complaint in relation to the  
15 matter. She didn't withdrew the complaints, she 16:06  
16 withdrew her cooperation with the investigation.

17 234 Q. She never made a complaint to the Garda Síochána  
18 Ombudsman commission, isn't that correct? Please  
19 accept the blindingly obvious, it makes it easier for  
20 us. 16:06

21 A. No, she didn't make a complaint directly to the Garda  
22 Ombudsman Commission in relation to the matter. We  
23 referred the matter because of the fact there was a  
24 Garda member, a serving Garda member, involved and

25 because of the serious nature of the incident that was 16:06  
26 alleged. We referred that matter or I referred that  
27 matter specific on the day to the Garda Ombudsman  
28 Commission for the purpose of investigations. Marisa  
29 Simms was provided with the opportunity when contacted



1 by Mr. O'Doherty to cooperate with them in relation to  
2 the investigation.

3 235 Q. Please don't use the word cooperate. That is  
4 inaccurate.

5 A. Well, that is word and that is the word I propose to 16:06  
6 use. She did not cooperate with the actual -- with  
7 Mr. O'Doherty in relation to the matter and indicated  
8 she did not wish to have any involvement in relation to  
9 the matter. It subsequently on the day was referred  
10 back to ourselves. Ms. Simms subsequently withdrew her 16:07  
11 statement and made a statement not withdrawing the  
12 allegations but withdrawing her cooperation in relation  
13 to the Garda investigation in relation to the matter.  
14 And as I say, Superintendent Murray after my  
15 appointment was terminated was subsequently appointed 16:07  
16 to carry out certain investigations in relation to the  
17 matter.

18 236 Q. Was there any point appointing Superintendent Murray to  
19 carry out an investigation once Marisa Simms had  
20 withdrawn her statement? 16:07

21 A. There still was an obligation to carry out inquiries in  
22 relation to the allegations that were contained within  
23 the statement of Marisa Simms to verify in some shape  
24 or form whether in fact those particular allegations  
25 were true. And if they were true, as you have already 16:07  
26 represented to the Tribunal, they had significant  
27 consequences for Garda Harrison if those allegations  
28 were deemed to be true.

29 237 Q. Which was why it was important when Marisa Simms did a

1 statement of retraction it said that the contents were  
2 true but she no longer wished to pursue a criminal  
3 complaint?

4 A. That's correct. As I have indicated she withdrew her  
5 cooperation with the criminal investigation that she  
6 had commenced on 6th October 2013. 16:08

7 238 Q. But the statement remained valuable for the purposes  
8 of --

9 A. She did not indicate at any stage, irrespective of the  
10 fact that it's represented at this Tribunal -- it's 16:08  
11 been represented at this Tribunal that what was  
12 contained in that statement is not in fact true. It  
13 was never -- she never represented at any stage to An  
14 Garda Síochána and at the time she made her statement  
15 of withdrawal what was contained in the statement, the 16:08  
16 allegations that were contained within it, which were  
17 extremely, were not true and factual.

18 239 Q. Before we move on from that particular point, is there  
19 anything in that statement by Marisa Simms to say that  
20 (a) the contact from Garda Harrison made to her by way 16:08  
21 of text messages or otherwise, over the course of the  
22 2011, 2012 fitted within the definition of harassment  
23 under the Non-Fatal Offences Against the Person Act?  
24 Because nobody asked her whether she found the contact  
25 at the time to be harassment. 16:09

26 A. What Ms. Simms represented in her statement of  
27 complaint on 6th October 2013, I am 100 percent  
28 satisfied fall within the remit of section 10 of the  
29 Non-Fatal Offences Against the Person Act in relation

1 to harassment.

2 240 Q. Right. why do you say it falls within the meaning of  
3 the Act?

4 A. That's my --

5 CHAIRMAN: Mr. Harty, as I said before, I have not only 16:09  
6 read the Act but also wrote about the Act, and I wonder  
7 is this getting a bit like the famous case, when the  
8 man pointed the gun at the person behind the counter  
9 and counsel failed to ask the question 'How did you  
10 feel when the gun was pointed at you?', you know it can 16:10  
11 be inferred. It is a famous case. Indeed, I think it  
12 appeared in a film, was it called The General? I am  
13 not sure.

14 241 Q. MR. HARTY: what I am asking about that is very simple,  
15 which is: The harassment -- insofar as Marisa Simms 16:10  
16 refers to the harassment element at all, she refers to  
17 looking back on it, it's all retrospective, not how she  
18 felt at the time, so it's very clear that at the time  
19 she didn't feel harassed, and it didn't come within  
20 section 10. In relation to the threats, central to a 16:10  
21 threat to kill in order to be a criminal offence is  
22 whether the person who makes the threat intends the  
23 person who hears the threat to believe that they are  
24 going to do it, isn't that correct?

25 A. Yes, the person to whom the threat is made, certainly 16:10  
26 on the day is a validating criteria that they would  
27 believe that the threats may well be carried out.

28 242 Q. I don't think they need to believe it, I think the  
29 person who makes the threat has to want the person to

1 whom they make it?

2 A. No, the person -- the injured party is the person who  
3 receives the actual threat. The crime is not dictated  
4 by who makes it, the crime is dictated by the person  
5 who receives the actual threat. 16:11

6 243 Q. Well, just so we are clear and, as I say, the Tribunal  
7 has read it:

8  
9 "A person without lawful excuse makes to another a  
10 threat by means of intending the other person to 16:11  
11 believe it will be carried out, to kill or cause  
12 serious harm to the other person, shall be guilty of an  
13 offence."

14  
15 In other words, I have a four-year-old who tells me on 16:11  
16 a regular basis he is going to kill me, neither of us  
17 believe that I am going to believe him that he is going  
18 to do it. And in relation to threats to kill, the use  
19 of the words "I am going to burn you" is only a  
20 criminal offence if the person who says it intends the 16:11  
21 other person to believe that they are going to carry it  
22 out. And there is nothing in the statement from Marisa  
23 Simms to suggest that she believed that Garda Harrison  
24 intended her to think that she was going to carry -- he  
25 was going to carry it out, nothing. 16:12

26 CHAIRMAN: So what is being put to you then, chief  
27 superintendent, is the notion that in the statement, no  
28 criminal offence is disclosed at all.

29 MR. HARTY: There are one or two minor ones, I would

1 accept, in the statement, in the frame in which it is  
2 provided, there is certainly mention in the statement  
3 of an assault, perhaps under section 3, certainly a  
4 section 2 assault, but in terms of the actual  
5 seriousness of the statement, nobody in that room seems 16:12  
6 to have thought that Keith Harrison was going to carry  
7 it out.

8 CHAIRMAN: In other words, did you think it was a  
9 lovers' tiff or a series of lovers' tiffs or did you  
10 think it was something more serious than that on 16:12  
11 reading the statement? I think is basically the  
12 question.

13 A. On reading the statement and the actual allegations  
14 that were presented within the statement by Marisa  
15 Simms, the allegations that were contained therein were 16:13  
16 deemed to be extremely serious in nature.

17 244 Q. MR. HARTY: But you didn't investigate them, you didn't  
18 engage in any crime prevention steps in relation to it,  
19 you didn't give Marisa Simms any crime prevention  
20 advice, you didn't carry out surveillance of Marisa 16:13  
21 Simms' home, you didn't bring Garda Harrison in to  
22 investigate them, you didn't do anything. You sent it  
23 to GSOC and you sent it to Tusla.

24 A. No, as I already said, Mr. Chairman, Ms. Simms was  
25 provided with crime prevention advice. She was given 16:13  
26 advice by Inspector Sheridan and it's in the reports  
27 that are presented to the Tribunal in relation to the  
28 actual domestic violence orders that were available to  
29 her. And it was represented to this Tribunal she was

1 actually Googling these particular orders for the  
2 purposes of acquiring information in relation to them.  
3 So she was provided with that particular advice. What  
4 we couldn't prevent and what we weren't in a position  
5 on the day to prevent was the situation whereby she was 16:14  
6 to return to reside with Garda Harrison. That  
7 situation we couldn't prevent. That is prevention we  
8 can't do.

9 245 Q. Inspector Sheridan gave her advice in relation to  
10 safety orders. 16:14

11 A. That would be correct, Mr. Chairman.

12 246 Q. She didn't give her advice in relation to the -- is it  
13 a GIM form?

14 A. No, no, she didn't serve any GIM forms on -- that is  
15 acknowledged, there were no GIM forms served by 16:14  
16 Inspector Sheridan on Marisa Simms.

17 247 Q. And a GIM form is a form that is standard practice to  
18 be served on somebody who has been the subject matter  
19 of a threat, isn't that correct?

20 A. Yes, subject to the classification of the threat, yes. 16:14

21 248 Q. What is the classification of the threat on a GIM form?  
22 How do you mean?

23 A. The nature or the seriousness of the actual threat.

24 249 Q. If a threat is serious you would serve a GIM form, is  
25 that correct? 16:14

26 A. Yes.

27 250 Q. And if it's not serious you wouldn't?

28 A. No. You would give certain advice, crime prevention  
29 advice in relation to the matter and it wouldn't

1 qualify for the service of the actual GIM forms.

2 251 Q. But if a threat was serious it would qualify for the  
3 service of a GIM form?

4 A. Yes, Chairman.

5 252 Q. After the 10th October, your dates then suggest that 16:15  
6 you have contact from Sergeant McGowan on 11th October,  
7 "Possible couple back together, withdrawal of  
8 complaint". Firstly, can you just tell me from those  
9 notes is that contact from -- that is 2462 -- from  
10 Sergeant McGowan to you or you to Sergeant McGowan? 16:15

11 A. No, that is a contact from Sergeant McGowan to me.

12 253 Q. How did she say she believed the couple were back  
13 together?

14 A. I don't recall, Chairman, if she actually told me how  
15 she came by that information or where she -- or how she 16:15  
16 believed it.

17 254 Q. You then spoke to her on 12th October, again regarding  
18 Garda Harrison, isn't that correct? That is what your  
19 note says at the bottom of 2462.

20 A. Yes, it's simply a note of the fact on the day we spoke 16:16  
21 in relation to the matter and nothing -- nothing  
22 further arose in relation to it.

23 255 Q. I think your notes in relation to Garda Harrison cease  
24 on 12th October, isn't that correct?

25 A. That would be correct. And I have reviewed my notes 16:16  
26 and I have allowed my contemporaneous notes to be  
27 looked at, and I had no further dealings in relation to  
28 the investigation or the matter that I had any cause to  
29 make any notes in my journal in relation to, and I

1 subsequently went on transfer on 25th of October.

2 256 Q. But you did in fact have dealings with a letter  
3 received from Mr. Hone. It is dated 16th of October, I  
4 understand you say you didn't receive it until 22nd  
5 October, is that correct? 16:17

6 A. That certainly would be the situation.

7 257 Q. It's stamped.

8 A. Mr. Chairman, that wouldn't be something I would be  
9 writing on my journal.

10 258 Q. And that is at page 769. And your evidence to the 16:17  
11 Chairman was that it didn't arrive until 22nd October.

12 A. Yes, it's date-stamped in our office on 22nd October.

13 259 Q. And you were aware at that stage of the strategy  
14 meeting having taken place, I take it, with Sergeant  
15 McGowan? 16:18

16 A. I think I have already said, I am aware that the  
17 strategy meeting took place, I don't know exactly when  
18 I became aware that the strategy meeting had taken  
19 place. But I was aware the strategy meeting had taken  
20 place. I would have -- I certainly on the day would 16:18  
21 have been made aware at some stage by Sergeant McGowan  
22 that the strategy meeting had taken place, but I cannot  
23 assist the Tribunal in relation to when exactly on the  
24 day I became aware that it had taken place.

25 260 Q. You left -- was your last day in Milford the 24th 16:18  
26 October?

27 A. It was either the 24th or 25th. I think my date of  
28 transfer was the 25th of October and I think I still  
29 was in Milford tidying up on certain correspondence or



1 outstanding correspondence of other matters before I  
2 left.

3 261 Q. But you read Mr. Hone's letter and you forwarded it to  
4 Sergeant McGowan on 24th October?

5 A. I certainly did. 16:19

6 262 Q. My understanding from your evidence was that at that  
7 stage you certainly were aware of the strategy meeting  
8 having taken place?

9 A. I was. I am not sure whether it was that day or -- it  
10 may well -- I certainly, I didn't speak to Sergeant 16:19  
11 McGowan specific in relation to it, but when that  
12 letter would have arrived I put a standard covering  
13 letter out to her in relation to the content of the  
14 actual letter.

15 263 Q. Your evidence yesterday was that on the arrival of the 16:19  
16 letter on 22nd October, you would have known on the  
17 arrival of that letter that the strategy meeting had  
18 been held, that is at page 85, line 4, 5 -- or 3, 4 and  
19 5 of yesterday's transcript.

20 A. I would have known on the 24th when I was answering the 16:20  
21 letter.

22 264 Q. So you knew when you were answering the letter on the  
23 24th?

24 A. I would have -- well, when I sent the correspondence, I  
25 think it's dated the 24th October, the correspondence I 16:20  
26 sent to Sergeant McGowan in relation to --

27 265 Q. You certainly knew when you were sending the letter to  
28 the Sergeant McGowan that the strategy meeting had  
29 already taken place?

1 A. Yeah, as far as I can recall, Mr. Chairman, I was aware  
2 that Sergeant McGowan had already done the follow-up  
3 with Tusla in relation to the matter, or the HSE.

4 266 Q. And in your statement at page 196, at the very bottom:  
5  
6 "I am aware that the HSE confirmed to Sergeant McGowan  
7 that they had closed their case on the matter."  
8

9 It's a very definite statement, and every other  
10 statement that you have given, superintendent, you have 16:20  
11 been able to --

12 A. That sentence arose yesterday and I wasn't -- I wasn't  
13 fully in a position to explain. Now I have read the  
14 statement again and I don't think that comment is  
15 directly related to the 24th October. It's a comment 16:21  
16 in relation to the actual complete follow-up in  
17 relation to the matter, that basically I was putting a  
18 note in my statement that I was aware on the day that  
19 the referrals that I had made to the HSE in relation to  
20 the matter had been finalised. 16:21

21 267 Q. Right.

22 A. Not --

23 268 Q. I would have to put it to you, that is an unusual  
24 explanation, superintendent, in circumstances whereby  
25 the next line is "as per correspondence dated 1st 16:21  
26 November 2013", in other words, your statement is very  
27 chronological.

28 A. Yeah, but as I say, I have no -- there is no -- I  
29 didn't put a date on that there. Like, I mean my

1 statement is chronological in relation to dates. If  
2 you look at it on 24th of October, then I -- or 25th  
3 October, whichever date it is, I am no longer based at  
4 the Milford Garda district, so anything that followed  
5 thereafter is correspondence I received in the Buncrana 16:22  
6 Garda district and not specific in relation my role as  
7 the district officer in Milford.

8 269 Q. Sorry, and I am slightly confused as to how you were  
9 told that Sergeant McGowan or when you were told that  
10 Sergeant McGowan had been advised by the HSE that they 16:22  
11 had closed their case?

12 A. That is just, when I was making my statement on 4th  
13 July, that is -- that is a statement I was in a  
14 position to make, that I was aware that the case in  
15 relation to the referrals had been finalised. 16:22

16 270 Q. When did they close the case?

17 A. I cannot -- I cannot tell the Tribunal when that date  
18 was.

19 271 Q. When did they inform Sergeant McGowan?

20 A. I cannot tell you that date either. 16:23

21 272 Q. You see, the reason why I have to ask you these  
22 questions, superintendent, is that, in fact, from the  
23 date of the strategy meeting on 21st October to contact  
24 made by Sergeant McGowan in January of the following  
25 year, and this is common case by Sergeant McGowan and 16:23  
26 the witnesses from Tusla, nothing was done by Tusla.  
27 So in fact, your recollection in your statement that  
28 the HSE had confirmed to Sergeant McGowan that they had  
29 closed their case on the matter adds up, because they

1 did nothing until Sergeant McGowan contacted them  
2 again.

3 A. What I am saying, Mr. Chairman, is that line in my  
4 statement, that comment in my statement is relevant to  
5 the completion of my statement on 4th July 2017, 16:24  
6 nothing in relation to what I knew or didn't know what  
7 was going on in January of 2014. I had no further  
8 involvement in relation to the matter once I left on  
9 25th October, and. I know it's been represented to the  
10 Tribunal in relation to Tusla, I received no request, 16:24  
11 I had received no request and that is all I can say, I  
12 had received no request from the HSE or Tusla for  
13 either a copy of the statements that had been made in  
14 relation to this particular matter the subject of the  
15 referral or for an opportunity on the day to view or 16:24  
16 review those particular statements. I am just saying  
17 that I myself as the district officer in Milford had  
18 received no such request.

19 273 Q. No, I appreciate that, and I don't think anyone has  
20 suggested that you did receive such request. 16:24

21 A. No, I am just making it clear that I actually hadn't  
22 received any request.

23 274 Q. And I would have difficulty with your suggestion that  
24 this is somehow a closing off on the matter as your  
25 statement goes on to deal with the matters of GSOC at 16:24  
26 some length and your disciplinary matters.

27 A. Well, all I can say, Mr. Chairman, is, I don't believe  
28 there is anything significant in relation to the  
29 matter. I see nothing, nothing irregular in relation

1 to the actual comment that I have made there, that I am  
2 aware that the matter was -- had been finalised.  
3 If you wish to tell me that the matter in fact was  
4 never finalised, then I have no difficulty  
5 acknowledging that I was mistaken in relation to my 16:25  
6 comments in relation to it.

7 275 Q. Superintendent McGovern, I had put to you that as far  
8 as you were aware the HSE had closed their  
9 investigation in October of that year, because that is  
10 what your statement says. 16:25

11

12 "On 24th October I provided Sergeant McGowan with a  
13 copy of this reply and requested she should liaise with  
14 Ms. Bridgeen Smith, social worker, HSE, to confirm  
15 there would be no further HSE intervention in the 16:25  
16 matter. I am aware that the HSE confirmed to Sergeant  
17 McGowan that they closed their case on the matter."

18 A. Yes, but --

19 276 Q. One sentence follows the other.

20 A. No, all I am going to say, Mr. Chairman, is, in 16:26  
21 relation to the correspondence I sent on 24th October  
22 2013 which presented a question, not in fact -- I  
23 wasn't making a statement, I was asking a question, I  
24 don't recall seeing any reply to that particular piece  
25 of correspondence. 16:26

26 CHAIRMAN: Yes, could I just intervene, superintendent?  
27 On the 24th, I suppose the next day you were going to  
28 other duties in another part of the country.

29 A. Yes.

1 CHAIRMAN: Obviously I have learned a great deal about  
2 how the HSE operate and I suppose the Gardaí would have  
3 been much more aware of at least some of it prior to  
4 the start of this Tribunal, but it may be that Gardaí  
5 might think as follows. Again, lets take it as 16:26  
6 hypothetical, not this case, here is a statement made  
7 by a woman who says that her husband is out of control,  
8 is an alcoholic and is beating her and the children.  
9 Let's suppose that she makes a statement to that effect  
10 to the Gardaí. Let's suppose you pass it over, which 16:27  
11 you are obliged to do. And then let's suppose, let's  
12 say a month later, if there even are bruises they would  
13 have been well gone at that stage, she comes in and  
14 says I am suffering from mental problems, I never meant  
15 to make the statement and I am an alcoholic as well. 16:27  
16 The Gardaí of course would be in a position then you  
17 couldn't possibly bring a criminal prosecution, isn't  
18 that the case? You would be finished in that instance.  
19 A. Yes, in those particular situations, Chairman, we have  
20 grave difficulty in pursuing those particular 16:27  
21 prosecutions because the injured party generally will  
22 not cooperate with our investigations. We don't have  
23 an actual statement of complaint or they have withdrawn  
24 their statement of complaint.  
25 CHAIRMAN: Okay. I can appreciate that. And I mean, 16:27  
26 one will have seen them over the years where indeed the  
27 injured party will refuse to turn up in court and then  
28 you have to apply to the judge for a warrant and then  
29 you are arresting someone whose is supposedly a victim

1 of something and the whole thing becomes very  
2 unpleasant, and well, it's all contraindicated really.  
3 But if it was the HSE did you think that maybe they  
4 would be in the same position, if someone got an  
5 initial contact in consequence of what the Gardaí sent 16:28  
6 to the HSE and then the person makes the same  
7 statement, if you like, of withdrawal and disavowal, I  
8 am an alcoholic, I never meant to say any of that, were  
9 you under the impression at that time looking back to  
10 October 2013, appreciating that procedures have changed 16:28  
11 somewhat, that the HSE would be in the exactly the same  
12 position, they couldn't take it any further?

13 A. No.

14 CHAIRMAN: You think they could?

15 A. Once we would make the referral to the HSE or Tusla, as 16:28  
16 the case may be, like, I mean they would -- and they  
17 would always carry out some form of evaluation in  
18 relation to the actual content of the actual referral.

19 CHAIRMAN: Yes.

20 A. And the fact on the day that our statement of complaint 16:29  
21 may well have been withdrawn would not -- and I am -- I  
22 am not speaking for Tusla or the HSE, it would not  
23 prohibit them from making the inquiries that they  
24 needed to make to satisfy themselves that the referral  
25 that we made on the day wasn't justified or that there 16:29  
26 wasn't evidence in support of it.

27 CHAIRMAN: So, as Donna McTeague said, perhaps in  
28 circumstances such as that they might speak to the  
29 young lady alone just to try and get a sense of what is

1 going on before speaking to anybody else and try and  
2 build up a rapport and see what is really going on?

3 A. Certainly, like, this referral, Sergeant McGowan was  
4 identified as the officer to make contact with in  
5 relation to the matter, so that Sergeant McGowan could 16:29  
6 provide the relevant social worker with an up-to-date  
7 set of facts or information that was in her possession  
8 to assist them in making their actual investigation or  
9 inquiries. And it was in existence then, it's utilised  
10 quite significantly more now but they were in a 16:29  
11 position on the day to seek permission from ourselves  
12 to sit down and review or the sharing of information,  
13 the review of the statements, but it would be something  
14 that is done significantly oftener now.

15 CHAIRMAN: So they could in effect conduct their own 16:30  
16 investigations?

17 A. Yeah, yeah. The fact that a criminal investigation is  
18 withdrawn wouldn't stop that situation.

19 CHAIRMAN: Yes, I think I understand that. So, they  
20 would be in a better position, but they wouldn't -- 16:30  
21 well, I suppose unless it's a place of a safety order  
22 where they would have to bring people to court and all  
23 that, I mean which is the most serious kind of thing,  
24 there was nothing to prevent them talking and seeing  
25 where people stood? 16:30

26 A. No, absolutely not.

27 CHAIRMAN: All right. I understand.

28 MR. HARTY: Superintendent McGovern, I have no more  
29 questions, and thank you and I am sorry for taking so



1 much time.

2 MS. LEADER: I just don't know if Mr. Harty wants to  
3 put it to the superintendent that the actual referral  
4 which he signed I think on 9th October was signed other  
5 than on a bona fide basis? That is the referral to the 16:30  
6 HSE.

7 CHAIRMAN: Yes, the referral to the HSE, was that done  
8 in good faith based on the statement or did you think  
9 the statement had been taken in - I am sorry, the word  
10 dodgy is coming to mind and that is the word I would 16:31  
11 use - circumstances whereby you shouldn't make a  
12 referral in good faith or did you do it in good faith?  
13 That is the issue.

14 A. Based on the content of the statement and the  
15 allegations contained therein, and the fact on the day 16:31  
16 it was represented to us that -- and I would say it was  
17 represented to us that two children were actually --  
18 were witness to a domestic violence-related situation  
19 and that is what was contained in the statement, we  
20 made two separate referrals, there was a mandatory 16:31  
21 obligation on me under the regulations on the day to  
22 make that referral, and I am more than satisfied, and I  
23 still am more than satisfied, that it was a proper and  
24 appropriate referral to make to the HSE.

25 CHAIRMAN: That's fine. 16:31

26 MR. HARTY: Sorry, just as a matter of propriety, I  
27 should just say, ask one or two questions in relation  
28 to that.

29 CHAIRMAN: Well, if you wish, but I mean --

1 MR. HARTY: I don't want anyone to feel that I am  
2 somehow --

3 277 Q. You signed off the referral as it had been compiled by  
4 Sergeant McGowan, isn't that correct?

5 A. I had contacted Sergeant McGowan, asked her to prepare 16:32  
6 the actual referrals in relation to both children. She  
7 took those referrals to me, I signed off on them as the  
8 designated officer, which I am required to do, and I  
9 forwarded them, as the correspondence dictates I  
10 forwarded them to the HSE for relevant attention. 16:32

11 278 Q. And insofar as the details contained on that referral  
12 form, it is mirrored in the statement of Marisa Simms,  
13 isn't that correct? This isn't a trick question, my  
14 understanding is that the detail contained on the  
15 statement is -- 16:32

16 A. It was a short -- a very, very -- it was a very, very  
17 short synopsis of the actual terms of the referral.

18 279 Q. One thing I should say to you, and in fairness to you,  
19 would it not have been better to use a standard  
20 referral form in relation to this rather than an abuse 16:33  
21 child protection referral form?

22 A. Again, Mr. Chairman, this aspect was discussed here  
23 already. That is the appropriate, the proper and  
24 appropriate designated form under the Children First  
25 Guidelines and Regulations for An Garda Síochána to use 16:33  
26 to make referrals of this particular nature to the HSE  
27 or Tusla. That is the form, that is the form that we  
28 use. It is the designated form at Appendix 5 of the  
29 actual Regulations and it is the correct form.

1 Irrespective maybe of what may well have been thought  
2 it is the correct form.

3 280 Q. The form itself deals with child abuse, it doesn't --  
4 and child protection, it doesn't deal with child  
5 welfare?

16:33

6 A. Well, it's emotional. And this was entered into in  
7 relation to the definition under the "domestic  
8 violence" under the Children First Guidelines or Policy  
9 and it is validated and it did qualify on the day for  
10 referral under those regulations.

16:33

11 281 Q. And no one in Tusla believed that this came within the  
12 description of emotional abuse?

13 A. Well, it comes within the definition of the guidelines  
14 contained in the Children First Guidelines and as far  
15 as I was concerned, and I am still -- I have no reason  
16 to change my view in relation to it, it's represented  
17 as emotional abuse and required referral as a mandatory  
18 referral on our behalf to Tusla.

16:34

19 282 Q. You accept that the experts in relation to it, in  
20 Tusla, believed it does not fall within the categories?

16:34

21 A. Well, Mr. Chairman, once the referral is made by the  
22 Garda authorities then after that it is the  
23 responsibility of --

24 CHAIRMAN: I know. And certainly there's some question  
25 as to the wording but their take on it is, yes, it was  
26 and it should have been referred, now what -- Am I  
27 getting it wrong?

16:34

28 MR. HARTY: No, it's the category of referral. This is  
29 a referral under appendix 5.

1 CHAIRMAN: Oh yes, the category. But it should have  
2 been referred.

3 MR. HARTY: No, I am not arguing in relation to that.  
4 I am not saying on the basis of the information  
5 available to Superintendent McGovern that his referral 16:34  
6 was made not bona fide on his part, and that suggestion  
7 is not being made, and if Ms. Leader needs me to make  
8 that clear to him I am happy to say that I do not have  
9 any suggestion that Superintendent McGovern in terms of  
10 filling out that form was doing anything that he didn't 16:35  
11 honestly believe he ought to do at the time. And if  
12 that clarification needed to be made I have no  
13 difficulty making that clarification.

14 A. Just one point, Mr. Chairman, I gather there's no  
15 allegation being made against me for doing it for the 16:35  
16 purposes of victimising either Garda Harrison or  
17 Ms. Simms in relation to the matter? It was done bona  
18 fide because of the actual content of the statement and  
19 for no other purpose or reason.

20 CHAIRMAN: That is what I understand, but I have to 16:35  
21 look at things and make my mind up about,  
22 superintendent, whether people make the allegation or  
23 not, but it is helpful to see where the direction is  
24 and the direction is not going in.

25 MR. HARTY: Insofar as that impression might have been 16:35  
26 given, there is not a suggestion -- I don't have  
27 instructions in relation to that and it wouldn't be my  
28 case. Thank you, superintendent.

29 CHAIRMAN: So Mr. Barnes, is there any questions?

1 MR. BARNES: Yes, sir, I have a few questions. And I  
2 wonder if my friend would help me have a line of sight  
3 of the witness. I appreciate it is not a criminal case  
4 but it would be helpful.

16:36

6 SUPERINTENDENT MCGOVERN WAS CROSS-EXAMINED BY

7 MR. BARNES:

8 283 Q. MR. BARNES: Good afternoon, Superintendent McGovern.  
9 I just have a few questions apropos of the question  
10 posited by the Chairman; namely, was this ill motivated 16:36  
11 as opposed to a genuine investigation? And I might  
12 gloss that by saying, or at least was it motivated  
13 otherwise than the ostensible reason for which it was  
14 conducted? And, was that right or was it just not  
15 right? You understand that? 16:36

16 A. You are asking me was our investigation ill motivated?

17 284 Q. No, I am not. I am saying that that is where I am  
18 coming from, as the Chairman framed -- looking through  
19 the prism of the Chairman, if you like, framed. Yes,  
20 effectively that it was not conducted for the 16:37  
21 ostensible reason of a proper criminal investigation,  
22 which is proper to the Garda brand and that would pass  
23 muster publically, or was it genuine; and that is where  
24 we are coming from, you understand that?

25 A. I understand. And the situation hasn't changed for me. 16:37  
26 It was a genuine complaint made by Marisa Simms and it  
27 was a genuine Garda investigation based on the actual  
28 content of that particular statement, motivated for no  
29 other reason.

1 285 Q. And you understand that she, while she has acknowledged  
2 the general nature of the fact that she -- on the basis  
3 of the duration of the interview, if you like, and her  
4 emotional state and for various other reasons it's  
5 inaccurate, that there's a certain amount of prompting, 16:38  
6 that when it got to the material aspect of the -- at  
7 the very end of the interview, that she was nodding  
8 along and agreeing with things and that there were  
9 several amendments that were not initialled and they  
10 were not appropriate, you understand that? 16:38  
11 A. I understand that she -- those submissions have been  
12 made. Nevertheless, when she did make her statement of  
13 withdrawal she did not indicate that the content of  
14 that particular statement was untrue. So from the very  
15 outset An Garda Síochána and the people that were 16:38  
16 tasked to investigate it, we were more than satisfied  
17 that the content of the statement as presented by  
18 Marisa Simms was true and factual and validated proper  
19 criminal complaints.  
20 286 Q. And she will go further and say, I suppose, that the 16:38  
21 texts which may be superficially seductive I suppose as  
22 to corroboration, were made in the context of a  
23 domestic dispute and are not at all reliable as  
24 corroboration. So that is basically the framework of  
25 where my cross-examination will be coming, you 16:39  
26 understand that?  
27 A. I appreciate it, but as far as the investigation team  
28 are concerned, the actual text messages in fact on the  
29 day actually validated the content of the statement of

1 complaint as opposed to the other way round.

2 287 Q. That is your position and I quite appreciate that, but  
3 hers is opposed to it. And that I suggest to you is a  
4 reasonable proposition but I will move on. Now, is it  
5 normal in the context of a normal criminal 16:39  
6 investigation that you would speak in terms of, as you  
7 have spoken, securing an undertaking, an undertaking  
8 from a victim to come in and give a statement? To  
9 secure an undertaking, that suggests a reluctance or a  
10 lack of voluntariness. Is that part of your experience 16:40  
11 as a senior guard of securing undertakings from victims  
12 to make a complaint?

13 A. I think in this instance the initial complaints were  
14 made by or on behalf of Marisa Simms by concerned  
15 family members. So the subsequent contact was made 16:40  
16 with Marisa Simms in relation to presenting herself  
17 to make --

18 288 Q. None of which is an answer to the question, by the way.  
19 None of which is an answer to the question.

20 A. Please, if you let me finish I will answer the question 16:40  
21 for you. As a consequence Ms. Simms was contacted and  
22 it may well be phraseology in the English language, but  
23 as a result of the contact with her whether you say she  
24 agreed to come in, she undertook to come in or she was  
25 going to come in, then that's simply the situation. 16:40  
26 She agreed, whatever way you want to put it, she agreed  
27 to present at Letterkenny Garda Station on 6th October  
28 to make a statement of complaint to Garda personnel and  
29 that is what happened.

1 289 Q. Right. Her sister was apprehensive and the primary  
2 motivation we have heard from Rita McDermott, the  
3 primary motivation of Paula's involvement was to make  
4 sure there was no hassle at the wedding, not out of  
5 concern for her sister, her mother alerted the Gardaí 16:41  
6 and thereby you apprehended that there might be  
7 something of interest in relation to Keith Harrison.  
8 And what you said, and you definitely did use at least  
9 three different phrases, the first of which, which  
10 might have been a little bit ill-advised, was an 16:41  
11 undertaking to come in to give a statement. Now, I am  
12 asking you, is it part of your experience as a senior  
13 guard to secure undertakings from victims to come in  
14 and give a statement? And is such, the requirement of  
15 an undertaking consistent with voluntariness? 16:42  
16 A. Mr. Chairman, we contact injured parties, victims, on a  
17 daily basis, and sometimes those particular people  
18 agree to allow us to come and visit them, sometimes on  
19 the day they request on the day that they come and meet  
20 us. So, look it, the wording that is used there is 16:42  
21 Ms. Simms gave an undertaking that she was going to  
22 come to Letterkenny Garda Station on 6th October to  
23 meet up with the Garda members concerned and that is  
24 all I read into it, Chairman.

25 290 Q. Well, and you modified your phraseology in the next 16:42  
26 reference in direct examination to the word  
27 "arrangement". You made an arrangement, which is  
28 fairly innocuous. But in cross-examination you  
29 referred to an agreement to come in. Now, that



1 suggests a negotiation, a reluctance, maybe a little  
2 bit of arm-twisting, can I put that to you?

3 A. Well, all I can say, Mr. Chairman, is my understanding  
4 that Marisa Simms' arm was not twisted by anyone  
5 involved in this particular investigation to come to 16:43  
6 Letterkenny Garda Station to make a statement of  
7 complaint in relation to the matter. She came there of  
8 her own free will. She was free to leave at any point  
9 of the actual statement-taking process, as has already  
10 been represented by both Inspector Sheridan and 16:43  
11 Sergeant McGowan, she didn't choose to do that. She  
12 came there of her own free will, she was told her  
13 rights in relation to leaving the station if she so  
14 wished, she made her statement of complaint and she  
15 went home. And that's it in simplistic terms. 16:43

16 291 Q. Well, is arrangement a little bit better than  
17 undertaking or agreement in the context of her  
18 reluctance that you apprehended?

19 A. Well, all I can say, Mr. Chairman, for me it's playing  
20 with words in the English language as opposed on the 16:44  
21 day just dealing with the simplistic aspect of  
22 Ms. Simms being contacted by the Garda members  
23 concerned and the 6th of October 2013, Sunday, 6th  
24 October 2013 was the day that was arranged for her to  
25 come to Letterkenny Garda Station to make a statement 16:44  
26 of complaint.

27 292 Q. Well, she kind of says that she was afraid that there  
28 would be guards, from Gweedore, coming down while there  
29 are Canadian visitors and there was a wedding going on

1 and there was enough conflict. I suppose I am putting  
2 words now into the equation that perhaps are not  
3 supported by evidence. But certainly, certainly there  
4 was a sense of embarrassment, there was a sense of  
5 trying to avoid guards coming to the house while there 16:44  
6 were visitors, there was a sense of a need to comply  
7 and give an undertaking or make an agreement with the  
8 guards to give a statement that she wasn't particularly  
9 willing to give, isn't that the context?

10 A. As I said earlier on, Mr. Chairman, sometimes we go to 16:45  
11 witnesses, sometimes they -- or victims and they come  
12 to us. On this occasion Ms. Simms was contacted, the  
13 undertaking was given that we had no difficulty on the  
14 day travelling to, it was in Meenderryowen in Annagry  
15 she was living at that particular time, to take the 16:45  
16 statement off her and not to put her under any  
17 inconvenience in relation to having to come to us in  
18 relation to the matter, but she expressed to us --  
19 represented -- she expressed concerns that she didn't  
20 want Garda members on the day calling out there at that 16:45  
21 particular time, so she undertook, whatever word you --  
22 we wish to use, and I am going to use, she gave an  
23 undertaking that she would present at Letterkenny Garda  
24 Station on 6th October 2013 to make her statement of  
25 complaint. 16:45

26 293 Q. Well, you appreciate that she takes a different view.

27 A. No, I acknowledge that she has -- she is making a  
28 different representation in relation to the matter.  
29 They are just my views, Mr. Chairman, in relation to

1 it.

2 294 Q. Now, would you think it's good for the Garda brand that  
3 victims, as you call them, would spend maybe two hours,  
4 up to two hours in the Garda station on chitchat, about  
5 five-and-a-half going into ambient features of their 16:46  
6 intimate personal life and perhaps the last hour, at a  
7 stretch, dealing with these serious -- I will just use  
8 your own words here, serious threats to burn, to burn  
9 out, which is never part of the evidence, do you think  
10 that that is a good signal to be sending out to the 16:46  
11 public, that if they are victims they will spend an  
12 awful long time before they get to the meat of it,  
13 talking about really irrelevant matters?

14 A. Well, from a criminal investigation perspective, you  
15 simply just can't sit down and start taking a statement 16:47  
16 of evidence. Unfortunately, if you do that, it will  
17 become very disjointed, no structure on it and it  
18 creates a difficulty both for both the actual person  
19 from whom you are taking the statement and from the  
20 people that is trying to take the statement. So quite 16:47  
21 a considerable time needs to be done preparing on the  
22 day, the actual preparation work for the actual taking  
23 of the statement before that actually takes place. And  
24 this was explained by Inspector Sheridan and Sergeant  
25 McGowan in relation to what they done and what needed 16:47  
26 to be done prior to the actual taking of the statement.  
27 I don't think it's represented that the statement  
28 subsequently on the day was all recorded in one hour,  
29 that everything that was done prior to that was by way

1 of introduction. It would not have been possible on  
2 the day to record the 33 pages on the day in the  
3 structured fashion that it was in simply an hour.

4 295 Q. 38 I believe.  
5 A. 38 pages, sorry. 16:48

6 296 Q. Just using perhaps a medical analogy, in relation to a  
7 matter, let's say to use your words, of serious and  
8 urgent focus, and you present at Accident & Emergency,  
9 the analogy is that you would spend about  
10 seven-and-a-half hours in triage talking to a nurse 16:48  
11 about matters of your intimate personal life when the  
12 gravamen of your presentation is to deal with threats  
13 to burn, to burn out, possible risk of death, serious  
14 harm, that doesn't make sense, does it?

15 A. I wasn't present at the actual taking of the actual 16:49  
16 statement.

17 297 Q. I know, but you had experience --

18 A. No, no, please, please, I wasn't present at the taking  
19 of the actual statement so I don't know exactly on the  
20 day what questions were asked or what information on 16:49  
21 the day specific was sought. Nevertheless, Ms. Simms,  
22 if she so chose or she wished not to provide any  
23 intimate details in relation to her past, she was --  
24 that was her prerogative, she didn't wish to do that.

25 298 Q. Oh, yeah -- 16:49  
26 A. She provided those facts on the day to Inspector  
27 Sheridan and to Sergeant McGowan as part of the actual  
28 structure of the taking of that particular statement.

29 299 Q. Right. I am not going to go into those unfortunate

1 details and questioning to which she was subjected to  
2 in any great degree, but I would ask you to refer to  
3 page 71 of the materials. And maybe two-thirds or four  
4 fifths of the way down the page. She instructs me she  
5 was asked the question: Do you have more feeling for 16:50  
6 Andrew or for Keith? And it's recorded there as if  
7 it's part of a fluent narrative: "I had more feelings  
8 for Keith than Andrew." Now, what part of a valid  
9 investigation as to threats to kill and harassment is  
10 that? 16:50

11 MR. DOCKERY: Chairman, that question was never put to  
12 either of the two members who took the statement, and  
13 it's the first time I have heard the suggestion made  
14 that that portion of the statement was tricked or  
15 cajoled out of Ms. Simms. It seems to be part of a 16:50  
16 rolling narrative that grows additional limbs as the  
17 days go by.

18 MR. BARNES: Well, I can't say that I remember that  
19 that question was put, as such, and I would appreciate  
20 the comments of the Chairman in relation to it. 16:51

21 300 Q. But would you accept that -- by the way, she does say  
22 that that question was asked and she gives it as an  
23 egregious example of the interview going anywhere other  
24 than where it should have been going. And do you not  
25 accept that it is the obligation of the interviewers, 16:51  
26 if you like, to direct the interview in relation to  
27 matters which are relevant, which didn't happen for  
28 about seven-and-a-half hours intimate?

29 A. We often find that in relation to taking of statements

1 from injured parties, that you often have to paint a  
2 picture in relation to the actual background to what  
3 has led to the actual problems in the first place. And  
4 as a result, there would certainly be -- there will be  
5 quite a bit of background information included in the 16:52  
6 statement in relation to both the injured party and the  
7 person who is being complained about, provided the  
8 person making the statement is happy and willing to  
9 provide that information. And Ms. Simms made this  
10 statement, it was read over to her at the end. She was 16:52  
11 entitled to add or subtract anything that was contained  
12 in that statement that she wasn't happy with or would  
13 have felt was inappropriate, but she didn't do that.  
14 She signed -- she -- the statement has been presented  
15 to the Tribunal. It's obvious on the day it was read 16:52  
16 over to her. There was amendments made or she  
17 initialled certain amendments that were made. If this,  
18 what you have represented on the day was unacceptable,  
19 unacceptable background material, unacceptable  
20 questions on the day that may well have been put to her 16:52  
21 and included in her statement, she was in a position to  
22 say to the Garda officers that read over that statement  
23 to her, and that is the reason why statements are read  
24 other: is there anything you wish to withdraw,  
25 subtract, amend or otherwise. That was her prerogative 16:53  
26 when that was done. So if she didn't want that  
27 particular material in her statement, she was in a  
28 position to tell the officer who was reading it over to  
29 her or making the amendments, I don't wish that there,

1 please strike that out, and that would have been done.

2 301 Q. Don't you think it would be good for the Garda brand if  
3 these type of details, which it might be argued were --  
4 could, to a certain degree, be desirable for the  
5 purposes of maintaining a flowing narrative that 16:53  
6 eventually comes to the meat, that having regard to  
7 irrelevant personal details, the statement might have  
8 been truncated to protect the interests of the witness?

9 A. These personal details or personal information on the  
10 day that was provided by Marisa Simms, she provided 16:54  
11 them. She provided that information.

12 302 Q. You heard her speak in an impassioned way when she was  
13 recalled, when it was asked was she in effect a  
14 grandstander or somebody looking for publicity, she was  
15 on the point of weeping, talking about all her personal 16:54  
16 details being aired in public unnecessarily, and one  
17 might have formed the impression that it was this  
18 process that victimised her rather than her domestic  
19 row on 28th September 2014 -- '13. would you agree or  
20 disagree? 16:54

21 A. Would you please repeat the question for me, please?

22 303 Q. It's a fairly awkward question, so I don't think I  
23 will. She was recalled to the witness-box and it was  
24 put to her that she was a publicity seeker and other  
25 things. And she said that her motivation, that why 16:55  
26 would anybody want to come here and have their details  
27 aired in public, she referred to a garda blue-lighting  
28 her on her day to Dunnes, and that her motivation was  
29 to seek peace. I am saying that -- you understand

1 that?

2 A. I understand -- I understand that she said that, yes.

3 304 Q. And that she feels more victimised from that interview  
4 and what ensued from it than anything that occurred on  
5 September 28th 2013, do you understand? 16:55

6 A. I understand what you are saying, yes.

7 305 Q. Okay.

8 CHAIRMAN: And do you want to say something about it,  
9 is what counsel is saying?

10 A. All I can say, Mr. Chairman, is, she came to 16:55  
11 Letterkenny Garda Station on 6th October 2013, she made  
12 a statement to Inspector Sheridan, Sergeant McGowan,  
13 two extremely experienced officers. She presented  
14 facts to them which they recorded in a statement of  
15 evidence which was subsequently read over to her and 16:56  
16 she signed off on. There is no way that Sergeant  
17 McGowan or Inspector Sheridan would have taken down  
18 details that they felt on the day was so personal to  
19 her that it was going to actually victimise her greater  
20 than the actual complaints that she had put in her 16:56  
21 statement. It would never arise. Like, I mean, the  
22 statement was taken for the purposes of conducting a  
23 criminal investigation, and the facts that were  
24 presented, they were presented by Ms. Simms on the day,  
25 on that particular day, and they were recorded in her 16:56  
26 statement.

27 306 Q. Well, you do know that she was shocked when contacted  
28 by GSOC in the course of a medical examination, or a  
29 medical appointment, which kind of suggests that the



1 infection was brewing at around the time of the  
2 interview, but she was shocked to discover that the  
3 statement had gone to GSOC because she hadn't  
4 informed -- been informed that it would be. She was  
5 shocked that it was sent to GSOC and she thought it was 16:57  
6 for the eyes of the chief only. So when you say she is  
7 making a criminal complaint, she says at least that it  
8 didn't seem like that to her. What do you say?

9 A. I know, Mr. Chairman, she has represented that  
10 particular fact, but from the outset and -- there 16:57  
11 was -- there was never any other understanding of what  
12 her purpose at Letterkenny Garda Station was, by the  
13 members that were taking the statement. She was there  
14 to make a statement of complaint.

15 307 Q. You weren't there and you are not in a position to give 16:57  
16 that evidence, I might suggest to you?

17 A. Well, no, I wasn't, I wasn't there, but you are asking  
18 me for my opinion in relation to a situation and I'm --  
19 I will give you my opinion, but I certainly on the day  
20 can't speak nor I don't intend to speak on the day for 16:58  
21 Sergeant McGowan or for Inspector Sheridan. And, I  
22 mean, you can represent a situation in relation to how  
23 your client felt on that particular day, and I accept  
24 your representation, but I cannot put it past that  
25 particular situation. 16:58

26 308 Q. No, but you are after saying that you weren't there but  
27 you would put it in categorical terms that there was  
28 never any other understanding, and I am saying that you  
29 can't give that particular piece of evidence because



1 Ms. Simms presented to me as a person on the day who  
2 was a significant victim of domestic violence. The  
3 situation that presented in that particular statement  
4 raised serious concerns for me in relation to  
5 Ms. Simms, her safety and the safety of her children. 17:00  
6 From a rural policing perspective, I certainly would be  
7 of the view on the day that most -- many of the murder  
8 investigations that I have been involved in on the day  
9 have been domestic-related, and I had serious concerns  
10 what the future consequences may well have been if this 17:01  
11 situation was allowed to continue, if the facts as  
12 contained in the statement as made by Marisa Simms on  
13 the 6th October were correct, and I have to take it  
14 still on today's date that those facts are correct  
15 because when she made her statement of withdrawal she 17:01  
16 never indicated at any stage to An Garda Síochána that  
17 the facts that she made or the complaints that she made  
18 on 6th of October and the situation that she presented  
19 on 6th of October were untrue, and if that is the  
20 situation, then the statement that she made, in fact, 17:01  
21 on the day is false.

22 310 Q. Right. Well, what parts of the statement, let's just  
23 take the last one, this was to sort of -- this arose --  
24 these comments, or most of them, arose in the context  
25 of justifying, in answer to Ms. Leader's question, why 17:01  
26 there would be such a high level Garda meeting with the  
27 chief super, two supers, an inspector and a garda from  
28 Internal Affairs, that it would be more perhaps  
29 appropriate perhaps to a murder, and you indicated in

1 your answer, you used some of these phrases, and I am  
2 asking you to point out for what pieces of evidence in  
3 the 38-page statement, right at the end thereof, which  
4 would justify such a dramatic and urgent and serious  
5 application of Garda resources? I mean, it seems to me 17:02  
6 that a number of serious Gardaí were converging on the  
7 control centre, perhaps with blue lights blazing, to  
8 deal with a serious emergency, and can you just point  
9 out, please, what portions of the statement would  
10 justify such a dramatic action and particularly the 17:02  
11 phrasing that you have used to justify such a  
12 high-level meeting?

13 A. The statement represented the criminal offences, as I  
14 have outlined here to the Tribunal. One very important  
15 and significant factor in relation to this whole fact 17:03  
16 was, that the actual person against whom the complaints  
17 were made was a serving member of An Garda Síochána.  
18 For that particular reason, there was a greater  
19 responsibility on us to ensure that if these facts  
20 were -- if the facts or the actual criminal complaints 17:03  
21 that is contained in that statement were correct, there  
22 was an obligation on senior management to address that  
23 particular issue.

24 311 Q. Well, would you like to allow me to tone down and give  
25 you an opportunity to point out, by reference to the 17:03  
26 document itself, what it is that justifies your  
27 phraseology and the serious and urgent focus about  
28 which you speak, and to focus your mind in a serious  
29 way on the particular portions of the statement which

1 justify the position you have adopted?

2 CHAIRMAN: So the question is, what are the worst bits  
3 of the statement, is that --

4 MR. BARNES: That is a much more elegant way of putting  
5 it. 17:04

6 CHAIRMAN: In other words, if you were to pick the  
7 highlights just from memory, what would you tend to --  
8 maybe that is the best way of answering it.

9 A. The most significant criminal offences contained in  
10 that particular statement is a threat by -- alleged 17:04  
11 threat by Garda Harrison on the day to burn and bury  
12 Marisa Simms and her children and her sister. I think  
13 that is a significant and serious threat if it were to  
14 be carried out.

15 312 Q. MR. BARNES: And as an experienced guard, promoted 17:04  
16 through the ranks over years of service, who has a lot  
17 of experience of evaluating evidence, can you point to  
18 anything that -- any piece of evidence that supports  
19 such really serious fears? You said, "serious risk of  
20 harm and possibly death". 17:05

21 A. Unfortunately, experience would dictate that, sadly,  
22 domestic violence-related situations unfortunately have  
23 in the past, and sadly no doubt into the future, will  
24 result in murder investigations.

25 313 Q. How many times do you want to avoid pointing to the 17:05  
26 relevant matters?

27 A. Do you want me to read out the actual paragraph of the  
28 statement?

29 CHAIRMAN: No, you can answer the question if you wish

1 any way you like. But what you are saying is that in  
2 terms of the actual text, reading it as a Garda  
3 officer, it was something, and I actually am now going  
4 to use the word alarm bells, that it was something  
5 where you became concerned as to the past perhaps 17:06  
6 leading to the future in the context of the experience  
7 you had had as an officer over many years.

8 A. That's correct, Mr. Chairman. I have represented that  
9 already. Unfortunately, on the day, statistics will  
10 show that before a victim of domestic violence has the 17:06  
11 courage to come forward and make a complaint in  
12 relation to abuse by a partner, that at least 25  
13 previous incidents have already occurred. On this  
14 occasion, Ms. Simms, she represented a catalogue of  
15 domestic-violence-related issues in the statement that 17:06  
16 she made on 6th October. Like, I mean, based on what  
17 was contained in that particular statement, one would  
18 have to have serious cause for concerns for her  
19 welfare, her safety and her ability to make decisions  
20 in relation to the environment that she found herself 17:07  
21 in. And the criteria for investigating criminal  
22 offences, we only have to have reasonable cause to  
23 suspect that what is represented to us, in fact, on the  
24 day are, in fact, factual, that justifies us in making  
25 certain decisions and carrying out certain 17:07  
26 investigations. But Ms. Simms came in on 6th of  
27 October, she made a specific and a lengthy statement in  
28 relation to a catalogue of incidents highlighting  
29 threats to kill, threats to burn, assaults that were

1 perpetrated and incidents of -- and a significant  
2 incident of domestic violence that occurred in the  
3 presence of her two children. If we weren't to act or  
4 to carry out some form of investigations or put  
5 measures in place on the day in relation to those 17:07  
6 particular threats, then we would have been found  
7 wanting in relation to our responsibilities on the day  
8 as Garda investigators.

9 314 Q. MR. BARNES: In relation to your evaluation, please,  
10 would you point out the piece of evidence that is the 17:08  
11 worst example of a threat to kill and cause serious  
12 injury within the meaning of Section 5 of the Non-Fatal  
13 Offences Against the Person Act, 1997, and why the  
14 threat therein contained is in any sense credible and  
15 hangs together as something that would be credible? 17:08

16 CHAIRMAN: In other words, I think the question is, how  
17 do you make the connection with potential homicide and  
18 what is in the statement?

19 A. Ms. Simms alleged that she received a threat -- I will  
20 read from her statement, at page 20 of her statement. 17:08  
21 She arrives home to a particular situation at her  
22 residence in Churchill and she relates to an incident  
23 involving what was a request on the day to take home  
24 curry chips, and this is what she says:

25  
26 "He said don't think a curry chip will make up for me  
27 being gone all evening. He started on in front of the  
28 girls and I felt completely drained and just wanted him  
29 to stop. I kept trying to put the child's top on and 17:08

1 he said no, he wouldn't stop, they know what is going  
2 on, meaning the children. This is the first time that  
3 he even started going on -- this is the first time that  
4 he even started going on in front of them. He kept  
5 making comments and ranting on about my sister, saying 17:09  
6 who does she think she is? I will take her down a peg  
7 or two, and also said I am going to bury her and you.  
8 He kept repeating this and I told him to stop, but it  
9 was as if he went into a total rant. He then said I am  
10 going to burn you, and at that point I could see the 17:09  
11 child's eyes filling up as she was getting upset so at  
12 that stage I put their coats over their pyjamas and  
13 told them we are going to the car."

14 MR. BARNES: Okay. Thank you.

15 A. I mean, that there -- and this was done also on the day 17:09  
16 fuelled by alcohol consumption.

17 315 Q. Yes. Well, isn't it not fair to say that - maybe it  
18 isn't - that looking at the entire statement, that he  
19 also threatened or is alleged to have threatened that  
20 "you would only see the children at the weekends"? 17:10

21 A. That has been represented, Mr. Chairman, yes.

22 316 Q. So as an example of evaluation, can I put it to you,  
23 and I am saying this seriously, that let's assume she  
24 was burned, immolated and killed on the Monday and  
25 buried on the Wednesday, it doesn't make sense really, 17:10  
26 does it, that she would see her children at the  
27 weekend?

28 A. That's just part of a catalogue of comments, or  
29 otherwise, that were made. The situation is, in



1 domestic-violence-related situations, like, you never  
2 know where the actual incident of domestic violence  
3 will end. If Ms. Simms had not to take her children  
4 and leave the house on this particular occasion -- this  
5 represented as a significant and serious incident 17:11  
6 involving Ms. Simms and her children. If she didn't  
7 decide to put her children in the car and get out of  
8 there at that particular time, no one can actually  
9 decide or make or provide a view as to what may well  
10 have followed in relation to that particular incident. 17:11

11 317 Q. Right. So you thought this was a serious situation,  
12 there was -- really, the Garda involvement perhaps was  
13 ended when she withdrew her statement. Did you not  
14 think that perhaps, in your own phrasing, being a  
15 victim, and the other phrases of emotional and physical 17:11  
16 trauma, that when she went back to Garda Harrison, that  
17 she might have Stockholm syndrome, or something like  
18 that, and it was really important to get her away from  
19 him because there was a serious threat? As a  
20 traumatised victim of psychological trauma, did you not 17:12  
21 put on your crime prevention hat and do something about  
22 that, if you thought there was any reality to it  
23 whatsoever?

24 A. As I have already said, Mr. Chairman, we could not  
25 prevent Marisa Simms from going back to the environment 17:12  
26 of the day that she had left and the environment that  
27 she had -- the violence and threatening environment  
28 that she had left at the time she made this particular  
29 statement. We couldn't prevent her from going back

1 there. She was given advice in relation to the  
2 domestic violence order that she could seek in relation  
3 to the matter. She never sought any of those orders.  
4 Nevertheless, we could not prevent her from going back  
5 there. And that, unfortunately, is a classic example 17:12  
6 of a victim of domestic violence; unfortunately on the  
7 day they can't take themselves out of the actual  
8 environment which is presented -- which presents these  
9 particular serious situations. They just -- sadly,  
10 they can't make those particular decisions. And this 17:13  
11 is a situation that represented to us. Ms. Simms on  
12 the day represented as a victim of domestic violence,  
13 apart from the criminal threats that were made there,  
14 but we cannot, other than to give advice or to assist  
15 Ms. Simms in whatever way we could, we can only provide 17:13  
16 advice.

17 318 Q. In relation to this high-level meeting of serious  
18 Gardaí, you indicated that you were discussing pathways  
19 of investigation, which obviously culminated in a  
20 reference to GSOC. Can you tell the Tribunal what were 17:13  
21 those various pathways of investigation that you  
22 considered?

23 CHAIRMAN: In other words, what options did you think  
24 were on the table vis-à-vis GSOC in the context of the  
25 statement you had in front of you? 17:14

26 A. Once the decision was made to refer the matter to GSOC,  
27 then we were -- we were obliged bar carrying out urgent  
28 inquiries to preserve possible evidence that would be  
29 of assistance on the day to GSOC. We would have

1           awaited the outcome of the GSOC evaluation before we  
2           would have carried out any further high-profile  
3           investigations in relation to the matter.

4 319 Q.   MR. BARNES: And once GSOC -- sorry, I should say -- I  
5           am instructed -- why do you say that Ms. Simms failed   17:14  
6           to cooperate with GSOC, in circumstances where she  
7           never agreed or was indeed informed of a reference to  
8           GSOC?

9           A.   That is the situation. The investigating officer in  
10          GSOC made contact with her and she decided not to   17:15  
11          cooperate with any investigation or inquiries that GSOC  
12          were undertaking in relation to the matter, and, as a  
13          result, the Garda Ombudsman Commission, they terminated  
14          their involvement in the matter due to lack of  
15          cooperation by the party that made the statement,   17:15  
16          Ms. Simms on this occasion.

17 320 Q.   Do you think 'failed' is an appropriate word and would  
18          you care to suggest perhaps a more appropriate word?

19          A.   Ms. Simms didn't cooperate with the investigations  
20          being undertaken by GSOC in relation to the matter.   17:15  
21          She didn't cooperate with any inquiries that they were  
22          making in relation to the matter. She told them she  
23          didn't wish to pursue the matter -- or didn't wish GSOC  
24          to pursue the matter on her behalf.

25 321 Q.   Now, in relation to section 10 of the --           17:16  
26          CHAIRMAN: Mr. Barnes, can I just ask you, and perhaps  
27          other people as well. I appreciate it's been a long  
28          day and it has been good to perhaps catch up with other  
29          things in the morning, but where are we now?

1 MR. BARNES: I can indicate that I won't be much  
2 longer.

3 CHAIRMAN: Yes. And, Mr. Dockery, are you going to ask  
4 any questions?

5 MR. DOCKERY: I won't have any questions. 17:16

6 CHAIRMAN: I understand you have had a change of status  
7 and I just wanted to say you are very welcome here.

8 CHAIRMAN: And is there any other questions after  
9 Mr. Barnes?

10 MS. LEADER: I think I have three questions. 17:16

11 CHAIRMAN: Very good. Well, let's try and finish,  
12 because unfortunately in the morning there is another  
13 thing that I have to do and it's not before 11:00, and  
14 on Monday there is another thing that I have to do and  
15 it's not before 11:00, and both are official 17:16  
16 responsibilities elsewhere.

17 MR. DIGNAM: Sorry, I was slow to press the button. I  
18 have some questions, but I don't think I have any more  
19 than ten minutes, and it may be that I'll be covering  
20 some of the same ground as Ms. Leader. 17:17

21 CHAIRMAN: Well, it may be too much. I think we have  
22 been around the quadrangle a number of times. I would  
23 like to try and feel we have got this done today.

24 322 Q. MR. BARNES: In relation to your high-level meeting on  
25 8th October 2013, did you evaluate the evidence of 17:17  
26 alleged harassment and it was indicated by the  
27 investigating -- one or other of the investigating  
28 Gardaí that the material in contemplation was  
29 interpersonal communications between the parties in a

1 domestic relationship between 2010 and the unhappy  
2 circumstances on 28th September 2013, and did you  
3 evaluate that as a credible -- to make a credible  
4 reference to the Director of Public Prosecutions?

5 A. I am sorry, Mr. Chairman. I don't actually understand 17:18  
6 what I am being asked.

7 CHAIRMAN: In other words, if this is just -- well, I  
8 think it was Rita McDermott who said a new relationship  
9 will have blisters. Now, no one is to ascribe to me  
10 the using of that phrase, but that is what she said, 17:18  
11 and if this was just blisters would you have any  
12 credible reason to refer this actual statement to the  
13 Director of Public Prosecutions?

14 A. Certainly not in relation to that one point or one 17:18  
15 aspect. I mean, the statement had to be taken on face  
16 value in its entirety. It identified a catalogue of  
17 incidents. And, look at, we have been through the  
18 definition of 'harassment', but harassment has to be an  
19 ongoing situation, and the reality of the situation  
20 which was presented in that particular statement 17:19  
21 presented a requirement to carry out an investigation  
22 into alleged harassment, and it's alleged, everything  
23 in the statement is alleged until such times as it's  
24 investigated, evidence is secured in relation to the  
25 allegations that are contained therein and that the 17:19  
26 matter is referred then at that particular point to the  
27 Director of Public Prosecutions to decide if sufficient  
28 evidence is in existence to commence criminal  
29 proceedings in the matter.

1 323 Q. MR. BARNES: well, not every complaint, if complaint it  
2 was, not every complaint results in a reference to the  
3 DPP, and you have indicated -- you were asked a  
4 question, you have indicated it's not my decision or my  
5 call. Now, I have to put it to you that that is not 17:19  
6 the case and that you are, as the superintendent, an  
7 evaluative filter and you decide whether or not  
8 something is credible or would affect your credibility  
9 if you were to send it on and make a recommendation to  
10 prosecute, and I am putting it to you that in relation 17:20  
11 to the so-called evidence of threats to kill and cause  
12 serious injury and to say that Keith Harrison, without  
13 lawful authority or reasonable excuse throughout the  
14 period from 2010 to 2013, harassed, by means of  
15 interpersonal calls, that the situation is not credible 17:20  
16 and the reason there wasn't a reference is that nobody  
17 in their right mind would make a reference on the basis  
18 of the evidence in this statement in relation to either  
19 section, do you understand that?

20 A. I understand what you are saying. The situation is 17:20  
21 this -- this statement would have been investigated  
22 based on the entirety of the matters contained therein.  
23 One aspect of it, only one aspect of it was the  
24 allegations in relation to alleged harassment. And I  
25 want to say, Chairman, in relation to any investigation 17:20  
26 involving a member of An Garda Síochána, the decision  
27 in relation to whether proceedings should or should not  
28 commence in relation to that matter cannot be made on  
29 the day by me or at any other level other than at the

1 office of Director of Public Prosecutions. So it's not  
2 correct to say that this matter could have been  
3 filtered out at local level. This matter could not  
4 have been filtered out at local level. The actual  
5 complaints were made in relation to a serving member of 17:21  
6 An Garda Síochána. The decision in relation to any  
7 criminal proceedings in this matter must be made by  
8 the -- somebody in the office of the Director of Public  
9 Prosecutions.

10 324 Q. Well, that is the decision to prosecute, but the 17:21  
11 decision to refer it to the Director of Public  
12 Prosecutions, Judge Charleton and very many people in  
13 this room have read so many documents coming from Garda  
14 officers that are -- that underneath the signature such  
15 as you as superintendent, "forwarded for favour of your 17:21  
16 attention, please". Now, I know that once you had  
17 involved yourself in the GSOC reference, that it went  
18 to Mary Murray. But in exploring pathways for  
19 prosecution, neither you nor Mary Murray nor anybody  
20 else was prepared to make a reference and put their 17:22  
21 credibility or their signature on a reference to the  
22 DPP on the basis of Marisa Simms' statement for several  
23 months before she withdrew it, isn't that the position?

24 A. The position is that before any material would be 17:22  
25 referred to the Director of Public Prosecutions, and  
26 indeed the allegations that were made would require  
27 some form of investigation, and the presentation of a  
28 file to the Director of Public Prosecutions to assist  
29 that office in making a decision in relation to -- it's

1 not referred specific on the day to have criminal  
2 prosecution taken. Files are referred by our offices  
3 to the Director of Public Prosecutions seeking their  
4 expert advice in relation to whether, in fact, criminal  
5 proceedings should be commenced in the first place in 17:22  
6 relation to the evidence contained within the relevant  
7 investigation file.

8 325 Q. I just have to put it to you finally that -- why, in  
9 fact, was the alleged statement if there was any --  
10 anybody had any genuine interest in pursuing a proper 17:23  
11 investigation and referral to the DPP, why wasn't the  
12 fundamental matter of the statement ever put to Keith  
13 Harrison?

14 A. I have explained that situation in relation to why it  
15 never got to the point where Keith Harrison wasn't 17:23  
16 interviewed in relation to the matter. First of all,  
17 we had a statement of withdrawal made by Ms. Simms in  
18 relation to the matter, and then we have the situation  
19 in relation to the actual different stages on the day  
20 where attempts were made to carry out investigations in 17:23  
21 relation to this particular allegation. But at the  
22 point that Superintendent Murray would have received  
23 the actual paperwork to carry out the investigations in  
24 relation to the matter, at that point Marisa Simms had  
25 already made a statement of withdrawal in relation to 17:23  
26 the matter, which would significantly have impacted on  
27 Superintendent Murray's ability to investigate the  
28 matter.

29 MR. BARNES: Thank you.



1 CHAIRMAN: Mr. Dignam, can you be as concise as you  
2 can, bearing in mind, honestly, I think I know almost  
3 everything that is to be known about this now.

4 MR. DIGNAM: Yes Chairman I will be very brief and I  
5 will simply ask questions to draw matters to the  
6 Tribunal's attention which may be of assistance to the  
7 Tribunal.

8  
9 THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM:

10 326 Q. MR. DIGNAM: Firstly, just to pick up on that last 17:24  
11 point, Superintendent McGovern, and it echos something  
12 that Mr. Harty said, which was that, and he asserted as  
13 a fact when he was putting it to you, that there was no  
14 plan for anybody to talk to Garda Harrison. Would you  
15 just clarify, you were an investigating officer and 17:24  
16 investigating member for a very brief period of time in  
17 early to mid-January, isn't that right --

18 A. Well --

19 327 Q. -- of 2014?

20 A. It's stated there was always an intention to interview 17:25  
21 Garda Harrison in relation to the actual allegations  
22 that were contained in the statement and situations  
23 arose that impacted on that particular situation. I  
24 wasn't the actual investigating officer; I was the  
25 officer in charge of the district where these 17:25  
26 particular incidents would have occurred. When the  
27 investigation was completed by the people that were  
28 assigned the investigation, then it would have been my  
29 responsibility to evaluate the file and forward that

1 file to the Director of Public Prosecutions so that a  
2 decision could be made in relation to whether, in fact,  
3 it justified the commencement of criminal proceedings  
4 in relation to the matter.

5 328 Q. Yes. And you were appointed -- I think that GSOC 17:25  
6 formally closed their case, if I might put it that way,  
7 or their investigation or assessment of the case in  
8 November 2013, isn't that right?

9 A. That would be correct.

10 329 Q. They had expressed the view quite early on that section 17:25  
11 102 wasn't appropriate, but they were going to consider  
12 the matter, and then they finally said in November of  
13 2013 that they weren't going to -- that they were  
14 finished their process?

15 CHAIRMAN: The 6th of November. 17:26

16 A. They had made a decision based on the fact that Marisa  
17 Simms would not cooperate with them in relation to  
18 their inquiries.

19 MR. DIGNAM: Yes.

20 A. Not based on the actual section of referral. They went 17:26  
21 through the process of evaluating it in the same way as  
22 if it had been a section 85 complaint, but it was the  
23 decision of Ms. Simms, or her lack of, that word --  
24 whether -- 'cooperation' is the word I used, her lack  
25 of cooperation with GSOC, they decided not to have any 17:26  
26 further involvement in relation to the matter and they  
27 referred it back to us.

28 330 Q. And then you were appointed on, I think, 4th of January  
29 2014 to carry out the disciplinary and criminal

1 investigation, isn't that right?

2 A. Yes.

3 331 Q. Yes. And that appointment was terminated about  
4 two-and-a-half to three weeks later because you had had  
5 the previous involvement of making the section 102 17:26  
6 referral. The question I have for you, Superintendent  
7 McGovern, is, is it unusual or is it usual that a  
8 particular member is appointed to carry out both the  
9 disciplinary and criminal investigation, or is it more  
10 usual for two separate members to be appointed to carry 17:27  
11 out two separate investigations?

12 A. No, the common practice is one member will be appointed  
13 to carry out both investigations. Both investigations  
14 will run alongside each other.

15 332 Q. Yes. But there is nothing unusual in you being 17:27  
16 appointed to carry out both investigations?

17 A. No, that is the actual common practice, so whoever  
18 would have followed on from me would have received the  
19 same appointment.

20 333 Q. And, in fact, that is what occurred, isn't it: 17:27  
21 Superintendent Murray, you may not know this, but we  
22 will hear from Superintendent Murray that she was  
23 appointed to carry out both investigations?

24 A. That is my understanding, yes.

25 334 Q. And can I take it and can the Tribunal take it that as 17:27  
26 part of a disciplinary or criminal investigation, the  
27 intention and the plan would be to interview all  
28 relevant parties, including Garda Harrison?

29 A. That would be correct, Chairman.

1 335 Q. Now, you -- Mr. Harty opened a document to you at page  
2 1629, which is Chief Superintendent McGinn's letter to  
3 the assistant commissioner in Internal Affairs, Human  
4 Resources, Superintendent McLoughlin, and he opened the  
5 final half -- half of the final paragraph -- I hope I 17:28  
6 am on the right page -- yes, sorry, Mr. Harty opened  
7 half of the final paragraph in relation to what  
8 recommendations or courses of action Chief  
9 Superintendent McGinn was proposing. Are you aware,  
10 Superintendent McGovern, that that is, in fact, a 17:28  
11 six-page letter and that the first five pages are  
12 essentially Chief Superintendent McGinn setting out the  
13 background and essentially setting out her rationale  
14 for the options which she sees as being available,  
15 which are the ones that are opened to you by Mr. Harty? 17:29  
16 A. Yes, I am, I am aware that it's -- it's a six-page  
17 document.  
18 336 Q. Yes. And that's quite a full exposition of her views.  
19 She is expressing those to both the assistant  
20 commissioner and indeed to the superintendent in 17:29  
21 Internal Affairs in Phoenix Park?  
22 A. It was a comprehensive evaluation of the situation.  
23 337 Q. And she suggests suspension or transfer in relation to  
24 Garda Harrison, isn't that right?  
25 A. Yes. 17:29  
26 338 Q. Now, I have to put this to you, Superintendent  
27 McGovern, because it has been asserted in the statement  
28 provided by Garda Harrison to this Tribunal in March  
29 2017 that Garda Headquarters was in some way involved

1 in a conspiracy or in collusion to harm or do down, if  
2 I might put it that way, Garda Harrison. Now, the  
3 response to that came from Headquarters, isn't that  
4 right; that letter was addressed to Headquarters and  
5 the response came from the superintendent, 17:30  
6 Superintendent McLoughlin, which Mr. Harty I think has  
7 opened also, which is at page 1714, which again is an  
8 open letter addressed to Chief Superintendent McGinn,  
9 and he disagrees with Chief Superintendent McGinn,  
10 isn't that right? 17:30  
11 A. That's correct, Chairman.  
12 339 Q. What he says is: No, I don't accept that what you are  
13 suggesting is the correct way to proceed. What I am  
14 suggesting is indoor duties.  
15 A. That's correct, Chairman. 17:30  
16 340 Q. Yes. Now, it's a matter for the Tribunal to assess  
17 that response, but to the extent that it can be  
18 suggested that there is some sort of collusion or  
19 conspiracy, do you agree --  
20 MR. HARTY: I am not sure if this man is in a position 17:30  
21 to give an opinion as to other people's collusion or  
22 otherwise. He can certainly say whether he was  
23 involved in a conspiracy, but I am not sure that the  
24 Garda legal team should be in a position to call a  
25 variety of Gardaí to give opinions as to what -- 17:31  
26 CHAIRMAN: Well, I mean, look, I think the situation  
27 is, he has been asked about everything except his  
28 opinion on Beethoven's string quartets. And I am going  
29 to allow the question.

1 MR. DIGNAM: I won't push the point then, Chairman.

2 341 Q. In relation then to two matters of fact, Superintendent  
3 McGovern, just for clarification or confirmation  
4 purposes, the Appendix 5 to the Children First  
5 Guidelines, which is on page 1252, and if I understand 17:31  
6 your evidence correctly you have already given this  
7 evidence, is this the form that you always use when you  
8 are notifying cases to Tusla, the HSE and Tusla?

9 A. Yes, that is the form that we currently use for  
10 notifications to Tusla. 17:31

11 342 Q. Yes. And then in relation to, in Mr. Harty's debate  
12 with you about whether you gave crime prevention advice  
13 or not or whether crime prevention advice was given,  
14 you referred to, I think, to crime prevention advice  
15 having been given in May 2011 -- after the May 2011 17:32  
16 events, if I put it that way?

17 A. There was, yes. And at that particular stage, like,  
18 the GM forms that were referred to, they were also  
19 served on both parties to that particular incident.

20 343 Q. And I am not going to ask you to look at them in any 17:32  
21 detail at all, Superintendent McGovern, but at page  
22 234, and running essentially to page 252, but if you  
23 just look at page 234, that is a letter from you to the  
24 chief superintendent Letterkenny. And am I correct in  
25 my understanding of paragraphs 1, 2 and 3 that they are 17:32  
26 referring to crime prevention advice, et cetera?

27 A. That's correct.

28 344 Q. So is it that, and I don't think there is any  
29 controversy about this, is it that that you were

1 referring to when you were talking about the crime  
2 prevention advice being given after May 2011?

3 A. That's correct, and it would also be relevant at the  
4 time in relation to the actual -- the sourcing of the  
5 addresses for Sergeant Wallace, the crime prevention 17:33  
6 officer as well.

7 345 Q. And then finally, Superintendent, in relation to --  
8 this obviously isn't a trial of the allegations that  
9 are made by Ms. Simms, but Mr. Harty was putting it to  
10 you that no offences were, in fact, made out, or even 17:33  
11 no basis for charges were made out in the statement of  
12 Ms. Simms, and, in the course of doing so, he described  
13 any expressions of feeling or of fear that she made  
14 were essentially retrospective in nature, that is how  
15 she felt at the time of making the statement rather 17:33  
16 than at the time that she was -- that alleged threats  
17 were made by Garda Harrison, et cetera.

18 MR. HARTY: Sorry to interject again. There is no  
19 expression of fear at all in the statement in relation  
20 to anything retrospectively in relation to it. I 17:33  
21 didn't suggest that and so --

22 346 Q. MR. DIGNAM: If I could ask you to look at page 81 --  
23 CHAIRMAN: This is the position: Any scholar of  
24 criminal law will realise that you have to prove a  
25 mental element. Every scholar of criminal law will 17:34  
26 also know that is either done two ways: by the person  
27 actually admitting it in a statement or by saying it to  
28 somebody else, which is also an admission, or by  
29 inference from the facts and circumstances surrounding

1 it. That is the situation. You can't look inside  
2 people's heads. And vis-á-vis things that occur, well,  
3 then, I think it still is a rule of criminal law that  
4 people intend the natural and probable consequences of  
5 their actions. There it is.

17:34

6 MR. DIGNAM: Yes.

7 CHAIRMAN: So you wanted to point out a particular  
8 thing, and that is it. What is it?

9 347 Q. MR. DIGNAM: On page 81, 86 and 89, Superintendent  
10 McGovern. Perhaps if we look at page 81 firstly, which  
11 is the incident, the Jim Quinn incident, as it has  
12 become known, Superintendent McGovern, if I could ask  
13 you to look at the bottom of that page where Ms. Simms  
14 says: "I was terrified of him and the only other time  
15 that I had seen him like this was the night of his  
16 brother's 21st in Galway." Did you read the statement  
17 and were you aware of that statement within Ms. Simms'  
18 statement?

17:34

17:35

19 A. Yes.

20 348 Q. And page 86 - I don't propose to go through the  
21 statement, Chairman - page 86. If you look at the  
22 bottom of page 86, did you read at the time the  
23 sentence "I felt totally harassed at this point and  
24 felt I couldn't do anything unless I had okayed it with  
25 him." Et cetera. And she goes on. And then at page  
26 89 -- sorry, did you read that sentence when you read  
27 the statement?

17:35

17:36

28 A. I did, Chairman yes.

29 349 Q. And at page 89, finally, Superintendent McGovern, and



1 this is in relation to the allegation of a threat to  
2 burn, did you see the sentence --  
3 CHAIRMAN: I think the answer is going to be 'yes', so  
4 just read out the sentence.

5 350 Q. MR. DIGNAM: It's, in fact, on page 90, Superintendent 17:36  
6 McGovern, the sentence at the top of the page:  
7 "I was really frightened of him at this stage as he was  
8 in such a rage it was as if he was not in control of  
9 himself and he was crazy."  
10 Had you read that sentence? 17:36  
11 A. Yes, Chairman.  
12 MR. DIGNAM: Thank you, Superintendent.  
13

14 THE WITNESS WAS RE-EXAMINED BY MS. LEADER:

15 351 Q. MS. LEADER: Yesterday, Superintendent, you told the 17:36  
16 Tribunal that you had -- there was a requirement on you  
17 regardless to refer the matter to GSOC, is that  
18 correct, to refer the matter of the statement that  
19 Ms. Simms made in relation to Garda Harrison to GSOC?  
20 A. Yes, one -- if it had not been referred under section 17:37  
21 102, it would have had to have been referred under  
22 section 85.

23 352 Q. And you referred to two particular Garda directives  
24 that you'd received from HQ in order to base that  
25 particular assertion that you made, isn't that correct, 17:37  
26 superintendent?  
27 A. That's correct, Chairman, yes.

28 353 Q. Now, one related to section 102, which has been  
29 referred to at length by Mr. Harty, but in relation to

1 the directive with regard to section 85 of Garda  
2 Siochana Act, first of all, Superintendent, I think it  
3 is correct to say that directives are there in order to  
4 assist guards to carry out their duties, is that  
5 correct?

17:37

6 A. That would be correct, Chairman, yes.

7 354 Q. And in that directive, in relation to section 85, which  
8 is Directive 50/13, I think there is a paragraph in it,  
9 whether it is correct or not, Superintendent, which  
10 says that:

17:38

11 "All complaints made by a member of the public  
12 concerning the conduct of a member of An Garda Síochána  
13 will immediately be forwarded in writing to the Garda  
14 Síochána Ombudsman Commission, with a copy submitted to  
15 the Chief Superintendent Internal Affairs."

17:38

16 A. That's correct, yes.

17 355 Q. And is that what you were basing that particular  
18 assertion on, that, no matter what happened, there was  
19 going to be a referral to GSOC?

20 A. Yes, that was the point I was trying to make:  
21 irrespective of whether it qualified for a 102  
22 referral, it had to be referred in accordance with  
23 section 85, and the process within GSOC is basically  
24 exactly the same thereafter.

17:38

25 356 Q. Whether that be a correct statement of the law or not,  
26 but you were relying on that directive, is that  
27 correct?

17:38

28 A. Yes, and I --

29 CHAIRMAN: I don't think we have a page number for that

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yet?

MS. LEADER: Yes, we do. 2495. It was circulated this afternoon.

CHAIRMAN: Anyway, you feel you were following that?

A. Yes, indeed, and, like, I mean, I have complied with that directive on many occasions in the past.

17:39

MS. LEADER: Thank you very much, Superintendent.

CHAIRMAN: All right. That is it. It's hopefully 11:00 in the morning. If it's any different, I will tell them. Thank you.

17:39

THE HEARING WAS THEN ADJOURNED TO FRIDAY, 6TH OCTOBER 2017 AT 11:00AM

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