

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE  
ON MONDAY, 9TH OCTOBER 2017 - DAY 34

34

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 MONDAY, 9TH OCTOBER  
2 2017 AT 11:15AM:

3  
4 MR. MCGUINNESS: Chairman, we are continuing this  
5 morning with the evidence of Chief Superintendent  
6 McGinn. 11:15

7  
8 CHIEF SUPERINTENDENT TERRY MCGINN CONTINUED TO BE  
9 CROSS-EXAMINED BY MR. HARTY:

10 MR. HARTY: Morning, Chief Superintendent. 11:16

11 A. Good morning.

12 1 Q. Now, you mentioned on Friday that you -- your first  
13 direct involvement with Donegal, in fact, was with the  
14 Morris Tribunal?

15 A. Yes, that's correct. 11:16

16 2 Q. You were that the liaison -- and, in fact, I think you  
17 were praised in the Morris Tribunal report for your  
18 cooperation with the Tribunal, isn't that correct?

19 A. Yes, that's correct.

20 3 Q. I think, therefore, in terms of that, I take it that 11:17  
21 you liaised with the Tribunal directly in respect of  
22 any evidential matters that needed to be sorted out  
23 through Garda Headquarters, is that correct?

24 A. My purpose was as Tribunal liaison officer, which I was 11:17  
25 appointed by the Garda Commissioner at the time because  
26 I had no involvement in Donegal prior to that, and I  
27 was a newly-promoted superintendent that had been  
28 assigned to the division and my role was to facilitate,  
29 you know, not the evidence but the queries from the

1 Tribunal to Garda Headquarters and to follow up on any  
2 inquiries that were outstanding in terms of notifying  
3 people that they should be in attendance because they  
4 hadn't got the correspondence or following up,  
5 etcetera. That was my role. 11:18

6 4 Q. That required very close cooperation with the Tribunal  
7 on your part?

8 A. I was completely independently to the Tribunal.

9 5 Q. I appreciate you were independent.

10 A. My role was just as a liaison to the flow of 11:18  
11 information between the two organisations - the  
12 Tribunal and An Garda Síochána.

13 6 Q. I see. But you also are aware then of, I take it,  
14 intimately aware of the outcome of the Morris Tribunal?

15 A. Absolutely, yes. 11:18

16 7 Q. And the various recommendations made in the Morris  
17 Tribunal?

18 A. Yes.

19 8 Q. And a number of directives issued from Headquarters  
20 following the Morris Tribunal, didn't they? 11:18

21 A. That's correct, yes.

22 9 Q. And one of them I want to raise particularly with you  
23 is HQ Directive 102/04. Do you know what that was, or  
24 do you recall?

25 A. I'd have to -- 11:18

26 10 Q. Yeah.

27 A. I think it's over, what, 13 years ago. I would like to  
28 pull it up, please.

29 11 Q. It's very simple. It says:

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"Each officer and inspector -- to each officer and inspector. This is a confidential document for use only by members of An Garda Síochána re officers journals. From 1st September 2004 all operational officers and inspectors will keep a daily record of duties performed in a journal, which will be an official issue. This daily record will record the following: all issues as to arrests and the reasons therefore; all issues of warrants, extensions, authorisations and reasons therefore; all investigations and the reasons for commencing same; all tasks relevant to key operational issues; audits, inspections, visits to stations and scenes of crime; all absences, to include annual leave, rest days, illnesses and courses, etcetera; all matters/incidents of importance. All records will be maintained strictly on a daily basis. Such records will never be destroyed without the express permission of the Garda Commissioner. The journals will be surrendered upon completion and will be subject to an audit as and when required. Replacement journals will be requisitioned under the stationery budget. HQ Circular 91/98 is hereby cancelled."

11:19  
11:19  
11:19  
11:20  
11:20

And that was issued by Assistant Commissioner Walter Rice on 29th July 2004, isn't that right?

A. Mm-hmm.

12 Q. And that was then followed up with a follow-up

1 directive the following year, which is 49/05, yet again  
2 a confidential document:

3  
4 "Re officers journals: The following advice is given  
5 to officers and inspectors to assist in recording their 11:20  
6 official duties in the officers journal. The journal  
7 refers to the personal decisions and actions taken by  
8 officers/inspectors such as the reason for arrest or  
9 extension of a prisoner, the reason for the issue of  
10 warrant, the reason for instigating a particular 11:20  
11 investigation, the recording of personal leave, rest  
12 day or other absences. The principle is that the notes  
13 maintained will be relevant and succinct to the matter  
14 at hand and that critical operational decisions will be  
15 recorded. This directive should be read in conjunction 11:21  
16 with HQ Directive 120/04."

17  
18 And then just so we are aware of how that came about,  
19 in the Morris Tribunal report at page -- at paragraph  
20 13.93: 11:21

21  
22 "One of the most reliable ways that the Tribunal has  
23 had of approaching the truth has been through  
24 contemporaneous documents. People may indeed rely on  
25 the correspondence which they send to other people and 11:21  
26 in the notes that they keep of an event for their own  
27 use. However, any record of what is supposed to have  
28 happened in respect of an event of importance is, at  
29 the very least, a statement of the facts that can be



1 compared with other versions and later accounts. This  
2 Tribunal has been much delayed by the need to sort out  
3 departures from prior statements and the need to  
4 compare testimony with earlier avowals as to the truth.  
5 In the absence of any earlier recording of an event, 11:22  
6 there is no point of comparison. There is, therefore,  
7 nothing to hinder alterations in memory, embellishments  
8 and untruths. Undoubtedly any investigation is better  
9 for having before it the earliest version of an event."

10  
11 So this matter arises directly from the Morris  
12 Tribunal?

13 A. That's correct.

14 13 Q. The issue of senior officers not maintaining clear  
15 records of why decisions were made and how decisions 11:22  
16 were made?

17 A. Yeah, in terms of arrests and issuing of warrants,  
18 because there's particular warrants under the Act, and  
19 if you were commencing, you know, critical decisions,  
20 it's not possible to write down every decision you 11:22  
21 make, you know, at all times, because if I was to do  
22 that in my daily work, I would be constantly writing  
23 down what I am doing.

24 14 Q. Okay. Chief Superintendent, I will read --

25 A. No, I know the circular. 11:22

26 15 Q. I will extract the relevant section. I will shorten it  
27 to the relevant point. Directive 120/04 says:

28  
29 "The daily record will include the following: all

1 investigations and the reasons for commencing same; all  
2 tasks relevant to key operational issues; all  
3 matters/incidents of importance."

4 A. Mm-hmm.

5 16 Q. That is what the daily record is required to contain, 11:23  
6 isn't that correct?

7 A. Yes.

8 17 Q. Now, we haven't seen your daily record books in  
9 relation to the dates.

10 A. I made full disclosure to this Tribunal. And have I no 11:23  
11 record that would fit into what you are looking for  
12 here.

13 18 Q. So you directed the commencement of an investigation?

14 A. No, I directed that the investigation would be referred  
15 to GSOC. 11:23

16 19 Q. No. You directed the commencement of an investigation  
17 when you directed Inspector Sheridan and Sergeant  
18 Collins to go and speak to Rita Campbell and take a  
19 statement from her?

20 A. Yeah. At that stage I requested Inspector Sheridan to 11:24  
21 review all the files, to meet with Rita McDermott to  
22 see if she was going to follow up by way of statement.

23 20 Q. Is that not directing the commencement of an  
24 investigation?

25 A. Well, if I was to write down every decision and 11:24  
26 investigation that I requested during the day, I will  
27 be constantly -- I don't have a record of that or --  
28 because it happened, actually, downstairs in the public  
29 office.

1 21 Q. And you were required, under HQ Directive 120/04, to  
2 record it?

3 A. Yeah. I haven't recorded what I said to her.

4 22 Q. Okay. And you didn't record anything in relation to  
5 the 8th October, either? 11:24

6 A. No, just that diary note that I had.

7 23 Q. No. So can you explain to this Tribunal, as a person  
8 who is intimately familiar because of your involvement  
9 in the Morris Tribunal, with the need for senior  
10 officers to record decisions? Can you explain why a 11:24  
11 decision made, and let's forget every other decision,  
12 but we do know that you made a decision on the 8th  
13 October to do various things?

14 A. Yes.

15 24 Q. Why was that not recorded in your record book, officers 11:25  
16 journal?

17 A. As you are aware, the sequence of events in this case  
18 was moving very quickly and rapidly. It required  
19 prompt action. There are times that you can't always  
20 make a record of your decision-making in terms of 11:25  
21 what's required, and on this occasion this was the only  
22 note. Because I was following up with reports and  
23 electronic copies of, actually, the decisions I was  
24 making. So there's electronic record or a written  
25 report on whatever decision I made. 11:25

26 25 Q. "In the absence of any earlier recording of an event,  
27 there is no point of comparison. There is, therefore,  
28 nothing to hinder alterations in memory, embellishments  
29 and untruths. Undoubtedly, any investigation is better

1 for having before it the earliest version of an event."

2  
3 That is precisely why HQ Directive 120/04 was brought  
4 in and that is precisely what we are dealing with here.  
5 why did you not keep a record of any decision that you 11:26  
6 made?

7 A. For example, as I said, this was very fast moving. It  
8 required prompt action on my behalf. I was directing  
9 certain actions. Everybody leaving the meeting knew  
10 what they had to do and I knew what I had to do and I 11:26  
11 was following up with written reports. So I could have  
12 spent time writing it into a diary, but I was following  
13 up electronically on reports, and there is clear record  
14 of my decision-making from start to finish.

15 26 Q. No, there isn't, there isn't a clear record of your 11:26  
16 decision-making from start to finish. The only record  
17 of your decision to appoint Inspector Sheridan is  
18 contained in the statement of Superintendent McGovern  
19 and in his very complete and very comprehensive  
20 officers journal. There is no record of you making 11:26  
21 that decision or why you made that decision, in your  
22 own paperwork.

23 A. No, and I told you how it happened. As I was returning  
24 to the station, that matters became of extreme  
25 importance. I don't have a written -- 11:27

26 27 Q. On 27th September nothing was happening?

27 A. On 27th September I was following up electronic reports  
28 to Superintendent McGovern following in on what was  
29 happening in --

1 28 Q. You advised Superintendent McGovern that you had made  
2 the decision to appoint Inspector Sheridan to carry out  
3 a review. That was a phone call made from your office,  
4 where you were sitting down at the time.  
5 A. Yes. 11:27  
6 29 Q. Where you had the reports before you.  
7 A. But can I say it's not the only decision I was making  
8 that day, and I have four district officers, and if  
9 every time I have a phone call or a conversation with  
10 my superintendents, if I am to write it down, I would 11:27  
11 just become paralysed by writing notes. I have no  
12 note --  
13 30 Q. Superintendent McGovern is not a man who strikes me as  
14 being paralysed.  
15 A. No, he is excellent at note-taking. 11:27  
16 31 Q. Yes. He is not a man who I would consider to be  
17 paralysed in performing his other functions because of  
18 the duty of keeping notes. Isn't that correct?  
19 A. Oh, absolutely. He's fantastic at note-taking.  
20 32 Q. No, he's fantastic at doing his job and is able to keep 11:28  
21 notes, isn't that correct?  
22 A. He's fantastic at doing his work. He's highly  
23 competent.  
24 33 Q. Yes, yes. And he was able to record your decision in  
25 his officers journal? 11:28  
26 A. Well, that's a matter for me. I'm happy with the  
27 decisions I make. I'm satisfied. I don't think there  
28 was a requirement to write down --  
29 34 Q. Did you disclose your officers journal of the 27th

1           September to the Tribunal?

2           A.    No, because there was nothing in it that was of  
3           reference to the Tribunal.

4   35   Q.    Except you made a decision in relation to this on 27th  
5           September, it ought to have been disclosed to the           11:28  
6           Tribunal.

7           A.    But I don't have anything of relevance to this Tribunal  
8           in that record.

9   36   Q.    And I have to take your word for that.

10          A.    And I would like to think you would.                   11:28

11   37   Q.    Unfortunately, I'm not entitled to test the other  
12          evidence because you haven't disclosed that journal.

13          A.    No, I'm telling you I have no note. I have no note of  
14          my conversation with --

15   38   Q.    I'm telling you that, in failing to have a note in           11:28  
16          relation to it, you are in breach of Directive 120/04.

17          A.    Possibly. But I didn't think it at the time. I didn't  
18          need a note. I was following up on a phone call with  
19          my superintendent. I wasn't making a critical decision  
20          at that stage.   11:29

21   39   Q.    You had three phone calls with the superintendent, or  
22          there were three phone contacts made on that date in  
23          relation to it. He contacted you, you said you were  
24          going to review the reports. He then tried you, but  
25          you were in dealing with another matter. And then you           11:29  
26          spoke to him later that afternoon. There were three  
27          contacts in relation to it, and they are all noted in  
28          his officers journal.

29          A.    That's correct.

1 40 Q. And you tell the Tribunal that they're not mentioned in  
2 your officers journal of the relevant date?  
3 A. That's correct.

4 41 Q. But we haven't had an opportunity to look at that  
5 journal. 11:29  
6 A. They're not noted and I don't have a reference of them.

7 42 Q. Did you determine what was relevant and what was not  
8 relevant for this Tribunal?  
9 A. No, but I know that I have no note. You know what I  
10 mean, there is no note there of those conversations. 11:29

11 43 Q. And it's not mentioned in your statement, this decision  
12 to appoint Inspector Sheridan on the 27th September?  
13 A. No, no, I didn't go into that detail, no.

14 44 Q. No.  
15 A. But I am happy, I'm satisfied I made a decision to 11:30  
16 appoint her to look at -- you know what I mean.

17 45 Q. And that is a decision which, under HQ Directive  
18 120/04, is required to be required to be noted in your  
19 officers journal?  
20 A. And I haven't notified it in my officers journal. 11:30

21 46 Q. No. And then at a later stage a conversation takes  
22 place with Inspector Sheridan and Sergeant Collins, and  
23 you didn't note that in your journal, isn't that  
24 correct?  
25 A. That's correct. 11:30

26 47 Q. And yet again, you didn't produce your journal for that  
27 date?  
28 A. I don't have a note.

29 48 Q. I'm asking you did you or did you not produce --

1 A. No. And I don't have a note in my journal. I told you  
2 I didn't take any note of that meeting.

3 49 Q. And then there was a meeting on the 8th October which  
4 required the summoning of two superintendents, two  
5 inspectors and Garda Karl Campbell to your office, and 11:31  
6 you don't have a note of that in your journal, do you?

7 A. The only notes that I have, I have sent them in to the  
8 Tribunal.

9 50 Q. Your diary note?

10 A. Yes. 11:31

11 51 Q. Did you offer to the Tribunal to look at your officers  
12 journal for the dates in question?

13 A. I provided all dates that were relevant and that were  
14 requested -- and I didn't -- no, I have no note of it  
15 in my -- 11:31

16 52 Q. From your version of events, the Tribunal have no  
17 knowledge, from your version of events, of your  
18 involvement on the 27th September. The Tribunal  
19 couldn't have asked you for it because the Tribunal  
20 didn't have any reason to believe that you had such a 11:31  
21 conversation?

22 A. I am satisfied that there is nothing there in relation  
23 to those phone calls or meetings and therefore I  
24 didn't -- I don't have it to give it and it's not  
25 there. 11:31

26 53 Q. Do you accept that at least on the 8th October, at the  
27 very least, these are matters which must have been put  
28 in your officers journal?

29 A. No. It was very prompt action that was required on my



1           behalf. Anything I was doing, I was following up with  
2           a report or an email, an electronic recording of  
3           whatever I was doing on that day. I have no written  
4           note, only what I disclosed to the Tribunal.

5   54   Q.    I take it, therefore, that you are telling the Tribunal 11:32  
6           that when you are required to issue warrants, that  
7           isn't something that has to be done promptly?

8           A.    No, no, I didn't say that.

9   55   Q.    Well, you said the reason why you didn't enter these is  
10           because things were happening promptly? 11:32

11           A.    No.

12   56   Q.    So I take it you're telling the Tribunal now that when  
13           a request is made to you for a warrant, that you take  
14           your time in relation to that and that's why you're  
15           able to note that in your officers journal? 11:32

16           A.    No, I did not say that.

17   57   Q.    That is precisely what you said. You told this  
18           Tribunal that things were happening so quickly that you  
19           didn't have time, and I'm just marvelling at the fact  
20           that you apparently have all the time in the world to 11:32  
21           issue warrants?

22           A.    It did not -- the meeting of the 8th did not require me  
23           to make any further note than what I was following up  
24           in relation to my decision-making.

25   58   Q.    HQ 120 does. 11:32

26           A.    I --

27   59   Q.    And your justification for that was because you were  
28           acting promptly --

29           CHAIRMAN: Mr. Harty, I am going to have to intervene.

1           You know, you really are going to have to cool down.  
2           Tóg go bog é. Le cúnamh Dé. Tóg go bog é.  
3           MR. HARTY: Ceart go leor.

4   60   Q.    You were fully aware these decisions are decisions that  
5           are required to be entered in your officers journal?           11:33

6           A.    I didn't -- it didn't fall on the data remit for me --  
7           I didn't make decisions, and any notes that I have I  
8           have disclosed them to the Tribunal. Any decisions  
9           that I made, I followed them up with reports or emails  
10           in relation to actions that needed to be required.           11:33

11   61   Q.    And you determined what was relevant for the Tribunal  
12           to see?

13           A.    No, I didn't determine. I made available all notes and  
14           records and information and reports and emails that I  
15           had in my possession to give to the Tribunal.           11:33

16   62   Q.    But not your officers journal of the relevant dates?

17           A.    It had no relevance. I had no note. There is no note  
18           there and it's not there.

19   63   Q.    And you're fully aware from your involvement on the  
20           Morris Tribunal as to why officers journals are so           11:34  
21           important, aren't you?

22           A.    Absolutely. But I do not -- I cannot -- I have no  
23           note. It not there. And I cannot say any more than  
24           that.

25   64   Q.    "In the absence of any early recording of an event,           11:34  
26           there is no point of comparison." Isn't that correct?

27           A.    That's the wording in the circular but in relation to  
28           this --

29   65   Q.    No, that is the determination of the Morris Tribunal.

1 A. Sorry.

2 66 Q. "In the absence of any early recording of an event,  
3 there is no point of comparison." Isn't that correct?  
4 A. If that's the wording in the report. I don't have it.  
5 If you tell me that's it. 11:34

6 67 Q. No, I'm asking you --

7 A. Yes. If you tell me, sorry, yes.

8 68 Q. That is simply a logical proposition.

9 A. Okay. Sorry, sorry.

10 69 Q. And isn't that correct: if nobody sees an earlier 11:34  
11 recording of something, nobody can know that the  
12 version that you are telling now is true or false?  
13 A. But, sure, the recording, it's followed up very quickly  
14 with reports on my behalf and decisions, interactions  
15 that were made. 11:35

16 70 Q. Except you made decisions in relation to this.

17 A. I made decisions and I followed them up by reports.

18 71 Q. No, no --

19 A. No, I have no note of my meeting with --

20 72 Q. Chief Superintendent, on the 27th September you made a 11:35  
21 decision to appoint Inspector Sheridan to carry out a  
22 review. We have no evidential paperwork in relation to  
23 why you made that decision, how you came to that  
24 decision, what you intended to supply Inspector  
25 Sheridan with, no record, nothing at all from your own 11:35  
26 note. It doesn't even feature in your composite précis  
27 of the matters that you believe are relevant for the  
28 Tribunal. You have left it out. Inspector Sheridan  
29 has left it out. It just, because -- the only reason

1 we know it happened was because it was contained in  
2 Superintendent McGovern's officers journal. That's the  
3 only reason we know it happened.

4 MR. MCGUINNESS: Just to correct that point. It is  
5 described in detail in Superintendent McGovern's  
6 statement. 11:36

7 MR. HARTY: Sorry --

8 MR. MCGUINNESS: It's not just the journal.

9 73 Q. MR. HARTY: Sorry, I didn't mean to -- but the only  
10 reason we have any evidence of it is Superintendent 11:36  
11 McGovern's journal. And then we have Superintendent  
12 McGovern's statement, in which he clearly was able to  
13 access his journal to see what precisely had occurred.  
14 But you left it out of everything. Inspector Sheridan  
15 left it out. Nobody else references it. And that's 11:36  
16 why officers journals are so important, Chief  
17 Superintendent, because it avoids a situation whereby  
18 we have to deal with the absence of any early recording  
19 of an event whereby there would be no point of  
20 comparison. But even in March of this year, when 11:36  
21 putting together your précis for the Tribunal, you  
22 don't mention it. You leave it out. Isn't that  
23 correct?

24 A. Yes.

25 74 Q. Why did you leave it out? 11:37

26 A. Because I didn't have it recorded in the journal on the  
27 27th. I provided all information, as I said, in an  
28 oversight, and I don't have a written note of my  
29 decision to appoint Inspector Sheridan on the 27th or

1 on the 2nd October.

2 75 Q. And you're telling the Tribunal -- do you recall  
3 deciding to appoint Inspector Sheridan on the 27th?  
4 A. Yes, yes.

5 76 Q. So why didn't you put it into your statement in March? 11:37  
6 A. I didn't go into that detail on it.

7 77 Q. You didn't mention it at all. It's not detail. We're  
8 not talking about detail here, Chief Superintendent.  
9 A. No, no, I understand, but I don't know how many times I  
10 can tell you, I don't have a written record of it. I 11:37  
11 know clearly why I appointed her. I do recall the  
12 conversation with Superintendent McGovern. I don't  
13 have a written notes of my thought process down, but  
14 I'm clear in my own mind why I appointed her.

15 78 Q. But you left it out of your statement to this 11:38  
16 Tribunal --  
17 A. Yes.

18 79 Q. -- in March.  
19 A. I did.

20 80 Q. Why did you leave it out of your statement in this 11:38  
21 Tribunal in March?  
22 A. Because when I made the statement in March, I was  
23 giving an oversight to contextualise it, and my  
24 appointment of Inspector Sheridan, I didn't think that  
25 was a matter of critical importance. 11:38

26 81 Q. You didn't think it was critically important?  
27 A. The fact that I appointed Inspector Sheridan.

28 82 Q. To carry out a review?  
29 A. Yes.

1 83 Q. why was it not important?  
2 A. well, at the time I was just giving a critical overview  
3 and it would come --  
4 84 Q. No, no, why was it not important? why was it not  
5 critically important? 11:38  
6 A. Because Inspector Sheridan was appointed by me to carry  
7 out a particular investigation. I make appointments  
8 all the time.  
9 85 Q. Yeah. And on the 27th September, that's when all of  
10 this, from the point of view of the involvement of An 11:38  
11 Garda Síochána, shall we say, dealing with the  
12 statements of Rita McDermott and Paula McDermott steps  
13 into action; in fact, it was just the statement of Rita  
14 McDermott at the time?  
15 A. Mm-hmm. 11:39  
16 86 Q. Or the reports, I think a better way to put it, of Rita  
17 McDermott at the time?  
18 A. Mm-hmm.  
19 87 Q. That's when it all starts going?  
20 A. Mm-hmm. 11:39  
21 88 Q. That's when everything on the action, on the part of  
22 the superintendent's office in Letterkenny, the chief  
23 superintendent's office in Letterkenny, gets moving,  
24 leading to the referral to Tusla after the 8th October  
25 meeting. Are you seriously telling this Tribunal that 11:39  
26 you didn't believe it was of critical importance?  
27 A. I didn't include it in the statement.  
28 89 Q. Are you seriously telling this Tribunal that you didn't  
29 believe it was of critical importance?

1 A. The actual appointment I didn't think was an issue, the  
2 actual appointment of Inspector Sheridan was an issue.

3 90 Q. Your decision to appoint --

4 A. My decision to appoint her, I didn't think that was an  
5 issue.

11:40

6 91 Q. Why not?

7 A. Because I appointed an inspector to carry out a task  
8 for me and to report back to me and I didn't think that  
9 was the critical important part of the -- and it was  
10 for no other reason or motive that I didn't put it into  
11 the statement.

11:40

12 92 Q. You put a whole load of things into your statement  
13 which aren't critical to this. The section 102  
14 referral in respect of the road traffic accident bears  
15 no relation to the matters that this Tribunal is  
16 inquiring into. The question of Garda Harrison not  
17 having insurance on his car, bears no relation to what  
18 this Tribunal is inquiring into in this module. The  
19 question in respect of the anonymous letter from Tusla,  
20 really bears no relation to what this Tribunal is  
21 inquiring into. The move from Buncrana and why Garda  
22 Harrison had to move from Buncrana, bears no relation,  
23 in real terms, to the engagement between Tusla and  
24 Garda Harrison and Marisa Simms in respect of their  
25 children. So you put all of that detail, which is,  
26 shall we say, peripheral, would be a better way to put  
27 it, into your narrative. But what's missing from your  
28 narrative and what I haven't had the opportunity to  
29 check from your officers journal, is what you did,

11:40

11:40

11:41

1           isn't that correct, because you left that out?

2           A.    I don't agree with you, that I left it out for any

3           other motive or reason. I've explained --

4   93   Q.    Well, I can tell you what the reason is. It's the

5           reason precisely why the Morris Tribunal said officers   11:41

6           journals must be maintained, because "in the absence of

7           any early recording of an event, there is no point of

8           comparison".

9           A.    When I make an appointment in relation to

10          investigations, I do it under the discipline           11:42

11          regulations, and it's always contained within the

12          paperwork. In this particular case, Inspector Sheridan

13          was appointed by me to review the incidents.

14   94   Q.    Can I see the paperwork appointing Inspector Sheridan?

15          A.    I don't have paperwork. I didn't make an appointment   11:42

16          under the discipline regulations.

17   95   Q.    You said every decision made by you is referenced --

18          A.    To carry out appointments into discipline regulations

19          to commence an investigation.

20   96   Q.    No, no, no, you said every decision that was made by   11:42

21          you is referenced in the paperwork. Can I see the

22          decision --

23          A.    I --

24   97   Q.    Can I see the paperwork supporting or evidencing the

25          decision to appoint Inspector Sheridan to carry out a   11:42

26          review?

27          A.    Can I be quite clear on this, Mr. Harty. I didn't -- I

28          don't have any paperwork --

29          MR. MCGUINNESS: Sorry, Chairman, I think Mr. Harty may



1 have missed the qualification. She did say every  
2 appointment in relation to discipline, in her answer.  
3 MR. HARTY: Yes, but I want to see, she says that --  
4 98 Q. And in relation to other decisions?  
5 A. What I was saying to you is, I didn't have any 11:43  
6 paperwork in relation to the appointment of Inspector  
7 Sheridan.  
8 99 Q. So we have nothing, aside from Superintendent  
9 McGovern's statement and his properly-maintained  
10 officers journal, we have no information as to when 11:43  
11 that conversation took place, how that conversation  
12 took place, why that decision was reached in respect of  
13 the appointment of Inspector Sheridan on the 27th  
14 September, the decision to appoint Inspector Sheridan  
15 on the 27th September? 11:43  
16 A. I don't differ from what Superintendent McGovern said.  
17 The conversations were on the telephone. There were a  
18 number of telephone calls. There was paperwork that he  
19 required that I undertook to get for him. I totally  
20 agree with all that Superintendent McGovern said. I 11:43  
21 didn't keep the same detailed note that he kept.  
22 100 Q. You didn't keep any note.  
23 A. I didn't keep any note, exactly.  
24 101 Q. Don't --  
25 A. Sorry, you're right, I have no note. 11:44  
26 102 Q. I mean, really, I think it would be slightly offensive  
27 to Superintendent McGovern to suggest that somehow his  
28 note-taking should be compared to yours because  
29 yours --

1 A. No, I'm sorry, I didn't, and I'm sorry, Superintendent  
2 McGovern is a very competent person and I'm certainly  
3 not comparing my lack of note with his detailed note.

4 103 Q. And then why didn't you put it into your statement of  
5 March of this year to the Tribunal?

11:44

6 A. I think I've explained that.

7 104 Q. No, you haven't. You have given an explanation. I  
8 pointed out to you that you included an awful lot of  
9 peripheral detail in relation to this matter to the  
10 Tribunal.

11:44

11 A. Sorry, excuse me.

12 105 Q. Some of which the Tribunal has determined, I think  
13 quite properly, are matters that the Tribunal needed to  
14 inquire into, by virtue of the fact that they were in  
15 your statement. But you left out central things. Why  
16 did you leave out the central things? You accept that  
17 your decision to appoint Inspector Sheridan, made on  
18 the 27th September, was central to what then  
19 transpired?

11:44

20 A. I didn't include it in my statement.

11:45

21 106 Q. Why not?

22 A. Because at the time when I appointed Inspector Sheridan  
23 it was to carry out a review and matters then developed  
24 as the incidents were occurring. I think it was  
25 obvious to everybody she had been appointed to carry  
26 out a review and take the statement, and I didn't go  
27 into that detail.

11:45

28 107 Q. No, you see --

29 A. But for no other reason. I didn't leave it out for any

1 other reason. I think everybody was aware that  
2 Inspector Sheridan was appointed.

3 108 Q. Inspector Sheridan was appointed, on your version of  
4 events, because Sergeant Collins mentioned -- had a  
5 conversation with you and you then went down with him 11:45  
6 to the officers room, I can't quite recall what room  
7 you said you had the conversation in, and brought the  
8 matter up about Inspector Sheridan. Nobody knew,  
9 nobody knew, that, in fact, you had decided, five days  
10 earlier, to appoint Inspector Sheridan? 11:46

11 A. Nobody knew at that time, apart from Superintendent  
12 McGovern, that that was my thought process.

13 109 Q. Yes. And nobody knew --

14 A. Inspector Sheridan was not in the station -- she was  
15 not in the station from the time of the 27th until 2nd 11:46  
16 October.

17 110 Q. I'm well aware of that, Chief superintendent.

18 A. Yes, but I just want to explain. You say everybody  
19 knew.

20 111 Q. You said -- 11:46

21 A. I think everybody knew from the papers that she had  
22 been appointed.

23 112 Q. Nobody knew that you had made a decision to appoint her  
24 from the papers, with the exception of Superintendent  
25 McGovern, and that came after -- 11:46

26 A. Yes --

27 113 Q. -- your statement of March?

28 A. And the only other person that needed to know was  
29 Inspector Sheridan herself.

1 114 Q. No, the Tribunal needed to know. The Tribunal needed  
2 to know that you had formed a decision on the 27th  
3 September. You were the person who was rightly praised  
4 by the Tribunal for giving -- for being the quickest  
5 off the blocks to get in your statement of evidence. 11:47  
6 CHAIRMAN: Well, I think I said one of the quickest.

7 115 Q. MR. HARTY: Sorry, sorry, one of the quickest off the  
8 blocks for getting in your statement of evidence. And  
9 you left out an important part of that, which is that  
10 your decision and why you made a decision on the 27th 11:47  
11 September to appoint Inspector Sheridan to carry out a  
12 review, you left that out of your statement that you  
13 gave to the Tribunal in March. You put in details  
14 which are at best peripheral, but central to what  
15 decision-making you reached on the 27th September and 11:47  
16 thereafter, you left that out. Do you accept that it  
17 is more central to the issues before the Tribunal than  
18 Garda Harrison's section 102 referral in respect of a  
19 road traffic accident?

20 A. I included what I thought was important. 11:47

21 116 Q. Do you accept that it is more important than Garda  
22 Harrison's section 102 referral in respect of the road  
23 traffic accident?

24 A. I think it is very difficult to compare both and  
25 analyse them. 11:48

26 117 Q. Well, no --

27 A. But I'm happy that --

28 118 Q. Module (n) is about what?

29 A. Module (n) is -- we can bring it up.

1 119 Q. Yes.

2 A. Yes, please.

3 120 Q. It's contacts between An Garda Síochána and Tusla/HSE  
4 in respect of Garda Keith Harrison, isn't that correct?

5 A. That's correct. 11:48

6 121 Q. Do you accept that the circumstances in relation --  
7 that gave -- that culminated in that reference to Tusla  
8 are more central to the Tribunal than whether Garda  
9 Harrison was involved in a road traffic accident some  
10 number of months earlier? Do you accept that? 11:48

11 A. Oh, I accept, yes, the contacts between An Garda  
12 Síochána and Tusla are paramount importance for this  
13 Tribunal.

14 122 Q. And decision-making in relation to that, you accept  
15 that that is more central? 11:49

16 A. The decision-making between An Garda Síochána and  
17 Tusla, yes.

18 123 Q. No, no, the decision --

19 A. But not my decision to appoint Goretta Sheridan.

20 124 Q. Oh, you think that is an irrelevance? 11:49

21 A. I'm not saying it's irrelevant. I'm just saying that  
22 it is quite apparent from all of the papers that I  
23 appointed her to carry out the review into the  
24 investigation. The fact that I didn't word it into the  
25 statement -- sorry. 11:49

26 125 Q. You are saying to this Tribunal that it was more  
27 important that they got detail in respect of the  
28 section 102 referral regarding the road traffic  
29 accident than information as to your decision-making on

1 the 27th September?

2 A. No, I'm not saying that. They're not my words, no.

3 126 Q. Right. Well, then, why did you leave it out of your  
4 statement?

5 A. I didn't leave it out deliberately. I left it out 11:49  
6 that -- I didn't leave it out intentionally and I  
7 didn't include it.

8 127 Q. Yes.

9 A. But it was for no ulterior motive. I think it is quite  
10 clear that I appointed Inspector Sheridan to review the 11:50  
11 incidents.

12 128 Q. Because, you see, in your statement of the evidence,  
13 and I'm just making sure I am absolutely fair to you in  
14 relation to it, the first time that you're involved --

15 A. Would it be okay if we bring it up on the screen? 11:50

16 129 Q. We can't go through it in detail, but I just want to  
17 confirm and I don't want to be unfair, that --

18 A. You're reading from my statement of March, is it?

19 130 Q. Yes. The first time you say you have any involvement  
20 is in respect of the -- if we come to it, page 8910. 11:50  
21 Page 7. If we start at page 7, page 54 of the papers,  
22 sorry, excuse me. You see:

23

24 "24th September, Rita McDermott contacted in relation  
25 to... 11:51

26 The persons involved in relation to this aspect that  
27 may be in a position to give further evidence if deemed  
28 relevant are Detective Sergeant David Durkin,  
29 Ballyshannon, and Rita McDermott. At 2:00pm on 30th

1 September, Paula McDaid, sister of Marisa Simms, came  
2 to give a statement. And the persons who may be of  
3 assistance in this regard and in position to give  
4 further evidence, if deemed relevant, are  
5 Superintendent Eugene McGovern, Detective Sergeant 11:51  
6 David Durkin, Sergeant Siobhán Molohan, Sergeant Jim  
7 Collins, Sergeant Brigid McGowan, Sergeant John Forkin,  
8 Sergeant Brendan Mahon, Paula McDaid."

9  
10 So we have a clear isolation, because we have the 24th 11:51  
11 September and the 30th September, and we know that you  
12 made decisions on the 27th September.

13  
14 "The following persons were involved in this aspect and  
15 may be in a position to give further evidence if deemed 11:52  
16 relevant: Detective Sergeant David Durkin and Rita  
17 McDermott."

18  
19 where is Chief Superintendent Terry McGinn in that  
20 list? 11:52

21 A. When I'm doing out the statement, I'm talking about the  
22 different incidents and I'm not talking --

23 131 Q. And decisions made and what was done.

24 A. I didn't put in that I appointed -- it's not in that  
25 statement that I appointed -- 11:52

26 132 Q. No.

27 A. But it's not deliberately left out or -- you know what  
28 I mean? We all know that --

29 133 Q. You accept that it was centrally relevant?

1 A. My appointment was --

2 134 Q. "The following persons were involved in this aspect and  
3 may be in a position to give further evidence if deemed  
4 relevant."  
5  
6 Chief Superintendent McGinn, you were involved in this  
7 aspect. You made decisions made based on Detective  
8 Sergeant David Durkin's reports.  
9 A. Yes.

10 135 Q. You are a person who may be in a position to give  
11 further evidence --  
12 A. Mm-hmm.

13 136 Q. -- if deemed relevant?  
14 A. I think I did put that at the very end of the  
15 statement --  
16 137 Q. No, no.  
17 A. -- covering, you know, that I am available.

18 138 Q. On the 30th September, yet again, the Paula McDaid  
19 incident is dealt with.  
20 A. Yeah.

21 139 Q. You're not listed as one of the people who may be in a  
22 position to give further evidence?  
23 A. But I think it's at the end of my statement that I am  
24 available to give further --

25 140 Q. No, no, you don't tell the Tribunal that you were  
26 involved in any decision-making up until that point,  
27 isn't that correct?  
28 A. I do cover it at the end of the statement that I am --

29 141 Q. You cover that you are willing to give any further



1 clarity or anything else in relation to it?

2 A. Yes.

3 142 Q. A very helpful paragraph if somebody knew that they  
4 needed to come and ask you. But the point about it is,  
5 the Tribunal didn't know that it needed to come and ask 11:53  
6 you, because you left yourself out as being a person  
7 involved in that aspect. You are left out. On the 2nd  
8 October -- 1st October:

9

10 "Sergeant Jim Collins spoke with Paula McDaid." 11:54

11

12 And that conversation is recited.

13

14 "The following persons were involved in this aspect and  
15 may be in a position to give further evidence if deemed 11:54  
16 relevant: Superintendent Eugene McGovern, Buncrana;  
17 Sergeant Collins."

18

19 On the 2nd October:

20

21 "Inspect Goretta Sheridan and Sergeant Collins took a  
22 written statement from Rita McDermott. The following  
23 persons were involved in this aspect and may be in a  
24 position to give further evidence: Chief  
25 Superintendent Terry McGinn." 11:54

26

27 Finally you appear on the stage. Finally you are  
28 accepting that you have an involvement, but until that  
29 point you don't exist in your version of events.

1 A. I think I have explained the whole background of the  
2 statement and how it was contextualised and that I was  
3 available to the Tribunal if they required further  
4 information.

5 143 Q. The Tribunal couldn't come to ask you for further 11:54  
6 information --

7 A. why not?

8 144 Q. -- on the basis of that statement, because the Tribunal  
9 didn't know on the basis of that statement that you  
10 were involved in decision-making in relation to this 11:55  
11 five days previously?

12 A. I think it's quite clear from Superintendent McGovern's  
13 report I was very much involved in making decisions.

14 145 Q. And Superintendent McGovern's statement, had you seen  
15 that when you -- 11:55

16 A. When I made the report, no.

17 146 Q. No, when you made that?

18 A. No, no.

19 147 Q. So you had no reason to know that Superintendent  
20 McGovern had noted this, did you? 11:55

21 A. I knew that I had appointed Inspector Sheridan. I know  
22 that I made that decision.

23 148 Q. why did you not put it into your statement?

24 A. I didn't put it into the statement because I was  
25 outlining the events and, you know, contextualising -- 11:55  
26 sorry -- yes.

27 149 Q. Yes. No, you are fine.

28 A. Contextualising what was in the statement and I was  
29 making myself available.

1 150 Q. But you understand from your statement, "The following  
2 persons were involved in this aspect and may be in a  
3 position to give further evidence if deemed relevant:  
4 Detective Sergeant David Durkin, Ballyshannon; Rita  
5 McDermott."

11:56

6 No mention there of another person involved in that  
7 aspect.

8 A. That's in relation to the incident.

9 151 Q. Somebody who read that report and decided to appoint  
10 Inspector Sheridan to carry out a review, as you call  
11 it, no mention. So the Tribunal couldn't possibly have  
12 thought from your statement that it needed more  
13 evidence in relation to that from you.

11:56

14 A. I was quite satisfied if the Tribunal needed further  
15 information from me they would have come and asked me  
16 for whatever information and I was willing to assist  
17 and provide whatever information.

11:56

18 152 Q. And in relation to your decision-making between then  
19 and the 2nd October, you're absent, aren't you?

20 A. But from the 27th to the 2nd, that's the next time I  
21 need to make a decision on the matter, is on the 2nd  
22 October.

11:57

23 153 Q. The conference of the 8th October is effectively the  
24 next time we have any reference from you in relation to  
25 conversations had by you in relation to this. You  
26 don't record in your statement for the Tribunal any  
27 detail in respect of decisions that you made or  
28 conversations that you had?

11:57

29 A. That's correct.

1 154 Q. You leave it out.  
2 A. Not deliberately.  
3 155 Q. How did you accidentally leave it out?  
4 A. As I have explained how I went about preparing my  
5 statement, how I went about contextualising, how I made 11:57  
6 myself available, how I identified the different  
7 incidents and who was available to do it. So it wasn't  
8 inadvertently, deliberately or accidentally left out.  
9 156 Q. There is nothing to hinder alterations in memory,  
10 embellishments and untruths, Chief Superintendent, that 11:58  
11 is why you don't note things on paper?  
12 A. No, no, no.  
13 157 Q. Because there is nothing --  
14 A. There's nothing untrue about me appointing Inspector  
15 Sheridan to carry out the inquiry. 11:58  
16 158 Q. There is nothing to hinder alterations in memory,  
17 embellishments and untruths?  
18 A. We know that I appointed her, we know that she did what  
19 I asked her to do.  
20 159 Q. No, we don't, actually. We don't know why you came to 11:58  
21 that conclusion.  
22 A. Why I appointed her?  
23 160 Q. Except in your evidence after sitting here for  
24 two-and-a-half weeks, listening carefully to what  
25 everyone else has said, we have no actual 11:58  
26 contemporaneous record, you tell us, because you  
27 haven't shown us your journals --  
28 A. Mm-hmm.  
29 161 Q. -- we have no contemporaneous records at all, as to how

1           you came to that decision-making process to appoint  
2           Inspector Sheridan.

3           A.    Well, I am quite clear how I went about it.

4   162   Q.    Yes.

5           A.    I don't have a written note, as I said, as to why I           11:59  
6           appointed her in particular.

7   163   Q.    In breach of HQ Directive 120/2004?

8           A.    I disagree with you on that.

9   164   Q.    How?

10          A.    Because I didn't make a formal appointment under the           11:59  
11          discipline regulations.

12   165   Q.    Sorry --

13          A.    I didn't formally appoint her.

14   166   Q.    Sorry, I missed that, and maybe I will read it out and  
15          maybe you will point out the bit in it --           11:59

16          A.    Where I make appointments.

17   167   Q.    Where it says you only have to note when it's got to do  
18          with the discipline regulations. I will read it out.

19

20          "From 1st September 2004 all operational           11:59  
21          officers/inspectors will keep a daily record of duties  
22          performed in a journal will be an official issue. This  
23          daily record will include the following: all issues as  
24          to arrests and reasons therefore; all issues of  
25          warrants, extensions, authorisations and reasons           11:59  
26          therefore; all investigations and the reasons for  
27          commencing same; all tasks relevant to key operational  
28          issues; audits, inspections, visits to stations and  
29          scenes of crime; all absences, to include annual leave,

1 rest days, illnesses and courses, etcetera; all  
2 matters/incidents of importance; all records will be  
3 maintained strictly on a daily basis. Such records  
4 will never be destroyed without the express permission  
5 of the Garda Commissioner. The journals will be  
6 surrendered upon completion and will be subject to an  
7 audit as and when required. Replacement journals will  
8 be requisitioned under the stationery budget. HQ  
9 Circular 91/98 is hereby cancelled."

10  
11 Did I miss, drop a word there?

12 A. I think what I was trying to explain to you: every  
13 time I ask a member of An Garda Síochána to carry out  
14 an inquiry on my behalf, I don't note it in the  
15 journal, because if I was to do that I would be  
16 constantly writing. 12:00

17 168 Q. You didn't ask her to carry out an inquiry; you asked  
18 her to carry out --

19 A. To carry out a review.

20 169 Q. A review. 12:00

21 A. Yes.

22 170 Q. Read all the statements, reports, isn't that correct?

23 A. To carry out a review, see what matters needed to be  
24 followed.

25 171 Q. What is the difference between a review and  
26 investigation? 12:00

27 A. A review is to look at all the paperwork, it's a paper  
28 review to look at all paperwork to establish if we have  
29 complied with our domestic violence policy and to

1 follow up on any outstanding jobs that need to be  
2 carried out, if we've missed something or we haven't  
3 dealt with it correctly.

4 172 Q. But this wasn't important?  
5 A. I'm not saying it wasn't important. I said I didn't 12:01  
6 note it.

7 173 Q. I'm saying you're saying this wasn't important?  
8 A. No, I didn't say it wasn't important. The work she was  
9 doing, I didn't say it wasn't important.

10 174 Q. "All matters/incidents of importance are to be recorded 12:01  
11 in the officers journal."  
12 I'm not saying, and I don't think anyone is suggesting,  
13 that every time a chief superintendent says will you  
14 find out where so-and-so is, that you have to record  
15 that in your officers journal? 12:01  
16 A. Mm-hmm.

17 175 Q. But all matters/incidents of importance have to be  
18 recorded in your officers journal. So was this  
19 important or unimportant?  
20 A. The work that Inspector Sheridan did was important, but 12:01  
21 I didn't see it fit to make a note.

22 176 Q. And I have to put to you that the reason why is because  
23 it is a lot easier to embellish, alter, give an  
24 alternative version of events. There is nothing to  
25 deal with embellished memory, alterations in memory, 12:02  
26 embellishments or untruths, if there is no record?  
27 CHAIRMAN: Mr. Harty, that is all very well and it's  
28 fine and I do understand the point. And then the next  
29 thing is, I suppose: what untruth or embellishment is

1 this chief superintendent being asked about?  
2 MR. HARTY: This is a Tribunal of Inquiry, and, in  
3 terms of that, it isn't a matter of me having to put a  
4 particular lie to Chief Superintendent McGinn, or  
5 anything else. This is the Tribunal attempting to 12:02  
6 uncover the truth in an inquisitorial form. It's not  
7 an adversarial form. It's not a matter of me  
8 particularising a series of lies from Chief  
9 Superintendent McGinn and then being required to prove  
10 them. It's a Tribunal of Inquiry, and, in that regard, 12:02  
11 Chief Superintendent McGinn, who is more familiar than  
12 most with the Morris Tribunal, more familiar than most  
13 with why it was important that officers journals be  
14 maintained, who is fully aware of the reasoning why  
15 officers journals had to be maintained, and insofar as 12:03  
16 Chief Superintendent McGinn has given a narrative to  
17 this Tribunal, and has sold a narrative to this  
18 Tribunal, or attempted to sell, I should say, a  
19 narrative to this Tribunal which expressly leaves out  
20 her own involvement in key parts of the decision-making 12:03  
21 process, then it is absolutely relevant that Chief  
22 Superintendent McGinn should be tested as to her  
23 credibility, because she is, on one hand, saying this  
24 was a matter of urgency and importance and it was the  
25 urgency which prevented it being noted, and on the 12:03  
26 other hand saying that, well, it didn't merit noting,  
27 and both cannot be true.  
28 CHAIRMAN: All right. But that's all very well,  
29 insofar as it goes. Thank you for that. I think on



1 Friday I identified three possible issues that might be  
2 relevant here as to how the HSE were involved. The  
3 first being that somehow there was some, I suppose,  
4 task not for the purpose of bona fide investigation  
5 given by Chief Superintendent McGinn to Inspector 12:04  
6 Sheridan. Secondly, that the investigation was  
7 Inspector Sheridan wasn't carried out bona fide and the  
8 statement was coerced. And then, thirdly, that knowing  
9 that the statement was coerced or being suspicious that  
10 the statement was coerced, that Chief Superintendent 12:04  
11 McGinn took steps contrary to the suspicion, namely,  
12 the meeting of the 8th October, not referring matters  
13 to GSOC in good faith, not referring matters to the HSE  
14 in good faith, not continuing the investigation in good  
15 faith. So those would tend to be uppermost in my mind, 12:04  
16 Mr. Harty, at the moment. It may be that you have a  
17 different view.

18 MR. HARTY: No, no, I agree that they are central  
19 issues in relation to it. And in terms of Chief  
20 Superintendent McGinn's version that she has given in 12:05  
21 evidence and under, not entirely -- or, sorry, shall we  
22 say, under not credulous and not credulous examination  
23 by Mr. McGuinness whereby he certainly tested her  
24 evidence, it becomes clear to me that her evidence in  
25 relation to these matters ought not to be accepted by 12:05  
26 the Tribunal. And the reason for that is --

27 CHAIRMAN: You can certainly make a submission to that  
28 effect, Mr. Harty, but --

29 MR. HARTY: I do need to continue to cross-examine her

1 in relation to those, to make it clear to the Tribunal  
2 why that is the case.

3 CHAIRMAN: All right. Well, I mean, we seem to be on  
4 the issue, we seem to be focusing on was there an  
5 appointment in good faith or was it something to do 12:05  
6 instead with getting at Garda Harrison? Did you give  
7 an instruction that a statement should be coerced out  
8 of Marisa Simms? Knowing or suspecting that a  
9 statement was coerced out of Marisa Simms, did she  
10 then, in those circumstances, take the steps which 12:06  
11 followed, reference to Tusla, reference to GSOC,  
12 commencing a criminal investigation, commencing  
13 discipline, other than in good faith? So we seem to be  
14 at number one and number two.

15 MR. HARTY: Well, at the moment what I am exploring is 12:06  
16 her --

17 CHAIRMAN: No, but, I mean, I think that is it,  
18 Mr. Harty, we don't need to continue the dialogue. I  
19 understand what that is at, and that is where we are  
20 at, I think. 12:06

21 177 Q. MR. HARTY: Also in relation to your attitude to this  
22 Tribunal, Chief Superintendent, I want to come back to  
23 something which we dealt with briefly last week, in  
24 relation to the anonymous letter and the detail in  
25 relation to it. When did that come to your attention? 12:06

26 A. When I was preparing the documentation and my statement  
27 for the Tribunal.

28 178 Q. How did it come to your attention?

29 A. How did it come? When I was gathering all the

1 materials, I was inquiring from my office and from the  
2 superintendents, you know, what information did we need  
3 that would fall into relevance.

4 179 Q. How did that come about? who did you have a  
5 conversation with in relation to preparing your  
6 statement? 12:07

7 A. My own office staff, Superintendent McGovern, and my  
8 own team, my own team, possibly.

9 180 Q. And who in your team located the letter?

10 A. I think it came in from Milford district. 12:07

11 181 Q. Your evidence last week was that it was in the chief  
12 superintendents's office.

13 A. It is in the chief superintendent's office, but  
14 eventually --

15 182 Q. who in your team located the letter? 12:07

16 A. who in my team -- I think it was eventually located by  
17 one of the people work under me.

18 183 Q. who?

19 A. Garda Alison Moore.

20 184 Q. Garda Alison Moore. She located it? 12:07

21 A. Yes.

22 185 Q. where did she locate it?

23 A. In Milford district.

24 186 Q. No. Your evidence was that it was in the chief  
25 superintendent's office? 12:08

26 A. It was in the chief superintendent's office. I  
27 couldn't put my hand on it. She got it through, via --

28 187 Q. where was it in the chief superintendent's office?

29 A. where was it in the chief superintendent's office?

1 188 Q. Yes.

2 A. It would be filed under whatever file number it came in  
3 at the time, it would be filed under that particular  
4 file number.

5 CHAIRMAN: We have been through this anonymous -- by 12:08  
6 the way, it is page 63, we should perhaps have it up,  
7 as to whether it is right for, I think it was Sergeant  
8 McGowan to take a copy of it or not, but --

9 MR. HARTY: I'm trying to work out, sir, what file it  
10 ended up on. 12:08

11 CHAIRMAN: You said 20 minutes ago it is entirely  
12 peripheral. And unless somebody is accusing the Garda  
13 of actually writing the anonymous letter --

14 MR. HARTY: Sir, I have to ask that, in relation to my  
15 cross-examination, I am trying to move quickly through 12:08  
16 things, these things are directly relevant to what is  
17 going on. I don't propose to give an explanation as to  
18 why they are directly relevant, but they are relevant  
19 to what precisely has gone on. It does deal with the  
20 issue of the state of mind of various parties at 12:08  
21 earlier times but also at the time in which they're  
22 putting together statements for the Tribunal.

23 CHAIRMAN: All right. Well, so as I can understand it,  
24 and my interruption is possibly due to my not  
25 understanding it, I take it that the submission might 12:09  
26 be that the anonymous letter having been received from  
27 somebody with an education, that the Gardaí lit on it  
28 as a means of getting at Garda Keith Harrison, is that  
29 the point?

1 MR. HARTY: No, it doesn't quite go that far. But I  
2 simply want to ask a question.

3 CHAIRMAN: Certainly, but, I mean, I have to try and  
4 marry it into what I am supposed to be trying to think  
5 about.

12:09

6 189 Q. MR. HARTY: What file --

7 A. What file in the chief's office?

8 190 Q. Yes.

9 A. As the files come in, they are given a number and then  
10 they are dealt with and then they're filed away in  
11 cabinets or maybe in the strong room. For this  
12 particular one when I was gathering the information to  
13 put my statement together, it came from the Milford  
14 file.

12:09

15 191 Q. How did you know to look for it?

12:09

16 A. I just knew from talking to the key people involved.

17 192 Q. Which key people?

18 A. Superintendent McGovern, my own office staff, and then  
19 I had asked one of the girls working in my team if she  
20 would pull the whole lot together.

12:10

21 193 Q. Sergeant McGowan?

22 A. No, no, no.

23 194 Q. You didn't discuss it with Sergeant McGowan?

24 A. No, I just -- I asked Sergeant McGowan to provide all  
25 material that she had in relation to the --

12:10

26 195 Q. Where did that meeting take place?

27 A. In Ballyshannon.

28 196 Q. When?

29 A. Some time before the Tribunal was set up.

1 197 Q. when?  
2 A. I can't -- I can get you an exact date. I don't have  
3 it off the top of my head.  
4 198 Q. Approximately?  
5 A. March, it would have happened, February/March. 12:10  
6 199 Q. And did she raise the matter of the anonymous letter?  
7 A. No, no, I was aware of the anonymous letter.  
8 200 Q. Oh, you were aware of the anonymous letter?  
9 A. Yeah, coming up to the March/February time.  
10 201 Q. Who made who aware of the anonymous letter, and when? 12:10  
11 A. I would say it was Superintendent McGovern, in a  
12 conversation that I had with him in trying to pull all  
13 the materials together.  
14 202 Q. When?  
15 A. Sometime in February, I would say. 12:10  
16 CHAIRMAN: Are we talking about 2017?  
17 A. Oh, it's 2017, Judge.  
18 CHAIRMAN: Oh, sorry, I thought we were talking  
19 about --  
20 A. No, no, no, sorry, 2017, sorry. 12:11  
21 203 Q. MR. HARTY: And you'd no awareness in relation to it,  
22 it wasn't maintained in any way under a file in Garda  
23 Harrison's name?  
24 A. No.  
25 12:11  
26 204 Q. No. Why did the guards have it? Why was it being sent  
27 up the line if it wasn't to be maintained on Garda  
28 Harrison's file?  
29 A. What happens is that we get a lot of information in

1 about different matters, and as they come in they are  
2 filed under a particular file number and then they are  
3 linked into particular files. There was no -- there is  
4 no file in my office in relation to Garda Harrison in  
5 and the chief superintendent's office. 12:11

6 205 Q. None?  
7 A. No.

8 206 Q. None at all?  
9 A. Apart from the discipline files, apart from the  
10 investigation files, apart from all those files, the 12:11  
11 sickness file.

12 207 Q. And this didn't feature in any of that?  
13 A. No.

14 208 Q. So why was it sent from superintendent in Milford to  
15 the chief superintendent's office? There was no 12:11  
16 investigation taking place in the chief  
17 superintendent's office. What was it doing in the  
18 chief superintendent's office?

19 A. I think at the time, and I'm just going back to -- you  
20 know, obviously because I wasn't working at the time, 12:12  
21 but it was to inform the chief superintendent that an  
22 anonymous letter had come in about a member of An Garda  
23 Síochána.

24 209 Q. And therefore it would have been filed on the file of  
25 that Garda Síochána? 12:12

26 A. It was filed under correspondence coming in. It wasn't  
27 filed under Garda Keith Harrison file, because all the  
28 files are separate. You know, if I can explain --

29 210 Q. It was referenced under Garda Keith Harrison's file?

1 A. No, no, it would be referenced under 'anonymous letter  
2 received by' - whatever the title on the file is.

3 211 Q. But it was sent to the chief superintendent's office  
4 because it referred to a member of An Garda Síochána?

5 A. Yes.

12:12

6 CHAIRMAN: But wasn't it the HSE that actually brought  
7 it to the attention of --

8 MR. HARTY: Yes. And it was Sergeant McGowan who  
9 determined that she wanted a copy of it.

10 CHAIRMAN: Well, if she hadn't taken a copy, I suppose  
11 we would have a different issue.

12:12

12 MR. HARTY: No. In fact, nobody in the HSE believes  
13 there's any involvement of Garda Harrison in relation  
14 to any wrongdoing in relation to it. There was no  
15 requirement --

12:13

16 CHAIRMAN: No, no, no, I appreciate all of that, and,  
17 as you said, it's peripheral, but --

18 MR. HARTY: It is peripheral, but what I am trying to  
19 work out, sir, is how a letter which is sent to the  
20 attention of the chief superintendent because it refers  
21 to a member of An Garda Síochána, we are being asked to  
22 believe that that wasn't entered on a file in relation  
23 to a member of An Garda Síochána or referenced on a  
24 file in relation to that member of An Garda Síochána.  
25 Is that what you are telling us?

12:13

12:13

26 A. What I am telling you is, within the chief  
27 superintendent's office, files that come in in relation  
28 to different things are filed differently.

29 212 Q. I appreciate that. But it's referenced on Garda



1 Harrison's file somewhere, isn't it?

2 A. It's referenced under 'anonymous letter from the HSE'.  
3 It's not on Garda Harrison's personal file.

4 213 Q. What file on -- how do you know, looking at Garda  
5 Harrison's files, that this letter exists? 12:13

6 A. You would have to go back, Judge, to Milford and then  
7 get the letters and the codes.

8 214 Q. No, because --

9 A. It's not in his personal --

10 215 Q. The letter was sent to the chief superintendent's 12:14  
11 office because it referred to Garda Harrison. So I'm  
12 asking you, how do I know, if I am chief superintendent  
13 in Letterkenny and you have handed over the division to  
14 someone on retirement, how do I know that this letter  
15 exists? It was sent precisely because it referenced 12:14  
16 Garda Harrison.

17 A. Yeah, well if I go in tomorrow morning into my office  
18 and I put in Garda Harrison in the files that I hold in  
19 my office, I wouldn't pick it up.

20 216 Q. But it was sent directly? 12:14

21 A. I know, but it's probably filed under -- they're all  
22 filed under different matters, so it could be filed  
23 under 'anonymous letter from the HSE re Garda  
24 Harrison', but it's not in his personal file.

25 217 Q. What file is it on then in relation to Garda Harrison? 12:14  
26 It's sent because it refers to Garda Harrison?

27 A. Yes, but it wasn't -- the filing system is such that  
28 they're all filed differently, you know what I mean?  
29 So it's not filed under -- I don't have a personal -- a

1 personnel --

2 218 Q. There is no file in respect of -- in the Gardaí at all  
3 in relation to the difficulties that Marisa Simms'  
4 relationship with Garda Harrison was causing a strain  
5 on her husband in relation to managing his children, 12:15  
6 that's not a matter that was ever part of a Garda  
7 investigation, isn't that correct?

8 A. I'm not a hundred percent sure on this, but I do know  
9 that Garda Harrison was liaising with the employee  
10 assistance, which is obviously confidential, so I'm 12:15  
11 sure if he is -- it is working, he would have raised  
12 that with the employee assistance people.

13 219 Q. He didn't raise that with the employee assistance  
14 people.

15 A. Well, then, we don't have it. If it's not raised, we 12:15  
16 don't have it.

17 220 Q. But is there a confidential file on Garda Harrison?

18 A. No.

19 221 Q. No?

20 A. No, no, not that I'm aware of. 12:15

21 222 Q. How did this come about that this -- where was it put?  
22 You see, it's sent to the chief superintendent's office  
23 because it refers to Garda Harrison; therefore --  
24 CHAIRMAN: Mr. Harty, you will forgive me for  
25 intervening, please do forgive me for intervening, but 12:16  
26 I am mystified as to what this has to do with anything,  
27 apart from being a background. In the background seems  
28 to start with this anonymous letter, and then there's  
29 some involvement later on with the family, the

1 occasions when Marisa Simms left, for whatever reason,  
2 the place where she was living with Garda Harrison.  
3 But whether this was filed or not filed or anything to  
4 do with this, it's just in the background. I can't see  
5 how a case of malice or lack of good faith can be 12:16  
6 constructed on the basis of where was this letter  
7 filed.  
8 MR. HARTY: I'm trying to work out what was in Chief  
9 Superintendent McGinn's knowledge and awareness at the  
10 time at which she appointed Inspector Sheridan to carry 12:16  
11 out a review or investigation of Garda Keith Harrison  
12 and Marisa Simms.  
13 CHAIRMAN: Well, I agree, I agree that is an important  
14 question. Yes, it is an important question.  
15 MR. HARTY: What I am trying to work out is: Chief 12:17  
16 Superintendent McGinn manages to find the relevance of  
17 this in March of this year.  
18 CHAIRMAN: Well, now, I think she would be criticised  
19 in the event that she hadn't put it in.  
20 MR. HARTY: I appreciate it does, in fact -- 12:17  
21 CHAIRMAN: It is a fair question, Mr. Harty, which is,  
22 how much did you know --  
23 MR. HARTY: Yes.  
24 CHAIRMAN: -- Chief Superintendent, about Garda Keith  
25 Harrison at the time when you said to Inspector 12:17  
26 Sheridan, look, I'm appointing you to have a look at  
27 this now?  
28 A. I would have known very little about him in terms of  
29 his domestic situation or the fact -- I didn't know at

1           that stage of the anonymous letter.

2 223 Q.   MR. HARTY: But you knew plenty about his domestic  
3           situation?

4           A.   I knew from the reports that I had received. And  
5           actually my -- 12:17

6 224 Q.   You're intimate with the details of his domestic  
7           situation?

8           A.   Yes, only at that stage when the reports are being  
9           brought to my attention into my office.

10 225 Q.   No, in November of 2011 he was refused to transfer to 12:17  
11           Letterkenny because of his domestic situation.

12           A.   Yes, because of his relationship with --

13 226 Q.   Yes.

14           A.   But I don't know the detail of his domestic situation  
15           and what is happening within the family. 12:18

16 227 Q.   No, but you were already well aware of his domestic  
17           situation?

18           A.   Sorry, yes.

19 228 Q.   You already knew about his relationship with Marisa  
20           Simms? 12:18

21           A.   Yes.

22 229 Q.   You already knew that, as far as you were concerned,  
23           because Martin McDermott had criminal associates in  
24           Letterkenny, somehow Garda Harrison could not be  
25           trusted to carry out policing duties in Letterkenny, 12:18  
26           isn't that correct?

27           A.   That's a decision I made, yes.

28 230 Q.   That's the decision you made?

29           A.   Yeah, and the fact I suppose that Marisa's mother was

1 still living within the Letterkenny district.

2 231 Q. Marisa's mother, and we'll perhaps touch on this little  
3 matter. You sent Sergeant Collins out because he had a  
4 good rapport with Rita McDermott, isn't that correct?

5 A. Yes. 12:18

6 232 Q. Paula McDermott had already come to An Garda Síochána  
7 and given statements, isn't that correct?

8 A. Yes.

9 233 Q. All right. You had no difficulty with Inspector  
10 Sheridan making contact with Marisa Simms, isn't that 12:19  
11 correct?

12 A. Yes.

13 234 Q. The relations between the McDermott family and An Garda  
14 Síochána was good?

15 A. Well, in the sense that -- and if I portrayed it 12:19  
16 wrongly, that there was an appearance of a conflict of  
17 interest, the point I was trying to make the last day  
18 is that the relationship between the McDermott family,  
19 mainly through Martin and An Garda Síochána, was  
20 strained because of the interventions and the 12:19  
21 investigation and the manslaughter of Gary McLoughlin.

22 235 Q. Your evidence was --

23 A. No, I would like to finish this, please, Mr. Harty, if  
24 I could. I certainly wasn't casting any aspersions on  
25 Rita McDermott, Paula or Marisa, in any sense that they 12:19  
26 couldn't come to An Garda Síochána, but I know that it  
27 would have been difficult for them to interact with us,  
28 and I certainly wasn't putting any --

29 236 Q. And they wouldn't trust you to investigate any of this?

1 A. It's not that they wouldn't trust us, but that it was  
2 going to be very difficult for them in the sense that  
3 Garda Keith Harrison was a member of An Garda Síochána,  
4 and it's very difficult to come in and ask your  
5 colleagues, who work with him every day of the week, to 12:20  
6 investigate him.

7 237 Q. Rita McDermott is an entirely law-abiding citizen,  
8 never --

9 A. Absolutely, absolutely, absolutely, and I totally agree  
10 and if I give that wrong impression -- 12:20

11 238 Q. And Paula McDermott is also an entirely law-abiding  
12 citizen?

13 A. Yes.

14 239 Q. Marisa Simms, to the best of my knowledge, has not come  
15 to the attention of Gardaí for breaking any laws? 12:20

16 A. No, absolutely, and I certainly wasn't casting any  
17 aspersions. I want to put it into context again, that  
18 it was most difficult for the McDermott family to  
19 interact because of what happened in relation to  
20 Martin, and certainly I was delighted -- 12:20

21 240 Q. But they --

22 A. -- can I just finish, please? -- I was delighted that  
23 the McDermott family could come to us and trust us to  
24 carry out this investigation. And I know it is very,  
25 very difficult for people who are vulnerable in 12:20  
26 relation to domestic violence in come into his  
27 colleagues and ask his colleagues in An Garda Síochána  
28 to investigate him. And it was from that --

29 241 Q. You said that it was because of the dealings with

1 Martin McDermott that the relationship between the  
2 McDermott family and An Garda Síochána was fractious,  
3 that was your evidence?

4 A. No, I didn't use the word --

5 242 Q. You did use the word 'fractious'.

12:21

6 A. Well, if I used the word, I wanted to say that I wasn't  
7 casting any aspersions on the McDermott family per se,  
8 but it was really to do with Martin McDermott and his  
9 associates, who commit crime in the Letterkenny  
10 district. And I have to make -- as a chief  
11 superintendent, I have to make those judgement calls  
12 for the effective service of policing in the county.

12:21

13 243 Q. What is that? You were intimately aware of the  
14 domestic relationship between Marisa Simms and Garda  
15 Keith Harrison in November 2011?

12:21

16 A. Yes, Keith Harrison told me about his relationship,  
17 yes.

18 244 Q. Fully aware. And when we come to the 27th September,  
19 what were you looking at?

20 A. When I came to the 27th September, I then had reports  
21 that there was domestic violence or abuse taking place  
22 within the home.

12:21

23 245 Q. You had one report, isn't that correct?

24 A. I had the report from David Durkin --

25 246 Q. Yes.

12:22

26 A. -- in relation to the incidents, and I had asked  
27 Inspector Kelly if there was any other reports, and I  
28 think the, as we call it, the Bogle incident, I had  
29 that report as well.

1 247 Q. When did you ask Inspector Kelly?  
2 A. When I received the report saying, I think around the  
3 24th or 25th September, I sent it out to David Kelly  
4 asking him if there was any other incidents in the  
5 Letterkenny district. 12:22

6 248 Q. Sorry, I'm just going back to your statement, because I  
7 appear to have missed that. 24th --  
8 A. It's not in my statement.

9 MR. Ó BRAONÁIN: Sorry, sir, to interrupt in relation  
10 to this. These interactions are, in fact, apparent 12:22  
11 from the booklet of documents, reports, going back and  
12 forth that are dated within the documents that have  
13 been circulated.

14 CHAIRMAN: So what is your point Mr. Ó Braonáin?

15 MR. Ó BRAONÁIN: I think it is a little bit unfair that 12:22  
16 Mr. Harty is cross-examining Chief Superintendent  
17 McGinn in a vacuum, asking her to recall off the top of  
18 her head when she received a particular report, when it  
19 is actually in the papers that Mr. Harty has. So it  
20 would be a bit fairer if he drew her attention to the 12:23  
21 particular document that he is questioning her about,  
22 ask her to look at it and confirm that that is hers.  
23 It might be of a bit more assistance, I think, to the  
24 Tribunal in terms of establishing what Chief  
25 Superintendent McGinn's state of knowledge was on the 12:23  
26 27th September when she made the decision that she  
27 made.

28 CHAIRMAN: Well, there was evidence, as I understand  
29 it, of reports being forwarded up, and we have had



1 actual sworn evidence of that. And then in relation to  
2 Sergeant Collins and any possible reason the McDermott  
3 family might have for not contacting the Gardaí, he  
4 indicated that he had had some kind of an encounter  
5 that would be better not to go into, in the past, but 12:23  
6 he certainly wasn't, to use the superintendent's words,  
7 casting aspersions. So there it is, Mr. Harty.

8 249 Q. MR. HARTY: The situation is, I am looking at your  
9 statement, 24th August 2013, detail the visit of Rita  
10 McDermott to Sergeant Durkin. On the 24th September 12:24  
11 2013, you detail the involvement of Rita McDermott to  
12 visiting Sergeant Durkin advising him that the wedding  
13 was taking place and that she planned to move her out.  
14 On the 30th September, you deal with Paula McDaid. But  
15 it would appear that sometime between 24th August and 12:24  
16 now, 27th September, that you had requested Detective  
17 Inspector Kelly to do something. It doesn't feature in  
18 your statement?

19 A. No. I asked Inspector Kelly -- when I was receiving  
20 these reports, Inspector Kelly -- 12:25

21 250 Q. One report?

22 A. One report. I sent on an email to Inspector Kelly  
23 asking him was there any other incidents in the  
24 Letterkenny district that I needed to be aware of.

25 251 Q. When did you do that? 12:25

26 A. Can I check? Because I have my emails, please.

27 252 Q. Yes.

28 A. The 23rd September, I must have sent it in before,  
29 yeah, on the 11th September -- sorry, on the 5th, I am

1 bringing you back, the 5th September I write to  
2 superintendent Letterkenny looking for details of "any  
3 incidents involving Garda Harrison attaching and  
4 referencing reports of Sergeant Durkin and  
5 Superintendent Finan, re call one from Rita McDermott". 12:26

6 253 Q. Was Detective Inspector Kelly acting --  
7 A. He was acting superintendent Letterkenny at the time.

8 254 Q. Right. Okay.  
9 A. That was on the 5th September.

10 255 Q. 5th September. On the 27th September you made a 12:26  
11 decision urgently to appoint Inspector Sheridan and  
12 that's why it was noted on your officers journal  
13 because things were happening quickly. But in fact on  
14 the 5th September you had already commenced inquiries,  
15 investigations in relation to this, isn't that correct? 12:26  
16 A. Yeah, that was the initial report that came in to me.

17 256 Q. So on the 5th September, some 22 days before the  
18 urgency that meant you couldn't note it in your  
19 officers journal, you were already dealing with these  
20 matters, isn't that right? 12:27  
21 A. I was dealing with call number one, yes, from Inspector  
22 Durkin.

23 257 Q. What else did you gather into your office?  
24 A. That was the first, on the 5/9. Will I go through it  
25 for you? 12:27

26 258 Q. Yes.  
27 A. Please. That was on the 5/9. On the 11/9 then  
28 Inspector Kelly forwarded his report to Sergeant Aidan  
29 Doherty asking him about the incident. And then he

1 reports it to me on the 23/9 about, let's say we'll it  
2 call it the Bogle incident and reports from Aidan  
3 Doherty.

4 259 Q. Right?

5 A. Then I receive, on the 24/9 I receive call two Rita 12:27  
6 McDermott to Sergeant Durkin. And on the 20 -- wait  
7 till I see. I received that from, via Superintendent  
8 Finan, who is superintendent Ballyshannon, he forwards  
9 me the second report on the 24th. And then on the 27th  
10 when I received the call then from Superintendent 12:28  
11 McGovern, he's not aware of some of the reports that I  
12 have and I undertake that I will forward the reports  
13 out to him.

14 260 Q. So on the 5th September you have directed preliminary  
15 investigations to take place, information to be 12:28  
16 gathered up?

17 A. I'm asking the superintendent Letterkenny on the 5th,  
18 I'm asking him is there any other details or any  
19 incidents or any other information there that I need to  
20 be aware of. 12:28

21 261 Q. And that isn't noted in your statement given to the  
22 Tribunal in March?

23 A. No, it's not, no. But I did enclose, I did disclose  
24 all my emails and they have that here.

25 262 Q. And is it contained in your journal? 12:29

26 A. No.

27 263 Q. Are you certain of that?

28 A. Yes.

29 264 Q. How are you certain?

1 A. I have checked all my notes and all my papers and I  
2 have disclosed all matters.

3 265 Q. And we're to take your word for that?

4 A. Yes, I would like to think so, yes.

5 266 Q. But you don't mention it in your statement? 12:29

6 A. I don't mention it in my statement and I don't put it  
7 in --

8 267 Q. But you had paper evidence in this case?

9 A. I had paper evidence. It's electronic.

10 268 Q. Yeah, but you knew, you certainly knew in March, you 12:29  
11 didn't need to be reminded, that you had in fact  
12 commenced these inquiries on the 5th September, isn't  
13 that correct?

14 A. I received the first call and then I'm asking is there  
15 any further information. 12:29

16 269 Q. You commenced your inquiries on the 5th September?

17 A. Yes.

18 270 Q. But you didn't tell the Tribunal that?

19 A. No, but I would have disclosed the emails. It was  
20 clear from my email that I -- all my emails. 12:29

21 CHAIRMAN: Mr. McGuinness, are these emails in the sets  
22 of books?

23 MR. MCGUINNESS: They are.

24 CHAIRMAN: They are.

25 MR. Ó BRAONÁIN: September, sir, 1663 of the materials. 12:30

26 CHAIRMAN: Yes.

27 MR. HARTY: Perhaps if that could be brought up  
28 actually.

29 CHAIRMAN: And I'm not sure it could be said one

1 commences an inquiry when information is put before  
2 one, which seems to be this.

3 MR. HARTY: No because --

4 CHAIRMAN: In terms of the screen, where are we at now?  
5 Is that page 1663, is it? Is that the right page? 12:30  
6 Sorry, Mr. Ó Braonáin, you asked for something to be  
7 put up, what was it? What are you talking about?

8 MR. Ó BRAONÁIN: That is the request from Chief  
9 Superintendent McGinn on the 5th September for further  
10 information in respect of incidents in the Letterkenny 12:30  
11 district.

12 271 Q. MR. HARTY: And that was forwarded by email, was it?

13 CHAIRMAN: Is this an email?

14 MR. HARTY: This is a letter where it refers to an  
15 investigating member. 12:30

16 A. Judge, it's where I'm writing, it's after I receive  
17 call number one, I'm writing to the superintendent  
18 Letterkenny to see if there is any further information  
19 contained within the --

20 CHAIRMAN: Maybe that anyone who calls out to the house 12:31  
21 is called the investigating member, even though there  
22 is nothing to investigate, as it turns out. I don't  
23 know what the terminology is. Anyway, there it is.  
24 There is the letter.

25 272 Q. MR. HARTY: Why isn't it in your statement? 12:31

26 A. It's not in my statement. I wasn't appointing him as  
27 senior investigating officer. I'm just gathering  
28 information at that stage.

29 273 Q. This is all about what the Gardaí did in the work up to

1 the Tusla reference. That's what this -- this is what  
2 this Tribunal is about.

3 A. Yes. This is where I am gathering information to  
4 assist me in my decision-making process. So I'm  
5 gathering the information in at this stage. 12:31

6 274 Q. And this was a letter sent to -- you see, I must admit  
7 I am slightly stupid, in that it's superintendent  
8 Letterkenny, I didn't realise that that meant Detective  
9 Inspector Kelly.

10 A. No, superintendent Letterkenny had retired from his 12:32  
11 position at that time, Inspector Kelly was acting up.

12 275 Q. I apologise --

13 A. But it goes to the office of superintendent  
14 Letterkenny.

15 276 Q. I apologise, because I didn't know that that letter was 12:32  
16 in fact received by Detective Inspector Kelly. I  
17 hadn't realised that until this moment.

18 A. No, it's not Detective Inspector Kelly. He was  
19 Inspector Kelly.

20 277 Q. Excuse me, Inspector Kelly. 12:32

21 A. Inspector Kelly, who was acting up, more than likely he  
22 was the senior inspector at the time and he was acting  
23 up for the superintendent who was absent.

24 278 Q. But you appreciate that there's no way for me to  
25 know -- 12:32

26 A. Sorry.

27 279 Q. -- either because I am obtuse or because it's not  
28 obvious.

29 A. Sorry, excuse me.

1 280 Q. That Inspector Kelly received that letter.  
2 A. Yes.  
3 CHAIRMAN: He may have.  
4 A. He may have.  
5 CHAIRMAN: I mean, it could be someone in his office 12:32  
6 who just conducted the inquiry on his behalf. I don't  
7 know.  
8 MR. HARTY: In relation to that, we have no statement  
9 of evidence from Inspector Kelly.  
10 MR. MCGUINNESS: Chairman, this document we're looking 12:32  
11 at is the one I did refer to the other day in the  
12 tranche of documents. It's at page 320 in the book,  
13 sorry 321. But the reply from Inspector Kelly is the  
14 previous page at 320. It is obvious that the inspector  
15 is replying to it. 12:33  
16 CHAIRMAN: But does the Carltona principle apply here,  
17 Mr. McGuinness?  
18 MR. MCGUINNESS: Well, it does because he says he's  
19 acting district officer.  
20 CHAIRMAN: Yes. But if someone replied on his behalf 12:33  
21 would the Carltona principle also apply?  
22 MR. MCGUINNESS: It might. But he obviously had the  
23 authority because he's signing himself as acting  
24 district officer.  
25 CHAIRMAN: All right. But your point is that the 12:33  
26 letter to chief superintendent Letterkenny and the  
27 reply from the inspector as acting superintendent are  
28 actually in the materials --  
29 MR. MCGUINNESS: Yes.

1 CHAIRMAN: -- at the pages at 320-321.

2 MR. MCGUINNESS: Yes.

3 CHAIRMAN: All right, I understand. Thanks.

4 281 Q. MR. HARTY: Inspector Kelly is of a rank that is  
5 required to maintain an officers journal, isn't that 12:33  
6 correct?

7 A. Yes.

8 282 Q. And we haven't seen Inspector Kelly's journal, isn't  
9 that correct? Isn't that correct?

10 A. Yes. But -- 12:34

11 CHAIRMAN: Well, we have seen the emails, Mr. Harty.

12 A. But the emails and --

13 CHAIRMAN: And they are all there, and it does clearly  
14 state that he is acting -- Inspector Kelly is a woman?

15 A. No, Inspector Kelly is a man. 12:34

16 CHAIRMAN: What is his first name?

17 A. David. David Kelly.

18 CHAIRMAN: Oh, that is David Kelly.

19 A. But I doubt that, because I'm looking for information  
20 that he would write -- because we have correspondence 12:34  
21 registers where we put in the correspondence coming in  
22 and the correspondence coming out. So we certainly  
23 wouldn't be making note 'I sent the chief a report that  
24 she was looking for'. That certainly wouldn't be  
25 contained -- 12:34

26 283 Q. MR. HARTY: Have we seen those correspondence  
27 registers? Have they been made available to the  
28 Tribunal?

29 A. No. But they can be made available, if required, yeah.



1 284 Q. And there's a variety of different correspondence  
2 registers?  
3 A. The correspondence register in Ballyshannon, there  
4 would be one in Milford, there would be one in  
5 Letterkenny and there would be one in my office. 12:35

6 285 Q. No. There's two in your office.  
7 A. There's two?  
8 286 Q. Two correspondence registers in your office.  
9 A. There's my own personal correspondence coming in and  
10 then the divisional, is that -- 12:35

11 287 Q. No. Sorry, two for the division.  
12 A. Sorry, I'm not with you.  
13 288 Q. There is a secret and confidential correspondence  
14 register --  
15 A. No. 12:35

16 289 Q. -- and there is a general correspondence register.  
17 A. No. No, there are secret and confidential files in my  
18 office that are locked away in a safe, but Garda  
19 Harrison -- there is no secret, confidential file in  
20 relation to Garda Harrison. 12:35

21 290 Q. No, no, I'm sorry, the Garda Code 47.10:  
22  
23 "Correspondence register divisional district offices.  
24 A correspondence register will be used in each district  
25 divisional office." 12:35

26  
27 And it goes on, and:  
28  
29 "The exception to this is the subsection above. What

1 needs to be put into it are secret correspondence,  
2 annual leave, sick files, crime reports, public service  
3 vehicle correspondence." [As read]

4  
5 And then if you move over to regulation 47.12:

12:36

6  
7 "Secret correspondence will be entered on a special  
8 register. In the divisional and district office a  
9 diary will be used for this purpose. This book will be  
10 kept under lock and key in the safe."

12:36

11  
12 You have two registers in your office.

13 A. Yeah. But the one that I have locked away in my safe  
14 relates to CHIS, informants, all of that, that is in my  
15 safe. Certainly Garda Harrison doesn't fall within  
16 that remit. His name is not contained within that.  
17 And therefore there is no matter of relevance in  
18 relation to the CHIS system.

12:36

19 291 Q. Yet again we have to take your word for it?

20 A. Well, I checked it.

12:36

21 CHAIRMAN: But I mean, Mr. Harty, are you suggesting  
22 that I ought to visit Letterkenny Garda Station?

23 MR. HARTY: I'm not suggesting --

24 CHAIRMAN: I mean, I actually have done it before,  
25 believe it or not.

12:36

26 MR. HARTY: I don't doubt it.

27 CHAIRMAN: And indeed I have been in a cell, lain down  
28 and actually been breathalysed as well. If people are  
29 wondering, that was part of official duties for the

1 Morris Tribunal. Is there something I need to look  
2 into again? By the way the test was negative, but --  
3 MR. HARTY: I don't doubt it.

4 292 Q. The answer is, is that, Chief Superintendent McGinn,  
5 you should have put in your statement that on the 5th 12:37  
6 September you start inquiries for other matters in  
7 relation to Garda Keith Harrison and Marisa Simms with  
8 Inspector Kelly, but you didn't?

9 A. I didn't put that in because it was very much at  
10 information stage, embryonic stage, I was trying to 12:37  
11 find out is there any information.

12 293 Q. No. It's not information stage or anything else, in  
13 relation to your statement for the Tribunal. It's  
14 directly relevant --

15 A. Any investigative work that is carried out at this 12:37  
16 stage is being investigated by Sergeant Durkin and  
17 superintendent Ballyshannon. There's no investigative  
18 work on my behalf at that stage.

19 294 Q. In relation to your statement of evidence to the  
20 Tribunal your personal involvement in relation to it. 12:37  
21 You see, even in your evidence on Friday you didn't say  
22 this. That you first started your inquiries about  
23 putting things together on 5th September, which is now  
24 22 days earlier than it was placed on Friday.

25 CHAIRMAN: But we do have those emails, don't we, 12:38  
26 Mr. Harty?

27 MR. HARTY: We do have those emails.

28 CHAIRMAN: And you did get those emails?

29 MR. HARTY: Oh yeah, no, I got those.

1 CHAIRMAN: Page 330-331.

2 MR. HARTY: I received those.

3 CHAIRMAN: And presumably we had to receive them from  
4 the Gardaí or from the chief superintendent.

5 MR. HARTY: Or from the Gardaí liaison office. It's 12:38  
6 not necessarily from the chief superintendent.

7 CHAIRMAN: Well, we got them from somewhere anyway --

8 MR. HARTY: Yes.

9 CHAIRMAN: -- and we did put them in. So I mean  
10 there's warning as to what it is. 12:38

11 MR. HARTY: But Chief Superintendent McGinn --

12 MR. MCGUINNESS: Chairman, I think as a matter of fact  
13 they did come originally from the chief superintendent  
14 through the Gardaí.

15 295 Q. MR. HARTY: So on the 5th September you're carrying out 12:38  
16 inquiries. It wasn't your evidence on Friday, but it  
17 is your evidence today. So 5th September you're  
18 carrying out inquiries, isn't that correct?

19 A. No, I'm not. At that stage of the report, the  
20 investigating officer is Sergeant Durkin, 12:39  
21 Superintendent Finan into my office because he is the  
22 serving member of An Garda Síochána, and now at this  
23 stage I'm inquiring is there any further information  
24 that I need to know; is this a once-off incident? what  
25 is this report that I am receiving? 12:39

26 296 Q. And you're also receiving a report from Superintendent  
27 Finan in relation to Garda Harrison's ability to carry  
28 out his role as a member of An Garda Síochána in  
29 Donegal Town, aren't you?

1 A. Yes. So that information is coming up to me as well,  
2 yeah.

3 297 Q. When did that information come and how did it come?  
4 A. I think some time around the 3rd October, I think. I  
5 mightn't be correct on the dates, I need to check the 12:39  
6 dates. But that he does write stating that there's a  
7 lot of unease in Donegal Town in relation --

8 298 Q. Was that the first mention there was in relation to it?  
9 A. Well, I --

10 299 Q. No, no. I prefer if you try to recall. 12:40  
11 A. Yeah, I'm trying to remember all these dates in my head  
12 and --

13 300 Q. It would have been very valuable if you had noted these  
14 things down at the time.

15 A. Yeah. Well, at the time when it came up, it could have 12:40  
16 come up at a meeting in relation to a PALF meeting. I  
17 don't know what it came up -- I can check that for you.

18 301 Q. I take it that if there was a PALF meeting there would  
19 be a minute of it?

20 A. There would be minute of the PALF meetings, yes. 12:40

21 302 Q. Have minutes of all PALF meetings relating to Garda  
22 Harrison been provided to the Tribunal?

23 A. I don't think so, but I don't think there was anything  
24 in it that was of reference. But I can double-check.

25 CHAIRMAN: Sorry, what is a "pal" meeting? 12:40

26 MR. HARTY: PALF.

27 CHAIRMAN: What?

28 A. PALF meetings. They are meetings that will happen --  
29 CHAIRMAN: It is coming up as "pal" and it is not

1 Ms. Kelly's fault. Does it stand for something?

2 A. PALF. P-A-L-F. It stands for performance and --

3 CHAIRMAN: -- and liaison.

4 A. -- framework meeting. What it is, I will get the

5 correct terminology, Judge, for you, but -- 12:40

6 CHAIRMAN: You mentioned something about a "chick" as

7 well?

8 A. CHIS.

9 CHAIRMAN: What is a CHIS?

10 A. They are covert human sources. People who are, as we 12:40

11 call informants.

12 CHAIRMAN: Sorry, yes.

13 A. Yes. And that are records, CHIS, it's Covert Human

14 Intelligence Sources.

15 CHAIRMAN: As opposed to artificial intelligence. 12:41

16 A. As opposed to artificial intelligence. Where there are

17 people who we work with in terms of under the CHIS

18 policy.

19 CHAIRMAN: Yes.

20 A. That is all done under lock and key. And the PALF are 12:41

21 regular meetings that I would have once a week in

22 relation to under a number of headings; what's

23 happening in terms of security, what's happening in

24 relation to serious investigations, what's happening

25 with sickness, personnel, what issues are -- 12:41

26 303 Q. MR. HARTY: So the PALF meetings would have been

27 updated regularly in relation to the arrest or, sorry,

28 to the charging of Garda Harrison in respect of the no

29 insurance, isn't that correct?

1 A. Possibly. It would have been referred into the office  
2 anyway for the appointment under the discipline  
3 regulations.

4 CHAIRMAN: I'm sorry, just so I can get this right.  
5 PALF seems to actually just be a management meeting. 12:41

6 A. It is a management tool.

7 CHAIRMAN: So, like your ordinary business would have a  
8 monthly management meeting --

9 A. Monthly meetings.

10 CHAIRMAN: -- or a financial meeting or something like 12:42  
11 that.

12 A. And what happens is, all the superintendents and  
13 inspectors would come to the meeting --

14 CHAIRMAN: I understand.

15 A. -- and we would have an agenda, and we work through the 12:42  
16 agenda.

17 304 Q. MR. HARTY: So what was the first PALF meeting in  
18 relation to Keith Harrison, just sticking to the year  
19 2013?

20 A. Yeah, there would be no PALF assigned to Garda 12:42  
21 Harrison. There would be a number of headings and an  
22 agenda. And maybe, when we would come to the section  
23 on personnel it would come up under personnel if  
24 there's any issues to be discussed.

25 305 Q. I take it that once it became apparent that Garda 12:42  
26 Harrison was being charged with driving with no  
27 insurance and was to be brought before the District  
28 Court that that would have been a matter which would  
29 have featured at a PALF meeting?

1 A. Well, it would have featured first with the  
2 superintendent reporting to the chief that it was  
3 happening, to look to make an appointment and at the  
4 next PALF meeting it may have come up; is there any  
5 furtherance of it? Where is it at? What stage is it 12:42  
6 at? But it wouldn't have been detailed, a big detailed  
7 report on it.

8 306 Q. It was public knowledge around Donegal Town that the  
9 conviction had taken place in May 2015 -- 2013, isn't  
10 that correct? 12:43

11 A. 2013.

12 307 Q. And so, I'm assuming if Superintendent Finan is raising  
13 the matter at PALF meetings he's doing so not long  
14 afterwards, isn't that correct?

15 A. I would have to go back and look at the paperwork, but 12:43  
16 he would have reported it first by way of report and  
17 then at PALF meetings when we're going through  
18 personnel issues it may have come up: Has this case  
19 come before the courts? Has it been dealt with? That  
20 would be the level that it would go through. Because 12:43  
21 there would be so many other -- these meetings were  
22 quite short and it allows us just to keep a progress on  
23 where we are with certain investigations.

24 308 Q. But Superintendent Finan -- you didn't -- who takes the  
25 notes of the PALF meetings? 12:44

26 A. I usually have my divisional clerk in at the meeting  
27 and he takes notes.

28 309 Q. Who is that?

29 A. Sergeant Peter Duffy.



1 310 Q. Sergeant Peter Duffy. And in relation to the incident  
2 of the no insurance you see when you detail that in  
3 your statement you don't mention that there was any  
4 issues further up the line. At page 53:

5  
6 "By way of information, on the 8th May 2013 Garda  
7 Harrison appeared before the District Court as  
8 convicted driving with no insurance in Donegal Town on  
9 the 24th February. He was fined €300 and summonses for  
10 failure to produce and displaying a false insurance  
11 disk were taken into consideration. The prosecution  
12 arose from a detection made when Garda Harrison was  
13 driving a private car in Donegal Town with a false  
14 insurance disk without current tax or NCT displayed."

15  
16 You don't mention when you are detailing that in your  
17 statement, that in fact this is a matter that came up  
18 in management meetings.

19 A. Because I may not have --

20 CHAIRMAN: Mr. Harty, how could it possibly help me? I  
21 mean, you said yourself that --

22 MR. HARTY: The tribunal --

23 CHAIRMAN: No but, Mr. Harty, you actually said earlier  
24 on, one of the things that you detailed as being  
25 irrelevant or practically irrelevant was the no  
26 insurance matter and I certainly wasn't take anything  
27 against Garda Keith Harrison in that regard. I think I  
28 said at the time that what I regarded as important was  
29 that the Gardaí actually took a prosecution against one

1 of their own. Now, whether it was noted at a  
2 management meeting or not doesn't seem to be anything  
3 to do with the three issues that I am most concerned  
4 with.

5 MR. HARTY: Well, it is in fact precisely to do with 12:45  
6 one of those issues, because the Tribunal has asked at  
7 number of stages it is my case that a head of malice  
8 had built up against Garda Harrison, and the answer is,  
9 the question of PALF meetings, which I had no knowledge  
10 of, and no reason to have any knowledge of, in relation 12:45  
11 to this incident, only came up in the answers given by  
12 Chief Superintendent McGinn.

13 CHAIRMAN: All right.

14 MR. HARTY: And that's why the issue is relevant.

15 CHAIRMAN: All right. Let's concentrate and see is 12:45  
16 there a head of malice. I mean, is there a head of  
17 malice? Did anyone mention anything malicious at any  
18 PALF meeting?

19 A. When this incident happened it would have been Chief  
20 Superintendent Sheridan. 12:46

21 CHAIRMAN: You wouldn't have been there?

22 A. I wouldn't have been there. But the other matter,  
23 Judge, is that these -- it's a very quick meeting, it's  
24 just to ensure that we're following through on  
25 investigations. So very little time would have been 12:46  
26 spent on the different issues that would be coming up.  
27 And it wasn't a meeting concentrating on Garda  
28 Harrison. You know what I mean. There would be so  
29 many other issues on the PALF programme, there would be

1 security of the State, there would be budgets, there  
2 would be serious investigations, there would be  
3 personnel issues, there would be matters about safety  
4 of manpower, there would be matters in relation to  
5 patrol cars, a whole sequence, and it wouldn't be a 12:46  
6 meeting that we would be discussing in any detail any  
7 issues in relation to Garda Harrison.

8 311 Q. MR. HARTY: Except that you said that you did?  
9 A. Sorry?

10 312 Q. Except that you said that you did discuss in detail 12:47  
11 issues in relation to Garda Harrison at a PALF meeting?  
12 A. No, I did not.

13 313 Q. Yes, you did.  
14 A. No, no, I beg to be corrected on that. I did not.

15 314 Q. You said Superintendent Finan mentioned the 12:47  
16 difficulties in respect of policing arising from the  
17 fact that Garda Harrison was prosecuted and convicted  
18 of no insurance. You dealt with that less than ten  
19 minutes ago.  
20 A. No. What I said was, if it came up that there was an 12:47  
21 issue in terms of the confidence in policing, but it --  
22 the meeting would not have gone into detail about Garda  
23 Harrison. The people around that people would know in  
24 terms of, that the court case was on and there would  
25 have been a discussion, and Superintendent Finan was 12:47  
26 reporting back in that an issue had been raised in  
27 terms of -- and I think the first time that it comes in  
28 is some time around the 3rd, it may not even have been  
29 discussed at the PALF.

1 315 Q. You said it was discussed at the PALF.  
2 A. No, what I said was, I needed to check whether it came  
3 up at PALF. But if it did, it would be in passing that  
4 there was an issue. It wouldn't have gone into any  
5 detail or any concentration. Or that this was matter 12:48  
6 about Garda Harrison.

7 316 Q. We do know that Superintendent Archbold notes that  
8 after the events in October that Sergeant Durkin was in  
9 fact agitated to have a plan, to have Garda Harrison  
10 put into the comms through in Letterkenny because of 12:48  
11 this very reason.

12 A. Yeah, there are reports to that effect.

13 317 Q. Yes.  
14 A. But they wouldn't have been discussed at the PALF, you  
15 know what I mean. It wouldn't have been gone into that 12:48  
16 detail.

17 318 Q. We don't know, see, and you don't put these things into  
18 your statement, you don't tell us these things, until  
19 they come out as answers to questions. You don't tell  
20 us that the question of the conviction for no insurance 12:48  
21 was in fact relevant to thinking over the course of the  
22 summer or the autumn of 2013. You don't tell us that.  
23 It's not in your statement. It's not referred to. And  
24 in fact it's Superintendent Archbold's notes that make  
25 it clear that in November of that year, certainly 12:49  
26 Sergeant Durkin was agitating strongly to have Garda  
27 Harrison moved out of Donegal Town. And we only  
28 received that last week through no fault of anybody,  
29 because it didn't appear to be directly relevant, it

1 was after the event, although it was also after the  
2 time that Sergeant Durkin gave his evidence. But if  
3 you had put this detail into your statement, shown us  
4 the PALF notes insofar as they relate to Garda  
5 Harrison, PALF minutes in relation to Garda Harrison, 12:49  
6 we could then see some context, but as matters stand we  
7 have now moved forward at least practically a calendar  
8 month in terms of your involvement with Garda Harrison.  
9 It had been 2nd October in your statement. It's now  
10 5th September. We know at that time that Garda 12:50  
11 Harrison had been convicted, that is a clear fact, in  
12 respect of the non-insurance. And you have commenced  
13 inquiries with Inspector Kelly to gather together any  
14 other reports about Garda Harrison, isn't that right?  
15 A. You have made a long statement there and I just -- you 12:50  
16 know what I mean, I need -- you know what I mean, I  
17 don't agree with what you are saying.  
18 319 Q. What don't you agree with?  
19 A. I don't agree that all this agitation by Sergeant  
20 Durkin and all of that. He's only reporting in what 12:50  
21 people in the community are saying.  
22 320 Q. No, no.  
23 A. In terms of -- I know you have said a lot.  
24 321 Q. It's not a matter for you in your evidence.  
25 A. But please, may I, just to answer you. You are 12:51  
26 chunking a lot of stuff together that we need to break  
27 down in chunks as to how it happened.  
28 322 Q. Right.  
29 A. Because all this is evolving.

1 323 Q. Superintendent Archbold's notes, I will come back to  
2 that point with you, but if we are dealing with the  
3 other matters, in May the conviction had taken place.  
4 A. Yes.

5 324 Q. I'm suggesting to you, and that is all I can do, 12:51  
6 because I haven't been sent any minutes in relation to  
7 Garda Harrison in PALF meetings, I'm suggesting to you  
8 that by September issues had been raised, isn't that  
9 correct? Isn't that correct?

10 A. Sorry, I don't know what question you're asking me. Oh 12:51  
11 yeah, call one had come in, we'll call it call one,  
12 from Rita to Sergeant Durkin.

13 325 Q. No, no, no. Issues had arisen in relation to the fact  
14 that Garda Harrison had been convicted.

15 A. Sorry. 12:52

16 326 Q. That had come to your attention?

17 A. Sorry, I was getting confused. Yeah.

18 327 Q. At PALF meetings?

19 A. No, not at PALF meetings. No. I think the first real  
20 report of that came in on the 3rd October. 12:52

21 328 Q. Are you saying to me that nobody at a PALF meeting had  
22 mentioned that Garda Harrison had been convicted in  
23 May?

24 A. Well, I wouldn't -- I wouldn't have been at those  
25 meetings, as I was out. But I cannot see it coming up. 12:52  
26 But it's a matter that I can check because there will  
27 be a record of those meetings.

28 329 Q. And then on the 5th September you're commencing an  
29 inquiry with Inspector Kelly, did you reference that in

1 your officers journal?

2 A. No. I have already said that I haven't and I haven't  
3 included it in my statement. But I haven't  
4 deliberately or inadvertently or -- any of those, and I  
5 wasn't acting with malice by not putting it in. 12:53

6 CHAIRMAN: Maybe we ought to go to page 330-331 in  
7 relation to that.

8 MR. MCGUINNESS: 320-321.

9 CHAIRMAN: Is it 320?

10 MR. MCGUINNESS: 330. 12:53

11 CHAIRMAN: It's volume 2 -- No, it's volume 1.

12 330 Q. MR. HARTY: 321 is your letter. And you're looking for  
13 it at that stage.

14 A. Yeah, that's what we're speaking about --

15 331 Q. Yes. 12:53

16 A. -- when I'm asking, that eventually Inspector Kelly  
17 responds.

18 CHAIRMAN: What I am wondering about, Mr. Harty, is:  
19 Surely it is her job to do this. I mean, if someone is  
20 complaining about a member of the Gardaí about domestic 12:53  
21 violence is it not the job of someone in the Gardaí to  
22 go into it?

23 MR. HARTY: It is the job of anybody coming before this  
24 Tribunal to cooperate fully and to give as much detail  
25 as is possible in relation to relevant matters. This 12:54  
26 is a relevant matter.

27 CHAIRMAN: But here you actually have the emails, you  
28 know.

29 MR. HARTY: They were not contained within the

1 statement of evidence from chief superintendent --  
2 CHAIRMAN: They're in the same volume, Mr. Harty.  
3 volume 1.  
4 MR. HARTY: They're not in her statement. They weren't  
5 appended to her statement. They weren't attached to 12:54  
6 her statement. The detail isn't given in relation to  
7 her statement.  
8 CHAIRMAN: But they're all put there for the purpose of  
9 informing people as to what is going on, appendices,  
10 etcetera, etcetera, etcetera. God knows I have read 12:54  
11 loads and loads and them.  
12 MR. HARTY: I am asking why this witness withheld in  
13 her own statement matters which are --  
14 CHAIRMAN: Sorry, Mr. Harty, you can't accuse someone  
15 of withholding something when it is actually here. 12:54  
16 MR. HARTY: She didn't put it into her statement.  
17 CHAIRMAN: But I mean, how would have that helped you?  
18 I mean, you can surely put two and two together.  
19 MR. HARTY: Garda Harrison has been criticised at  
20 length for stuff, things that he put into his statement 12:54  
21 which was considered to be irrelevant. He has been  
22 criticised for the use of words in his statement.  
23 Marisa Simms has been criticised --  
24 CHAIRMAN: Mr. Harty --  
25 MR. HARTY: -- for the use of words -- sorry, sir, if 12:55  
26 you don't mind, sir.  
27 CHAIRMAN: No, no, Mr. Harty, just hang on a minute  
28 please. Who has criticised Garda Harrison?  
29 MR. HARTY: Counsel's opening for the Tribunal has



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criticised Garda Harrison.

CHAIRMAN: So, you're saying counsel are wrong. Maybe it's a good time now to break. We have been here for two hours. Do you think you will require another hour or so?

12:55

MR. HARTY: At least.

CHAIRMAN: And at least another hour? So, should we schedule no witnesses for this afternoon?

MR. HARTY: I think at this stage it is looking unlikely.

12:55

CHAIRMAN: Sorry, Mr. McGuinness.

MR. MCGUINNESS: We hope to get through the other witnesses, I'm going to hold them here. Thank you.

CHAIRMAN: We could sit late.

THE HEARING THEN ADJOURNED FOR LUNCH

1           THE HEARING CONTINUED AFTER LUNCH AS FOLLOWS:

2

3 332 Q. MR. HARTY: Good afternoon, chief superintendent. So  
4 just in relation to the decision on 5th December to  
5 contact Inspector Kelly, that isn't mentioned in your  
6 statement of evidence to the Tribunal? 14:01

7 A. That's correct.

8 333 Q. Can you tell me what other decisions you made prior to  
9 that that aren't contained in your statement?

10 A. Prior to the 5th? 14:02

11 334 Q. Yes.

12 A. I would have to go through all of the documentation.  
13 what I have in the 5th, you can clearly see what is in  
14 the report in my statement.

15 335 Q. You see, the difficulty I have, and the importance in  
16 relation to all of this, is that that correspondence  
17 only arises by virtue of the attachments to, I think  
18 it's Superintendent McGovern's statement, and if  
19 Superintendent McGovern hadn't been so careful, we  
20 wouldn't have been aware of that. 14:02

21 A. Well, I would have provided all of the paperwork that I  
22 had under my possession and control, I was coming to  
23 give evidence, if requested by the Chairperson, and I  
24 would have been able to give in evidence why I  
25 appointed Inspector Sheridan. 14:02

26 336 Q. You are the chief superintendent for the division where  
27 all of this happened?

28 A. That's correct.

29 337 Q. I have to put it to you that you should have told the

1 Tribunal in your own statement what you did or didn't  
2 do?

3 A. I have provided all of the information, as I said, all  
4 of the documents, electronic format, that I had in my  
5 possession. I indicated that I would come and give 14:03  
6 evidence if required and I would provide clarity. It  
7 wasn't that I was trying to hide any decisions that I  
8 made or --

9 338 Q. We simply don't know what decisions you made, we have  
10 some documentation that other people have revealed. 14:03

11 A. My key decisions are all documented in terms of -- and  
12 on the 5th December, as you call it, that was a means  
13 of me gathering information to assist me in my  
14 decision-making process. I hadn't actually made any  
15 decision at that stage. 14:03

16 339 Q. Okay. Your decision on 27th is not documented anywhere  
17 except that it then was documented by Superintendent  
18 McGovern, isn't that correct?

19 A. Yes. And it's quite evident that I appointed Inspector  
20 Sheridan to carry out the inquiries I tasked her with 14:03  
21 but I have no written formal notification of appointing  
22 her.

23 340 Q. But it's not mentioned in your statement. You have no  
24 paperwork in relation to it, the only reason we know it  
25 is because Superintendent McGovern saw fit to note it 14:04  
26 in his journal, and then to include it in his  
27 statement. But had he not done so we would not have  
28 known at all.

29 A. I think it was quite clear from the paperwork and all

1 of the documentation that I supplied that Inspector  
2 Sheridan had been asked to go out and follow up on  
3 those inquiries on my behalf. There is no formal -- as  
4 I have said, there is no formal notification. I did  
5 not include it in my statement and I didn't include it 14:04  
6 in any journal or any other paperwork. And I have  
7 supplied full disclosure to the Tribunal.

8 341 Q. In respect of PALF meetings in September, they are a  
9 weekly meeting?

10 A. Sorry, could I correct you on that? 14:04

11 342 Q. Yes.

12 A. The PALF meetings were 2010. They came in, in 2010 and  
13 then in 2013 they changed to PAF meetings and they  
14 represent Performance Accountability Framework  
15 meetings. 14:05

16 343 Q. Okay.

17 A. So that was my --

18 344 Q. Yes. And they were weekly in the division, isn't that  
19 correct?

20 A. Weekly with the divisional officer, yes. 14:05

21 345 Q. And then there are also higher up meetings between the  
22 divisional officer and the assistant commissioner,  
23 isn't that right?

24 A. That's correct, yes.

25 346 Q. And do they take place weekly? 14:05

26 A. Monthly.

27 347 Q. Monthly. In relation to September 2013, there would  
28 have been four PAF meetings?

29 A. In the month of September, yes.

1 348 Q. Yes. We haven't received any minutes in relation to  
2 those.  
3 A. More than likely because there's no relevance in them.  
4 349 Q. But you determine the relevance. But those meetings  
5 were with superintendents and inspectors, isn't that 14:05  
6 correct?  
7 A. Yeah, they are weekly meetings and they look at our  
8 crime figures, they look at our budgets, they look at  
9 security matters, they look at key performance  
10 indicators, they look at targets that we set ourselves 14:06  
11 and are we meeting those targets in terms of  
12 implementation. There is a small section at the end in  
13 terms of personnel, long-term sickness. The likes of a  
14 case like this would not be discussed in depth.  
15 350 Q. It would be mentioned? 14:06  
16 A. Briefly in the sense that the member was out sick,  
17 hadn't returned from sick or was up in court or -- if  
18 it needed to go in, in more detail it would be a  
19 one-to-one meeting with the particular superintendents.  
20 They are very short meetings, they are over within an 14:06  
21 hour-and-a-half and people go back to their districts  
22 and run their districts. But we wouldn't spend a lot  
23 of time on one particular case.  
24 351 Q. I appreciate that. But the case that is being  
25 mentioned is relevant? 14:06  
26 A. It's a relevant case, but the PAF meeting wouldn't be  
27 the meeting that we would determine decisions or  
28 progress. But certainly if -- I can go back and  
29 actually get those PAF meetings and make them available

1 to the Tribunal if required.

2 352 Q. And you would have had a PAF meeting with the assistant  
3 commissioner in September?

4 A. In that month, yes.

5 353 Q. Do you know what date that was? 14:07

6 A. Not off the top of my head, no, but that can be easily  
7 got.

8 354 Q. And you would have had one in October?

9 A. October, yes.

10 355 Q. And I take it certainly in October the decision to seek 14:07  
11 the suspension of a member would come up?

12 A. Well, I would have already briefed him by way of  
13 report. And at that PAF meeting in October it would  
14 have the four chief superintendents for the northern  
15 region, so it would be four divisions we would be 14:07  
16 discussing and certainly we wouldn't be  
17 concentrating -- sometimes maybe the commissioner may  
18 ask me to stand back, he may want to talk to me about a  
19 particular issue, but I had already forwarded him the  
20 paperwork in relation to this. So, I have no 14:07  
21 recollection of having any one-to-one meetings with him  
22 on it.

23 356 Q. But yet again, in terms of there being minutes in  
24 relation to it, we haven't seen those, they haven't  
25 been provided -- 14:07

26 A. No, I think they can be made available.

27 357 Q. -- to the Tribunal. Prior to the 5th September then,  
28 you received this statement on the -- 24th August  
29 statement. Do you know did you do anything else

1 between the receipt of that statement and the request  
2 on 5th September?

3 A. Can I go through my activity log and I will be able to  
4 tell you? I would have emailed out reports to the  
5 superintendents in Glenties and Milford in relation to 14:08  
6 the upcoming wedding and the information that there was  
7 going to be some incident.

8 358 Q. That is the 24th September?

9 A. 24th September, yeah. But I would have emailed it out  
10 on 27th. 14:09

11 359 Q. Yes.

12 A. And I spoke with Superintendent McGovern on 27th, and  
13 we have discussed that.

14 360 Q. Yes. And you didn't mention, put into your officers  
15 journal the emails in relation to that. If there had 14:09  
16 been an incident at that wedding would it not have been  
17 important that your steps taken to prevent such an  
18 incident would be noted in your officers journal?

19 A. As I have said, and I don't know how many times I can  
20 say it, I didn't put it in my officers journal but I 14:09  
21 followed up by way of reports, electronic emails. Any  
22 decisions I made is documented in the paperwork and  
23 correspondence. I don't have a note of 'I decided to  
24 send a report to Glenties', because if I was to do that  
25 in relation to every decision I make and every person I 14:09  
26 speak to, frankly I wouldn't be getting a lot of work  
27 done. So I didn't put it into my journal but as soon  
28 as I got the reports highlighting there was going to be  
29 possible disturbance at the wedding I put both

1           superintendents on notice with a copy of the reports on  
2           what information I had.

3 361 Q.    But you accept that if something had happened at that  
4           wedding and the Gardaí hadn't reacted to it, it could  
5           well have been an issue as to why you hadn't noted it   14:10  
6           in your journal?

7           A.    No, I don't think it would come up in the journal. It  
8           would be - I presume, if there was an inquiry - what  
9           information did I have and how did I act on it? And I  
10          have a clear paperwork trail as to what I did.           14:10

11 362 Q.    The point of officers journals is that it is a  
12          contemporaneous record of why you did something and  
13          what you did.

14          A.    Exactly. But every decision and every action I take  
15          and every little paperwork that I look for in terms of   14:10  
16          assisting me in my decision-making I don't document in  
17          the officers journal because there is electronic  
18          reports and electronic data that shows exactly what  
19          pathway I followed or what action that I took. And in  
20          relation to that, what I did was, when I received the   14:10  
21          reports, I sent it to superintendents in Glenties and  
22          Milford to advise member that the wedding was coming up  
23          and there would be a possible disturbance at the  
24          wedding.

25 363 Q.    There is no electronic footprint in respect of your   14:11  
26          decision on 27th September to appoint Inspector  
27          Sheridan, do you accept that?

28          A.    Yes. Because I didn't send out anything electronically  
29          on it.



1 364 Q. Which is why it's important that it's noted in your  
2 journal.  
3 A. No, I haven't got it in my journal. You know what I  
4 mean, I am quite clear how it happened. And, it's not  
5 in my journal. 14:11

6 365 Q. And then on 2nd October -- just so we are clear, did  
7 you do anything between 27th September and 2nd October?  
8 A. Could I just -- would you give me one moment, please?  
9 Yes, on the 1st October Inspector Kelly speaks with me  
10 in relation to the emails he is sending regarding Garda 14:12  
11 Mahon's report, and I have a discussion with him and I  
12 email a copy of that to Superintendent McGovern and the  
13 Donegal DV.

14 366 Q. And you didn't note that in your journal either?  
15 A. I didn't, no. 14:12

16 367 Q. And you don't mention that conversation in your  
17 statement of evidence to the Tribunal either?  
18 A. I don't, no.

19 368 Q. On 2nd of October, can you recall what time it was that  
20 you spoke to Sergeant Collins? 14:12  
21 A. It was sometime in the afternoon, around 4:00 in the  
22 afternoon. I was returning from a meeting with the  
23 council and I met him in the station yard in  
24 Letterkenny.

25 369 Q. And you had already read his report? 14:12  
26 A. I had received the report up from -- on 1/10 I received  
27 the report from Inspector Kelly and a copy of Garda  
28 Mahon's report.

29 370 Q. And that included that Sergeant Collins did a report as

1 well?

2 A. Yes, that was probably included in it.

3 371 Q. And you read that?

4 A. I would have read that, yes.

5 372 Q. Did you read that before you bumped into Sergeant 14:13  
6 Collins or after?

7 A. I am not clear on that, I don't know. No, I don't  
8 think I did actually. No, I didn't see it at that  
9 time. Because when Sergeant Collins spoke to me I know  
10 I was alarmed at what he was telling me and I went 14:13  
11 straight to look for Inspector Sheridan. So if I read  
12 it beforehand I probably maybe would have looked for  
13 Inspector Sheridan before I went out to the other  
14 meetings.

15 373 Q. Right. Because Sergeant Collins said there was 14:13  
16 nothing, that he felt the Gardaí were being played, is  
17 that what alarmed you?

18 A. I didn't see that at that time. I think that was  
19 afterwards I seen that report in relation to the  
20 wedding, where he was saying that the Gardaí were being 14:13  
21 played.

22 374 Q. Yes.

23 A. It was a tug, yes.

24 375 Q. Well, surely he said that to you in the car park?

25 A. No. In the car park what he was saying to me, you know 14:14  
26 that he had spoken with Paula McDermott and that it was  
27 at that stage that he mentioned that there had been an  
28 incident and burning and burying was mentioned. And I  
29 was alarmed at that when I heard that, you know, that a

1 member of An Garda Síochána would make such  
2 allegations.

3 376 Q. But surely he said to you what he said in his report?  
4 A. No, it was quite brief. Because as soon as he  
5 mentioned that to me I was quite concerned. 14:14

6 377 Q. Okay. So, what did you do? You rushed off and asked  
7 him to follow you down?  
8 A. No, I got out of the car and I said -- I think actually  
9 he was leaving to go home that day, if that is my  
10 recollection. I asked him to come in, that I was 14:14  
11 looking for Inspector Sheridan. She wasn't in her  
12 office and I found her down near the day room, which is  
13 down near the public office.

14 378 Q. And during that walk to the day room he didn't say to  
15 you that he felt that the Gardaí were being played? 14:14  
16 A. No, he didn't go into detail with me.

17 379 Q. But you had some conversation?  
18 A. We had a conversation about the allegations that were  
19 contained, contained from the report of Paula  
20 McDermott, that there was mention of -- 14:15

21 380 Q. I find it hard to believe that an experienced officer  
22 such as Sergeant Collins wouldn't have included his own  
23 qualitative assessment in relation to it.  
24 A. At that time, no, that wasn't provided.

25 381 Q. But he had made a qualitative assessment of what Paula 14:15  
26 McDermott was up to.  
27 A. Yes.

28 382 Q. He had. And are you saying to me he didn't relay that  
29 to you?

1 A. Not at that stage.

2 383 Q. So you went down and you spoke to Inspector Sheridan,  
3 you were alarmed at that stage?

4 A. I was alarmed at what Sergeant Collins had been telling  
5 me about burning and burying, and you know what I mean. 14:15  
6 I was really concerned about that, when I heard those  
7 words. Because we had particular cases in Donegal  
8 before where this had happened and it was causing an  
9 alarm -- you know, a sense of alarm for me.

10 384 Q. Your alarm, surely the first thing you would have done 14:16  
11 is ask Sergeant Collins what he thought about it all?

12 A. No. I said to him I am going to appoint Inspector  
13 Sheridan, will you come with me? And we went looking  
14 for her. And the reason that I wanted Sergeant Collins  
15 to come with me, because he had been stationed in 14:16  
16 Raphoe, he had built up a good rapport with the  
17 community in Raphoe, he knew where the people were  
18 living and, in my mind, he was the best place to take  
19 Inspector Sheridan out to meet Rita McDermott.

20 385 Q. You went further than that, you said he had a good 14:16  
21 rapport with Rita McDermott?

22 A. Yes, and the people of Raphoe.

23 386 Q. No.

24 A. Sorry, with Rita and the people of Raphoe. He was a  
25 highly-respected member of An Garda Síochána in Raphoe, 14:16  
26 and I knew that, that the people of Raphoe liked  
27 Sergeant Collins and worked very well with him as their  
28 community sergeant.

29 387 Q. Well, was that discussed with Sergeant Collins as to

1           how well he knew Rita McDermott?

2           A.    Not at that time, no.

3 388 Q.    Because he was certain he was sent out because he knew  
4           Rita McDermott and had a rapport with her?

5           A.    Yeah. well, my memory was he told me that --           14:17

6 389 Q.    So how did you know that?

7           A.    He told me actually he knew the McDermott family from  
8           his time working in Raphoe.

9 390 Q.    And that he knew Rita McDermott?

10          A.    Yes, from his time working in Raphoe.           14:17

11 391 Q.    Yes. And he told you all of this?

12          A.    In the conversation he told me that he would have  
13          made -- he telephoned Paula and that he knew the  
14          McDermotts from his time working in Raphoe and he felt  
15          that he had a good rapport and relationship with them.   14:17

16 392 Q.    So you obviously asked him what did he think of Paula  
17          McDermott coming to the station to make this report?

18          A.    Not at this time, no, no. No, no, I wanted -- at that  
19          stage, I wanted Inspector Sheridan -- I wanted to get  
20          Inspector Sheridan before she went off duty.           14:18

21 393 Q.    But you knew -- you are walking together from the car  
22          park to the day room. In fact you had gone to her  
23          office first. And you are discussing how well he knows  
24          the McDermott family, and yet you are not asking him  
25          what he thinks of Paula McDermott making this --       14:18

26          A.    No, I didn't go into that conversation.

27 394 Q.    At all?

28          A.    No.

29 395 Q.    Even though it merits comment in his own report?

1 A. Yeah, but not at that time.

2 396 Q. The report preceded your conversation.

3 A. Mm-hmm, but I hadn't sight of it.

4 397 Q. I appreciate that. But you are discussing with him how  
5 well, he knows the McDermott family? 14:18

6 A. Mm-hmm.

7 398 Q. And you are not in any way assessing his view as to  
8 whether or not Paula McDermott might be overstating or  
9 understating anything?

10 A. No, I didn't ask him to assess or validate the 14:18  
11 information at that stage, no.

12 399 Q. No. But he already had assessed it and had come back  
13 with a question-mark on the report, isn't that right?

14 A. Yeah. But I do think, and noting from his report, that  
15 he did feel the threats were live threats. 14:19

16 400 Q. Did he?

17 A. He did. I think it's contained in his report.

18 401 Q. Did he say that to you at the time?

19 A. No, no. We didn't do any assessment or validation on  
20 the information that was contained. 14:19

21 402 Q. You didn't?

22 A. Can we bring up his report, please?

23 403 Q. He says in relation to it -- but you see --

24 A. Oh sorry.

25 404 Q. -- we are not talking about the report, you hadn't read 14:19  
26 the report at that stage?

27 A. No, no. And that is what I am saying; we didn't assess  
28 it or validate it.

29 405 Q. Yeah. But he didn't -- the point about it is, you

1            assessed his relationship with the McDermotts?

2            A.    Mm-hmm.

3 406 Q.    You discussed with him whether or not Rita McDermott

4            would make a statement to him, I presume?

5            A.    No, no.    No, no. 14:19

6 407 Q.    No?

7            A.    No, I wanted Inspector Sheridan to do that.

8 408 Q.    But him to be present?

9            A.    Yes.    Because of his relationship with the family and

10           the fact that he was the community sergeant in Raphoe 14:19

11           and that the people of Raphoe liked him and he worked

12           well with them.

13 409 Q.    Except for the fact that your evidence on Friday, that

14           the McDermotts had a fractious relationship with An

15           Garda Síochána? 14:20

16           A.    And that is why particularly I asked Sergeant Collins

17           because I knew that he personally had a very good

18           relationship and he would be able to open doors that I

19           possibly or other people mightn't have been able to

20           open. 14:20

21 410 Q.    Why did the doors need to be opened?

22           A.    Because when you are dealing with a family in a

23           vulnerable situation like this, where the victims --

24           perpetrator is a member of An Garda Síochána and as

25           there is a previous relationship with the family and An 14:20

26           Garda Síochána in very difficult circumstances, it is

27           not the normal relationship that you have in these type

28           of cases, so therefore, you have to be respectful and

29           put your shoes on the people making the reports and

1 have empathy with them and to try and support them  
2 through the process of making a complaint and coming  
3 forward.

4 411 Q. In other words, he was important, if you were to have a  
5 statement from Rita McDermott to have somebody there to 14:20  
6 relax her, to put Rita McDermott at ease?

7 A. Well, I thought it was important that Sergeant Collins  
8 was -- would be able to identify with her, they had a  
9 shared reference from the community of Raphoe, and that  
10 there was a certain level of trust between both of 14:21  
11 them. Because Goretti Sheridan was new to the division  
12 and wouldn't have built up a rapport knowing the people  
13 of Raphoe or the McDermott family.

14 412 Q. And in order to open the door, for Goretti Sheridan to  
15 take the statement, it was important that Jim Collins 14:21  
16 go?

17 A. Jim Collins was the introductory method --

18 413 Q. Yes.

19 A. -- into the family.

20 414 Q. Why couldn't Sergeant Jim Collins have taken the 14:21  
21 statement?

22 A. I looked at it that Inspector Sheridan was a specialist  
23 interviewer in this regard, that she had a lot of  
24 experience in dealing with domestic violence. It was a  
25 female, and I thought sometimes it's easier to make a 14:21  
26 statement to a female when you are in a situation like  
27 that. So --

28 415 Q. Rita McDermott wasn't in any situation and she was  
29 somebody who was entirely comfortable with Jim Collins,



1 according to your evidence?

2 A. Yes, but also when you are making a statement in  
3 relation to domestic violence and other issues which  
4 can be quite personal and intimate, I felt that  
5 possibly that Inspector Sheridan would build up a 14:22  
6 rapport with her and that there would be a certain  
7 understanding between them in coming forward and making  
8 a statement. It was very difficult for Rita --

9 416 Q. I am not talking about Marisa Simms making a statement,  
10 I am talking about Rita McDermott. 14:22

11 A. No, excuse me, I am sorry, it was very important that  
12 Inspector Sheridan had built up a rapport and trust and  
13 confidence with Rita McDermott, that she felt  
14 comfortable. Because it's very difficult for a mother  
15 of a victim to come forward to An Garda Síochána where 14:22  
16 the perpetrator is actually a member of An Garda  
17 Síochána and come to his colleagues in the station and  
18 tell her story of what she feels is happening, and we  
19 have to take it on face value.

20 417 Q. She had no difficulty going and talking to Sergeant 14:22  
21 Collins and she had already -- or to David Durkin,  
22 Sergeant Durkin, did she?

23 A. No, she had known, I understand, Sergeant Durkin from  
24 his time in working in Raphoe and she had confidence in  
25 him but I felt that Inspector Sheridan was the person 14:23  
26 best placed and the most skillful in this area to take  
27 the statement.

28 418 Q. And yet in order for her to be able to take the  
29 statement it was important that Sergeant Collins go to

1 make Ms. McDermott at ease?

2 A. And there are occasions when you do need two people,  
3 but in situations like this I felt that because  
4 Sergeant Collins had been stationed in the area,  
5 well-respected, that he was the person to make the 14:23  
6 introduction rather than somebody cold calling at the  
7 door, that Rita McDermott didn't know.

8 419 Q. When were you contacted by Inspector Sheridan after  
9 that?

10 A. The next phone call that I had from Inspector Sheridan 14:23  
11 I think the evening that the statement was taken from  
12 Rita, she contacted me to say that Rita McDermott had  
13 make a statement.

14 420 Q. Where is that noted?

15 A. There is no note. I have made all my notes available 14:23  
16 and if you don't have my note there, I don't have any  
17 note in my diary, I am not making any decision, she is  
18 just informing me that Rita McDermott has made a  
19 statement.

20 421 Q. Okay. Directive 120/04: 14:24  
21  
22 "The daily record will include all matters/incidents of  
23 importance."  
24

25 This was a matter where it was important that an 14:24  
26 inspector and a sergeant go immediately to Raphoe to  
27 get a statement. Where is the record?

28 A. I have no record, Judge.

29 422 Q. You have no record again, isn't that correct? We don't

1 know what was said in that conversation between  
2 yourself and Inspector Sheridan because you didn't keep  
3 a record of it, isn't that correct?

4 A. I know that she told me that she had obtained a  
5 statement from Rita McDermott. 14:24

6 423 Q. You tell us now that she told you that. You have no  
7 record of it.

8 A. Well, it was a quick phone call to say I have had a  
9 statement from Rita McDermott.

10 424 Q. And what did you say to her? 14:25

11 A. And that she was following up on inquiries and that she  
12 was hoping that she would be able to meet with Marisa  
13 Simms and get a statement from her in due course.

14 425 Q. And what did you say to her?

15 A. Fine, you continue with your inquiries. 14:25

16 426 Q. What did you say to her?

17 A. That is fine, you continue with your inquiries.

18 427 Q. That is fine, you continue with your inquiries?

19 A. And they are my recollection of the words to that  
20 effect. Not every word is -- 14:25

21 428 Q. There is no report from Inspector Sheridan to say she  
22 had taken the statement?

23 A. No.

24 429 Q. It's all done on the phone?

25 A. No, no. 14:25

26 430 Q. Inspector Sheridan is also governed by directive  
27 120/04, isn't that correct?

28 A. Yes.

29 431 Q. Because "all operational officers and inspectors"?

1 A. Yes.

2 432 Q. "The daily record will include all investigations and  
3 the reasons for commencing same. All matters/incidents  
4 of importance." She is obliged to keep a daily record  
5 as well, isn't she? 14:25

6 A. But she is continuing her investigation.

7 433 Q. No, no, she is obliged to keep a daily record?

8 A. But I would not expect Inspector Sheridan to tell me  
9 every phone call she makes, every statement she takes,  
10 it just wouldn't be practical in terms of -- 14:26

11 434 Q. She is not supposed to you advise you. She is supposed  
12 to keep a daily record.

13 A. Yes, but I wouldn't even expect -- if I went to look at  
14 her journal, I wouldn't expect to find that detail in  
15 her journal. 14:26

16 435 Q. Sorry, this is when the investigation has commenced.

17 A. Yes, I wouldn't expect --

18 436 Q. You wouldn't expect to find a reference to the  
19 commencement of an investigation in an inspector's  
20 daily journal? 14:26

21 A. But sure the paperwork speaks for itself.

22 437 Q. No, it doesn't.

23 A. The statement is there, that she took it on a  
24 particular date and a particular time.

25 438 Q. The confidence in policing that arose after the Morris 14:26  
26 Tribunal, it was all focused in Donegal, in Donegal we  
27 had to prove we were better and more to the letter than  
28 everyone else, that was your evidence on Friday, and  
29 yet a key recommendation of the Morris Tribunal, which

1 turned into directive 120/04, which expressly deals  
2 with what should have been done in maintaining public  
3 confidence in policing; Inspector Sheridan should have  
4 put this in her daily journal.

5 A. I don't agree with you. I have been involved in many 14:27  
6 an investigation and every statement I take I don't  
7 record it in my journal that I took a statement from A,  
8 B, C and D.

9 439 Q. "The daily record will include the following: All  
10 investigations and the reasons for commencing same." 14:27

11  
12 "All investigations and the reasons for commencing  
13 same."

14  
15 From Inspector Sheridan's point of view, she commenced 14:27  
16 that investigation on 2nd October, she did not maintain  
17 a daily record -- or at least she hasn't disclosed a  
18 daily record from her officers journal in relation to  
19 it. But you are now telling us that she wasn't obliged  
20 to? 14:28

21 A. If I was carrying out an inspection into Inspector  
22 Sheridan's journal I wouldn't expect to find every  
23 statement that she took, every person she spoke to,  
24 every -- that would be contained within the  
25 investigation file. 14:28

26 440 Q. "Commencement of the investigation is to be recorded in  
27 the daily record." Is it or is it not?

28 A. Yeah, but I didn't make any formal appointment to  
29 Inspector Sheridan. Inspector Sheridan may have made a

1 record that the chief appointed her.

2 441 Q. She said she was the lead investigator, your evidence  
3 is that she went out, that Sergeant Collins was to act  
4 as an introduction --

5 A. Mm-hmm. 14:28

6 442 Q. -- and then she was the investigator to take the  
7 statement. That is the day on which the statement --  
8 the investigation commenced from her point of view?

9 A. Yes, yes.

10 443 Q. It is something which directive 120/04 requires,  
11 requires that she enter in her officer journal. 14:28

12 A. Judge, for very serious crime investigation files there  
13 is a section where I would appoint senior investigating  
14 officers and that is done on paper, that I would  
15 appoint somebody to conduct a particular investigation. 14:29  
16 But in this particular case, because of the way the  
17 events unfolded, that I actually went seeking her out  
18 and asked her to go, I didn't follow up with any paper  
19 to say that you are appointed to be the senior  
20 investigating officer in this case. 14:29

21 444 Q. You are telling us that she was not required to enter  
22 in her officers journal a daily record in respect of  
23 this, is that what you are telling us?

24 A. My expectation --

25 MR. MCGUINNESS: Chairman, I wonder could I just 14:29  
26 intervene because from our perspective, I am not sure  
27 that this is relevant matter for the chief  
28 superintendent in this sense: That Inspector Sheridan  
29 has been through the box and Mr. Harty obviously

1 cross-examined her, and I am just not sure where it's  
2 bringing us, because there is no dispute that a  
3 statement was taken. Ms. McDermott gave her evidence,  
4 Rita McDermott, and she was represented. So I think  
5 any issues about the taking of the statement, it's  
6 clear the statement was made and I don't see the  
7 relevance of this line at this point.

14:30

8 MR. HARTY: I can explain.

9 MR. MCGUINNESS: I am sure Mr. Harty has many other  
10 areas to cover.

14:30

11 MR. HARTY: I can explain that very clearly to  
12 Mr. McGuinness. This particular directive is  
13 confidential document for use only by members of An  
14 Garda Síochána. It only came to my attention yesterday  
15 evening, so I wasn't aware -- unlike the Garda team, I  
16 didn't know this directive existed. But it does exist,  
17 and it's very clear. And it's very clear why, and just  
18 to assist Mr. McGuinness:

14:30

19  
20 "In the absence of any earlier recording of an event  
21 there is no point of comparison. There is therefore  
22 nothing to hinder --"

14:31

23  
24 CHAIRMAN: Honestly, Mr. Harty, I know it off my heart.  
25 I will recite it for you better than any bit of  
26 Shakespeare or whatever that I know, but  
27 Mr. McGuinness' point is: You know, where are we going  
28 with this? What is, if you like, the allegation? And  
29 fair enough, I think you make a good point in saying,

14:31

1 look, it's not for me to make an allegation in relation  
2 to this, but I am here trying to inquire and it  
3 actually does help if parties have a definite view.  
4 Now, as I understood it, the definite view is that,  
5 look, if I use the word conspiracy no doubt someone is 14:31  
6 going to refer to the conspiracy room or something like  
7 that, but in fact, it simply means that people are  
8 breathing together, conspirare, what it actually means  
9 is that people are working towards the same end. And  
10 here I come to the point, which is that I understood 14:31  
11 the whole point of this was that in some way the chief  
12 superintendent, as indeed Garda Harrison said it in his  
13 statement, was looking for an opportunity to get at.  
14 That is what I understood and indeed it's explicitly in  
15 Garda Harrison's own statement. I mean, he says that 14:32  
16 they had a row and this is at the relevant time over  
17 the wedding, and he said it was a very normal argument  
18 that many couples experience, that there was no  
19 violence or threat of violence, just an exchange of  
20 words that resulted in Marisa Simms deciding to stay 14:32  
21 with her sister until after the wedding, but that a  
22 complete fabrication of events was transmitted to  
23 Sergeant Durkin by Marisa Simms' family to the effect  
24 that Garda Harrison had been violent to Marisa and  
25 thrown her out of the house and then Marisa was then 14:32  
26 bombarded with calls by Inspector Sheridan pressuring  
27 her to make a statement. Now that is what he said to  
28 the Tribunal in his statement of 7th of March 2017.  
29 And I suppose what I tend to wonder about is: If that



1 is the trajectory of the case then what is the extent  
2 to which he says that Chief Superintendent McGinn was  
3 in on this in the event that it happened at all? That  
4 is what I am really wondering.

5 MR. HARTY: That's precisely where we are, sir, in 14:33  
6 relation to it. And what this Tribunal needs to be  
7 fully alert to - because this Tribunal was fully aware  
8 of what recommendations had to be made as a result of  
9 the Morris Tribunal - is that, in terms of the  
10 information it has gotten, the paper trail it ought to 14:33  
11 have if these decisions are made in accordance with the  
12 Garda rules of An Garda Síochána, there should be a  
13 paper record maintained by both Inspector Sheridan and  
14 Chief Superintendent McGinn in respect of this stage of  
15 the investigation. And the absence of it, no one else 14:33  
16 perhaps is concerned with the absence of this record.  
17 I, however, am very concerned about it because I take  
18 directive 120 --

19 CHAIRMAN: Mr. Harty, I know how concerned you are  
20 about it because I have been hearing your concern. 14:33  
21 It's clear that these are the instructions of your  
22 client, that there is a cause for concern. You will  
23 possibly be aware of the case law which says that in  
24 the event that a witness to a particular event is not  
25 called, for instance, by a plaintiff, that sometimes 14:34  
26 the court can raise an inference in relation to the  
27 absence of a witness, though Ms. Justice Laffoy says  
28 that that particular power should be only used very,  
29 very sparingly. Now I take the same view; that in the

1 event that there really are important documents  
2 missing, it may be that I can take an inference and I  
3 have that in mind, but let's come to the point.

4 MR. HARTY: The point --

5 CHAIRMAN: I mean, what is the point in relation to 14:34  
6 this? Is it that something nefarious was going on and  
7 therefore wasn't recorded, is that it?

8 MR. HARTY: At the moment, at the moment, sir, we  
9 simply --

10 CHAIRMAN: No, but I mean, I don't really want to 14:34  
11 continue the dialogue because I am interrupting your  
12 cross-examination, Mr. Harty. So if you wish to ask  
13 the chief superintendent that question, please do.

14 445 Q. MR. HARTY: I put it to you very simply, chief  
15 superintendent: It is highly irregular that neither 14:35  
16 yourself nor Inspector Sheridan have maintained any  
17 entries in your officers journals in relation to any of  
18 this. It is in breach, do you accept, the complete  
19 absence of paperwork?

20 A. I don't agree. I explained how the events happened, 14:35  
21 how it developed. If I was to appoint Inspector  
22 Sheridan I would be sending out paper to say that she  
23 would be appointed as a senior investigator officer in  
24 this case. At the time that I appointed her to go out,  
25 events had evolved to such an extent -- 14:35

26 446 Q. How many members --

27 MR. HEGARTY: Chairman, may I assist? On behalf of  
28 Inspector Sheridan an allegation is being made she kept  
29 no record. There is one kept and it's disclosed at

1 page 841. Three times there Mr. Harty has made that  
2 allegation, it's untrue. It's page 841, if it's  
3 brought up, there is a record maintained.  
4 MR. HARTY: Sorry, that is not a record of this, sir.  
5 That is a record of a meeting, that is a record that 14:36  
6 she has taken the statement, it's not in her journal.  
7 CHAIRMAN: Yes, let's have just a read of this. I am  
8 sorry, if we could go back.  
9 MR. HEGARTY: That is record from her journal.  
10 CHAIRMAN: Maybe you would be so kind as to read that 14:36  
11 out, chief superintendent. I am sorry, I can't read  
12 your handwriting.  
13 MR. HARTY: No, that is Inspector Sheridan.  
14 A. "6:13 Office Letterkenny and Milford. Statement  
15 Raphoe, Sergeant Jim Collins. Rita Bogle complained. 14:36  
16 RS Garda --" I can't read the next word "-- Harrison on  
17 duty and being --"  
18 CHAIRMAN: "Assault" I think it says, does it?  
19 A. "-- re Harrison assault."  
20 CHAIRMAN: And they drove to -- They drove where? 14:36  
21 MR. MCGUINNESS: Raphoe.  
22 A. Raphoe, is it? Something, I can't read the last --  
23 CHAIRMAN: It looks like check upon. well, there is  
24 some kind of a record, Mr. Hegarty, but what is the  
25 point you are making, I beg your pardon? 14:37  
26 MR. HEGARTY: He has said repeatedly there is no  
27 record. That is a record from a journal entry. It  
28 records exactly what happened when she went out to  
29 Raphoe with Sergeant Jim Collins and the words that you

1 weren't able to read are "Being abusive to Marisa  
2 Simms".

3 MR. HARTY: And it's reflected in Inspector Sheridan's  
4 own statement as being an entry from her diary, not  
5 from her official journal. 14:37

6 MR. HEGARTY: I have just clarified it for you.

7 CHAIRMAN: I mean, Mr. Harty, do you have a point. I  
8 don't know how good the point is, but I am listening to  
9 the point and I note what you are saying about all of  
10 this. And again, I have said, as far as following the 14:37  
11 established case law, that is what I would tend to look  
12 at first but I have to be careful in jumping to any  
13 conclusion. It certainly would help in the event that  
14 the issue was put, in a very stark way, in the way that  
15 Garda Harrison said it in his statement to the Tribunal 14:38  
16 of 7th march 2017.

17 MR. HARTY: And I will come to that.

18 447 Q. Firstly, I want the chief superintendent to say on oath  
19 that none of this should have been recorded at any  
20 stage in either her officers journal or Inspector 14:38  
21 Sheridan's officers journal?

22 A. I didn't record it in my journal, as I said, Judge. I  
23 said it on oath, it's not in my journal.

24 448 Q. No, I am asking you should it have been?

25 A. At this stage I don't think so because I don't 14:38  
26 record -- because I am dealing with these decisions all  
27 the time, I would be --

28 449 Q. On 8th of October should it have been? On 10th of  
29 October should it have been?

1 A. No. Because I was forwarding a report to the --  
2 450 Q. And you are on oath --  
3 A. Yes, I am on oath to say --  
4 451 Q. -- saying as chief superintendent of the Donegal  
5 division that this should never have been entered in 14:38  
6 your officers journal?  
7 A. Can I say that a report that I would send to the  
8 assistant commissioner northern region speaks for  
9 itself. It's contained in the report. I don't make a  
10 note I sent a report on, because I am sending reports 14:39  
11 all day every day and if I was to record every single  
12 one of them -- so I don't have it in my officers  
13 journal. I didn't have it --  
14 452 Q. At all?  
15 A. At all. 14:39  
16 453 Q. At all?  
17 A. At all.  
18 454 Q. And you are saying on oath that you weren't obliged to?  
19 A. I am saying sorry?  
20 455 Q. You are saying on oath that you weren't obliged to? 14:39  
21 A. In my opinion, no, because I was dealing with decisions  
22 where they are --  
23 456 Q. When you were raising the matter with Assistant  
24 Commissioner Kenny at a later stage in relation to the  
25 disciplinary, would it not have been important that 14:39  
26 your officers journal be open for inspection by  
27 Assistant Commissioner Kenny?  
28 A. No, because I was forwarding my report, it was on  
29 the -- the paperwork was there. I was forwarding the

1 report on to him. Everything was in the paperwork. I  
2 don't copy into my journal what is on the paperwork.  
3 And I don't see the journal -- not every decision that  
4 you make and not every report that you write is  
5 required to be kept within the journal.

14:39

6 457 Q. I am going to put it to you very bluntly, chief  
7 superintendent: It is perfectly obvious that directive  
8 120/04 requires that in order to carry out your duties  
9 you must record this in your officers journal?

10 A. Well, I didn't record it in my officers journal.

14:40

11 458 Q. And it would appear that neither did Inspector  
12 Sheridan. She recorded it in her diary but nothing in  
13 her officers journal.

14 MR. HEGARTY: Chairman, with respect, I am sorry to  
15 interrupt but it's the same document, a journal, diary,  
16 it's the same document. That is my instructions.

14:40

17 MR. HARTY: Sorry, I have to disagree with my friend on  
18 that. An officers journal is a particular book which  
19 is handed out to individual officers from central  
20 stationery, it is a different thing to a simple diary,  
21 isn't that correct?

14:40

22 A. Yes, they are two separate things. But I am not sure  
23 what this page is from. what book this page is from.

24 459 Q. Well, her statement says it's from her diary.

25 A. Okay.

14:40

26 460 Q. And I take it you wouldn't confuse your diary and your  
27 journal?

28 A. No, no, they are separate.

29 461 Q. Entirely separate?

1 A. Yes.

2 462 Q. I have to put it to you in relation to your  
3 conversation -- because only two people were present at  
4 that conversation?

5 A. With the 27th? 14:41

6 463 Q. On the 2nd October, only two present were present at  
7 that conversation. Sergeant Collins wasn't involved in  
8 that conversation?

9 A. That was a telephone conversation.

10 464 Q. Yes. You said to her she was to follow up and get a 14:41  
11 statement from Marisa Simms?

12 A. No, I think my understanding is follow-up with her  
13 inquiries.

14 465 Q. Follow-up with her inquiries. What was her next  
15 inquiry to be? 14:41

16 A. Well, you know what I mean, she is a competent  
17 investigator, she would know the list of jobs that she  
18 needs, maybe what information.

19 466 Q. What was her next inquiry?

20 A. The information she needs to collect. One of the 14:41  
21 critical things would be to make contact with Marisa  
22 Simms and see would she -- invite her to make a  
23 statement.

24 467 Q. Get her in to make a statement?

25 A. Yeah, well, one would be inviting her -- but I didn't 14:41  
26 tell her to do that. She would understand, I don't  
27 need to spell out A, B, C, D to Inspector Sheridan, she  
28 is very competent, she knows her business, she knew how  
29 to do her own investigation. I didn't tell her you

1 need to do this, you need to do that, you need to --  
2 468 Q. Sergeant Collins says in relation to the journey out,  
3 that you didn't advise her to do anything, you directed  
4 her to make contact with Rita Bogle McDermott with a  
5 view to taking a statement, that is what Sergeant 14:42  
6 Collins in his statement at 1046?  
7 A. When I went to the day room to tell her, I said I want  
8 you to go out and meet with -- it was what I wanted.  
9 Obviously when a chief superintendent would tell an  
10 inspector she would look at it as a direction to go 14:42  
11 out.  
12 469 Q. Yes. And with a view to taking a statement.  
13 A. Yes.  
14 470 Q. You already had all the information from Rita  
15 McDermott? 14:42  
16 A. No, I didn't.  
17 471 Q. Oh, yes, you did.  
18 A. No, with due respect --  
19 472 Q. You had the information from the report of Garda Mahon,  
20 that was the -- or Sergeant Durkin I should say. You 14:43  
21 just didn't have a statement.  
22 A. No, but in our domestic violence policy where the  
23 victim, who is a vulnerable person, doesn't make a  
24 statement we can take statements from third parties who  
25 would be familiar with the events and we didn't have a 14:43  
26 statement from Rita McDermott in relation to --  
27 473 Q. But you had the information from Rita McDermott?  
28 A. We had information from Rita McDermott.  
29 474 Q. But you wanted a statement from her. Because of your



1 domestic violence policy you wanted --

2 A. Our domestic violence policy would tell us that, you  
3 know, where we are receiving reports that there are  
4 domestic violence issues that third party people who  
5 are familiar and are concerned with the issues can make 14:43  
6 a statement.

7 475 Q. You directed Inspector Sheridan to get that statement?

8 A. I directed her, I asked her, whether it was a  
9 direction -- I asked her, directed her to go and  
10 interview Rita McDermott. 14:43

11 476 Q. Yes. At that point, you were aware that Inspector  
12 Sheridan had previously been involved in investigating  
13 Garda Harrison, isn't that right?

14 A. Well, I would have known that, and I am not sure if I  
15 was working at that stage, the 102 referral had been 14:44  
16 made. She wasn't the investigating officer for that.

17 477 Q. She was.

18 A. No.

19 478 Q. In terms of An Garda Síochána she was.

20 A. No. If I may, please. The 102 was being investigated 14:44  
21 by GSOC and she was the liaison within the division to  
22 collect information.

23 479 Q. And to investigate?

24 A. No, no, no. When there is a 102 referral it's a GSOC  
25 investigation, it's not a Garda investigation. We are 14:44  
26 just assisting. GSOC are determining how the  
27 investigation progresses.

28 480 Q. Regardless of what she was doing, you knew full well  
29 that she had previous involvement with Garda Harrison?

1 A. I knew she had made -- she was the liaison in relation  
2 to the 102 referral.

3 481 Q. Yes.

4 A. But I don't think she carried out any investigative  
5 function. 14:44

6 482 Q. She did do some scene of crime, I understand, in  
7 relation to it, preservation, she took a number of  
8 steps and also made contact --

9 A. Yeah, that would have been under the direction of GSOC.

10 483 Q. But you knew she had previously been involved? 14:44

11 A. I think I was off at that time but I knew there was a  
12 102 and she would be the liaison.

13 484 Q. You knew she had previously been involved in an  
14 previous investigation regarding Garda Harrison?

15 A. Yes. That she was being involved, yeah. But she 14:45  
16 didn't carry out the investigation. I think I have to  
17 be clear on that. She wasn't the investigator. It was  
18 a GSOC investigation.

19 485 Q. Yes. And on the 2nd October you told her to contact  
20 Marisa Simms to get a statement, isn't that correct? 14:45

21 A. No, no, not on 2nd, no. I asked her to go to Rita  
22 McDermott.

23 486 Q. I appreciate that, and then you spoke to her on the  
24 phone?

25 A. Yes, sorry, later on that evening. 14:45

26 487 Q. And progress her inquiries which would have been  
27 contacting Marisa Simms?

28 A. Which we both understood would be following up.

29 488 Q. And when did you direct Sergeant McGowan to help?

1 A. I didn't.

2 489 Q. You didn't?

3 A. No.

4 490 Q. So how does Sergeant McGowan end up carrying out an  
5 investigation in a different district? How does that 14:45  
6 happen?

7 A. Well, normally what would happen is that the  
8 superintendent of the district would give permission,  
9 you know, that the superintendent who is running the  
10 investigation would seek assistance from other people 14:46  
11 within the division --

12 491 Q. Yes.

13 A. -- and they would make a request through the  
14 superintendent.

15 492 Q. Yes. Superintendent McGovern didn't send Sergeant 14:46  
16 McGowan to do it. And he was the head of his district,  
17 so can you explain to me how it came to pass that  
18 Sergeant McGowan became involved? Because it was  
19 outside her district.

20 A. That's correct. But I wasn't involved in any way in 14:46  
21 that decision or nor did I direct her to bring Sergeant  
22 McGowan with her. I wasn't involved in any way and  
23 didn't know that Sergeant McGowan was with Inspector  
24 Sheridan taking the statement.

25 493 Q. You didn't know that? 14:47

26 A. No.

27 494 Q. And I am correct in saying that an inspector can't go  
28 around and ask a sergeant in another district to move  
29 district as such?

1 A. Well, if the inspector is acting up or if the inspector  
2 feels that they need the assistance because somebody is  
3 skillful in a particular area --

4 495 Q. They can request?  
5 A. -- they can request. 14:47

6 496 Q. And that would come from the -- they can request the  
7 superintendent to --

8 A. Protocol would dictate that you would ask the boss in  
9 the area if --

10 497 Q. And nobody asked Superintendent McGovern, he was told 14:47  
11 that she was going to assist and he gave his okay in  
12 relation to it?

13 A. Well --

14 498 Q. She said she was tasked to carry out -- Sergeant  
15 McGowan said she was tasked to carry out? 14:47

16 A. If that is --

17 499 Q. To assist?  
18 A. -- Superintendent McGovern's evidence. I know I wasn't  
19 involved or I didn't ask her to do it. And I don't see  
20 any problem in her doing it. If I was involved, 14:47  
21 because she is quite skillful investigator and she is a  
22 female and she has a lot of experience under her belt,  
23 so I wouldn't see any difficulty with it. But I didn't  
24 on that particular day task or ask her and I wasn't  
25 involved in any way in that. 14:48

26 500 Q. And she had prior history with Garda Harrison as well?  
27 A. She had in relation to the anonymous letter, yes. I  
28 don't think she had personal -- if I am correct I don't  
29 think she had personal contact with him.

1 501 Q. Not that I am aware of it?  
2 A. No, I don't think so, no, I am not aware.

3 502 Q. But she had in fact made the Pulse complaint about him  
4 and she had also been involved in the anonymous letter?  
5 A. That's correct, yes. 14:48

6 503 Q. So, so far, in terms of our independent investigation,  
7 we have Inspector Sheridan, who has been previously  
8 involved in the investigation under the section 102,  
9 and Sergeant McGowan, who has previously been involved  
10 in the Pulse complaint, and the anonymous letter, isn't 14:48  
11 that correct?  
12 A. Yes.

13 504 Q. Now, what correspondence, communication, notes, emails,  
14 did you get from Inspector Sheridan between the evening  
15 of the 2nd October and the 6th October? 14:49  
16 A. None.

17 505 Q. None. At all?  
18 A. At all.

19 506 Q. But you knew she was going to come in and make a  
20 statement? 14:49  
21 A. No, I didn't, no.

22 507 Q. Are you sure?  
23 A. No.

24 508 Q. No idea?  
25 A. I had no idea that she was coming in on the 6th to make 14:49  
26 the statement.

27 509 Q. This was all very urgent. What follow-up did you make  
28 with Inspector Sheridan to say where is that statement  
29 or how have you progressed that investigation?

1 A. No, I didn't become aware that a statement had been  
2 made until the morning of the 7th October.

3 510 Q. What follow-up did you have with Inspector Sheridan  
4 between 2nd October and the 7th October?

5 A. I didn't have any. 14:49

6 511 Q. None?

7 A. None.

8 512 Q. This was really urgent, this was all very serious,  
9 Sergeant Collins was to go and get Inspector Sheridan  
10 to make sure that she didn't go off duty but went out 14:50  
11 to Raphoe to get a statement immediately from Rita  
12 McDermott. Inspector Sheridan phoned you back after  
13 taking the statement.

14 A. That's correct.

15 513 Q. That was urgent. This was all important because this 14:50  
16 was domestic violence, shocking allegations, shocking  
17 suggestions. It had to be dealt with post haste. And  
18 you made no contact with Inspector Sheridan from the  
19 evening of the 2nd October until she contacted you on  
20 7th October, is that your evidence? 14:50

21 A. That is my evidence, Judge, and note, and that's  
22 correct.

23 514 Q. I have to put it to you that that is incredible?

24 A. That is my evidence, Judge. I didn't have contact her.

25 CHAIRMAN: What is incorrect? 14:50

26 MR. HARTY: Incredible.

27 CHAIRMAN: Sorry, what is incredible?

28 MR. HARTY: The fact that Chief Superintendent McGinn  
29 put the foot on the accelerator in relation to all of

1 this to get a statement from Rita McDermott, then told  
2 Inspector Sheridan to follow up on her replies, on her  
3 inquiries but made no inquiry of Inspector Sheridan as  
4 to how that was progressing from the evening of the 2nd  
5 October to the 7th October. That is incredible. 14:51  
6 Because this was extraordinary, this was urgent, this  
7 was something which the following day required a  
8 meeting of two superintendents, two inspectors, a chief  
9 superintendent and a guard from Internal Affairs  
10 division in her own office. 14:51  
11 CHAIRMAN: So I understood you were aware after the  
12 weekend was over.  
13 A. It was, the weekend was over, that was the 7th of  
14 October, yeah, the Monday.  
15 CHAIRMAN: And the 8th was the meeting, so you were 14:51  
16 aware on the 7th?  
17 A. I was aware on the 7th, Judge.  
18 CHAIRMAN: All right.  
19 515 Q. MR. HARTY: But I am not asking about when you were  
20 aware, I am asking about what contact you had made 14:51  
21 in relation --  
22 A. I didn't make any from the 2nd to the --  
23 CHAIRMAN: Did you read the statement on the 7th?  
24 A. No, Judge. I spoke with Inspector Sheridan in general  
25 about the contents, it was away for typing. And she 14:52  
26 filled me in on certain aspects of it. And that is why  
27 I called the meeting on the 8th.  
28 CHAIRMAN: So you had a conversation about it?  
29 A. I had a conversation with Inspector Sheridan on the

1 7th.

2 CHAIRMAN: And then, did you read it prior to the

3 meeting on 8th?

4 A. No. Because it was being typed and she read it to the

5 meeting on the 8th. But she would have briefed me on 14:52

6 the -- on the day before.

7 CHAIRMAN: Okay. Thanks.

8 516 Q. MR. HARTY: The Superintendent McGovern knew on the 3rd

9 that there was plans to have Marisa Simms come in on

10 the 6th to make a statement, because he was told that 14:52

11 by Sergeant McGowan. Did he tell you that it was going

12 to happen?

13 A. No.

14 517 Q. So nobody told you?

15 A. Nobody told me. 14:53

16 518 Q. And you didn't ask anybody?

17 A. I didn't ask anybody, no.

18 519 Q. Did you make a follow-up on the 4th October to make

19 sure that -- to find out had anything happened at the

20 wedding? 14:53

21 A. No. But I would have been briefed by Superintendent

22 English, who is the superintendent on call for the

23 weekend, about the threatening phone calls, the 999

24 phone calls.

25 520 Q. And during the course that did you make any inquiries 14:53

26 as to what was going on?

27 A. No. There was a text message and he was going to

28 forward me on a comprehensive report, which I got on

29 the 7th.



1 521 Q. And then on the 7th you are told that the statement has  
2 been made, what else are you told?

3 A. Well, first of all, the first matter of priority that  
4 day was the 999 calls, the threat on Garda Harrison.  
5 There was certain functions I needed to carry out in 14:53  
6 terms of data protection with ECAS. And there was  
7 security arrangements in place for the duty of care to  
8 Garda Harrison. I was informed then by my divisional  
9 clerk, Peter Duffy, that a statement had been made and  
10 I spoke to Inspector Sheridan about the statement. 14:54  
11 Generally she gave me a flavour of what was contained  
12 in the statement but the statement was away for typing,  
13 it was a long statement and that is why I called the  
14 meeting for the 8th.

15 522 Q. And in relation to that, you hadn't seen the statement? 14:54  
16 A. No.

17 523 Q. The allegations contained in the statement, for the  
18 most part, coincided with the matters that you had  
19 seen, being told of by the Paula McDermott complaint,  
20 the most serious allegations in the statement? 14:54  
21 A. And possibly in more detail of --

22 524 Q. But you didn't see the detail?  
23 A. I didn't see the detail, no.

24 525 Q. But despite not having to be overly concerned about it  
25 between the 2nd October and the 7th October, you found 14:54  
26 it necessary to convene a high level conference on the  
27 8th October without having seen the statement?  
28 A. Yeah. I had a briefing from Inspector Sheridan and  
29 based on what she told me and the fact of the

1 threatening phone calls against Garda Harrison, I felt  
2 it prudent to assist me in making critical decisions  
3 that I would call the key people involved to have  
4 the up-to-date information.

5 526 Q. Inspector Sheridan sent that, if we go to page 904, 14:55  
6 sent that email to Sergeant Duffy, isn't it, David  
7 Kelly and Michael Harrison, at quarter past midnight on  
8 7th October. Did you see a copy of that email?

9 A. I wasn't briefed until I came in the next morning.

10 527 Q. Yes. Did you see a copy of that email? 14:55

11 A. I didn't see a copy of the email but I was briefed that  
12 a statement had been taken.

13 528 Q. And you knew that Sergeant Duffy had it?

14 A. I knew Sergeant Duffy -- he informed me firstly that a  
15 statement had been made. 14:56

16 CHAIRMAN: Can I just clarify the use of a name, and it  
17 is a good while ago, about half an hour ago you  
18 referred to Paula Campbell. Is that --

19 MR. HARTY: It's a married name. Paula McDermott would  
20 be -- 14:56

21 CHAIRMAN: And then Rita McDermott was referred to by a  
22 different name, Rita Bogle, but she was never Campbell,  
23 was she?

24 MR. HARTY: No.

25 CHAIRMAN: There was some reference to Rita Campbell. 14:56

26 MR. HARTY: It is entirely possible that I befuddled  
27 it.

28 CHAIRMAN: No, I know, but just to clarify it so I  
29 won't get it wrong.

1 MR. HARTY: No, no. Rita Bogle was Rita Bogle by her  
2 maiden name. And Paula McDermott by her married name  
3 is Paula Campbell.  
4 CHAIRMAN: Right.

5 529 Q. MR. HARTY: That email, did you see a copy of that 14:57  
6 email?  
7 A. No. No.

8 530 Q. But you were aware from Sergeant Duffy that he had a  
9 copy of the statement?  
10 A. That a copy of the statement had been sent in, yes, he 14:57  
11 briefed me the next morning.

12 531 Q. Did you have a read through it?  
13 A. No.

14 532 Q. Why not?  
15 A. There was other pressing matters in terms of the 14:57  
16 threats against Garda Harrison, it was very difficult  
17 to read and it was sent for typing. But I had a brief  
18 though from -- as a result of probably being advised by  
19 Peter Duffy I spoke to Inspector Sheridan.

20 533 Q. And then you had this high level conference the 14:57  
21 following day?  
22 A. It was as a result of this and the threatening phone  
23 calls that I felt it prudent in order to make  
24 decisions, that I would get the key people into my  
25 office the next morning. 14:57

26 534 Q. Okay. And that was because you took the threats so  
27 seriously?  
28 A. Which threats now? Against Garda Harrison or  
29 against --

1 535 Q. No. The threats allegedly made by Garda Harrison.  
2 A. Yes. And the threats to Garda Harrison. There were  
3 two threatening phone calls that came in over the  
4 weekend where Garda Harrison was being threatened to be  
5 shot. 14:58

6 536 Q. Mm-hmm.  
7 A. And I took those very seriously as well and I had a  
8 duty of care to Garda Harrison.

9 537 Q. Yes. Now, before we come to what went on in that  
10 meeting on 8th October, you mentioned that there had 14:58  
11 been a previous incident in the division, I am taking  
12 it it's previous or was of it a subsequent incident in  
13 the division, where a member was accused of domestic  
14 violence and that his partner withdrew the statement  
15 within three days? 14:58

16 A. That's correct, yes.

17 538 Q. Can you just tell me was that before or after the  
18 incident with Garda Harrison?

19 A. Before the incident with Garda Harrison.

20 CHAIRMAN: I presume you mean her partner? 14:58

21 MR. HARTY: No, it was a member of --

22 A. It was a member of An Garda Síochána.

23 MR. HARTY: -- Garda Síochána. Whilst Superintendent  
24 McGovern had no recollection of an incident of a  
25 complaint being made against a Garda in respect of 14:59  
26 domestic violence, Chief Superintendent McGinn was  
27 aware of such an incident and the statement made by the  
28 injured party was withdrawn after three days.

29 CHAIRMAN: Okay. So the garda was a man?

1 A. The garda was a man.

2 CHAIRMAN: There was a statement about him?

3 A. About him.

4 CHAIRMAN: And then it was withdrawn three days later?

5 A. Yeah, to assaults and threaten to kill, and there was 14:59  
6 children involved, and she was found wandering by a  
7 taxi-man in his nightdress with bruising, etcetera, to  
8 her body.

9 539 Q. MR. HARTY: Sorry, there was another time and before we  
10 move on to that and come to that just, you in fact 14:59  
11 spoke to Inspector Sheridan other than on the phone in  
12 relation to the fact that Rita McDermott had made a  
13 statement.

14 A. Was it that evening when she came back in from taking  
15 the statement? 14:59

16 540 Q. I don't know. But you said you spoke to her in the  
17 station.

18 A. Yeah, when I spoke to Jim Collins I went to look for  
19 Inspector Sheridan.

20 541 Q. This was after she made the statement, you spoke to her 15:00  
21 in the station?

22 A. Well, it possibly then -- it was either on the phone  
23 that evening or -- when she came back in from taking  
24 the statement I spoke to her.

25 542 Q. So you -- 15:00

26 A. It was around, sometime after 6:00 or -- sorry, going  
27 back to the other incident I was talking about.

28 543 Q. Yes.

29 A. This was a case in Donegal that I had to deal with as a

1 chief superintendent --

2 544 Q. Mm-hmm.

3 A. -- you know, where a lady came in and reported that she

4 -- a taxi-man actually initially reported that he had

5 found a lady wandering in her night gear, very badly 15:00

6 assaulted and the allegations was that she was

7 assaulted by a garda. The garda had taken the child,

8 who was in the relationship at the time, and when he

9 locked the lady in the room he threatened to kill her.

10 So that was reported to me, a statement taken. And I 15:01

11 immediately suspended the guard in this particular case

12 and moved him. Three days later, the victim withdrew

13 her statement.

14 545 Q. Mm-hmm.

15 A. And three months later then she was further assaulted, 15:01

16 very badly assaulted, and the member was subsequently

17 dismissed and charged before the courts and dealt with

18 before the courts. So this was my experience --

19 546 Q. When was that?

20 A. About ten years ago. 15:01

21 547 Q. Right. Superintendent McGovern had no recollection of

22 that incident.

23 A. Possibly not, it wasn't his district.

24 548 Q. A member of An Garda Síochána who is dismissed from the

25 force for domestic violence leading to a conviction in 15:01

26 the courts, in the division, and Superintendent

27 McGovern had no knowledge of it?

28 A. Well, if he said he didn't, it wasn't his district, it

29 was in Ballyshannon, and it was I think -- the

1 superintendent at the time was Superintendent Coen.

2 549 Q. But surely --

3 A. I can't speak on why he has no recollection of it. But

4 I have the recollection and I was the person to have to

5 deal with it. 15:02

6 550 Q. Did you convene a high level conference in respect of

7 that?

8 A. Yes, I called in the key people in terms of it to find

9 out. So I can make key decisions I need the people

10 around the table to give me the most up-to-date 15:02

11 information.

12 551 Q. The meeting on 8th October, you convened that

13 conference without having read the statement, is that

14 your evidence?

15 A. My evidence is that I had a brief on it and I also -- 15:02

16 it wasn't only about the statement, it was also about

17 the threatening phone calls that were made against

18 Garda Harrison. And my duty of care to Garda Harrison.

19 552 Q. We will talk about your duty of care to Garda Harrison

20 in a bit. In relation to the discussion that took 15:03

21 place between yourself, Superintendent McGovern,

22 Superintendent Finan, isn't that correct?

23 A. Yes.

24 553 Q. Did Superintendent Finan have a view in relation to

25 section 102 of the Garda Act? 15:03

26 A. He possibly could have. And I know he is coming to

27 give evidence tomorrow so he will be able to --

28 554 Q. Well no, perhaps you can tell me what he said. I

29 appreciate that you are at a disadvantage in

1 Superintendent Finan's case because you haven't heard  
2 his evidence yet.

3 A. Most of the -- because the incidents happened in  
4 superintendent Milford's area, most of the discussion  
5 and the in-depth discussion took place between myself 15:03  
6 and Superintendent McGovern.

7 555 Q. Can you tell me what Superintendent Finan said?  
8 A. I don't think he involved himself at all in the  
9 conversation. I don't have any memory of him  
10 interjecting or -- the conversation was mostly between 15:03  
11 myself and Superintendent McGovern in the presence of  
12 the other people.

13 556 Q. Are you saying to us that when yourself and  
14 Superintendent McGovern were badly misinterpreting  
15 section 102 of the Garda Act, that Superintendent Finan 15:04  
16 just said nothing?

17 A. I have no recollection of him interjecting or offering  
18 opinion.

19 CHAIRMAN: In other words, the point is: Did he offer  
20 a contrary view -- 15:04

21 A. I have no recollection.

22 CHAIRMAN: -- and say look, this is a section 85?

23 A. No, but we certainly would have considered it, Judge.  
24 If he had provided a contrary view we certainly would  
25 have considered it. 15:04

26 CHAIRMAN: All right.

27 557 Q. MR. HARTY: It's the funny that the first time you have  
28 no recollection of an event is when you haven't heard  
29 the evidence here in the last two and a half weeks.



1 A. No, I am quite clear in relation to the 102 referral  
2 that the conversation was between my and Superintendent  
3 McGovern. Because we were the two key people concerned  
4 with it.

5 558 Q. Why were you the two key people concerned with it? 15:04

6 A. Because the incidents as alleged took place in the  
7 Milford district, which was in Superintendent  
8 McGovern's area, I was the chief superintendent  
9 ensuring that matters were investigated properly and  
10 appropriately. He was -- because of his role as 15:05  
11 superintendent, the Commissioner has delegated his or  
12 her functions to the superintendent to make the  
13 referral. So we were the two key people concerned with  
14 making the decision as to whether it should go to GSOC  
15 or not. 15:05

16 559 Q. It's any superintendent must make the --

17 A. Oh, any superintendent, but obviously because it would  
18 be the superintendent in Milford where the incidents  
19 happened he would be the most appropriate person to do  
20 it. 15:05

21 560 Q. You don't recall what input, if any, Superintendent  
22 Finan made?

23 A. Superintendent Finan was present. He didn't interject,  
24 because he knew that it was the responsibility of  
25 Superintendent McGovern. It was his area, it wasn't 15:05  
26 Superintendent Finan's area of responsibility, it was  
27 Superintendent McGovern's.

28 561 Q. Yourself and Superintendent McGovern are interpreting  
29 section 102 of the Act beyond breaking point. Your

1 version is that it was because "may have caused serious  
2 harm" meant may cause serious harm into the future, and  
3 Superintendent McGovern's version is that "may have  
4 caused serious harm" meant psychological harm, harm of  
5 the mind. Surely Superintendent Finan said, hold on a 15:06  
6 moment, the Act is written in fairly plain English by  
7 statutory terms, it clearly says there needs to be  
8 serious harm to make a section 102 referral? And are  
9 you saying he said nothing?

10 A. We carefully considered the wording of the Act. I have 15:06  
11 no recollection of him interjecting or giving an  
12 opinion. The conversation was mostly between myself  
13 and Superintendent McGovern.

14 562 Q. And you are telling us that you seriously, honestly  
15 thought that section 102 of the Garda Act -- I should 15:06  
16 read it out for you: "The Garda Commissioner --" by  
17 which delegated function is you.

18 A. Delegates responsibility, yes.

19 563 Q. "-- shall refer to the Ombudsman Commission any matter  
20 that appears to the Garda Commissioner to indicate that 15:07  
21 the conduct of a member of the Garda Síochána may have  
22 resulted in the death of or serious harm to a person."

23  
24 And your interpretation of that was that the words "may  
25 have resulted" are irrelevant. 15:07

26 A. No, I didn't say they were irrelevant. I have to have  
27 in mind that there were children present when these  
28 threats were made and that the children have no voice  
29 in any of this, so that it may have caused serious

1 harm.

2 564 Q. Oh, it may have caused serious harm to the children?

3 A. Absolutely, yes, and psychological harm to the

4 children.

5 565 Q. Oh, that is what it was about? 15:07

6 A. No, no, that is not what it was about. It was about

7 referring the matter for independent investigation by

8 GSOC.

9 566 Q. Oh, no, no. It was about your obligation under the Act

10 and now, I am grateful for that because it's always 15:08

11 nice to have a new version.

12 A. It's not a new version. It was always my -- and it's

13 in our mind that the children were of paramount

14 importance in this. And that would have --

15 567 Q. The section 102 referral was about the children? 15:08

16 A. No, it was about reporting the matter to GSOC, the

17 criminal conduct of a member of An Garda Síochána which

18 may have caused serious harm. We discussed

19 psychological harm, we discussed harm to the mind, we

20 discussed the 88 -- the other section that it could be 15:08

21 made under, and we decided, and Superintendent McGovern

22 agreed, that we would make the 102 referral to GSOC.

23 568 Q. On the basis of psychological harm to the children?

24 A. It may have caused serious harm and we discussed

25 psychological. 15:08

26 569 Q. To the children?

27 A. To the children. And as I said here, if I got the

28 section wrong, but it was made in the spirit of the

29 legislation, that where we would refer it to 102.

1 570 Q. No, it wasn't made in the spirit --  
2 A. It was made in the spirit, and very much, may I say,  
3 the children were present when these threats were made  
4 by a member of An Garda Síochána, and that was utmost  
5 and foremost in my mind. 15:09

6 571 Q. All right. That was foremost in your mind?  
7 A. Yes.

8 572 Q. Why didn't you tell that to Darren Wright?  
9 A. Darren Wright never spoke to me at all about this.

10 573 Q. Why didn't you get it communicated to Darren Wright? 15:09  
11 A. I did communicate it through Internal Affairs and I  
12 wanted to make sure that he got a copy of the statement  
13 so he knew exactly what was contained within the  
14 statements.

15 574 Q. Why didn't you tell it to Chief Superintendent 15:09  
16 McLoughlin?  
17 A. I did discuss it with Chief Superintendent McLoughlin  
18 section 10, 5, 7, psychological -- I discussed the  
19 whole lot with him on the phone.

20 575 Q. No, you didn't discuss this new case, brand new. 15:09  
21 A. This is not brand new. The children --

22 576 Q. And all the most interesting because it is --  
23 A. No, it's not, Mr. Harty. The children were always  
24 present. That was always uppermost in our mind.

25 577 Q. "The Garda Commissioner shall refer to the Ombudsman 15:09  
26 Commission any matter that appears to the Commissioner  
27 to indicate that the conduct of a member may have  
28 resulted in the death of or serious harm to (including  
29 psychological to harm to the children who may have

1 heard the threat)."  
2  
3 It is entirely new and it has never been said before.  
4 A. It has always been said in my reports going back, that  
5 Ms. Simms and her children. 15:10  
6 578 Q. Never said to anybody --  
7 A. It's one of my reports where I am asked to rationalise  
8 my decision-making.  
9 579 Q. In relation to the --  
10 A. Making the 102 referral. 15:10  
11 580 Q. Can we read what serious harm means?  
12 CHAIRMAN: Again, I know it off my heart and the  
13 question is: It doesn't seem to me to refer at the  
14 moment, maybe someone is going to make a submission to  
15 the opposite effect, but at the moment being as careful 15:10  
16 as I can, it doesn't seem to me -- well, supposing  
17 someone went absolutely mad and ended up in a lunatic  
18 asylum, I mean that is one thing. You might say that.  
19 It could be that you were taking the view that over a  
20 period of years there was terrible harm to this woman 15:11  
21 in consequence of the various ins and outs, I don't  
22 know, but let's suppose you were taking the view and  
23 she wasn't in St. Conal's Mental Hospital in  
24 Letterkenny --  
25 A. Yes. 15:11  
26 CHAIRMAN: -- what counsel is putting to you is that  
27 that was stretching the definition in the Act. And you  
28 know the definition, I know the definition, he knows  
29 the definition. So we don't have to go around and

1 around the roundabout, but what have you got to say  
2 about that?

3 A. Well, what I have to say, Judge, is that I was deeply  
4 concerned that the children were there to witness the  
5 criminal conduct that took place and that I was of the 15:11  
6 opinion that it may have caused serious harm, it was in  
7 the spirit of having the matter independently  
8 investigated I referred it to GSOC and as I said in my  
9 direct evidence, if I got the section wrong, I got it  
10 wrong, but it was in the spirit of good faith and it 15:11  
11 certainly wasn't made for any ulterior motive.

12 581 Q. MR. HARTY: And yet there is no way that an experienced  
13 officer of your experience could have read that  
14 section --

15 A. No, I read -- 15:12

16 582 Q. -- and taken that interpretation?

17 A. No, I have read the section, I understand --

18 583 Q. Do you accept "may have caused"?

19 A. Yes.

20 584 Q. That means it, the act must have caused damage in the 15:12  
21 past?

22 A. Yes.

23 585 Q. Do you accept -- you know what serious harm is under  
24 the Act?

25 A. Absolutely. And I understand what psychological and -- 15:12

26 586 Q. No, no, no, it doesn't mention psychological. It  
27 doesn't mention psychological anywhere.

28 A. Yeah.

29 CHAIRMAN: Well, Mr. Harty, I don't know if would you

1 accept the example that I gave, and I shouldn't use the  
2 word lunatic, I know it's not a current word, so just  
3 take me as being incorrect in saying that, but, well  
4 they say full moons and still people have a tendency to  
5 lose it on full moons, I don't know what the moon is 15:12  
6 like tonight, but let's suppose someone went, just had  
7 a total nervous breakdown in consequence of an  
8 altercation, do you say that is inside or outside the  
9 definition?

10 MR. HARTY: Outside. 15:13

11 CHAIRMAN: Outside. So if they end up a shivering  
12 jelly of nerves, unable to articulate things properly  
13 and are actually hospitalised over it, it's not within  
14 the section.

15 MR. HARTY: It's not in my experience that anyone has 15:13  
16 ever been charged with serious assault causing harm,  
17 for example, in respect of somebody becoming so  
18 petrified of the assault that an actual physical injury  
19 is determined.

20 CHAIRMAN: Yes, I suppose research indicates, however, 15:13  
21 that these terrible experiences -- we are more alert  
22 nowadays to Post-Traumatic Stress Disorder. Certainly  
23 you hear it quite a lot and also in relation to  
24 children who suffered sexual abuse, one hears that,  
25 too, that it does have lifelong effects. But let's 15:13  
26 suppose that even is the case, and I am not talking  
27 about this case, even if it were sexual abuse causing  
28 lifelong inability to trust the opposite sex, etcetera,  
29 etcetera, if it were a case of somebody having a total

1 break down of sense and having to be hospitalised over  
2 that, you say it's not serious harm within the meaning  
3 and you are saying serious harm is related to the  
4 Non-Fatal Offences Against the Person Act.

5 MR. HARTY: Well, it's defined in the section, and I 15:14  
6 could see how potentially one could argue that if  
7 somebody's behaviour was so extreme that it drove  
8 somebody towards suicidal behaviour, that might come  
9 within the "creates a substantial risk of death". But  
10 the other two definitions of injury are "causes serious 15:14  
11 disfigurement or loss or impairment of mobility of the  
12 body as a whole or the function of any particular  
13 bodily member or organ".

14 CHAIRMAN: Well then, do you take the view that a loss  
15 of the function of a bodily organ does not include the 15:14  
16 mind?

17 MR. HARTY: I think from a medical point of view I am  
18 not entirely sure that the mind is deemed to have lost  
19 function simply because the mind is not functioning in  
20 the manner in which we want it to. 15:15

21 CHAIRMAN: Well, mental health is a very serious thing.  
22 But anyway, that is the view you are taking. I don't  
23 know, are you taking a different view, chief  
24 superintendent?

25 A. No, my view is, Judge, that it's a legal interpretation 15:15  
26 but it falls back to the Garda Commissioner, it's a  
27 subjective view, and that the sole determination is by  
28 the Garda Commissioner. And that if, in the event that  
29 we got the wrong section, then the matter can be



1 referred back to us. But what I am saying is that we  
2 made the referral in the spirit of the legislation  
3 looking for independent -- for no ulterior motive, and  
4 I feel that it was appropriately and properly made.  
5 Other people may not agree but that is my views and 15:15  
6 opinions on the matter.

7 587 Q. MR. HARTY: Not only do other people not agree, nobody  
8 else agrees with you with the exception of  
9 Superintendent McGovern.

10 A. Yes, and I know that. 15:15

11 588 Q. Chief Superintendent McLoughlin --  
12 CHAIRMAN: So what counsel is putting to you is that  
13 you are in folie à deux, do you understand the point?  
14 And he is saying, look, how do you justify that? And,  
15 therefore, the following question is: Is it not the 15:16  
16 case that this was not well-motivated? That is the  
17 crux of it.

18 A. Yeah, no, I understand. And we are the people who are  
19 in possession of all the information, that are  
20 available to us at the time. We consider it 15:16  
21 in-depthly. I got a briefing from all the people  
22 involved. It's a subjective view. I am of the  
23 opinion, Judge, that it was made appropriately and  
24 properly. There was no ulterior motive. It was done  
25 in the spirit of legislation. And I think it's 15:16  
26 important that the children had a voice in this and  
27 that I felt this was the way to go. I know other  
28 people didn't agree with me, that was my decision and  
29 that was the reason for it. And there was no ulterior

1 motive.

2 589 Q. MR. HARTY: And nowhere on paper before today do you  
3 ever mention that it was specific harm to the children  
4 and the lack of their voice which gave rise to your  
5 requirement for an independent investigation by GSOC? 15:17

6 A. I think I do include it in one, where I am asked to  
7 rationalise my decision-making.

8 590 Q. You mention it, the threats to Marisa Simms and her  
9 children?

10 A. Marisa Simms and her children. 15:17

11 591 Q. And the possibility that they will be subject to a risk  
12 to their life in the future, I understand?

13 A. Yes, that was my interpretation at the time.

14 592 Q. That the threats would be carried out?

15 A. Yes. 15:17

16 593 Q. Yes.

17 A. Can I say, and I have said this in my direct evidence,  
18 that I may have got the section wrong and my  
19 interpretation may have been incorrect, but it was made  
20 in good faith and in the spirit of the legislation and 15:17  
21 the fact that there were children. I can accept if I  
22 interpreted it incorrectly.

23 594 Q. You see, I have to put to you it wasn't made in good  
24 faith. Because if it had been made in good faith it  
25 would be mentioned in your officers journal, like all 15:17  
26 of the other things you would have done, they would be  
27 mentioned in the officers journal. I have to put it to  
28 you, chief superintendant, it couldn't have been made  
29 in good faith because a chief superintendent acting in

1 good faith would have made entries in their officers  
2 journal in relation to it?

3 A. I disagree in relation to that.

4 595 Q. The situation is that nobody could have thought that  
5 serious harm meant that somebody was going to kill 15:18  
6 somebody in the future.

7 A. I think I have explained that.

8 596 Q. No, you haven't, you have given an --

9 A. I have explained my rationale, I have explained -- and  
10 if I got the interpretation wrong, I can accept that I 15:18  
11 got -- but I have to say that it was made in good  
12 faith, based on the information that I had available at  
13 the time, considering it, it was measured, it was  
14 appropriate and it was properly made. And there was no  
15 ulterior motive on my behalf. 15:18

16 597 Q. Garda Campbell was present in the room at this stage?

17 A. He was, yes.

18 598 Q. And Garda Campbell is a man who is the division's  
19 expert on GSOC referrals, isn't that correct?

20 A. He deals with the administration for all of the 15:19  
21 referrals, probably in relation to 102 referrals  
22 because it's superintendent, possibly the most expert  
23 person is Superintendent McGovern on the matter within  
24 the division.

25 599 Q. Within the division he is the most expert person? 15:19

26 A. In terms of making these referrals, yes.

27 600 Q. And it would appear that the two most expert people --  
28 I presume you are second to him if not ahead of him in  
29 relation to that?

1 A. I would be involved with him in terms of making the 102  
2 referrals, in terms of the decision-making process but  
3 it is the superintendent that makes it. But we do  
4 consider all of the information on the facts and we  
5 made a decision.

15:19

6 601 Q. Can you tell me the serious injury which had been  
7 caused to Marisa Simms or her children?

8 A. Yes, I explained where she was being -- threats to burn  
9 and bury her in front of her children.

10 602 Q. I am not being clear. Explain to me the serious injury  
11 which had been caused, so there's two parts to that; an  
12 actual physical injury that has already been caused to  
13 Marisa Simms by the actions of Garda Keith Harrison --

15:19

14 A. Yes.

15 603 Q. -- can you tell me what that actual serious injury,  
16 which had been caused, was?

15:20

17 A. Well, what had been caused is she was threatened to be  
18 killed, burnt and buried. She was thrown out of her  
19 house on a number of occasions. She was assaulted when  
20 she went back into the house to get the uniforms for  
21 the children. So there was a number of incidents  
22 catalogued within the statement.

15:20

23 604 Q. Sorry --

24 A. Where she had received injury.

25 605 Q. The physical injury that she had received which had  
26 created a substantial risk of death.

15:20

27 A. The substantial risk was where she was -- where the  
28 burning and burying in front of her children.

29 606 Q. The physical injury --

1 A. There was no physicality to it.

2 607 Q. The physical injury that had been caused to her  
3 creating a substantial risk of death?

4 A. As I explained, it was discussed, the psychological  
5 part of it and that it would cause -- could have caused 15:21  
6 a risk to the mind. These are all matters that we  
7 discussed. If my interpretation is incorrect it wasn't  
8 done for any ulterior motive.

9 MR. MCGUINNESS: Chairman, as Mr. Harty said a few  
10 minutes ago, Sergeant Campbell or Garda Campbell was in 15:21  
11 the room, he is actually also present in the room today  
12 and we had brought him down last Thursday with the hope  
13 that we would deal with his evidence and I had  
14 indicated to Mr. Harty on Thursday morning that I would  
15 intend to interpose him. Now, I didn't do that on 15:21  
16 Thursday because we found that we could secure his  
17 attendance again today and we did secure Garda  
18 Campbell's attendance again today and he has come  
19 obviously from duty and has to go back to duty at an  
20 appropriate stage. But I was going to propose, 15:22  
21 Chairman, subject to anything that you might hear from  
22 any of the other parties, whether it's realistic now to  
23 interpose Garda Campbell because it doesn't look likely  
24 that the cross-examination will finish in time today to  
25 allow Garda Campbell to be heard after that. Now, I am 15:22  
26 not criticising Mr. Harty's cross-examination at all in  
27 terms of length, he said on Friday he would be an  
28 hour-and-a-half, he has been twice that and I know he  
29 has some distance more to go. So subject to what you

1 might hear, could I suggest that?  
2 CHAIRMAN: Well, I know across the water this would not  
3 be permitted. People are given a certain amount of  
4 time to do things, I know in the United States of  
5 America people are given a certain number of hours to 15:22  
6 do things and they can use them whatever way they want.  
7 I am not going to be in a tribunal that goes on for  
8 years, that is plainly what I am just not going to do.  
9 Now, it's not a criticism of Mr. Harty, but really, we  
10 have to move on. And I don't think also that it's fair 15:23  
11 to a witness to come back day after and day and have to  
12 be examined again and again and again, it just is not  
13 compatible with human dignity as far as I am concerned.  
14 And I think we should try and finish this now as soon  
15 as we can. And we will then hear from Garda Campbell. 15:23  
16 If necessary I will sit late, I will sit until 7:00  
17 tonight if we can make the stenography arrangements but  
18 this just can't go on and on.  
19 608 Q. MR. HARTY: In page 2427 --  
20 CHAIRMAN: Mr. Harty, how long are you going to be? 15:23  
21 It's a question now, it's not a loaded question, it's  
22 just --  
23 MR. HARTY: I appreciate that.  
24 CHAIRMAN: It's just a question. You did say an  
25 hour-and-a-half on Friday. 15:23  
26 MR. HARTY: I did.  
27 CHAIRMAN: And presumably you have a discipline in your  
28 mind as to where you are going and all of that.  
29 MR. HARTY: I am most of the way there.

1 CHAIRMAN: But I can't sit here forever and go over the  
2 same thing again and again and again. Because, you  
3 know, I am actually the one doing the inquiry, not  
4 anybody else. And the extent to which this is now  
5 helping me is a matter that I am going to have to 15:24  
6 analyse later on. So, I mean, it's only a question,  
7 Mr. Harty. It's not as if -- it may be taking the  
8 American view and saying you have 40 hours to do your  
9 case in, you can use them whatever way you want is the  
10 right one. Sooner or later it's going to have to be 15:24  
11 introduced in this country.  
12 MR. HARTY: I will be an hour.  
13 CHAIRMAN: Okay. Well, it's now 24 minutes past  
14 three o'clock. When do we have to  
15 change stenographers? [DISCUSSION RE STENOGRAPHERS] 15:25  
16 609 Q. MR. HARTY: If we look at page 2427 --  
17 CHAIRMAN: By the way, the threat to sit late, it's not  
18 a threat to sit late. I mean, people were just  
19 remembering the other day the late Mr. Justice Neiland,  
20 who some of us will remember very fondly, used to sit 15:25  
21 in court from 9:00 in the morning until 11:30 at night.  
22 Those were different days and I certainly didn't  
23 experience it, but those were the days that are perhaps  
24 gone now. Anyway.  
25 610 Q. MR. HARTY: Chief superintendant, on that page they are 15:25  
26 Inspector Sheridan's notes that she took at the  
27 meeting, we haven't seen Garda Campbell's notes that he  
28 took, and in the middle of that page it says "Section  
29 102 GSOC "may"". That is the inverted commas around

1 the word "may"?

2 A. Yes.

3 611 Q. So that's clearly what was being discussed, is the word  
4 "may"? And then it goes on and says "Section 105, Garda  
5 continue and GSOC." And that is what section 105 says, 15:26  
6 doesn't it?

7 A. No, my interpretation of 105 now is different.

8 612 Q. What is your interpretation of section 105?

9 A. My interpretation of 105 is that a member can be  
10 charged with a crime even though GSOC are continuing 15:26  
11 their investigations.

12 613 Q. In other words, the Gardaí can continue to investigate?

13 A. Yeah, but a person can be charged, you know, actually  
14 charged with an offence.

15 614 Q. Yes. But it says that the Gardaí -- when you are 15:26  
16 charging somebody with an offence, Chief  
17 Superintendent, you do it on the basis of an  
18 investigation, don't you?

19 A. Or a suspicion or an arrest at a scene or --

20 615 Q. Well, you tend not to charge just on suspicion; you 15:26  
21 tend to gather some evidence together before you charge  
22 someone?

23 A. Absolutely. And maybe some -- a lot of charges would  
24 go to the DPP. But could we bring up the section,  
25 please? 15:27

26 616 Q. Oh, I can read it to you.

27 A. Yes, please.

28 617 Q. Section 105, for the transcript:  
29



1 "Nothing in this Act precludes a member of An Garda  
2 Síochána from charging another member with an offence,  
3 even though the conduct to which the offence relates  
4 could be the subject matter of a complaint or  
5 investigation under this part. However, if a complaint 15:27  
6 has been made concerning the conduct of a member of the  
7 Garda Síochána the member may not be charged with an  
8 offence relating to that conduct except by or with the  
9 consent of the Director of Public Prosecutions."

10  
11 Now, it's not a matter of interpretation, but just in  
12 terms of the explanatory memo at the side:

13  
14 "The same conduct may form the basis for complaint or a  
15 charge." 15:27

16  
17 And that is what Inspector Sheridan notes in relation  
18 to it.

19 A. We certainly wouldn't have been able to charge Garda  
20 Harrison with any offence without referring to the DPP. 15:27

21 618 Q. No, of course not, of course not.

22 A. So it doesn't have any relevance in this case.

23 619 Q. It does have relevance in this case. It says that:

24  
25 "Nothing in this Act precludes a member of An Garda  
26 Síochána from charging another member with an offence,  
27 even though the conduct to which the offence relates  
28 could be the subject matter of a complaint or  
29 investigation under this part."

1 CHAIRMAN: Just put simply, if garda A murders his  
2 wife, you refer that to GSOC under section 102 but you  
3 are still entitled to carry on a murder investigation  
4 with a view to charging him before the courts. That is  
5 what it seems to say. 15:28

6 A. Yes, Judge.

7 CHAIRMAN: And are we all agreed on that?

8 MR. HARTY: That is precisely it.

9 CHAIRMAN: That is fine.

10 A. Judge, we wouldn't continue the investigation until 15:28  
11 GSOC reported back to us under 102, whether they were  
12 taking it on as a criminal -- they can take it on as a  
13 criminal investigation.

14 620 Q. MR. HARTY: Sorry, I would have to put it to you that  
15 in the -- in the most extreme example, which is the one 15:28  
16 that has just been raised by the Chair of the  
17 Tribunal --

18 A. Yes.

19 621 Q. -- you would undoubtedly charge the member in question  
20 of murder and arrest them there and then in relation to 15:28  
21 it, regardless of what GSOC were doing?

22 A. We would refer it immediately to GSOC, but if we were  
23 called we would arrest immediately. Certainly --

24 622 Q. And continue with the investigation?

25 A. Yes, but it would be referred to GSOC and GSOC would 15:29  
26 take it on under criminal investigation. They have the  
27 same powers in An Garda Síochána, powers of arrest,  
28 powers of charge. We are complementary organisations  
29 in terms of conduct of a member of An Garda Síochána,

1 so they will have the power of arrest as well.

2 623 Q. What power of arrest do GSOC have?

3 A. They have power of arrest under the Act, so we are  
4 complementary organisations. If GSOC deem it  
5 appropriate to arrest a member, they have the same 15:29  
6 powers under the Oireachtas as An Garda Síochána. We  
7 are complementary. And if they deal with members of An  
8 Garda Síochána's conduct as opposed to --

9 624 Q. No, I see that there is limited powers of arrest for  
10 GSOC, we won't go into it, and we don't need to, but 15:29  
11 it's -- the situation here is, Inspector Sheridan has  
12 noted that this is discussed at the meeting, section  
13 105 was discussed at the meeting.

14 A. I don't see its relevance here. Definitely,  
15 sergeant -- or Garda Harrison needed to be arrested and 15:30  
16 the allegations put to him, but not by his colleagues  
17 in An Garda Síochána in Letterkenny but by some  
18 other -- you know what I mean, it would be entirely  
19 inappropriate for the Gardaí that he works beside to  
20 arrest him and charge him. 15:30

21 625 Q. Really?

22 A. I would think so, yes. I would prefer that it would go  
23 for independent, impartial fair hearing.

24 626 Q. So in relation to the no insurance, who should have  
25 done that? 15:30

26 A. The investigation into no insurance, it is not in the  
27 same category or seriousness. It depends on the  
28 seriousness of the offence.

29 627 Q. But in terms of appropriateness --

1 A. Yes.

2 628 Q. -- I mean, that all was his own sergeant who charged  
3 him.

4 A. Yes, but they are different ranges and different  
5 seriousness. 15:30

6 629 Q. But could you not just have gone to a different  
7 district to have him charged in relation to it?

8 A. I wanted to go to -- I wanted to give it to GSOC, which  
9 I am obliged to do. I am mandated by the Oireachtas to  
10 go to GSOC. 15:31

11 630 Q. why?

12 A. Because it's a conduct of a member of An Garda  
13 Síochána, serious conduct.

14 631 Q. And where is it mandated in the Act that this had to go  
15 to GSOC? 15:31

16 A. It's written into the legislation, into the protocols.

17 632 Q. where? what section?

18 A. I would have to legally research it, but if you can  
19 bear with me.

20 633 Q. No, you came out with it -- 15:31

21 A. But I know that --

22 CHAIRMAN: Is this the particular thing that Ms. Leader  
23 referred to with Superintendent McGovern?

24 A. Superintendent McGovern, yes.

25 MR. HARTY: It's a circular which is, to a certain 15:31  
26 extent, opaque in terms of relevant things. But you  
27 are saying you are mandated by statute?

28 CHAIRMAN: well, it may be, but it's like the Cane  
29 Mutiny - the navy manual is a document created by

1 geniuses for the implementation of idiots. In other  
2 words, things have to be -- I am not saying anyone in  
3 the Garda is either a genius or an idiot, but what I am  
4 saying is that if there is a vast body of legislation,  
5 which there is, the Garda clearly have to distill it 15:32  
6 down into a digestible form of soup.

7 634 Q. MR. HARTY: In relation to that, you were questioned at  
8 some length by Mr. Guinness yesterday. You had an  
9 opportunity to ask for a consent from Ms. Simms and you  
10 didn't take it, isn't that correct? You had an 15:32  
11 opportunity to ask for a consent from Ms. Simms to make  
12 a complaint?

13 A. Oh, sorry, on the day she came with the telephones?

14 635 Q. Yes.

15 A. No, we didn't. We already had made the 102 referral at 15:32  
16 that stage.

17 636 Q. No, but you knew she was coming, there is a phone call  
18 made by Inspector Sheridan to Ms. Simms at 10:30,  
19 according to Ms. Simms' phone, so I think it's --

20 A. Well, yeah, I knew she was coming to the Garda station, 15:32  
21 but we made a decision at the meeting to make the 102  
22 referral, that is what we did, so therefore we didn't  
23 need her consent at that stage.

24 637 Q. You also made decisions that certain other steps had to  
25 be taken by way of processing the investigation? 15:33  
26 A. In at the meeting, yes.

27 638 Q. Yes. You had to interview Paula, Andrew?

28 A. Mm-hmm.

29 639 Q. Emma Roulston, isn't that right?

1 A. There were different witnesses identified as we were  
2 going through the statement that would assist.

3 640 Q. And was it you or Inspector Sheridan who determined  
4 that Sergeant McGowan should be involved in taking  
5 those, carrying out those interviews? 15:33

6 A. It possibly would have come up, but because obviously  
7 it's Inspector Sheridan's investigation, that she would  
8 be doing the lead interview. But sorry, was your  
9 question --

10 641 Q. I am just asking you whether it was you or Inspector 15:33  
11 Sheridan who decided to detail Sergeant McGowan?

12 A. Oh, sorry, Sergeant McGowan. Sorry, I misunderstood  
13 what you said. No, I didn't give any direction or ask  
14 her to include, but I would have no difficulty if she  
15 did because she was familiar with the case. 15:33

16 642 Q. And she is in a different district?

17 A. And she is in a different district. That is what you  
18 say. No, but I would have no difficulty with her if  
19 she was the one selected because she was familiar with  
20 the case. But I didn't give a specific direction for 15:34  
21 Sergeant McGowan to go with Inspector Sheridan.

22 643 Q. But you did give a direction, and the three  
23 superintendents present there at the time, the chief  
24 superintendent and two superintendents, gave a  
25 direction that these statements were to be taken? 15:34

26 A. No, as she was going through the statement, these were  
27 jobs that she was picking out that she needed to do.

28 644 Q. You see, you will forgive me, Chief Superintendent;  
29 inspectors don't go around at meetings with chief

1           superintendents to give jobs to sergeants who aren't  
2           even in their district?

3           A.    No, she wasn't -- what Inspector Sheridan was doing was  
4           noting what follow-up inquiries that she had to  
5           complete. 15:34

6   645   Q.    Interviews, not inquiries.

7           A.    Or interviews, sorry, interviews that she had to  
8           complete.

9   646   Q.    Which is not the same thing as inquiries. And they  
10          were to be carried out by Brigid McGowan? 15:34

11          A.    That wasn't discussed at the meeting.

12   647   Q.    Well, it's in her notes.

13          A.    That she was going to bring her with her, yeah.

14   648   Q.    No, that they were to be carried out by Brigid McGowan.  
15          Her name is written beside them in her notes, "B MCG". 15:35

16          A.    Yeah. I didn't direct that she would do them with her.  
17          Inspector Sheridan may -- she may be able to say, but I  
18          didn't say bring Brigid, but I would have no difficulty  
19          if she was bringing Sergeant McGowan because Sergeant  
20          McGowan was with Inspector Sheridan taking the 15:35  
21          statement and she was familiar with the case.

22   649   Q.    And she has also noted in her diary, this is at page  
23          2426, that the HSE referral is to be done by Brigid  
24          McGowan. Now, what is she doing detailing Brigid  
25          McGowan to make a HSE referral in a different district? 15:35

26          A.    Inspector Sheridan didn't direct. That was  
27          Superintendent McGovern's decision, from an  
28          oversight --

29   650   Q.    2426, sorry. You see, she has noted in her diary --

1 A. Sorry, what number?

2 651 Q. 2426. She has noted in her notes of that meeting that  
3 "B MCG, HSE referral". Now, she had no further contact  
4 with Superintendent McGovern, she had no further  
5 dealings with Superintendent McGovern in relation to 15:36  
6 this, but she has noted "HSE referral, B MCG".

7 A. Yes, Superintendent McGovern, it was his decision, he  
8 knew that he had to do it. I wasn't directing him. He  
9 knew that was part of his job that he needed to --

10 652 Q. How would Inspector Sheridan have known that? 15:36

11 A. Because it was at the meeting I checked to see has the  
12 HSE referrals been made and Superintendent McGovern  
13 undertook that he was doing them, and possibly because  
14 Brigid would be the liaison manager with the HSE, that  
15 she would be the one automatically making -- but it 15:36  
16 would be Superintendent McGovern --

17 653 Q. Did he say that?

18 A. No, it didn't need to be said.

19 654 Q. It's noted by Inspector Sheridan in her notes of the  
20 meeting that the HSE referral is to be done by B MCG. 15:37

21 A. Yes. What happened at the meeting was, I asked were  
22 they being done, Superintendent McGovern said yes and  
23 that he was undertaking to do them.

24 655 Q. And that is all?

25 A. And that Brigid obviously would be filling out the 15:37  
26 paperwork for him, but that was between Superintendent  
27 McGovern --

28 656 Q. That was said?

29 A. I don't know if that was said, I don't know.



1 657 Q. It's important whether that was said or not.  
2 A. I don't have any recollection of that being said.  
3 658 Q. You don't have any recollection?  
4 A. All is my -- it was very short, that he was undertaking  
5 to do it, it was his responsibility, it was a 15:37  
6 management decision on his behalf and he was doing  
7 that. He didn't need any direction from me or any  
8 input from me in relation to that decision.  
9 659 Q. Even though he left saying he was given two jobs at the  
10 meeting, which was the GSOC referral and the HSE 15:37  
11 referral, you say he wasn't given that job?  
12 A. He wasn't directed by me, no. He knew himself. I was  
13 just doing an oversight to see was it completed, was it  
14 done.  
15 660 Q. And nobody mentioned whether or not Brigid McGowan was 15:37  
16 drafting it up?  
17 A. No, I have no recollection.  
18 661 Q. But Inspector Sheridan appears to have known that at  
19 that particular meeting?  
20 A. And she may be able to explain better why she wrote 15:38  
21 that. I can't say.  
22 662 Q. And in relation to the other statements?  
23 A. The other statements were listed as obviously people  
24 who could assist with the inquiry.  
25 663 Q. Yes. And the name of the person to take those 15:38  
26 statements, Brigid McGowan -- "honeymoon, Brigid  
27 McGowan". Just the name is there.  
28 A. No, I can see the name is there, but I didn't direct  
29 that Brigid McGowan would go and take these statements.

1 I have no difficulty with Sergeant McGowan doing it  
2 because she is familiar with the cases and taking the  
3 statements, but that wasn't a decision that I needed to  
4 make.

5 664 Q. But, see, you do have a difficulty with Brigid McGowan 15:38  
6 doing those things because you did say you didn't want  
7 people with prior involvement dealing with it, so it's  
8 directly contrary to the evidence that you gave, you  
9 said you wanted GSOC to investigate it because it was  
10 clear there's no contact -- 15:38

11 A. Yes, but they're not doing investigations. What they  
12 are doing there is, they are just getting witness  
13 statements, people who witnessed the events, which  
14 would be obviously passed to GSOC --

15 665 Q. But that's not an investigation -- 15:39

16 A. -- they would be passed to GSOC because Inspector  
17 Sheridan was a point of contact for the investigation  
18 with GSOC.

19 666 Q. No, she wasn't.

20 A. She was, yes. 15:39

21 667 Q. GSOC didn't make contact with Inspector Sheridan.

22 A. But when Superintendent McGovern sent in his paperwork  
23 he nominated that any follow-up he would need would be  
24 Inspector Sheridan.

25 668 Q. But they didn't contact her? 15:39

26 A. They didn't make any contact.

27 669 Q. And the answer is Brigid McGowan was the person  
28 carrying out this investigation, according to Inspector  
29 Sheridan's notes, rather than Inspector Sheridan?

1 A. My understanding is that these people weren't  
2 interviewed.

3 670 Q. At that meeting it was agreed that these people would  
4 be interviewed?

5 A. These people were identified as witnesses to be 15:39  
6 interviewed, but, in my opinion, they were to be  
7 interviewed by GSOC and under the direction of GSOC.

8 671 Q. Did you send that message to GSOC?

9 A. No, no, inspector -- Superintendent McGovern did in his  
10 report. 15:40

11 672 Q. He said to interview these people?

12 A. No, no, no, he sent the message to GSOC that the point  
13 of contact would be Inspector Sheridan and her mobile  
14 number.

15 673 Q. I have to put it to you, and I might as well just put 15:40  
16 it very bluntly: You had an obligation to investigate  
17 this statement whether GSOC investigated it or not.  
18 You were aware of that. It's noted at that meeting  
19 that you discussed the obligation for a parallel  
20 Garda/GSOC investigation, and no such Garda 15:40  
21 investigation took place, isn't that correct?

22 A. I referred it to GSOC and I was waiting for GSOC to  
23 come back to us and let us know what type of an  
24 investigation they were conducting.

25 674 Q. And then you say, contrary to Superintendent McGovern's 15:40  
26 evidence, that Superintendent McGovern, off his own  
27 bat, without direction from you, made the referral to  
28 the HSE?

29 A. Absolutely. I wouldn't be directing because that is a

1 matter for the district officer. I don't have to tell  
2 him to do that. He knew it was a management decision,  
3 that is what he needed to do. He didn't need my  
4 instruction or input or direction.

5 675 Q. On what basis? 15:41

6 A. To make the HSE referral.

7 676 Q. Yeah. what elements do you say were discussed that  
8 made the HSE referral necessary?

9 A. In reading the statement where we looked at the  
10 incident of the 28th where the children were present, 15:41  
11 those matters needed to be referred to the HSE.

12 677 Q. On the basis of emotional abuse?

13 A. On the basis of our guidelines in relation to making  
14 HSE for welfare and child protection issues.

15 678 Q. On the basis of emotional abuse? 15:41

16 A. welfare and child protection issues --

17 679 Q. On the basis --

18 A. The threshold is very low in relation to HSE referrals.

19 680 Q. You put it in as emotional abuse. Did you discuss that  
20 with Superintendent McGovern? 15:41

21 A. It was discussed at the meeting about psychological  
22 abuse.

23 681 Q. So it was discussed?

24 A. It was discussed in terms of the 102 referral, not in  
25 relation to the HSE referral. 15:41

26 682 Q. But it was discussed?

27 A. About the psychological abuse, yes.

28 683 Q. On the children?

29 A. On the children, that they were present when these --

1 when the threats were being made and how their eyes  
2 filled up and then the mother took them from the house  
3 to the car.

4 CHAIRMAN: Yes, I mean, I have read it.

5 A. Yes. Sorry, Judge. 15:42

6 CHAIRMAN: Don't worry, Chief Superintendent. It's  
7 just I have read it, I know all about it.

8 A. Okay.

9 684 Q. MR. HARTY: And that was the basis for a report and  
10 that was discussed at the meeting in relation to 15:42  
11 emotional abuse, psychological abuse?

12 A. It was discussed in the context of the statement, but  
13 it wasn't necessary for the HSE referral. As I said,  
14 the threshold is very low in relation to the HSE  
15 referral. 15:42

16 685 Q. Yes.

17 A. And Superintendent McGovern undertook that that was his  
18 job and he was doing it, it didn't require any input  
19 from me.

20 686 Q. And did he come back to you about it? 15:42

21 A. No.

22 687 Q. Ever?

23 A. No.

24 688 Q. Even when it was rejected by the HSE?

25 A. No. 15:42

26 689 Q. Did Inspector Sheridan deal with it with you?

27 A. With me, the HSE referral, no.

28 690 Q. Did Sergeant McGowan?

29 A. No.

1 691 Q. When did you last discuss the HSE referral with  
2 Sergeant McGowan?  
3 A. Possibly before this commission.  
4 692 Q. And before that?  
5 A. I didn't discuss it with her. 15:43  
6 693 Q. At all?  
7 A. At all.  
8 694 Q. You -- then, as a result of that meeting, two legs of  
9 the attack are launched, isn't that correct?  
10 A. You mean by that the HSE referral and the 102 referral? 15:43  
11 695 Q. Yes.  
12 A. Yes.  
13 696 Q. You then leave that meeting and you commence the  
14 paperwork, because you had Garda Karl Campbell there  
15 for a reason -- 15:43  
16 A. Yes.  
17 697 Q. -- in respect of the third leg, isn't that right?  
18 A. Which is?  
19 698 Q. The disciplinary leg.  
20 A. No, no, I don't do the disciplinary. That is all tied 15:43  
21 up with the GSOC.  
22 699 Q. Sorry, the suspension?  
23 A. Yes, that is the suspension, yes.  
24 700 Q. Yes. And you wrote for that on the 10th October, isn't  
25 that right? 15:44  
26 A. That's correct, yes.  
27 701 Q. And you wrote a long report to the Chief Superintendent  
28 Internal Affairs?  
29 A. Yes.

1 702 Q. Did you draft it?  
2 A. I drafted -- well, Karl would have put in -- I would  
3 have sat with Karl Campbell doing the drafting of it.  
4 703 Q. And that is at page 1624. Now, what did you have  
5 before you when you were doing that? 15:44  
6 A. I had the reports that were generated by Sergeant  
7 Durkin --  
8 704 Q. Mm-hmm.  
9 A. -- called 1 and 2. I would have had Sergeant Collins'  
10 report. 15:44  
11 705 Q. Mm-hmm.  
12 A. Garda Mahon's report.  
13 706 Q. Mm-hmm.  
14 A. The statement of Rita McDermott.  
15 707 Q. Mm-hmm. 15:44  
16 A. And the statement of Marisa Simms.  
17 708 Q. Mm-hmm.  
18 A. And other background information that I had in relation  
19 to Garda Keith Harrison, you know, in terms of his  
20 service, in terms of where he was stationed. 15:45  
21 709 Q. In terms of his disciplinary history?  
22 A. His disciplinary history.  
23 710 Q. You would have had reference to the fact that he was on  
24 station duties in Athlone, all of that, isn't that  
25 correct? 15:45  
26 A. No, I don't -- I didn't have Athlone information. I  
27 just had what I had in my own, you know, my own  
28 possession.  
29 CHAIRMAN: Your own bailiwick, effectively?

1 A. Yes, yes.

2 711 Q. MR. HARTY: I presume you had his full file in front of  
3 you at that stage?

4 A. I didn't, no.

5 712 Q. You didn't? 15:45

6 A. No.

7 713 Q. why not?

8 A. I had all the reports that I needed for this particular  
9 case. I wasn't --

10 CHAIRMAN: Well, you know, Mr. Harty, if she does she 15:45  
11 is wrong, if she doesn't she is wrong, and I am tending  
12 to wonder is there some place in between. Now, I am  
13 wondering again how this does this help me. So this is  
14 the suspension, she took a very strong view that Gardaí  
15 shouldn't be bullying their domestic partners and there 15:45  
16 shouldn't be any violence and he should be suspended,  
17 and she said in her direct evidence, very  
18 straightforwardly, I didn't regard him as a person I  
19 could have confidence in as a garda interacting with  
20 the public. I mean, it couldn't be stronger than that. 15:46  
21 That is bluntly what she said. And there is the point.  
22 Whether it's in the documentation or not, it's very,  
23 very clear.

24 MR. HARTY: Okay.

25 714 Q. Chief Superintendent, 1624: 15:46  
26  
27 "Garda Harrison was 33 years old, a native of Caltra,  
28 Galway. He has two brothers and one sister. He was  
29 briefly married to --" from such a date to such a



1 date -- "the couple divorced in November 2011. He has  
2 12 years service and has been attached to the Donegal  
3 division since March 2011."  
4

5 Now, there is nothing in the paperwork that we have  
6 seen before this Tribunal to identify to us how you  
7 knew precisely who Garda Harrison was married to.

15:46

8 CHAIRMAN: No, Mr. Harty --

9 MR. HARTY: Sorry, sir, I am asking what this --

10 CHAIRMAN: Mr. Harty, seriously, Mr. Harty, please.

15:47

11 MR. HARTY: This letter is of central importance to  
12 this Tribunal.

13 CHAIRMAN: Mr. Harty, you have just asked a question  
14 which you know is incorrect, I know it's incorrect, you  
15 know it's incorrect.

15:47

16 MR. HARTY: The dates of marriage and who he was  
17 married to.

18 CHAIRMAN: Mr. Harty, you know that is incorrect. I am  
19 pointing it out as gently as I possibly can. You know  
20 it's incorrect.

15:47

21 MR. HARTY: Because on the basis of the documentation  
22 that --

23 CHAIRMAN: You did have paperwork about this.

24 MR. HARTY: Yes, which if that paperwork --

25 CHAIRMAN: Let's not refer to it. But the question you  
26 asked you know to be incorrect.

15:47

27 MR. HARTY: I am not asking a --

28 CHAIRMAN: I mean, this is embarrassing, Mr. Harty, you  
29 know, you know --

1 MR. HARTY: I am aware what the Tribunal is referring  
2 to. I am also aware of what --

3 CHAIRMAN: Sorry -- yes, I know, but there is not a  
4 kind of a state of mind of law world where you are not  
5 aware because you know a document is inadmissible. You 15:48  
6 are aware and indeed you are aware from your client's  
7 instructions as well.

8 MR. HARTY: I will put the question differently.

9 715 Q. The answer is, in all of the information that you've  
10 given to us about what you say you had in that room, 15:48  
11 none of that information would have contained the  
12 identity of his previous spouse or the dates upon which  
13 they were married.

14 A. It would be in his personal history file.

15 716 Q. But you told me it wasn't there. You just told me you 15:48  
16 didn't have it.

17 A. Yeah, but it would be contained in that.

18 717 Q. But you told me you didn't have it when you wrote this  
19 letter?

20 A. No, I wouldn't have had it because it was in 15:48  
21 Ballyshannon Garda Station.

22 718 Q. But you have it there?

23 CHAIRMAN: Mr. Harty, I am going to intervene. The  
24 previous marriage, anything that happened in the  
25 previous marriage -- 15:48

26 MR. HARTY: This question, sir --

27 CHAIRMAN: I mean, look, she didn't invent it out of  
28 nothing, it didn't drop like manna from heaven. It's  
29 clearly she got information from somewhere, but how

1           could it possibly matter? You know, so-and-so, you see  
2           that in obituaries in whatever English newspaper one  
3           might occasionally read, so-and-so was married to  
4           so-and-so at a particular time or in 'Who's who' and  
5           had so many children or didn't have children, or come 15:49  
6           from, and their hobbies are tennis, croquet and  
7           high-jumping. So what, you know?  
8 719 Q.   MR. HARTY: So what, because the question is, it wasn't  
9           on the personnel file because that was in Ballyshannon,  
10          so what file did you have -- 15:49  
11         CHAIRMAN: No, but I --  
12         MR. HARTY: Sorry, sir, I am going to ask this question  
13          and I am entitled to.  
14         CHAIRMAN: No, but, Mr. Harty, I actually don't want to  
15          know about this. I couldn't care less about this. 15:49  
16         MR. HARTY: Well, in those circumstances, sir, I can't  
17          ask any more questions of this witness because this is  
18          directly relevant to what has gone on before this  
19          Tribunal --  
20         CHAIRMAN: All right. Well, then, Mr. Harty, if you 15:49  
21          feel that there is something in this, I am inviting you  
22          to ask a question, but I just can't, at the moment, see  
23          that it's sinister, but you are going to point out how  
24          it is, then please do. I am inviting you to do that if  
25          you wish. 15:50  
26 720 Q.   MR. HARTY: What file did you have? We now know it  
27          wasn't his personnel file, we know it is not the  
28          reports, we know it is not the contained in any of the  
29          statements. What file did you have on Garda Keith

1 Harrison which contained the identity of his former  
2 spouse, the dates for which they were married and the  
3 circumstances of their divorce? what file did you  
4 have?

5 A. I wouldn't have -- the personal history files are held 15:50  
6 at Ballyshannon, and I would have had files in my  
7 office in relation to other matters that Garda Harrison  
8 had been involved in, for example, the road traffic  
9 incidents and the 102 referral, so --

10 721 Q. None of those would have referred to his previous 15:50  
11 marriage?

12 A. Yeah, but no, I would say that what happened in this  
13 particular case, as Garda Campbell was gathering the  
14 history and the background, he probably would have rang  
15 Ballyshannon to get what was in the history file, but 15:51  
16 the history file is not held at divisional office; it's  
17 held at district office level.

18 722 Q. But we will ask Garda Campbell then what he was  
19 referring to. This letter then goes on, it deals with  
20 the page 1625, the report from Rita McDermott, the 15:51  
21 threat against Garda Harrison, the complaint of Marisa  
22 Simms. It then at the bottom of page 1625 says:

23  
24 "On 8th October 2013 Superintendent Eugene McGovern  
25 referred the matter to the Garda Síochána Ombudsman 15:51  
26 Commission in accordance with section 102 of the Garda  
27 Síochána Act 2005. Copies of Marisa Simms' and Rita  
28 McDermott's statement were forwarded to Mr. Darren  
29 Wright for consideration."

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Now, I think it's already been dealt with, but your explanation as to why you don't make -- point out that this has already been queried at length, or queried, should I say, by Chief Superintendent McLoughlin, why don't you do that?

15:52

A. He already has the paperwork from the days before, and on the 9th he actually -- he writes to me the day before asking me have I -- he wants a full report from the Commissioner and he is asking me if I am considering suspension. On the 9th of October he writes to me, so I know he is familiar with the paperwork because I have already communicated with him.

15:52

723 Q. And you have already spoken about the matter to Assistant Commissioner Kenny?

15:52

A. I was just briefing him on the outcome, yes, of our meetings.

724 Q. You were updating him, in fact?

A. Updating him, yes, keeping him in the loop, because these are matters of public importance.

15:52

725 Q. You then go through the primary considerations, the strength of the evidence:

"Marisa Simms has handed over her mobile phone and given permission for the call and text data to be retrieved from her mobile phone."

15:53

A. Yes.

726 Q. But we only learned on Friday that you hadn't even bothered to read the data from the mobile phone at the

1 time you wrote this letter?

2 A. That's correct.

3 CHAIRMAN: well, I think 'bother' is not correct. I  
4 think it hadn't actually been --

5 MR. HARTY: It had been. It was done on the 8th. 15:53

6 A. No, it was dumped, but it hadn't been assessed and  
7 analysed.

8 CHAIRMAN: It takes time to get the stuff out and put  
9 it into a dump.

10 A. It had been dumped. 15:53

11 727 Q. MR. HARTY: And who had assessed it and analysed it and  
12 when?

13 A. It was just assessed and analysed prior to coming to  
14 this Tribunal.

15 CHAIRMAN: That is what I understood she sought in, 15:53  
16 what, March or something.

17 A. Exactly, yes.

18 728 Q. But you understand when you're assessing the strength  
19 of the evidence --

20 CHAIRMAN: March 2017. 15:53

21 729 Q. MR. HARTY: -- for somebody's suspension, that was  
22 evidence that you were in a position to assess the  
23 strength of it at the time you wrote this letter on the  
24 10th?

25 A. Yes, but that was being preserved for the GSOC 15:54  
26 investigation, to be handed over to GSOC.

27 730 Q. But you were asking for his suspension on the basis of  
28 the strength of the evidence?

29 A. Yes.

1 731 Q. But you didn't actually go and assess the strength of  
2 the evidence?

3 A. No, because I was preserving the evidence, in  
4 accordance with section 89 of the Act, to hand it over  
5 to GSOC. 15:54

6 732 Q. The seriousness of the allegations you set out, the  
7 risk to members of the public.

8 A. Yes.

9 733 Q. "Potential to pervert the course of justice" --

10 A. Can we move it down, please? 15:54

11 734 Q. "Risk to colleagues, potential to pervert the course of  
12 justice, suborn colleagues."

13 A. Yes.

14 735 Q. "Options for alternatives: Garda Harrison can no  
15 longer serve in the Donegal division for the following  
16 reasons." 15:55

17  
18 And you set those out.

19  
20 "The incidents as alleged by Marisa Simms occurred in 15:55  
21 the Milford district. Marisa Simms continues to reside  
22 in the Milford district. Garda Harrison was convicted  
23 of road traffic offences at Ballyshannon district.  
24 There were public confidence issues with continued  
25 deployment in that district." 15:55

26  
27 So they were certainly well and live by that stage --

28 A. Yes.

29 736 Q. -- 10th October?

1 A. Yes.

2 737 Q. "Marisa Simms' mother resides in Letterkenny district.  
3 Marisa Simms is a teacher which is --" at a school  
4 which is in the Letterkenny district.  
5 "Marisa Simms' sister, Paula McDermott, resides in the 15:55  
6 Glenties district. Garda Harrison was previously  
7 attached to the Buncrana district but was transferred  
8 to Donegal Town due to his relationship with Marisa  
9 Simms. As previously referred to, Marisa Simms is a  
10 sister of Martin McDermott who was serving a prison 15:55  
11 sentence for the manslaughter of Garda Gary McLoughlin  
12 of Buncrana Garda Station. The threat to Garda Keith  
13 Harrison's life has been assessed, in accordance with  
14 HQ Directive 129/11, as substantial."  
15  
16 Now, leaving aside all of the other reasons, was Garda  
17 Keith Harrison safer from being a targeted attack on  
18 his life outside of Donegal?  
19 CHAIRMAN: You know, should they have moved him to,  
20 let's say, Kerry, or whatever? 15:56  
21 MR. HARTY: This is what was being requested here, was  
22 a move outside Donegal, and part of the justification  
23 for this is because there was a threat to Garda  
24 Harrison's life.  
25 CHAIRMAN: Do you understand the question? 15:56  
26 A. I do, yeah, and there are occasions where people are  
27 moved because of the threat to other areas. This is  
28 just one of the reasons that were taken into  
29 consideration in terms of -- because the threat was



1           substantial, and Garda Harrison himself pointed out as  
2           the person he thought made the threats.

3 738 Q.   MR. HARTY: And are you saying that it was in Garda  
4           Harrison's interest that he moved out of Donegal so  
5           that the person who was determined to kill him wouldn't 15:56  
6           kill him?

7           A.   It was one of the decisions based on the overall  
8           context.

9 739 Q.   Are assassins in Donegal, do they tend to only kill  
10          people in Donegal? 15:57

11          A.   No, what I am saying is, it's just --

12          CHAIRMAN: Mr. Harty, it would make sense. I mean, of  
13          course there is a criminal network, but they would have  
14          to go to the bother of finding out was he in - wherever  
15          it may be. I am not sure, are Garda postings, they are 15:57  
16          not posted to the general public, are they?

17          MR. HARTY: No.

18          CHAIRMAN: There is nothing like the diocesan directory  
19          which you look up and see is there a particular priest  
20          in a particular diocese? 15:57

21          A.   No, Judge. But on occasions then when they move to a  
22          community, the community welcome their new guard and it  
23          could become public some way that way. But normally we  
24          don't make it public as to where members are posted to.

25 740 Q.   MR. HARTY: You see, you then deal with the likely 15:57  
26          outcome, the estimate of time, that the matter is being  
27          referred to GSOC.

28

29          "I am not in a position to determine when the

1 investigation will conclude."

2  
3 You knew at this stage that the investigation was  
4 unlikely to commence in GSOC because GSOC had already  
5 said it wasn't a section 102 referral? 15:58

6 A. They undertook -- they undertook to refer back to us  
7 when they carried out their Section 91 inquiries.

8 741 Q. The relevant complaint history is done, current  
9 performance, long-term sick leave as a result of the  
10 road traffic accident. This is page 1628. Now, 15:58  
11 current performance, would it not have been fair at  
12 that stage to enter the fact that Garda Harrison --  
13 there had been no issues with Garda Harrison's carrying  
14 out of his functions as a member of An Garda Síochána,  
15 isn't that correct? 15:58

16 A. Prior to all of this happening?

17 742 Q. Prior to the report of the 8th October, there was no  
18 issues with Garda Harrison in how he performed his  
19 functions?

20 A. As you said yourself, there was agitation and rumblings 15:58  
21 coming from the community in Donegal Town.

22 743 Q. That is not about whether -- that's how other people  
23 are dealing with it --

24 CHAIRMAN: No, but again, the presumption of innocence  
25 would be applied here. I mean, there is the 15:59  
26 unfortunate Pulse thing and Garda Harrison has a view  
27 on that which he expressed and he said Chief  
28 Superintendent Sheridan never spoke to him about that.  
29 There is that. There is, of course, the ongoing

1 relationship with Marisa Simms. There is nothing wrong  
2 with that. It's just I suppose the relations that --  
3 and the connections that one has, again applying the  
4 epithet: I am not my brother's keeper. But you  
5 thought, as I thought it, in November, that he was a 15:59  
6 nice man, November 2011, who had some financial  
7 problems he was talking to you about. You couldn't  
8 help him out, apart from suggesting that he improve his  
9 Irish, get the 7.5% Gaeltacht allowance and perhaps  
10 move to Gortahork, or some place like that. 15:59

11 A. That is it, Judge, and, as far as I was concerned, it  
12 was a very positive meeting.

13 CHAIRMAN: So that is the attitude I take, Mr. Harty,  
14 because that is what is there on the evidence.

15 MR. HARTY: Except it's actually a matter of some 16:00  
16 import, which is that, in fact, in the Donegal  
17 division, Garda Harrison was never even the subject  
18 matter I think of a regulation 10 in respect of the  
19 performance of his duties as a member of An Garda  
20 Síochána. 16:00

21 CHAIRMAN: Well, that is what I would assume. I would  
22 hope that some Gardaí do carry out their duties in an  
23 exemplary fashion.

24 MR. HARTY: Yes. And that is a matter which should  
25 have been put in there in relation to current 16:00  
26 performance, in that letter.

27 CHAIRMAN: So the question is, why didn't you put in  
28 he's a wonderful man and a wonderful garda, or was your  
29 view coloured by the statement from Marisa Simms?

1 A. I suppose because of all the information that I had,  
2 Judge, that prior to all of these incidents I didn't  
3 take into account or put it in and -- but I certainly  
4 was coloured by the statement that I received from  
5 Marisa Simms, and that was the driving factor in my 16:00  
6 looking for the suspension from duty. It was a public  
7 confidence issue. And that I found it difficult  
8 that -- you know, I had a confidence issue with him, a  
9 public confidence issue that he would be able to carry  
10 out his functions effectively as a member of An Garda 16:01  
11 Síochána.

12 744 Q. MR. HARTY: He had been twice nominated for a Scott  
13 medal, isn't that right?

14 A. That's right, yes.

15 745 Q. And you never went and spoke to him about what was 16:01  
16 contained in Marisa Simms' statement?

17 A. No, because I was waiting for investigation. It would  
18 be up to GSOC to let him know that they were carrying  
19 out an investigation via the Garda Commissioner, so I  
20 certainly wouldn't be asking him about it when it was 16:01  
21 under active investigation.

22 746 Q. well --

23 A. I didn't, because it was under active investigation.  
24 Once I handed over to GSOC, it becomes a GSOC  
25 investigation. They then tell me when they want, now, 16:01  
26 me to notify Garda Harrison they are now investigating  
27 him.

28 747 Q. But it never became a GSOC investigation.

29 A. I do understand they did deem it a 98 investigation,

1 which is a criminal investigation.

2 748 Q. No, they didn't.

3 A. I did understand from Darren Wright's reports, although  
4 he questioned the 102 referral --

5 749 Q. No, it never proceeded to any investigation in relation 16:02  
6 to the matter because they contacted Ms. Simms --  
7 CHAIRMAN: Well, actually, it's fine, let's accept  
8 that. If they did anything, Chief Superintendent, it  
9 certainly wasn't much?

10 A. Yes. 16:02

11 CHAIRMAN: I mean, that is fair enough. It's maybe  
12 best to leave it like that.

13 A. Exactly. And then it would be up to them to tell me.  
14 So I certainly wouldn't be calling Garda Harrison in.  
15 It wouldn't be prudent of me to call Garda Harrison in 16:02  
16 and put him on notice.

17 750 Q. MR. HARTY: You wrote to him. You were aware by the  
18 start of November at the very latest that GSOC were  
19 doing nothing with this, isn't that right?

20 A. It wouldn't be prudent. It wouldn't be prudent of me 16:02  
21 to put him on notice that there is a criminal  
22 investigation or there is a statement here.

23 751 Q. Yes.

24 A. That wouldn't -- you know what I mean, that wouldn't be  
25 a management function. When there is a criminal 16:02  
26 investigation, I wouldn't interfere in the integrity of  
27 the investigation.

28 752 Q. What investigation?

29 A. The criminal investigation that was being conducted.

1 753 Q. which criminal investigation?  
2 A. As soon as I became that GSOC weren't doing a criminal  
3 investigation, I then wrote to the assistant  
4 commissioner to have somebody appointed outside the  
5 division to do it. 16:03

6 754 Q. But you knew on the 7th of October that Garda Wallace  
7 had been aware of the fact that he had -- that he knew  
8 that Marisa Simms had made a statement?  
9 A. No, I didn't take it from that, because I know that  
10 once you make a statement, that it's critical, and I 16:03  
11 understand from the evidence here that Garda Harrison  
12 didn't actually know what was in the statement.

13 755 Q. He didn't know what was in the statement but he knew  
14 there was a statement.  
15 A. I didn't pick that up, that he knew at that stage there 16:03  
16 was a statement. You know what I mean, I understood  
17 that he was - if I can call it fishing for information  
18 from Sergeant Wallace as to whether a statement was  
19 made or not.

20 756 Q. He had been told that Marisa Simms, by Marisa Simms, 16:03  
21 that she had gone to make a statement or had a  
22 statement taken from -- by Inspector Sheridan, and  
23 Sergeant Wallace knew that.  
24 CHAIRMAN: You know, and I think I know that too.

25 A. Sorry -- 16:03

26 757 Q. MR. HARTY: So he knew on 7th of October that there was  
27 a statement.  
28 A. I knew from Sergeant Wallace's report that he was --  
29 CHAIRMAN: What I think is correct to say is that he

1 alleges that Marisa Simms said to him: I have gone and  
2 obtained a safety order, I have made a statement, and  
3 that Chief Superintendent McGinn walked in during the  
4 course of the interview and made a resounding comment,  
5 no disrespect intended, Chief Superintendent, about the 16:04  
6 conduct of male Gardaí towards their wives or domestic  
7 partners and what would or would not be tolerated.  
8 That is what was reported, but Marisa Simms hasn't  
9 stood over that in evidence.

10 758 Q. MR. HARTY: But certainly it would appear from 16:04  
11 everything that he was of the view that a statement had  
12 been made, and he was still of that view?

13 CHAIRMAN: That is fair. It seems so.

14 759 Q. MR. HARTY: And we will come back to that in a  
15 second -- 16:04

16 CHAIRMAN: How bad it was, I am sure he had no idea.

17 MR. HARTY: Maybe he had no idea in relation to that.

18 CHAIRMAN: Unless he was told sometime later.

19 A. That is it, Judge.

20 760 Q. MR. HARTY: And you then go on and you rely on the HSE 16:04  
21 referral:

22  
23 "A HSE referral has been made by Sergeant Brigid  
24 McGowan in respect of Marisa Simms' children and their  
25 exposure to the abuse and the alleged assaults by Keith 16:05  
26 Harrison on Marisa Simms."

27  
28 So you knew on the 10th that Sergeant McGowan had made  
29 the HSE referral?

1 A. Oh, I knew from the 8th that Superintendent McGovern  
2 was ensuring that it would be made.

3 761 Q. Yes. But you knew on the 10th that it was done by  
4 Sergeant McGowan. How did you know that?

5 A. Well, the process is that the superintendent makes the 16:05  
6 referral. Sergeant McGowan would fill out the  
7 paperwork for sign-off by the superintendent.

8 762 Q. How did you know that?

9 A. Well, I knew from Superintendent McGovern leaving the  
10 meeting on the 8th, that was the task. 16:05

11 CHAIRMAN: That is the evidence so far, that he was to  
12 do that, and it was, in any event, automatic. And the  
13 evidence-in-chief was that, as far as the chief  
14 superintendent was concerned, it was only her job to  
15 make sure, kind of tick this one off type thing, and 16:05  
16 the tick-off was done at the meeting. So she knew it  
17 was in hand, whether it had been sent or not, that it  
18 was going through.

19 A. That's correct, Judge.

20 763 Q. MR. HARTY: You then conclude that letter by -- report, 16:06  
21 by saying that:

22

23 "Garda Harrison is alleged to have misrepresented his  
24 position in An Garda Síochána to obtain details on  
25 Marisa Simms while she was away with friends for the 16:06  
26 weekend."

27

28 Now, Sergeant Durkin had already checked that by the  
29 10th October and had already confirmed that the --



1           Garda Harrison did not, in fact, say, I want these  
2           because I am a garda.

3           A.    Yes, and I corrected that, that it wasn't available at  
4           the time that I was drafting the report, but as soon as  
5           I became aware, that I corrected it in the next report. 16:06  
6           But that was the information I was working off at the  
7           time.

8   764   Q.    "An alternative to suspension would be to transfer  
9           Garda Harrison to another division."  
10  
11  
12           Can you tell me where in the Garda Code, the Garda Act,  
13           or anywhere else, where transferring a garda to another  
14           division is considered part of the disciplinary  
15           process?

16           A.    And that is a point I am trying to make. This opinion 16:07  
17           that I am -- is not part of any criminal or  
18           disciplinary process. It's not in lieu of discipline,  
19           it's not in lieu of any criminal. It is me, as a chief  
20           superintendent in charge of running the division,  
21           expressing to the Commissioner that there is a public 16:07  
22           confidence issue in Garda Harrison serving in Donegal  
23           Town. So it's not part of any disciplinary or any  
24           criminal process; it's about management of the Garda  
25           division.

26   765   Q.    Can we go to page 1624. 16:07  
27           CHAIRMAN: Are they not entitled to do that? Are we  
28           not entitled to suspect the -- well, they are not, so,  
29           I mean, either it's a disciplined force or it's not.  
          And does one really have to go through several

1 administrative hoops to say, look, we have a problem  
2 with a garda here, but there may not be a problem with  
3 him somewhere else so can he move to Meath? I mean, is  
4 that --

5 MR. HARTY: They can request --

16:07

6 CHAIRMAN: Is that impossible in the context of the way  
7 the police force is run?

8 MR. HARTY: Yes.

9 A. I understood, Judge, there is a lot of case law in  
10 relation to suspension and changing people's duties and  
11 it cannot be considered in lieu of discipline or a  
12 criminal -- you cannot, let's say, punish somebody by  
13 transferring them or keeping them and then discipline  
14 them, and there is a lot of case law in relation to  
15 that, but in this particular case --

16:08

16:08

16 766 Q. There is an awful lot of case law, there is a lot of  
17 law which says that a disciplinary sanction --

18 MR. MCGUINNESS: If he'd let the witness finish her  
19 answer.

20 767 Q. MR. HARTY: A disciplinary sanction cannot include  
21 moving division?

16:08

22 A. Or suspension.

23 768 Q. No, suspension is contained within the Garda Discipline  
24 Regulations.

25 A. Yes. But can I say in this particular case, I am  
26 asking, because of a public confidence issue in  
27 policing, which I am obliged in the division and it's  
28 my opinion to the Garda Commissioner that this man  
29 should not be allowed to serve. It has nothing got to

16:08

1 do with discipline and it's not to do with the  
2 criminal.

3 CHAIRMAN: So the answer is, it's not criminal, it's  
4 not investigative, it's not disciplinary, it's not  
5 GSOC. It's a question of public confidence and the 16:08  
6 right of the Garda Commissioner to put people where the  
7 Garda Commissioner feels they will be useful as opposed  
8 to have them in places where people's confidence in the  
9 Gardaí will be undermined.

10 769 Q. MR. HARTY: Can we look perhaps at page 1 -- 16:09  
11 CHAIRMAN: I don't know, is that possible,  
12 Mr. O'Higgins?  
13 MR. O'HIGGINS: Yes, Judge.  
14 CHAIRMAN: It is? Is that a yes?  
15 MR. O'HIGGINS: Is it possible for management to -- 16:09  
16 CHAIRMAN: Yes.  
17 MR. O'HIGGINS: Yes.

18 770 Q. MR. HARTY: We will look at page 1624. We are on it.  
19 CHAIRMAN: We will have to break now, Mr. Harty. Will  
20 you be much longer? 16:09  
21 MR. HARTY: I might as well deal with this one question  
22 in terms of what the witness said. This is the letter  
23 to chief superintendent Internal Affairs re --  
24 CHAIRMAN: Mr. Harty --  
25 MR. HARTY: "Re Garda Discipline Regulations 2007 16:09  
26 suspension from duty, Garda Harrison, Donegal Town  
27 Station." It is about discipline.  
28 CHAIRMAN: Mr. Harty, do you know what, I am actually  
29 entitled to intervene and say we should take a break.

1 MR. HARTY: I appreciate that, but --

2 CHAIRMAN: I am actually entitled to do that. We  
3 should take a break. And I am asking you will you be  
4 much longer?

5 MR. HARTY: I am going to be longer, I am afraid. 16:10

6 CHAIRMAN: Like how much longer?

7 MR. HARTY: I am doing my best to get through things.  
8 In terms of --

9 CHAIRMAN: Mr. Harty, do you know, it's a question that  
10 has been asked for centuries by judges. Now, I am not 16:10  
11 a century old, but I have been in practice since 1979  
12 and it certainly has been asked of me.

13 MR. HARTY: It will be another 30 minutes at least.

14 CHAIRMAN: Well, let's say 30 minutes. Will you say 30  
15 minutes? 16:10

16 MR. HARTY: I should be done.

17 CHAIRMAN: Because I want to get through Garda Campbell  
18 today and I want to send him home back to Donegal. It  
19 is not unreasonable. Now, Mr. Barnes, how long are you  
20 going to be? 16:10

21 MR. BARNES: I think I may be up to half an hour.

22 CHAIRMAN: Is there anybody else? Mr. Ó Braonáin, have  
23 we been through the loops? I appreciate that you are  
24 appearing for Chief Superintendent McGinn but -- oh, I  
25 am sorry, Mr. Power, I beg your pardon. I don't know 16:11  
26 why -- it's the big dark glasses that keep drawing my  
27 attention to Mr. Ó Braonáin. Please forgive me.

28 MR. POWER: Mr. Ó Braonáin is doing such a good job  
29 here. I might have a few questions, but I will be very

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brief.

CHAIRMAN: And the Garda Commissioner?

MR. DIGNAM: Chairman, at the moment I have two questions, but I expect they will probably be covered by some of the other parties.

16:11

CHAIRMAN: And, Mr. McGuinness, is there anything else?

MR. MCGUINNESS: I hope everything will have already been covered.

CHAIRMAN: Yes. All right. So what do you think, we will break for 15 minutes and then we will come back.

16:11

THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

AS FOLLOWS:

771 Q. MR. HARTY: Chief Superintendent McGinn, that letter was headed "Garda Síochána Discipline Regulations 2007, suspension from duty Garda Keith Harrison, Donegal Town station"?

16:28

A. Yes. Sorry, yes.

772 Q. So it was, in fact, a recommendation for suspension under the Garda Discipline Regulations, because that is how you suspend somebody, it's under the Garda Discipline Regulations?

16:29

A. No, the Commissioner can decide under different regulations to suspend. I had been requested the day before from the chief superintendent Internal Affairs had I considered suspension in this case, but suspension cannot be in lieu of discipline or criminal.

16:29

773 Q. It isn't in lieu of discipline or criminal, but it is part of the Discipline Regulations that, subsequent to

1 matters to be investigated, the discipline takes place  
2 under the Garda Discipline Regulations 2007. The  
3 suspension takes place under that?

4 A. The suspension can take, but in this particular case  
5 where I am recommending that it be suspended, it's for 16:29  
6 confidence. It's a public confidence in policing  
7 issue. It's not to do with suspension because somebody  
8 is under criminal or disciplinary investigation.

9 774 Q. Yes, it is. That is why it is headed "Discipline  
10 Regulations"? 16:29

11 A. No.

12 775 Q. Why is it headed "Discipline Regulations" if that is  
13 not what it is about?

14 A. No, I am quite that in this particular case suspension  
15 was not in lieu of discipline or criminal. It was to 16:30  
16 do with public confidence in policing.

17 776 Q. I will pull up the actual regulation if you give me a  
18 moment. I think it is Regulation 7, but I could be  
19 wrong. Yes, it is Regulation 7.

20 16:30

21 "Regulation 7 of Garda Discipline Regulations 2007:  
22 where, in the opinion of the Commissioner, the  
23 circumstances render such a course desirable in the  
24 interests of An Garda Síochána, he or she may suspend a  
25 member off duty." 16:30

26

27 And then it goes on to say provided the provisions --  
28 but it is under the Discipline Regulations that it is  
29 done.

1 A. Yeah, but it's not in lieu of discipline or criminal.

2 777 Q. Of course it's not in lieu --

3 A. It's a management decision in terms of public

4 confidence in policing. Because if I am suspending him

5 in lieu of other matters, well then it is double 16:31

6 jeopardy, you know what I mean? So that is not what is

7 happening in this case.

8 778 Q. Yeah. But you were then replied to, and your letter

9 meets the format that was set out to you for what was

10 to be considered in respect of suspension, the primary 16:31

11 consideration, secondary consideration, that was the

12 letter which was sent to you on the 9th?

13 A. That was the request, yes.

14 779 Q. Yes. In making your recommendation. And that's at

15 page 1726, but I don't think we need to open it. In 16:31

16 any event, Chief Superintendent McLoughlin came back,

17 and that's at page 1589.

18

19 "With reference to the above --" this is from Chief

20 Superintendent McLoughlin. 16:32

21

22 "With reference to the above and previous

23 correspondence resting with your minute dated 10th

24 October, the content of which is noted, your

25 recommendations have been considered, and, having read 16:32

26 the accompanying statements, I am of the view that in

27 circumstances outlined in the attached statements the

28 more appropriate action in this matter available to

29 local Garda management is for the member concerned to

1 be confined in indoor duties."

2

3 It goes on:

4

5 "From the details contained in the correspondence 16:32  
6 received at this office to date it is unclear why this  
7 matter was deemed suitable for referral to the Garda  
8 Síochána Ombudsman Commission pursuant to the  
9 provisions of Section 102 of the Garda Síochána Act as  
10 amended. I am therefore to seek your views and those 16:32  
11 of the district officer in that regard. Report in  
12 early course, please."

13

14 That was the response you received, isn't that right?

15 A. Yes, yes. 16:32

16 780 Q. So as a result of your request to have Garda Harrison  
17 either suspended or moved district under the Garda  
18 Síochána Discipline Regulations, Garda Harrison, the  
19 direction you received was that he was to be confined  
20 in indoor duties? 16:33

21 A. Yes, that's correct, Judge.

22 781 Q. And that was the direct consequence of your request for  
23 suspension?

24 A. That was in reply to that minute that I would have  
25 sent. But he was already confined from the meeting of 16:33  
26 the 8th in relation to his safety.

27 782 Q. Mm-hmm.

28 A. And I understand possibly before that, because he only  
29 worked one day after the court conviction, if my memory



1 is correct. There was only actually one day that he  
2 actually worked prior to all of these indoor duties.  
3 So there was three elements working into it.

4 783 Q. You see, you swore an affidavit in the High Court,  
5 didn't you, in respect of the judicial review  
6 proceedings?

16:33

7 A. Yes.

8 784 Q. And you say in that, paragraph 11, at the bottom of  
9 paragraph 11:

10

16:34

11 "Primarily for his own safety but also in the knowledge  
12 that this might help restore faith between the Gardaí  
13 and the local community I decided the applicant should  
14 be reassigned to office duties within the station and  
15 this has been his default to date."

16:34

16 A. Yes.

17 785 Q. In fact, that decision wasn't made by you, that  
18 decision was made by Chief Superintendent McLoughlin in  
19 response to your request for a suspension?

20 A. It had already been made before that in the meeting of  
21 the 8th.

16:34

22 786 Q. You do accept that it would be better to give full and  
23 detailed answers in affidavits before the High Court?

24 A. The affidavits I gave to the High Court, yes.

25 787 Q. Yes.

16:34

26 A. I gave full detail.

27 788 Q. But you didn't point out to the High Court that the  
28 reason why Garda Harrison was on station duties was  
29 because you requested that he be suspended or moved

1 division and Chief Superintendent McLoughlin directed  
2 that, instead, he should be maintained on indoor  
3 duties, which was, in fact, the truth?

4 A. In fact, on the 8th October at the meeting he was on  
5 indoor duties from that meeting of the 8th, for his own 16:35  
6 personal safety. And as a result of me looking for the  
7 suspension, they agreed, but he had already been  
8 confined to indoor duties.

9 789 Q. And that decision was made at the meeting of the 8th?

10 A. And possibly he could have been on indoor duties, 16:35  
11 because I think he only worked one day after the road  
12 traffic incident.

13 790 Q. But that was decided at the meeting of the 8th?

14 A. The meeting of the 8th was that he would be confined  
15 pending the outcome of the security consideration. 16:35

16 791 Q. Where is that noted?

17 CHAIRMAN: The road traffic incident, is that the  
18 crash?

19 A. The Manorhamilton --

20 MR. HARTY: Yes. 16:35

21 A. -- or the 102?

22 CHAIRMAN: The conviction in Manorhamilton.

23 A. Yes.

24 CHAIRMAN: Judge Durkin, was it?

25 A. Yes, Sergeant Durkin. 16:36

26 792 Q. MR. HARTY: Are we talking about the road traffic  
27 conviction or the road traffic crash?

28 A. Sorry, Judge, yeah, it's the 102 referral. The  
29 Broderick incident. He had only worked one day from

1 that and the incident in Manorhamilton.

2 CHAIRMAN: That's the 17th May 2013?

3 A. 2013, yes, Judge.

4 793 Q. MR. HARTY: He had been out sick until the week of  
5 the -- the first week in October. Where is it noted 16:36  
6 anywhere that it was the meeting of the 8th October  
7 which determined that Garda Harrison was to remain on  
8 indoor duties?

9 A. Superintendent Finan took from the meeting that he was  
10 to be on indoor duties until the outcome of the 16:36  
11 investigation. I think it's covered by -- he had been  
12 advised by Sergeant Durkin, I think. Sergeant Durkin  
13 told Garda Harrison the reason why he was on indoor  
14 duties.

15 794 Q. Yes, he told him that. And undoubtedly that is what 16:37  
16 was told to him by you, but in fact it was --

17 A. I wouldn't have spoken --

18 795 Q. -- Chief Superintendent McLoughlin who directed that he  
19 be confined on indoor duties?

20 A. But he had been already on indoor duties prior to -- 16:37

21 796 Q. That's not something I'm aware of before now.

22 CHAIRMAN: What's the point, Mr. Harty?

23 MR. HARTY: The point is that an affidavit was sworn  
24 before the High Court which gave one reason for why  
25 Garda Harrison was on indoor duties, and the 16:37  
26 documentation which the Tribunal has seen has another  
27 reason as to why Garda Harrison was confined on indoor  
28 duties.

29 CHAIRMAN: But he was on indoor duties, in any event,

1 when he came back to work.

2 MR. HARTY: I'm not clear on that.

3 CHAIRMAN: Well, I think that is the situation.

4 A. That's it, Judge, yes.

5 CHAIRMAN: But it wasn't in consequence of 8th October, 16:38

6 that simply continued it --

7 A. That continued on, judge, and this continued on as

8 well.

9 797 Q. MR. HARTY: Sorry, that is not the case, Chief

10 Superintendent. My instructions, I've just checked on 16:38

11 that, Garda Harrison was not on indoor duties before

12 12th October.

13 A. I think, in fact, he only actually worked one day.

14 798 Q. And the statement from Superintendent Finan doesn't

15 make any reference to that, so the answer is, is that 16:38

16 Garda Harrison was informed on the 12th that he was on

17 indoor duties; in other words, subsequent to this

18 correspondence?

19 A. No. I would know that Sergeant Durkin spoke to him

20 before that. 16:38

21 799 Q. There is no evidence of that.

22 A. It's in Sergeant Durkin's statement, or one of the

23 reports. It is in one of the reports of sergeant --

24 800 Q. In any event, my instructions are that my client had

25 not been put on indoor duties until 12th October? 16:38

26 A. No, I disagree with that. And I understand from

27 Sergeant Durkin it was because of the threats that he

28 was put into indoor duties. And it may be contained in

29 the 9th May letter, but it is the case that he was on

1 indoor duties because of the threat. And it came from  
2 the meeting, I understood, of the 8th.

3 801 Q. You see, even in your letter on the 10th, I'm just  
4 looking here, in your letter on the 10th, you don't say  
5 that he has been confined to indoor duties? 16:39

6 A. No, I don't, no.

7 802 Q. No.

8 A. But that was the position.

9 803 Q. Well, the position is, is that he says he wasn't.  
10 Nobody had suggested before now that he was. You, in 16:39  
11 the High Court affidavit, say that the reason why he  
12 was confined from the 12th was because of the risk to  
13 his safety and maintaining confidence in public  
14 policing.

15 CHAIRMAN: well, there's the two reasons together. 16:40

16 MR. HARTY: Yes. But the point is that no one -- you  
17 never mentioned that that was as a result of a request  
18 to suspend him made on the 10th October, nor that it  
19 was a directive from chief superintendent Internal  
20 Affairs on the 12th October. 16:40

21 A. The decision had been made prior to Chief  
22 Superintendent McLoughlin's minute.

23 804 Q. Can I see the evidence of that decision, please? The  
24 recording of it.

25 A. If we look at the report of the 9/5/2014. It's in one 16:40  
26 of the reports that --

27 CHAIRMAN: He got back a reply the next day, which is  
28 the 9th, isn't that right?

29 MR. HARTY: The 11th.

1 CHAIRMAN: The 11th.

2 MR. HARTY: The letter was sent on the 10th.

3 A. It's in one of the reports there that Sergeant Durkin  
4 is having a conversation with him, possibly could be in  
5 Superintendent Archbold's, sometime around May time, in 16:41  
6 his notes.

7 MR. HARTY: In May?

8 A. It's in one of the -- it is in some of the papers.

9 CHAIRMAN: It may be there, but there was a lot  
10 happening on the 11th October. Marisa Simms had asked 16:41  
11 GSOC can she stop, Superintendent McGovern notes in his  
12 diary from Sergeant McGovern - possible that the couple  
13 are back together, and then it is possible that this is  
14 the date when he was actually put on indoor duties, is  
15 that it? 16:41

16 A. My understanding is, Judge, he was -- definitely from  
17 the 8th he was to be put on indoor duties before the  
18 recommendation.

19 CHAIRMAN: well, you see, he thinks he worked one day  
20 outdoors. 16:41

21 A. I need just to correct that, Judge. He only actually  
22 worked one day before --

23 805 Q. MR. HARTY: Can you point out to me where you noted the  
24 decision at that meeting that he be confined to indoor  
25 duties, from that meeting on the 8th October? 16:42

26 A. I don't have a written note of it, but it is my  
27 understanding that he was going to be confined to  
28 indoor -- or was already. I think there was one day  
29 that he had actually worked, but he was going to be

1 confined pending the threat assessment.

2 806 Q. Chief Superintendent, do you accept that, at the very  
3 least, where a garda is to be on restricted duties,  
4 that that, at the very least, merits notation on your  
5 part in paper, on paper? 16:42

6 A. My understanding is that at the meeting of the 8th he  
7 was already on -- now I'm open to, but certainly from  
8 the meeting of the 8th he was confined to indoor  
9 duties.

10 807 Q. You see, it doesn't feature in the only note that I 16:42  
11 have seen of that meeting.

12 A. No, I don't have it noted.

13 808 Q. And you didn't note it anywhere?

14 A. I didn't note it, no.

15 809 Q. Do you accept that a chief superintendent who directs 16:43  
16 that somebody is to be maintained on indoor duties  
17 should note that somewhere?

18 A. I didn't note it and I understood that --

19 810 Q. I'm not asking you whether you did, I'm saying do you  
20 accept -- 16:43

21 A. No, I have no note, no.

22 811 Q. Do you accept that a chief superintendent, where they  
23 are confining a garda to restricted duties, should note  
24 it somewhere?

25 A. I would be happy once the superintendent advises him of 16:43  
26 the decision.

27 812 Q. I'm asking you, do you accept that it is a reasonable  
28 proposition in a disciplined force, when a  
29 superintendent restricts a garda's duties, that that

1 would be noted somewhere?

2 A. I'm open to what evidence that --

3 813 Q. I'm not talking about evidence.

4 A. No, but I haven't got a note, sorry if I misunderstood  
5 your question. 16:44

6 814 Q. Yes.

7 A. I haven't noted it in any note.

8 815 Q. And do you accept that you should have?

9 A. I'm happy that when inspector -- or when Superintendent  
10 Finan told Garda Harrison he was confined to indoor 16:44  
11 duties via Sergeant Durkin that he was aware that he  
12 was on indoor duties.

13 816 Q. You see, it's not mentioned in Superintendent Finan's  
14 statement either.

15 A. Okay. But I understand he will give evidence tomorrow 16:44  
16 and --

17 817 Q. But, see, this is -- we're back to your obligation to  
18 keep records and notes about things, Chief  
19 Superintendent.

20 A. Yeah. I can only speak for myself, and I don't have a 16:44  
21 note of it. It was a decision that had been made. The  
22 purpose of the meeting of the 8th was to make critical  
23 decisions, have the key people in the room. I didn't  
24 write out or make a note to tell Garda Harrison he was  
25 on indoor duties. 16:44

26 818 Q. But it was made on the 8th?

27 A. Or even prior to the meeting of the 8th.

28 819 Q. And you didn't report it to Internal Affairs when  
29 looking for suspension?



1 A. No, I did not.

2 820 Q. It is a relevant matter when you are dealing with  
3 suspension; in fact, it was highly relevant to the  
4 issue, wasn't it?

5 A. I didn't go into the nature of the duties he was 16:45  
6 performing, no.

7 821 Q. It was highly relevant to the issues that you were  
8 looking for in relation to his safety and public  
9 confidence in policing, which are two issues that you  
10 relied on in respect of the application for a 16:45  
11 suspension. It was highly relevant if the decision had  
12 already been made?

13 A. I didn't include it in the report, going up to --

14 822 Q. Can you tell me why you didn't?

15 A. For no reason only that I didn't include it. I 16:45  
16 obviously didn't put it in for the relevance. I was  
17 replying to the request from the Commissioner, whether  
18 he should be suspended. I didn't go into the nature of  
19 the duties he was performing, but there is no ulterior  
20 motive why I left it out. 16:45

21 823 Q. No, there never is. You met Garda Harrison or were in  
22 the same room as Garda Harrison over the course of the  
23 next few weeks, weren't you?

24 A. Here at the commission?

25 824 Q. No, no? 16:46

26 A. Or at the Tribunal?

27 825 Q. After you had written that letter on the 10th October,  
28 you were in the same room as Garda Harrison over the  
29 course of a couple of days in October 2013?

1 A. In October 2013. Help me please, you obviously know  
2 when --

3 826 Q. Okay. You were at the trial of a member of An Garda  
4 Síochána --

5 A. Yes, yes.

16:46

6 827 Q. -- who was being investigated and prosecuted by a  
7 superintendent from the Donegal division in respect of  
8 a sexual assault on and harassment charge against two  
9 other members of An Garda Síochána from the same  
10 division, isn't that right?

16:46

11 A. Yeah, the trial was one guard committing the assaults  
12 in the workplace on two female members, yes.

13 828 Q. Two female members. And it was investigated by the  
14 superintendent from the neighbouring district, isn't  
15 that correct?

16:47

16 A. Superintendent Coen.

17 829 Q. Yes. And it involved a very controversial trial, I  
18 don't want to go into too much detail for fear of,  
19 shall we say, unnecessarily exposing the victims, but  
20 it was a matter whereby Garda Harrison had witnessed  
21 ongoing sexual assault?

16:47

22 A. Sexual harassment.

23 830 Q. Sexual harassment and a sexual assault. I'm not sure  
24 whether he witnessed the sexual assault, to be fair --

25 A. To be fair, I think it was sexual harassment in the  
26 workplace.

16:47

27 831 Q. And there was a sexual assault?

28 A. No, no, but that -- that sexual assault charge didn't  
29 continue. It was an assault.

1 832 Q. An assault?  
2 A. An assault.  
3 833 Q. An assault. And Garda Harrison was one of the few  
4 Gardaí who was in a position to witness what had taken  
5 place and stood by the two women when they made a 16:48  
6 statement of complaint, isn't that right?  
7 A. Garda Harrison did provide evidence at that trial.  
8 834 Q. Yes.  
9 A. Yes.  
10 835 Q. And he did indicate and gave evidence that the 16:48  
11 behaviour was, as far as he was concerned, not within  
12 the bows of the normal or the appropriate?  
13 A. Yeah, his evidence mainly concerned where he observed  
14 the male garda touching the female garda near to her --  
15 a stab vest near the breast, and that he deemed it was 16:48  
16 inappropriate.  
17 836 Q. And the comments that were made by the --  
18 A. And the comments that were made by the -- yes.  
19 837 Q. And you quite properly were in court to witness all of  
20 this? 16:48  
21 A. I probably wasn't there all the time, but I did go to  
22 the court a number of times, obviously, to hear. But I  
23 was there the day Garda Harrison -- but he did give  
24 good evidence in that case.  
25 838 Q. I think he was thanked by at least one of the two women 16:48  
26 afterwards?  
27 A. I'm not aware of that.  
28 839 Q. For standing up for them. But you were there at that  
29 time in the same building as Garda Harrison; why did

1           you not go and speak to him?

2           A.    And tell him that his partner had made a so many page  
3           statement and that he was possibly going to be under  
4           criminal investigation and put him on notice that these  
5           crimes were being alleged against him? I didn't think 16:49  
6           it would be appropriate or prudent on my behalf.

7 840 Q.    Sorry, this is late October. You know as well as I do  
8           that, by late October, Sergeant McGowan, by the 10th  
9           October, I think, or possibly 11th, 11th October, had  
10          informed Superintendent McGovern that Garda Harrison 16:49  
11          and Ms. Simms appeared to be on good terms, if not back  
12          together, you were aware from the 7th October that  
13          Garda Harrison was aware that Inspector Sheridan had  
14          spoken to Marisa Simms and taken some form of a  
15          statement from her, you were aware that by the end of 16:49  
16          October, that Marisa Simms had spoken to GSOC and  
17          didn't wish to proceed with any form of GSOC  
18          involvement?

19          CHAIRMAN: Yes, that is the email of the 15th October?

20          MR. HARTY: Yes. So you knew that he knew the 16:50  
21          statement was there.

22          A.    I knew that he knew -- you know, we can interpret that  
23          we knew that there was -- but I didn't know whether he  
24          knew the content and it wasn't my place to advise him.  
25          That was a matter for the investigating body of GSOC or 16:50  
26          who was appointed to investigate afterwards. But it  
27          certainly wasn't my function to advise him.

28 841 Q.    Now, in relation to who was to investigate afterwards,  
29          you write in early November, on the 12th November,

1 looking for the appointment of a person, a  
2 superintendent from outside the Donegal division, to  
3 investigate all aspects, both criminal and  
4 disciplinary, in relation to this matter?

5 A. That's correct. 16:51

6 842 Q. You, in fact, had, two weeks earlier, been sitting in a  
7 courtroom where a superintendent from within the  
8 division had investigated one garda vis-à-vis the  
9 complaints made by two other gardaí, quite  
10 successfully -- to conviction? 16:51

11 A. Yes.

12 CHAIRMAN: I have that. And the question is what,  
13 Mr. Harty?

14 843 Q. MR. HARTY: The question is why did it have to be  
15 somebody from outside the division? Because where a 16:51  
16 superintendent from the neighbouring district can carry  
17 out the investigation, why did it have to be somebody  
18 from outside the division? And that was three gardaí  
19 were involved in the other incident. Not one, not two,  
20 but three gardaí -- 16:51

21 A. Mm-hmm.

22 844 Q. -- were involved in the other incident. And  
23 Superintendent Coen had no difficulty dealing with the  
24 matter. So why did it have to be somebody from outside  
25 the division? 16:52

26 A. Because, Judge, as I have previously said, I wanted a  
27 independent, impartial, fair hearing. Due to the  
28 history between An Garda Síochána and the appearance of  
29 any bias or conflict of interest between the McDermott

1 family and An Garda Síochána and Marisa and the Garda  
2 Síochána, and it is very difficult for the colleagues  
3 of members to have to investigate their own and make an  
4 arrest and take them before the courts.

5 845 Q. Superintendent Coen had done a very fine job? 16:52

6 A. Yeah. If I can maybe go back to the history in  
7 relation to the Superintendent Coen appointment, it  
8 came out of bullying and harassment in the workplace  
9 and it had come out of a civil process before  
10 developing into a criminal process. 16:52

11 846 Q. But there was no requirement, even though the process  
12 had some history, even though it involved three serving  
13 members, a public trial, there was no difficulty with  
14 Superintendent Coen?

15 A. The process in that case with the three members was 16:52  
16 under the harassment and bullying policy and everybody  
17 agreed initially to informally deal with it in an  
18 informal process. Then, as it progressed, we went to a  
19 formal investigation. So it wasn't made under the  
20 criminal code at that stage. 16:53

21 847 Q. It became --

22 A. Yes, when Superintendent Coen did his investigation and  
23 as he did his interviews and when it became apparent  
24 that there was criminal offences, he was already in the  
25 process of doing his investigation, he sent the file to 16:53  
26 the DPP.

27 848 Q. And there would be no difficulty with Inspector  
28 Sheridan doing the same thing?

29 A. We're talking about different scale of offences, and it

1           wasn't as serious as threats to kill and harassment and  
2           ongoing domestic violence.

3 849 Q.     It wasn't as serious?

4           CHAIRMAN: Well, that is the view she takes, and I can  
5           make a judgement on it one way or the other. 16:53

6           MR. HARTY: Yes.

7 850 Q.     The situation is, you wrote that letter, it was  
8           approximately two months before you got a response,  
9           appointing Superintendent McGovern. Superintendent  
10          McGovern, quite rightly under the Garda Discipline 16:54  
11          Regulations, said he couldn't carry out the discipline  
12          investigation. It's not a question of appropriateness  
13          or not; it's simply in breach of the regulations for  
14          him to carry out the discipline investigation, isn't  
15          that correct? 16:54

16          A.     And it wouldn't be appropriate.

17 851 Q.     But it is just simply in breach of the regulations?

18          A.     Well, he had dealt with the HSE referral on some  
19          matters, yes.

20          CHAIRMAN: He wasn't going to do it anyway. 16:54

21          A.     Yes, he wasn't going to do it, and it was referred back  
22          to Superintendent Murray.

23 852 Q.     MR. HARTY: And then it was referred to Superintendent  
24          Murray, who you appointed because in fact you're the  
25          person who does the appointment, isn't that right? 16:54

26          A.     Yes.

27 853 Q.     In February. And then nothing was done by  
28          Superintendent Murray until December?

29          A.     Yes.

1 854 Q. what steps did you take to follow up Superintendent  
2 Murray from February to December?  
3 A. I had received no -- but I understood the investigation  
4 had commenced and it had started and she was carrying  
5 out her investigation. 16:55

6 855 Q. You were the appointing officer --  
7 A. Yes.

8 856 Q. -- under the regulations. You were the person who will  
9 ultimately have to consider the report in conjunction,  
10 I presume, with the assistant commissioner as to 16:55  
11 whether or not it goes to a board of inquiry, or do you  
12 decide?  
13 A. No, I decide.

14 857 Q. Okay.  
15 A. And then I send it to Internal Affairs. 16:55

16 858 Q. And there's nothing to stop you communicating with  
17 Superintendent Murray to ask about the progress of her  
18 investigation?  
19 A. No. But I understand that has been done by Internal  
20 Affairs. 16:55

21 859 Q. No, but you're the appointing officer?  
22 A. I know I'm the appointing officer, but I don't get  
23 involved in the investigation until the file comes back  
24 to me.

25 860 Q. And this matter, which was much more serious than the 16:55  
26 question of the assaults, the sexual assault and  
27 harassments in --  
28 A. I think to be fair to everybody, it wasn't a sexual  
29 assault. There are three gardaí involved. It was an



1 assault and sexual harassment in the workplace.

2 861 Q. Sorry, an assault and sexual harassment. This was much  
3 more serious, but you, on your watch, being somebody  
4 who was fully able to investigate it, fully able to  
5 ensure that the investigation was progressed, made no 16:56  
6 inquiry for the entirety of 2014?

7 CHAIRMAN: In other words the question is: why didn't  
8 you hurry her along or ring her up and say, look,  
9 what's going on here?

10 A. I understood that was being done by Internal Affairs, 16:56  
11 Judge, that they were following through.

12 CHAIRMAN: There's things, in other words, that move  
13 off your desk and that's it?

14 A. They move off my desk, and then she is allowed the  
15 integrity of her investigation and she reports back to 16:56  
16 me.

17 862 Q. MR. HARTY: What did you do when you appointed her?

18 A. In the sense -- what do you mean what did I do?

19 863 Q. Can you tell me about the meeting with her?

20 A. I had a meeting with her, yeah, just to hand her over 16:56  
21 the paperwork.

22 CHAIRMAN: Did you, in fact, appoint her, or was it B  
23 Branch?

24 A. No, what happens, I made the inquiry with the assistant  
25 commissioner and then he came back initially with 16:57  
26 Superintendent McGovern, we went back to him on that,  
27 and then he appointed Superintendent Mary Murray to  
28 carry out the investigation and then I make the  
29 appointment papers, and then, Judge, I give her the

1 paperwork then that's involved, the statements.

2 CHAIRMAN: And then she's supposed to report to B

3 Branch, is it?

4 A. And then she reports back to me. No, she reports back

5 to me as the appointing officer. 16:57

6 CHAIRMAN: Well, then, the question is, I suppose:

7 when the reports didn't come back, I suppose why didn't

8 you ring her up and say, I wonder what's going on here?

9 A. Em --

10 CHAIRMAN: That is counsel's question. 16:57

11 A. Yes, I understand what counsel is asking me. I was

12 working off the presumption she was continuing with her

13 investigation and she would be reporting back to me

14 with a full file.

15 864 Q. MR. HARTY: Because, sorry, I literally just -- this 16:57

16 documentation has clearly just been received by the

17 Tribunal, an additional statement by Superintendent

18 Mary Murray, which is directly on point, it turns out,

19 with an unusual appositeness. Superintendent Murray

20 met you in relation to it, and you met her, I think, 16:58

21 on --

22 A. Can we put this up on the screen?

23 865 Q. Yes. Well, perhaps if we just go to the documentation.

24 Page 2558. Sorry, it should be 2559 first. They don't

25 exist yet. I can hand it over to you. Oh, she has it. 16:58

26 So, in fact, you're being requested on the 24th April

27 by Internal Affairs asking what is the status of the

28 investigation?

29 A. Yes. And I'm asking her then to --

1 866 Q. Yeah.

2 A. Yeah.

3 867 Q. "Please submit a status report by 17th June."  
4

5 And that was dated 29th April. There is another 16:59  
6 request in relation to the -- on the 30th June from  
7 Chief Superintendent McLoughlin, which you forward on  
8 the 8th July.

9 A. Yeah, he's querying, you know, what the progress is.

10 868 Q. Yes. 16:59  
11 A. It's coming from Internal Affairs.

12 869 Q. Yes. But I'm asking, they're coming to you, though?  
13 A. They're coming to me, but I won't be interfering with  
14 the investigation because I'm the appointing officer.  
15 I'm just asking, have you got the file ready for me 16:59  
16 yet? Where's the file?

17 CHAIRMAN: well, this says that she didn't progress it  
18 beyond 15th May because he had engaged with the  
19 Confidential Recipient, or whistleblower, as it is  
20 commonly colloquially referred to. 17:00

21 MR. HARTY: I am dealing with Chief Superintendent  
22 McGinn's state of knowledge.

23 CHAIRMAN: Yes. well, there you go.

24 870 Q. MR. HARTY: Chief Superintendent McGinn, you're again  
25 reminded on the 8th -- on 30th June: 17:00  
26

27 "I am to inquire as to the current status of the  
28 investigation being undertaken by Chief Superintendent  
29 Murray pursuant to Garda Discipline Regulations 2007.

1 An update report from the investigating officer would  
2 be appreciated in early course, please."  
3  
4 And on the 8th July you simply forward that on again.  
5 A. I'm just looking for a status, is it done or is it not 17:00  
6 done, or -- it's for Internal Affairs. I'm not asking  
7 her for any detail.  
8 871 Q. Yet again, these contacts aren't referenced in your  
9 statement, are they?  
10 A. No. 17:01  
11 872 Q. Do we know whether they are contained in your journal?  
12 A. No, no, no. I wouldn't -- there's paperwork there to  
13 show -- I don't put in my journal every piece of  
14 paperwork that I send out in terms of discipline. I  
15 think it is important that I let you know that, that I 17:01  
16 don't write down every --  
17 873 Q. You write down very little, Chief Superintendent, I  
18 have already come to that conclusion.  
19 A. Yeah, but in fairness, Mr. Harty, I follow up with  
20 either electronic or paper copy. The reports are here. 17:01  
21 I'm here to tell you, you know what I mean, that I  
22 follow up on a report, what is the progress of the  
23 investigation.  
24 874 Q. Yes. But the point about it is that until ten minutes  
25 ago and until these had been provided to the Tribunal, 17:01  
26 your evidence was that you heard nothing in relation to  
27 this from the date of the appointment of Mary Murray in  
28 February until December. And that was an express  
29 question that I asked you and you answered it?

1 A. I know. And I think my answer was that Internal  
2 Affairs were looking for progress, that coming from --  
3 875 Q. No, you said it was all a matter for Internal Affairs.  
4 CHAIRMAN: No, no, I don't think she did say that. But  
5 clearly on the 8th July she's looking for "please 17:02  
6 submit a status report", and then 30th June Internal  
7 Affairs are saying basically an update report would be  
8 appreciated, and then on the 28th April chief  
9 superintendent Internal Affairs "Please submit a status  
10 report", and that's Terry McGinn. So there was a 17:02  
11 number of reminders, certainly.

12 876 Q. MR. HARTY: There's a number of, shall we say,  
13 boomeranging, letters which are sent from Internal  
14 Affairs to the chief superintendent, are simply  
15 forwarded on to Superintendent Murray, nothing more 17:02  
16 done, nothing more actioned by you, isn't that correct?

17 A. I am just seeking the status reports from her, yeah.  
18 CHAIRMAN: What are we to make of that, Mr. Harty?  
19 What is the point you want to make about it?  
20 MR. HARTY: The point I want to make is that nobody is 17:02  
21 doing a damn thing --  
22 CHAIRMAN: Right.  
23 MR. HARTY: -- is the point I am making.  
24 CHAIRMAN: Well, leaving out the cursing, what is the  
25 story; do you accept that you were doing nothing all 17:03  
26 the way through 2014?

27 A. Absolutely not, Judge.

28 877 Q. MR. HARTY: What did you do?  
29 A. I'm trying to progress the investigation. I am waiting

1 for the report back from Mary Murray so that I can then  
2 make a recommendation on the report coming back in.

3 878 Q. And it didn't come back in, so what did you do?  
4 A. I'm asking her for status reports, so she's prompted,  
5 she's prompted by these reports to know that I am still 17:03  
6 waiting, it's not forgotten about, it's to come back  
7 in.

8 879 Q. You see, you only prompt her when you're prompted?  
9 A. From Internal Affairs.

10 880 Q. Yes. 17:03  
11 A. Yes. That was my evidence earlier --

12 881 Q. Yes.  
13 A. -- that they were doing the prompting.

14 882 Q. Yeah. But you don't try to prompt her at all of your  
15 own motion? 17:03  
16 A. well, she would clearly know that I need the  
17 investigation file back in, you know what I mean? I  
18 don't ring her up and say, you know, Superintendent  
19 Murray, I need that, you know, where is it? You know  
20 what I mean. 17:03

21 883 Q. But you don't.  
22 A. Yeah, I didn't --

23 884 Q. The point is that you don't. where it comes to, Chief  
24 Superintendent, is that these threats were serious,  
25 they're obviously meant, they were obviously of serious 17:04  
26 risk to Marisa Simms and her children, that's why you  
27 convened the high-level meeting, but after the  
28 high-level meeting, you then make a section 102  
29 referral that falls outside the definition that

1 everyone who wasn't at that meeting on the 8th October  
2 accepts falls outside that definition, you seek  
3 suspension or removal from the division, you seek -- a  
4 HSE referral is made as a result of it. Now, at the  
5 end of October, on paper at least, all of those had 17:04  
6 come to an end, all of them. You say that there was a  
7 serious threat to Marisa Simms and her children.  
8 You're sitting in a courtroom with Garda Harrison,  
9 whereby if you honestly believe there is a serious  
10 threat, it would have been perfectly reasonable to go 17:05  
11 up to him and try to assess his state, his state of  
12 mind. You don't even need to go into the details, but  
13 if you are that concerned for Marisa Simms and her  
14 children, you could have done that at the very least.  
15 You never sent a welfare officer out to work out how 17:05  
16 Garda Harrison's state of mind is vis-à-vis the threats  
17 to kill.

18 A. First, can I say that in a court of law where Garda  
19 Harrison is a witness in relation to three other Garda  
20 members, I certainly wasn't going to interfere with 17:05  
21 that process and go up and say to Garda Harrison and to  
22 be seen in any way to interfere with that witness.  
23 Secondly, I did ensure that the matter was referred to  
24 the employee assistance and that Brian Tuohy's services  
25 were available to Garda Harrison. Garda Harrison -- 17:05

26 885 Q. That was in relation to the threats to kill on Garda  
27 Harrison, not in relation to Garda Harrison's state of  
28 mind that led to him making these threats.

29 CHAIRMAN: We are going around the place. In effect,

1 the question is, that if you had the high level of  
2 concern, and put as simply as this, if you had the high  
3 level of concern about harassment, accessing computer  
4 records, and mobile phone is computer I think under the  
5 Malicious Damage Act, threats to kill, violence, 17:06  
6 apparent out-of-control behaviour, alcoholism, that you  
7 would have done more, that is basically the question.  
8 MR. HARTY: Well, sorry, and the Tribunal is right, but  
9 in fact you would have done something?

10 A. Well, Judge, I'm happy that the decisions I made were 17:06  
11 the right decisions at the time.

12 886 Q. And what did you do on the ground to protect Marisa  
13 Simms and her children?

14 A. If I can start from the beginning, what I did, going  
15 back to the 27th July, I can work my way through it, 17:06  
16 all the decisions that I made, I feel they were  
17 measured, they were appropriate and they were properly  
18 made. So I am satisfied that my decision-making and my  
19 action was correct in all the circumstances.

20 887 Q. I appreciate you think you did perfectly. But that's 17:07  
21 not what I am asking you. I am asking you what you  
22 actually did.

23 A. Well, should I --

24 888 Q. After the meeting of the 8th October, what did you  
25 actually do on the ground to protect Marisa Simms, to 17:07  
26 inquire into Garda Harrison's state of mind, to carry  
27 out a criminal investigation, to --

28 A. Can we take them in separate?

29 889 Q. To protect Marisa Simms, what did you do?



1           A.    First of all, I was happy from the meeting of the 8th  
2                    October that Marisa Simms had established a good  
3                    rapport with Inspector Sheridan, she had her mobile  
4                    phone number, and that they were able to contact each  
5                    other. I was aware that she was coming to the station   17:07  
6                    that evening. I was aware that she had family support  
7                    and she was no longer residing with her partner at. I  
8                    was aware that she was fully informed of what safety  
9                    measures and civil remedies that were open to her in  
10                  getting a barring and protection order. I was fully   17:08  
11                  aware that she was going to be with her family and she  
12                  had the support of her family, and she was happy  
13                  herself, leaving the Garda station, that she was happy  
14                  for her own safety. In terms of Garda Keith Harrison,  
15                  which I also had a duty of care on 4th/5th October, I   17:08  
16                  was satisfied by the threat assessment carried out by  
17                  the Gardaí and in particular in relation to  
18                  Superintendent Kevin English's report that the threat  
19                  was -- that it was substantial, and that Garda Keith  
20                  Harrison had been provided with crime prevention advice   17:08  
21                  by Sergeant Paul Wallace and that had been delivered on  
22                  the 7th October. I also knew that I when came into  
23                  work on 7th October, I gave a direction to continue  
24                  those patrols, continue the security arrangements are  
25                  in place. So I was aware that there was patrols in and   17:09  
26                  around the home of Garda Harrison on the night in  
27                  question, or in around the time that these threats were  
28                  made. I was also aware that he was confined to indoor  
29                  duties pending. I also knew that he had the service of

1 the welfare offered to him if he needed the welfare  
2 that was required, and I also knew that he had employee  
3 assistance support in terms of his colleagues who  
4 worked with him in the Garda station, particularly the  
5 sergeants in Donegal Town, who were very supportive and 17:09  
6 helpful to him at this time of crisis in his life.

7 890 Q. Sergeant Durkin was, in fact, asking that he be  
8 transferred to Letterkenny, it turns out?

9 A. But Sergeant Durkin at the time was a very good  
10 sergeant and was very much looking after the welfare of 17:09  
11 Garda Harrison, and I know that Sergeant Durkin would  
12 carry out his duties very well. Working away from that  
13 then, I made the 102 referral. The 102 referral didn't  
14 come back to me. As soon as it did come back to me, I  
15 asked for the appointment of Mary Murray. Mary Murray 17:10  
16 was appointed. So I am satisfied in my role as chief  
17 superintendent I took all reasonable measures in  
18 relation to the security of Marisa Simms and her  
19 children, as asked by you.

20 891 Q. Given the evidence that Marisa Simms is most at risk 17:10  
21 and most in danger when the person, the perpetrator or  
22 the alleged perpetrator of the domestic violence  
23 becomes aware that the person has gone to An Garda  
24 Síochána, isn't that correct?

25 A. They're most at risk when they report it and make a 17:10  
26 statement.

27 892 Q. Yes.

28 A. So it depends on the state of knowledge of Garda  
29 Harrison as to what was contained within the statement.

1 893 Q. No, it doesn't. It depends on the fact that Garda  
2 Harrison was aware that a statement was made, and that  
3 took place on the 7th October, that Garda Harrison  
4 became aware, so, in fact, the risk to Marisa Simms had  
5 increased rather than decreased. 17:10

6 A. Well, we don't know and we don't have any evidence of  
7 what actually Marisa Simms told Garda Harrison.

8 894 Q. Sorry, you had Paul Wallace's statement as to what  
9 Garda Harrison was told by Marisa Simms?

10 A. That this was for the chief's eyes only and no Garda 17:11  
11 would be allowed --

12 895 Q. Yes, and that he was going to lose his job, that -- or  
13 that he wouldn't be in work on Friday, I think was the  
14 quote?

15 A. And that the chief was after him. 17:11

16 896 Q. Yes.

17 A. But I don't know if -- I know what Marisa, but did she  
18 do that to protect herself, I don't know. Did she  
19 take --

20 897 Q. Your evidence was -- 17:11

21 A. My evidence is what I did. I don't know why Marisa, if  
22 she did ever tell him this, why she told him.

23 898 Q. Chief superintendent, your evidence was, Chief  
24 Superintendent, that Marisa Simms was more at risk once  
25 it became apparent to Garda Harrison that Marisa 17:11  
26 Simms had gone to An Garda Síochána, that was your  
27 direct evidence --

28 CHAIRMAN: No, Mr. Harty, she did say that, but she  
29 said that in relation to the generality of domestic

1 violence cases. And, I mean, you know, it's a free  
2 country, and if people want to live with people who  
3 have been abusive to them, there's nothing the Garda  
4 can do to stop it, and I certainly know of no law that  
5 can be applied in aid of safety, and you can't get an 17:12  
6 injunction to prevent a crime. Now, I'm not saying  
7 that applies to this case; I'm saying that applies to  
8 the generality of cases. And I am very well aware of  
9 that.

10 MR. HARTY: But I am asking this chief superintendent. 17:12

11 899 Q. So, in other words, by the 8th October the risk has  
12 increased rather than decreased compared to your state  
13 of knowledge of the 2nd October?

14 A. And yes, as I said, in general terms, that once a  
15 person reports the investigation and particularly even 17:12  
16 more so in this case because they are reporting it to  
17 his colleagues, his boss within the workplace and he  
18 was a serving member of An Garda Síochána, so Ms. Simms  
19 put herself even at a bigger risk --

20 900 Q. Yes. 17:12

21 A. -- by reporting it to her own colleagues. But I was  
22 satisfied from the measures that were in place and her  
23 state of mind with Inspector Sheridan when she left  
24 that station that day, that she had her number, they  
25 had built up a good rapport, she was going to ring her, 17:12  
26 that was the best --

27 901 Q. And you knew three days later that there was already a  
28 query that she was going to withdraw the statement on  
29 the 11th?

1 A. But we don't know for sure until she actually withdraws  
2 the statement, when she does. But in domestic violence  
3 situation and within our policy, we don't always take  
4 the attitude of the person who is making the complaint,  
5 because there are other issues. And in this particular 17:13  
6 case, it was different because of the children.

7 902 Q. And you knew, did you not, that you had given no GIM  
8 advice to Marisa Simms?

9 A. That's correct. But if you look at what the GIM form  
10 is, the GIM form is when An Garda Síochána receive 17:13  
11 information from a third party, that they're in  
12 possession of information, that we bring it known to  
13 the person who is actually under threat. In this case,  
14 Ms. Simms came to us. So it would seem ridiculous if  
15 we would give her a GIM form. 17:13

16 CHAIRMAN: But, I mean, you know, look, we're dealing  
17 with a secondary school teacher with a university  
18 education who looked up a whole load of stuff on a  
19 website and who knew perfectly well, it seems to me,  
20 how one goes about things, and again it's a free 17:14  
21 country, people can live with anybody they want,  
22 whether they've cut off their leg beforehand, or  
23 anything else, it's up to them.

24 903 Q. MR. HARTY: And in relation to that, the situation is  
25 that by the 21st October, it appears certainly at 17:14  
26 superintendent level, and above, that the HSE are doing  
27 nothing?

28 CHAIRMAN: Mr. Harty, it's now --

29 MR. HARTY: I am coming --

1 CHAIRMAN: It's now 45 minutes at least. I mean, we  
2 have to at some stage come to an end. I am going to be  
3 utterly intolerant, I am afraid, of anybody else asking  
4 any questions. If they are irrelevant, I'm just, I'm  
5 afraid, going to shut you down. So you'd better get  
6 straight to the point. 17:14

7 904 Q. MR. HARTY: Very simply, I'm putting it very plainly to  
8 you, I'm putting it to you, Chief Superintendent  
9 McGinn, you didn't give a fig for Marisa Simms or her  
10 children. You intended to rely on that meeting on the 17:15  
11 8th October to do one thing and to do one thing only,  
12 which was to get Garda Keith Harrison out of your  
13 division or suspension, and that is what you went to do  
14 afterwards, because they are the only positive steps  
15 that you took. 17:15

16 A. I disagree with that, Judge. I think I have outlined  
17 in my direct evidence and in cross-examination the  
18 steps that I took, and I am satisfied the steps that I  
19 took were appropriate, they were measured and they were  
20 properly -- and I have absolutely no -- as I said, no 17:15  
21 motive, no ulterior motive in any way to make life  
22 difficult for Garda Harrison.

23 905 Q. And even after the High Court proceedings were over,  
24 even after the disciplinary proceedings were stopped,  
25 there was no criminal investigation, isn't that 17:15  
26 correct?

27 A. After it was finished, I had to write to the Attorney  
28 General seeking the Attorney General's views in terms  
29 of where the investigation was now going to go and

1           whether I should cease or continue.

2 906 Q.    And there was none?

3           A.    The Attorney General's advice was that --

4 907 Q.    The Attorney General doesn't recommend criminal  
5           investigations. 17:16

6           A.    At this stage, yes.

7 908 Q.    No. That's a matter for the DPP.

8           A.    It's a matter for the Attorney General, yes.

9           CHAIRMAN: Under the Constitution it is the Attorney  
10          General, but it says that limited functions may be 17:16  
11          devolved by law in the Attorney General. But he still  
12          has the function, or she. Was it a she at the time?  
13          Yes. She can still do it if she wants. The  
14          Constitution is a self-executing document, as they say.

15 909 Q.    MR. HARTY: As the disciplinary investigation came to 17:16  
16          an end in the High Court, which was in 2016, isn't that  
17          correct?

18          A.    And it was on delay, yes.

19 910 Q.    It came to an end in the High Court?

20          A.    Yes. 17:16

21 911 Q.    An attempt was made by Garda Harrison, on Garda  
22          Harrison's behalf, to have him returned to work, isn't  
23          that correct?

24          A.    That's correct, yes, he wanted to return to work.

25 912 Q.    Yeah. How long did it take after the end of the High 17:16  
26          Court proceedings for you to facilitate the return to  
27          work for Garda Harrison?

28          A.    If I can say that there was a lot of negotiation and  
29          discussions. We had to go to mediation. I attended

1 mediation on behalf of the Garda Commissioner to try  
2 and facilitate Garda Harrison's return to work.

3 MR. MCGUINNESS: Chairman, I am wondering is this  
4 relevant.

5 MR. HARTY: It is in terms of whereby Chief 17:17  
6 Superintendent McGinn has said she had no malice or no  
7 attempt to be out to get Garda Harrison, and I think  
8 the Tribunal needs to know that it was not until  
9 February this year that you made yourself available for  
10 mediation in respect of the matter. 17:17

11 A. Can I say, Judge, from the --

12 CHAIRMAN: I just find it really strange, the fact that  
13 a garda is going to go to work or not going to go to  
14 work, is the subject of mediation. I just find it  
15 really, really weird. I think you turn up for work, 17:17  
16 that's everybody's job in the country. Whether there  
17 was mediation or not or whether this is now going to be  
18 covered in some kind of lachrymose sauce, I'm really  
19 not interested in it at all.

20 MR. HARTY: Well, except where Chief Superintendent 17:18  
21 McGinn tells on oath that she had no reason to be out  
22 to get Garda Harrison. It went from December 2015 to  
23 February 2017 to implement the recommendations of the  
24 chief medical officer and for you to have enabled those  
25 recommendations to be implemented. 17:18

26 A. Judge, can I --

27 CHAIRMAN: We can accept that Garda Harrison had strain  
28 or stress, that there was stress. People have stress,  
29 there's a lot of stress. But whether the stress was



1 due, in fact, to what Marisa Simms had said or whether  
2 it was due to another cause, I don't know. I won't  
3 make any judgment on that. Because what I am actually  
4 inquiring into is "Contacts between the Gardaí and  
5 Tusla in relation to Garda Keith Harrison", not in 17:18  
6 relation to his suspension or whether he was under  
7 strain and whether there was negotiations later on. I  
8 think Mr. McGuinness is right, Mr. Harty.

9 MR. HARTY: Well, then as long as the Tribunal is happy  
10 to strike from the record any absence of malice. 17:18

11 CHAIRMAN: You will appreciate I didn't go back.

12 MR. HARTY: Yes.

13 CHAIRMAN: You will appreciate also what I did not  
14 consider following the private meeting. Similarly,  
15 there is a limit to which I can go forward. I 17:19  
16 appreciate that what people do after an event sometimes  
17 informs why they did the event. But one really is  
18 going forward a long way. I mean, this is four years  
19 later now.

20 MR. HARTY: The difficulty, sir, is that the witness 17:19  
21 says she never went out or never did anything malicious  
22 towards Garda Harrison. The chief medical officer had  
23 recommended that Garda Harrison be stationed at a  
24 different station, and that was supported by  
25 independent evidence commissioned by the Garda 17:19  
26 Commissioner.

27 CHAIRMAN: We have had no evidence --

28 MR. HARTY: And in relation --

29 CHAIRMAN: We have had no evidence of this, Mr. Harty,

1 absolutely none, absolutely none. You are telling me  
2 all this, but I have had no evidence.

3 MR. HARTY: It arises as a result of --

4 CHAIRMAN: There's no documents in here about it  
5 either.

17:19

6 MR. HARTY: It arises as a result -- there's no  
7 documents in there referencing Chief Superintendent  
8 McGinn having no malice towards Garda Harrison either.

9 It arises in response to that, which is that surely

10 once everything had resolved, the next thing to do

17:20

11 would be to facilitate Garda Harrison's return to work.

12 A. Can I say, Judge, from May 2015 we were instructed via

13 Collins & Company solicitors, via the Garda

14 Commissioner, that management in Donegal were not to

15 interact with Garda Harrison or meet with him or engage

17:20

16 with him in any respect. Prior to that, under the

17 sickness policy, the team in Donegal Town, the

18 superintendent, sergeants, under the sickness policy,

19 were in contact with him. But we were under clear

20 expression from the solicitors of Garda Harrison that

17:20

21 they didn't want any intervention by myself or my team

22 in Donegal to intervene with him. Garda Harrison, yes,

23 went for medical assessment, and it came back that he

24 suffered an injury on duty. It was a self-referral via

25 the medical, and it needed to be, obviously,

17:20

26 investigated by somebody outside --

27 CHAIRMAN: I know, but I seriously don't think I ought

28 to go into this. I mean, it's opening up a whole new

29 area where we will have to get all the affidavits from

1 the High Court, all the medical reports, and then  
2 apparently you are being accused of being malicious in  
3 not taking him back quickly enough. So you are being  
4 accused of being malicious in not taking him back  
5 quickly enough. So there's the accusation. What is  
6 the answer? 17:21

7 A. I have no reason to target in any way Garda Harrison,  
8 Judge. All of these reports came to my desk, required  
9 input and intervention by me as the chief  
10 superintendent in the division. If I had not carried 17:21  
11 out my duty, I would be accused of neglect of duty. I  
12 carried out my duty appropriately, I would say  
13 measured, and I have absolutely no malice towards Garda  
14 Harrison. And he is back working in my division there  
15 for the last couple of months and I have shown no 17:21  
16 malice to him whatsoever.

17 CHAIRMAN: There it is.

18 MR. HARTY: Thank you, Chief Superintendent McGinn. I  
19 would be grateful if you would make available to the  
20 Tribunal your journals for the relevant period of -- 17:21

21 CHAIRMAN: I'm not going to ask her to do that,  
22 Mr. Harty. I mean, in relation, for instance, to other  
23 people's privacy.

24 MR. HARTY: I am not asking that the Tribunal release  
25 them -- 17:22

26 CHAIRMAN: No, no, no.

27 MR. HARTY: -- at this stage.

28 CHAIRMAN: Look, the other thing that is done here is,  
29 I mean, I see documents and sometimes I say, well,

1 that's not relevant, that's not relevant. For  
2 instance, I was up in GSOC and I read a whole load of  
3 files in relation to, just to take a different example  
4 to this, everyone who had the name McCabe, including a  
5 Fr. McCabe, who seemed to have been abusing a young boy 17:22  
6 some years ago. So, I mean, that is how extensive the  
7 trawl was. But you don't have that because it's not  
8 relevant. I'm going to be the judge of whether or not  
9 there has been proper disclosure. And secondly, if  
10 there was not proper disclosure, and it is an if, 17:22  
11 whether or not I apply the Laffoy J judgment in  
12 relation to that and raise an inference. That, I will  
13 do.

14 MR. HARTY: Yes. Similarly, I will simply make the  
15 same point in respect of the PALF, that clearly it is a 17:22  
16 matter for the Tribunal again, the PALF minutes.

17 CHAIRMAN: Well, you can look for the minutes if you  
18 don't -- just in the event that anything comes up there  
19 that mentions Garda Harrison --

20 A. Yes. 17:23

21 CHAIRMAN: -- during the relevant period.

22 A. Relevant period, yes.

23 CHAIRMAN: Now, the relevant period, I'm limiting you  
24 to 2013.

25 A. To 2013. 17:23

26 CHAIRMAN: 2013 into spring of 2014.

27 A. Into spring 2014. And --

28 CHAIRMAN: If there is anything. And I see those, and  
29 maybe I have a simplistic view as being like a business

1 meeting, like a meeting in hotel.

2 A. That's it.

3 CHAIRMAN: What's our occupancy, all the rest of it.

4 But here it's Garda business as opposed to hotel

5 business. 17:23

6 A. And we're looking at budget figures, crime figures,

7 performance indicators.

8 CHAIRMAN: Maybe it's best not to mention figures.

9 A. Yes, Judge.

10 CHAIRMAN: In any event. 17:23

11 A. Yes.

12 MR. HARTY: Thank you, Chief Superintendent.

13 A. Thank you.

14 CHAIRMAN: So, Mr. Barnes, have you any questions, do

15 you think? 17:23

16 MR. BARNES: Yes, Judge, just a few.

17 Good afternoon, Chief Superintendent McGinn.

18 CHAIRMAN: I'm actually going to ban all 'good

19 mornings' and 'good afternoons' from now on, whether to

20 me or to anybody else. It never happened in court up 17:24

21 until eight years ago, and it's now going to stop here,

22 in any event. Just get on with the evidence from now

23 on, please. That applies to everybody. I don't want

24 to be wished 'good morning', 'good afternoon', nor the

25 witnesses, because it seems to me as soon as it's done 17:24

26 it descends into bad temper, and that's the reason I am

27 banning it. All right. So good afternoon to you,

28 Mr. Barnes. Let's carry on, please.

29

1 CHIEF SUPERINTENDENT MCGINN WAS CROSS-EXAMINED BY

2 MR. BARNES:

3  
4 913 Q. MR. BARNES: In your evidence today, Chief  
5 Superintendent McGinn, you indicated in response to a 17:24  
6 question that you were not casting aspersions on the  
7 McDermott family in a particular context.

8 A. That's correct, yes.

9 914 Q. Can I take it that you agree with me that the McDermott  
10 family in no way condone and in every way condemn the 17:24  
11 crime that tragically resulted in the death of Garda  
12 Gary McLoughlin?

13 A. I fully agree with that, yes.

14 915 Q. Thank you. Now, in relation to the direct examination,  
15 your direct examination by Mr. McGuinness, 17:25  
16 Mr. McGuinness was what I would characterise as seeking  
17 to elucidate some of the dissident features, or  
18 ostensibly dissident features of this particular set of  
19 circumstances. And at page 39 the question is, and I'm  
20 just going to read the page very quickly: 17:25

21  
22 "Did you see particularly the reference to the  
23 sergeant's report to being concerned about whether, you  
24 know, the Gardaí were being used in relation to the  
25 wedding to deal with their problems about Garda 17:25  
26 Harrison simply not being invited and causing a bit of  
27 trouble?"

28  
29 And you reply:

1  
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"At the time I sent Inspector Sheridan, I wasn't aware at that stage, but I did subsequently see the sergeant's report on that regard."

17:25

And the Chairman said:

"That is Sergeant Collins, the Collins report?  
A. Yes."

17:25

Then the material bit:

"But did you become concerned about whether there might be, as it were, mixed motives for any of the reports that had been previously made by other members of the McDermott family."

17:26

And you say: "No, no."

And are you asked: "why is that?"

17:26

And your response is:

"Because, as I said, that the relationship between An Garda Síochána and the McDermott family was quite fractious and that they wouldn't be coming to An Garda Síochána unless they needed our help."

17:26

Now, the import of that is that there is a relationship

1 and that it is not merely fractitious [sic], that it is  
2 quite fractitious and that it wasn't trivial matters  
3 such as the potential interruption of the wedding or  
4 maybe perhaps more serious matters of alienating Garda  
5 Harrison and reinstating Mr. Simms, that it was the 17:27  
6 gravity of the alleged threats that overcame a  
7 reluctance that was caused by a relationship which was  
8 quite fractitious. Do you understand what I am saying?  
9 A. Yes, I understand what you are saying to me is that  
10 Mrs. McDermott was obviously so concerned for her 17:27  
11 daughter and the domestic violence that she felt the  
12 need to come to An Garda Síochána and it over-rid [sic]  
13 any other relationship that we had.  
14 916 Q. Well, I have to put it to you that --  
15 A. In terms of -- 17:27  
16 917 Q. -- in the course of seeking to elucidate what I say are  
17 some dissident elements of the case, you have stated as  
18 a fact that there was a relationship, that it was not  
19 merely fractitious and that it was quite fractitious.  
20 Can you give Judge Charleton any evidence at all of any 17:27  
21 relationship of a fractitious relationship and one that  
22 was indeed quite fractitious?  
23 A. The relationship between the McDermott family and An  
24 Garda Síochána goes back to the death of Gary  
25 McLoughlin, where obviously it was difficult for both 17:28  
26 the McDermott family and An Garda Síochána. Mrs.  
27 McDermott then -- I've put myself and empathising with  
28 her and putting myself into her shoes, she was  
29 concerned as a mother and that she felt that she needed



1 to come to An Garda Síochána for help and assistance,  
2 even though, let's say, we call it our two families,  
3 the Garda Síochána family and the McDermott family had  
4 gone through a very difficult period in terms of what  
5 happened in relation to the fatality.

17:28

6 918 Q. Was there any relationship -- the word 'fractious' is  
7 the one I should have referred to in relation to the  
8 transcript, and I have some definitions: causing  
9 trouble, hard to manage or control, full of anger and  
10 disagreement.

17:28

11 A. I think both An Garda Síochána as a family and the  
12 McDermott family we were all full of anger in and  
13 around that time. But it did, to clarify today, that I  
14 wasn't casting any aspersions on Mrs. McDermott, Marisa  
15 McDermott or Paula McDermott. And I don't feel that  
16 there's any bad relationship between An Garda Síochána  
17 and the McDermott family, and I fully respect the  
18 McDermott family and An Garda Síochána's family in  
19 relation to all of this. And certainly at the time of  
20 the death of Garda Gary McLoughlin, there was a lot of  
21 anger.

17:29

17:29

22 919 Q. But I think in a relationship that is fractious, the  
23 other party has to be aware that there is this level of  
24 disagreement between the two families, as it were.

25 What evidence is there of any such disagreement which  
26 would impede members of the McDermott family  
27 ordinarily, but for the severity of the alleged  
28 threats, that would impede them from coming to An Garda  
29 Síochána? If you have any evidence, please give it to

17:29

1 Judge Charleton.

2 A. As I say, the anger that surrounded the death,  
3 certainly on behalf of An Garda Síochána, and -- but I  
4 have to say that there is no bad relationship between  
5 the McDermott family per se and An Garda Síochána. And 17:30  
6 if I gave that impression, I was wrong, to the Judge,  
7 that there was a continuing bad relationship between  
8 both.

9 920 Q. There was never any bad relationship, it was never  
10 fractious and it was never quite fractious? 17:30

11 A. There was a lot of anger at the time between the  
12 McDermott family and An Garda Síochána.

13 921 Q. How was this expressed? That would tend to suggest  
14 that there was some resentment in relation to the  
15 necessary prosecution for the tragic and wrongful death 17:30  
16 of Garda Gary McLoughlin?

17 A. Well, it was just that it was very emotional and very  
18 angry and both sides found themselves in a position  
19 they didn't want to be in.

20 CHAIRMAN: Well, I mean, I have heard it said in the 17:30  
21 past by a very wise policemen that murder tends to  
22 destroy two families - the family of the person  
23 murdered and also the family of the person who does the  
24 murdering, and I think that is a reasonable statement,  
25 certainly something people would have seen. But your 17:31  
26 case anyway, Mr. Barnes, is that certainly Marisa Simms  
27 would never have any difficulty going to the Gardaí  
28 voluntarily if she'd wanted to, is that your point?

29 MR. BARNES: That and the fact that, in answer to

1 Mr. McGuinness's question seeking to elucidate the  
2 matter of the mixed motives and the concern that Chief  
3 Superintendent McGinn ought to have apprehended, that  
4 she indicated that there was a fractious relationship.  
5 And that is, it wasn't a relationship, it wasn't  
6 fractious and it wasn't quite fractious.

17:31

7 CHAIRMAN: So, in other words, what Mr. Barnes is  
8 saying, look, as far as Marisa Simms is concerned, she  
9 never would have had any difficulty going to the  
10 Gardaí, and I don't know if you can offer a comment on  
11 that?

17:31

12 A. I would say it would be very difficult for Marisa Simms  
13 to come to the Gardaí especially when the perpetrator  
14 of the abuse of violence to her was a member of An  
15 Garda Síochána, to come in to his colleagues and to  
16 report him to the colleagues.

17:31

17 922 Q. MR. BARNES: I don't want to labour this too much, but  
18 isn't it the case that you've agreed with me that the  
19 McDermott family in no way condone and in every way  
20 condemn the crime that tragically took the life of  
21 Garda Gary McLoughlin?

17:32

22 A. Absolutely, yes.

23 923 Q. So in response to the question that -- where  
24 Mr. McGuinness is seeking to elucidate, you know, were  
25 you not concerned about the mixed motives, you have  
26 given evidence to explain why that what wasn't your  
27 concern and effectively implying that the gravity of  
28 these alleged threats caused the McDermott family to  
29 overcome a reluctance, they wouldn't -- this is what

17:32

1           you say:

2

3           "And they wouldn't be coming to An Garda Síochána

4           unless they needed our help."

5           Yes.

17:32

6 924 Q.   In the context of this alleged relationship, which was  
7           not merely fractious but quite fractious.

8           A.   Yes.

9 925 Q.   Do you get my point?

10          A.   Yes.

17:33

11 926 Q.   That they wouldn't be coming if it wasn't for the  
12          overwhelming nature of these particular alleged  
13          threats?

14          A.   Yeah, I know the point you're making, but the point  
15          that I would like to make to the Tribunal is that Rita  
16          McDermott would not have been coming reporting Garda  
17          Keith Harrison to the guards, to his colleagues, only  
18          that she was deeply concerned as a mother as to what  
19          was happening within the relationship between Garda  
20          Harrison and Ms. Marisa Simms.

17:33

17:33

21 927 Q.   Moving on to page 59 and 60 of the transcript of your  
22          direct evidence, you are saying, in the context where  
23          Marisa Simms has claimed that she understood the  
24          position to be that this encounter, the interview or  
25          the statement, as it has been described, was for your  
26          eyes only, and presumably in that context in order to  
27          try and rein in behaviour that had become a little bit  
28          difficult with all that was going on around the period  
29          of 28th September 2013, you are saying in categorical

17:33

1 terms, very, very specifically:

2  
3 "But she did know that the matter was going to be  
4 criminally investigated either by An Garda Síochána or  
5 GSOC. I don't know if she knew by GSOC, but she 17:34  
6 certainly knew it was going to be criminally  
7 investigated."

8  
9 what is -- and you have said earlier on, just before  
10 the conclusion of your evidence in cross-examination to 17:34  
11 Mr. Harty, "my evidence is what I did". Now, this  
12 seems to be in the circumstances derivative, and can  
13 you give Judge Charleton an explanation as to how you  
14 arrived at this level of certainty as to Marisa Simms'  
15 intentions and what she was aware of when she went in 17:34  
16 to the Garda station to give that -- to speak with  
17 Inspector Sheridan and Sergeant McGowan?

18 CHAIRMAN: In other words, what else do you have to  
19 offer to show that she would have been aware that once  
20 she goes into a Garda station, that the Gardaí would 17:35  
21 begin an investigation? That is your question,  
22 Mr. Barnes, isn't it?

23 MR. BARNES: I think so.

24 A. I think the fact that she made a statement of  
25 complaint, the statement was read over to her. The 17:35  
26 fact that she signed the permissions to have her phone  
27 downloaded and the information obtained from the Gardaí  
28 to be used in a criminal investigation by Goretta  
29 Sheridan and the fact that she came back a couple of

1 days later to hand in the phones, that she knew that  
2 they were for purpose of evidence. And I think that  
3 all signifies that she knew that there was going to be  
4 a criminal investigation.

5 928 Q. And in relation to matters, why did you not advise her 17:35  
6 when she came in with the phone, in compliance with  
7 what she thought the purpose of the interview was, why  
8 did you not then advise her that this would be used for  
9 either an investigation by An Garda Síochána or by  
10 GSOC? 17:36

11 A. I didn't personally meet her that day she came to the  
12 station, but I understand from Inspector Sheridan that  
13 she was fully aware that she was supplying her phones,  
14 etcetera, for a criminal investigation, and I don't  
15 think the matter of GSOC became an issue or discussion. 17:36  
16 But by that stage the 102 referral had been made.

17 929 Q. Is it possible that there was a fundamental  
18 misunderstanding as to the purpose of this particular  
19 interview and this exchange of evidence?

20 A. From the presentation that Inspector Sheridan gave me 17:36  
21 and the meeting of the 8th, and the meaning of the  
22 statement, I was fully satisfied and sure that  
23 Ms. Simms knew why she was making the statement and it  
24 was for the purpose of criminal investigation.

25 930 Q. But is it possible that there could have been a 17:37  
26 misunderstanding? I know that you were satisfied and I  
27 know that you had data, but looking at it as an  
28 evaluative exercise, I'm asking you do you think that  
29 there could have been a fundamental misunderstanding

1 about the purpose of this particular interview or  
2 exchange?

3 A. I have no evidence to suggest that, and I didn't have  
4 any personal interaction with her, so, Judge, I'm not  
5 able to take it any further. I don't know. 17:37

6 931 Q. Okay. I am moving on to matters concerning question  
7 two that the Chairman mentioned near the end on Friday,  
8 and that is in relation to apprehension, were you aware  
9 that the statement was in any way unfirm. That is  
10 Marisa Simms' statement. I want to say to you that at 17:37  
11 page 55 of the transcript, you indicate that in  
12 relation to section 102, that is in relation to GSOC,  
13 "that we did have a very, very in-depth debate in  
14 relation to that". Can I ask you in relation to the  
15 proofs and the evidence in relation to section 5 of the 17:38  
16 Non-Fatal Offences Against the Person Act and Section  
17 10 of the Non-Fatal Offences Against the Person Act,  
18 did you have a very, very in-depth debate in relation  
19 to the meaning of those two sections and the quality of  
20 the evidence, any ambiguity in relation to the evidence 17:38  
21 that appeared in the very final pages of Ms. Simms'  
22 statement?

23 A. At the meeting of the 8th we discussed the possible  
24 breaches of the criminal law as we read through the  
25 statement, we discussed the particular sections. We 17:38  
26 went into some depth in terms of the offence and what  
27 proofs would have been necessary to prove the offence.  
28 In relation to, for example, section 10, we talked  
29 about the harassment and that it has to be over -- it

1 can't be just one incident; it has to be over a period  
2 of time and it has to be on a number of occasions and,  
3 you know, it just can't be one incident where --  
4 harassment. So between the knowledge of the people in  
5 the room, we certainly had a discussion on the 17:39  
6 different offences and how the statement fell into  
7 those offences and what proofs and further evidence was  
8 required.

9 932 Q. Well, in relation to harassment, are you aware that  
10 evidence has been given at this Tribunal to the effect 17:39  
11 that the harassment in contemplation was the sum total  
12 of interpersonal communications between 2010 and  
13 September 28th, 2013, and would you have any cares or  
14 misgivings as to the validity of such a prosecution in  
15 the context, and I just want to get to it, that in the 17:40  
16 first line, section 10, it provides that somebody who  
17 falls within, as it were, in the fame of an  
18 investigation "it must be without lawful authority or  
19 reasonable excuse". And what I am saying to you is:  
20 In those circumstances, isn't it completely impossible 17:40  
21 to maintain a prosecution where the parties are in an  
22 interpersonal relationship right throughout the course  
23 of, in this case, 2010 to 2013, isn't it impossible to  
24 bring a prosecution in those circumstances? Or are you  
25 aware -- I will just leave that question there. 17:40

26 A. Well, firstly, am I aware if there was ever a  
27 successful prosecution under section 10 of the  
28 criminal -- I am aware that there has been cases taken  
29 before the courts. Secondly, it's a matter of the



1 investigator collecting the evidence, presenting it to  
2 the DPP, the DPP directing whether there is a charge or  
3 not. So our purpose really is to collect the evidence  
4 and present it to the DPP and it's a pattern for the DPP  
5 then to determine what charges are preferred. 17:41

6 933 Q. That is not really the case, if I may say so?

7 CHAIRMAN: I think what Mr. Barnes is asking you about,  
8 and it is an important matter, is this: we have all  
9 heard of an on/off relationship.

10 A. Yes. 17:41

11 CHAIRMAN: Yes. So if this is a courtship and there's  
12 too many text messages and they break it off, and then  
13 there's a whole load more and they break it back on  
14 again, and then there's a whole load more and they  
15 break it off, you know what I am saying. 17:41

16 A. Yes, yes.

17 CHAIRMAN: It is like a ping-pong match. Does that  
18 really come within the section? Isn't that the point,  
19 Mr. Barnes?

20 MR. BARNES: That is the point. 17:41

21 A. Yes. But then, if they are delivered in such a way  
22 that the person receiving them finds them very  
23 obsessive or controlling or harassing her well then it  
24 becomes, you know, a matter for harassment. It depends  
25 on the person receiving the message. 17:41

26 934 Q. I see. Now, do you know of any case where during the  
27 currency, where the evidence to support a harassment  
28 charge under section 10, has been based on  
29 interpersonal communications during the currency of a

1 romantic relationship?

2 A. There has been cases where it would come to our  
3 attention that a relationship has broken up and one  
4 person can't accept that the relationship has broken up  
5 and that they are trying to contact, you know, all of 17:42  
6 the time, and that the person receiving the contacts  
7 doesn't want them and that they are following them to  
8 different places and showing up in shops and  
9 restaurants where they are, and they would consider  
10 that to be -- 17:42

11 935 Q. If I may interrupt there. You have more or less made  
12 my point without answering the question. Which is: Do  
13 you know of any case where a superintendent has made a  
14 recommendation to the DPP and a case has been mounted  
15 in circumstances where there is a subsisting 17:42  
16 relationship or has been a subsisting relationship that  
17 when it comes to a conclusion and there's no, let's  
18 say, harassment, or potential harassment, after the  
19 conclusion of the relationship, do you know of any  
20 prosecution that has been mounted on a retrospective 17:43  
21 look at all the communications that happen during the  
22 currency of the relationship?

23 A. Obviously every case is different and you look at every  
24 case on its own merit. Off the top of my head, Judge,  
25 I can't think of one case that, you know, describing -- 17:43  
26 CHAIRMAN: Well, there was a few famous cases, there  
27 was a famous case in Dublin arising out of the College  
28 of Surgeons and again it was, apparently, some kind of  
29 involvement, heaven knows what it was, they could have

1 gone to the pictures once for all I know, and then  
2 there was obsessive conduct thereafter, but I suppose  
3 that is to be contrasted with years over on/off  
4 relationship with multiple texts, and that is what  
5 Mr. Barnes is contrasting things about. 17:43

6 936 Q. MR. BARNES: Yes, I put it to you that there is no such  
7 thing as any prosecution ever being mounted on the  
8 basis of an historic look at interpersonal  
9 communications after the relationship has concluded?

10 CHAIRMAN: Yeah. 17:44

11 A. I'm not aware, Judge, obviously.

12 CHAIRMAN: And these seem to be cases where men are  
13 told no, it's all off --

14 A. Yes.

15 CHAIRMAN: -- and they don't accept it. 17:44

16 A. Mm-hmm.

17 CHAIRMAN: And they should of course accept it.

18 A. Yes, if the relationship is over.

19 CHAIRMAN: So that is the contrast anyway.

20 A. Or if it's a case where a man may suspect that a woman 17:44  
21 is seeing other people, and that there's a little bit  
22 of jealousy in the relationship and, you know, that the  
23 partner may say that he's turning up in places.

24 CHAIRMAN: I am familiar with the pattern, yes.

25 A. Yes. 17:44

26 937 Q. MR. BARNES: Just in conclusion of section 10 may I ask  
27 you, was there any hope at all at all of a prosecution  
28 being mounted in the facts and circumstances of this  
29 case under section 10 of the Non-Fatal Offences Against

1 the Person Act?

2 A. Well, we took it in its totality and that it was all to  
3 form into one. A file never went to the DPP in  
4 relation to section 10.

5 938 Q. Yes. Nobody put their credibility on the line by 17:44  
6 suggesting that a prosecution could be mounted on the  
7 facts and circumstances of this case, isn't that  
8 correct?

9 A. No file was ever sent to the DPP in relation to this  
10 matter. 17:45

11 939 Q. And you don't want to answer the question particularly.  
12 Nobody put their credibility on the line by suggesting  
13 the facts and circumstances of this case, that a  
14 realistic and genuine prosecution could be mounted --  
15 CHAIRMAN: well, they have actually put their -- I mean 17:45  
16 Inspector Sheridan has said yes, I thought it was. Now  
17 she may be wrong, but she certainly said it. Sergeant  
18 McGowan certainly said it. And I think Chief  
19 Superintendent McGinn is saying it as well. But I mean  
20 your point may be right, Mr. Barnes, I don't know. I 17:45  
21 will have to read the whole statement. But what you  
22 are saying is look, it doesn't come under harassment,  
23 it comes under on/off.

24 MR. BARNES: It could never in my submission. And the  
25 point is that I'm simply trying to address, at this 17:45  
26 late stage of the day, I'm trying to address one of the  
27 questions that was in your mind. And effectively it is  
28 that in relation to a section 10 and the proofs that  
29 were present for it, in the context that you evaluated

1 in a very, very, very in-depth way section 102, would  
2 you regard Marisa's statement as an infirm basis on  
3 which to maintain a section 10 prosecution in this  
4 case?

5 A. I was happy at the time from my meeting that the 102 17:46  
6 referral was the way to go. I said all of that.

7 940 Q. Yes.

8 CHAIRMAN: I think what you are being asked is: Look,  
9 if you had this statement, and you've heard it read out  
10 now -- 17:46

11 A. Yes.

12 CHAIRMAN: -- so would you have gone to court with it,  
13 happy that you had at least a reasonable prospect of a  
14 conviction?

15 A. I would, Judge, yes. I would gather all the evidence. 17:46  
16 But I would send it to the DPP and he would let me  
17 know, or she.

18 CHAIRMAN: You're putting your name on the line.

19 A. Yes.

20 CHAIRMAN: That's fine. 17:46

21 941 Q. MR. BARNES: Now, you indicated in relation to -- that  
22 you had all the information and you were being asked  
23 this in the context of the omission to arrest or the  
24 omission perhaps to protect Marisa Simms on the basis  
25 that you really apprehended a very, very serious threat 17:46  
26 to her life and that of her children. And I'm just  
27 saying that in relation to these alleged threats that,  
28 number one, they're quite incredible in the context  
29 that there seems to be -- or at least it seems to be

1 maintained that there was a credible thread to burn, to  
2 incinerate, to bury, which is a sort of funeral, and  
3 that that is inconsistent if you just look at it, with  
4 the statement in the same space in time that Marisa  
5 would not see her children but at the weekend? Do you 17:47  
6 understand? That you couldn't infer from those  
7 circumstances --  
8 CHAIRMAN: Yes. In other words, it's this ranting and  
9 raving as opposed to anything serious.  
10 A. Yes, Judge, I know what you are saying. 17:47  
11 CHAIRMAN: Is that fair enough?  
12 A. But I have to take the statement on face value.  
13 942 Q. MR. BARNES: Do you really have to take the statement  
14 on face value?  
15 A. Well I do, with those threats. 17:47  
16 943 Q. No, I think your job before you put a name to a  
17 recommendation to the DPP, resources being limited, and  
18 mindful of your own credibility, that you would  
19 evaluate what the evidence amounts to and whether or  
20 not that in the circumstances of that evidence, that 17:48  
21 you could possibly say that the person that you have in  
22 mind to be prosecuted could possibly have intended such  
23 a threat to be taken seriously --  
24 A. I would have to --  
25 944 Q. -- which is the gravamen of the offence. 17:48  
26 A. Yes. I would have to investigate it, gather all the  
27 evidence, interview all the parties, present the file  
28 to the DPP. And I think we can't forget, when all this  
29 is happening, there are children present.

1 945 Q. Yes, I know.

2 A. And that's --

3 946 Q. You've really made my point for me, because you didn't  
4 have all the information, you didn't arrest Keith  
5 Harrison and put the allegation to him so he might have 17:48  
6 explained it, which I think you ought to have done. Do  
7 you not agree that you ought to have arrested Keith  
8 Harrison? And in the context of the gravity of the  
9 threat that you apprehended at face value to these  
10 children, do you not think you should have arrested him 17:48  
11 and it might have put a stop to his gallop?

12 A. Yes, Garda Keith Harrison, reasonable cause to suspect  
13 that he should have been arrested. My view was that he  
14 shouldn't be arrested by the colleagues that he has to  
15 work with every day and that it was better to have an 17:49  
16 independent investigation carried out into it. There  
17 was certainly enough evidence contained in the  
18 statement for reasonable cause to suspect.

19 947 Q. Do you really mean that?

20 A. I do, yes. 17:49

21 948 Q. Okay. So it became obvious that at an extremely early  
22 stage that the GSOC investigation wasn't going to fly  
23 on the basis of your referral, isn't that right?

24 A. Yes, and that --

25 949 Q. So then, in those circumstances the obligation, the 17:49  
26 public obligation and the obligation to prevent crime  
27 and to protect the individuals that you had this  
28 serious apprehension in relation to serious threats,  
29 that sort of revives and it's at your door and nothing

1 was done, isn't that right?

2 A. I don't agree.

3 950 Q. Okay.

4 A. There was a public wrong done. There was a moral  
5 obligation on An Garda Síochána as being the people 17:49  
6 designated to investigate this matter. I still wanted  
7 it to be done independently, you know, without  
8 prejudice, so that Garda Harrison would get a fair  
9 hearing. And I think it's very difficult for his  
10 colleagues that he works with every day of the week to 17:50  
11 have to be the people who do that arrest. That was my  
12 motivation in sending it out for independent  
13 investigation. Yes, certainly there was a public wrong  
14 done, a moral wrong and it did require investigation.

15 951 Q. Well, really I do think that given the length of the 17:50  
16 interview and the scant nature of the evidence, the  
17 lack of exploration of the evidence, that it is -- and  
18 you taking everything at face value and it being so  
19 scant and limited, that you didn't have a proper basis  
20 on which to launch an investigation and that you could 17:50  
21 easily have remedied it and you didn't.

22 A. I disagree, Judge.

23 952 Q. I see. And in the context of an arrest, wouldn't that  
24 be a way in which you could say well, we have this  
25 evidence and we have your denial, Mr. Harrison, but 17:51  
26 while we're at it we'd like you to hand over the white  
27 spirit from your tool shed and will you hand over the  
28 petrol from your garage, just so there are no  
29 accelerants and to reduce the risk, and if you were to



1 do such a thing as to buy more that would be evidence  
2 of intent and greatly strengthen our case; wouldn't  
3 that be a protective action if you really apprehended  
4 that there was a serious threat?

5 A. I totally disagree with you. I think it is very 17:51  
6 disingenuous. An Garda Síochána already had to deal  
7 with a case in Donegal where her husband burnt her and  
8 is now serving time for it. So in my mind it was a  
9 very real threat and it needed to be investigated. So  
10 Judge I took, I took the threat, Judge, on face value, 17:51  
11 I wanted it to be investigated and I think all my  
12 decisions were measured in that regard.

13 953 Q. Okay.

14 CHAIRMAN: Is that the case in Drimark, is it?

15 A. No, that is in relation to Dolores McCrea, where she 17:52  
16 was murdered by her husband and her body was burned and  
17 it became before the courts.

18 954 Q. MR. BARNES: Well, I am kind of putting it to you that  
19 the evidence such as it is, is at the very best  
20 equivocal, that it could never be the basis of a 17:52  
21 successful criminal prosecution and that you did  
22 nothing to improve the proofs, even taking them at face  
23 value by means of further investigation in a timely  
24 manner such as to protect the people that you  
25 apprehended were under such a threat. 17:52

26 A. I disagree with that, Judge. I feel that I called a  
27 meeting, prompt action was taken, my decisions were  
28 deliberate and measured and appropriate in the  
29 circumstances. The evidence was retained by An Garda

1 Síochána pending the investigation. I know it went  
2 into the quick sand. But in terms of my actions I  
3 think they were measured and were appropriate in the  
4 circumstances.

5 955 Q. Now, in the context your apprehension of serious 17:53  
6 psychological harm, would it not have been better to  
7 ensure that Mr. Gerry Hone received in timely fashion  
8 comprehensive information for him to be able to  
9 determine that this was not merely a type two or  
10 welfare potential concern, but was actually a 17:53  
11 protection?

12 A. That information, Judge, was handed over at the  
13 strategy meeting in relation to the information that  
14 was available.

15 CHAIRMAN: Mr. Barnes is saying if you felt it was, as 17:53  
16 I suppose old lawyers would have said, a disease of the  
17 mind or a consequential disease or a fracturing of  
18 mental integrity, that you might have made that case, I  
19 suppose, to Gerry Hone. Maybe that would have made the  
20 position worse, I don't know. 17:53

21 MR. BARNES: And finally -- sorry.

22 CHAIRMAN: But I mean, do you want to say anything  
23 about that?

24 A. Well no, what I'm saying, Judge, is at the early stage  
25 of the investigation the referral was made to the HSE, 17:54  
26 the information was passed over. As I explained  
27 earlier, both the HSE and An Garda Síochána we have  
28 different roles and responsibilities to carry out  
29 different functions.

1 CHAIRMAN: I think it was the section 102.

2 A. The 102, yes.

3 CHAIRMAN: And I appreciate there was a concern about  
4 if you pre-arm the suspect with information --

5 A. Yes. 17:54

6 CHAIRMAN: -- you have yourself a difficulty. In other  
7 words, the social worker goes and puts everything and  
8 you later arrest the suspect and then you put  
9 everything --

10 A. Yes. 17:54

11 CHAIRMAN: -- well then, obviously you're at a  
12 disadvantage.

13 A. You're obviously aware.

14 CHAIRMAN: No, I appreciate that. But I think what  
15 Mr. Barnes asked you was: In relation to section 102 17:54  
16 would you not have made your case stronger, that look,  
17 what we're talking about here is the disturbance of the  
18 mind in consequence of years of abuse?

19 A. But I understood that was going to happen, after the  
20 102 referral there was a phone call and immediately we 17:54  
21 looked at the sections and interpretation of sections  
22 and then I forwarded on the statements. So there was  
23 no really opportunity to share the information, or pass  
24 the information. Because we got caught up in  
25 sections -- 17:55

26 CHAIRMAN: Yes, all right.

27 A. -- which wasn't --

28 956 Q. MR. BARNES: I'm really talking about the information  
29 to be relayed to Gerry Hone. It's clear that Mr. Hone

1 was talking about resource issues in relation to  
2 welfare cases, that four and a half months is sort of  
3 what may happen in the context of resources in relation  
4 to welfare cases. But in relation to the serious  
5 psychological harm that you appear to have apprehended, 17:55  
6 that would put it into the category of a protection  
7 case which would require an urgent intervention of a  
8 serious nature. And he did not have sufficient  
9 information at the time the matter was relayed to him,  
10 in order to treat it as a case that was consonant with 17:55  
11 your apprehension of serious psychological harm and to  
12 make a very timely intervention in the interests of the  
13 children.

14 A. I think the strategy meeting had happened where  
15 information was shared between the two agencies before 17:56  
16 Gerry Hone's letter had reached the superintendent's  
17 office.

18 957 Q. I am just putting it to you that doesn't all add up  
19 really.

20 A. I disagree. I'm happy that Sergeant McGowan would have 17:56  
21 briefed the HSE fully insofar as she could in terms of  
22 the exchange of information between the two agencies.  
23 CHAIRMAN: But the point is that the Gardaí should have  
24 pressed the HSE more.

25 A. We're two separate agencies with different roles and 17:56  
26 functions; we don't tell them how to do their business  
27 and they don't tell us. But we work effectively  
28 together. And at all stages, you know, that the  
29 children's welfare is of paramount importance. And

1 that would always take a first step behind any criminal  
2 investigation.

3 958 Q. MR. BARNES: Now in the circumstances of the serious  
4 harm that you apprehended, on the basis of really scant  
5 data which was at the very end of the interview, which 17:56  
6 was completely equivocal and insufficient to maintain a  
7 prosecution, were you surprised to learn that four and  
8 a half months later when the children were visited that  
9 they were well presented and jolly, and if I am  
10 paraphrasing please forgive, but that they were voluble 17:57  
11 about their home life with Andrew and voluble and happy  
12 about their home life with Marisa, getting on well at  
13 school and just happy to talk and no signs whatsoever  
14 of any of this harm that you apprehended?

15 A. Judge, if the HSE, if that is their findings I am happy 17:57  
16 and have no reason to question it being any other way,  
17 you know what I mean. If that is what they are  
18 reporting back.

19 959 Q. Do you have reason to question your apprehension of  
20 harm? 17:57

21 A. That was the decision I made at the time with the  
22 available information, in the context of what I was  
23 dealing with at the time. So I felt I made the right  
24 decision. I may not have got the section right but I  
25 feel I made the right decision. And it was done in the 17:57  
26 best interest and without malice or --

27 CHAIRMAN: Thank you, Mr. Barnes.

28 MR. BARNES: Thank you very much.

29 CHAIRMAN: Did you want to ask any questions,

1 Ms. McKechnie?  
2 MS. MCKECHNIE: No, thank you.  
3 CHAIRMAN: Is there anybody else? Mr. Power, did you  
4 want to ask any questions?  
5 MR. POWER: I have a view questions. 17:58  
6 CHAIRMAN: But is it a 'Yes, yes, yes with the EBS'  
7 type examination? Because if it is, it's not going to  
8 help. Sorry, to be -- you're probably too young to  
9 remember the ad, Mr. Power.  
10 MR. POWER: I will be very brief. 17:58  
11 CHIEF SUPERINTENDANT MCGINN WAS CROSS-EXAMINED BY  
12 MR. POWER AS FOLLOWS:  
13 960 Q. MR. POWER: First of all, Chief Superintendent McGinn,  
14 in relation to the accessing of Pulse by Garda  
15 Harrison, I think it is fair to say that the 17:58  
16 investigation that was due to commence by  
17 Superintendent Murray was different to that of Chief  
18 Superintendent Jim Sheridan, isn't that correct?  
19 A. That's correct. The Pulse investigation related to  
20 Garda Keith Harrison checking her car at different 17:58  
21 places and it was checking incidents, for example like  
22 the Bogle incident when he came back from work,  
23 checking it on the Pulse system.  
24 961 Q. And I think you set that out in particular in your  
25 letter of the 12th November 2013, to the assistant 17:59  
26 commissioner of the northern region, and indeed I think  
27 some of the allegations you put there specifically  
28 address Pulse access after the date on which Chief  
29 Superintendent Sheridan discussed the issue with Garda

1 Harrison?

2 A. Yes. My appointment was after matters were dealt with  
3 by Chief Superintendent Sheridan.

4 962 Q. So in fact, although they relate to Pulse entries they  
5 are different? 17:59

6 A. They are different Pulse entries than what Chief  
7 Superintendent Sheridan dealt with.

8 963 Q. Thank you. Secondly then, in relation to the Garda  
9 Code and in particular about your meeting with Garda  
10 Harrison in November 2011, at that stage I think 17:59  
11 Ms. Rita McDermott was living near Raphoe, isn't that  
12 correct?

13 A. That's correct, yes.

14 964 Q. And how far is Raphoe from Letterkenny?

15 A. Oh, it's about -- 17:59

16 CHAIRMAN: Twenty to 25 minutes.

17 A. Yeah.

18 965 Q. MR. POWER: So that is within the time distance you  
19 said in your evidence earlier on, isn't that correct?

20 A. Yes. 17:59

21 966 Q. I think the case made by Garda Harrison in that regard  
22 is at that stage they weren't in a relationship, but to  
23 your knowledge was Garda Harrison in a relationship  
24 with Ms. Simms at that stage?

25 A. My understanding, they were in a relationship, yes. 18:00

26 967 Q. And in fact I think also Mr. Martin McDermott escaped  
27 from Portlaoise Prison in around 15th March 2012, that  
28 is some four months later in any case.

29 A. That's correct. Then he went to Derry and he assaulted

1 a police officer in Derry at the time at his release.

2 968 Q. And finally then about the Code itself, could you  
3 comment that it's kind of not just in relation to the  
4 Garda -- the spouse or the partner of a garda having  
5 family in the area, but it's also about the perception 18:00  
6 of having family in an area where a guard such as that  
7 is serving, isn't that correct? It's about the  
8 community having a perception.

9 A. Yes. It's all to do with public perception, public  
10 perception, public confidence in An Garda Síochána in 18:00  
11 its ability to carry out its functions effectively in a  
12 fair and impartial manner.

13 969 Q. Chief superintendent, your decision then to appoint  
14 Inspector Goretta Sheridan was communicated to  
15 Inspector Sheridan on 2nd October 2013, but in fact you 18:01  
16 made it on the 27th September 2013?

17 A. That's correct.

18 970 Q. And I just want to clarify that that was based on the  
19 statements that are in the documents before the  
20 Tribunal, in particular for example that of August 18:01  
21 29th, 2013 by Superintendent Finan, isn't that correct?

22 A. That's correct, Judge, yes.

23 971 Q. In that one I think it was noted to you that the  
24 incident alleged was the third such incident and one of  
25 them had been reported previously to An Garda Síochána 18:01  
26 and that specifically was the Bogle one, isn't that  
27 correct?

28 A. That's correct, Judge, yes.

29 972 Q. There's a suggestion put that you did not know the



1 Bogle or the Bogle incident had not been before you as  
2 such when you made the decision to appoint Inspector  
3 Goretta Sheridan but it was included there?  
4 A. That's correct. It wasn't clear in the report from  
5 Durkin that it was actually the Bogle incident, it just 18:01  
6 said there were three incidents, but on examination it  
7 showed that one of them was the Bogle incident.  
8 973 Q. I think in response to that, on the 5th September 2013  
9 you sought details of any incidents involving Garda  
10 Harrison, isn't that correct? 18:02  
11 A. That's correct, yes, to Inspector Kelly.  
12 974 Q. That was in response as such to the report to you by  
13 Superintendent Finan?  
14 A. That's correct, yes.  
15 975 Q. Then following from that, on the 23rd September 2013 18:02  
16 you were given a report by acting Superintendent David  
17 Kelly, isn't that correct?  
18 A. That's correct, yes.  
19 976 Q. And again this related to the incident --  
20 A. The Bogle incident -- 18:02  
21 977 Q. -- the Bogle incident?  
22 A. -- and report from sergeant Doherty.  
23 978 Q. That's right. And the report that included Ms. Simms  
24 being described by Rita McDermott as being in a  
25 distressed state, isn't that correct? 18:02  
26 A. That's correct, yes.  
27 979 Q. And again on the 24th September 2013 you were made  
28 aware by Superintendent Finan, and Sergeant Durkin's  
29 report was attached to that, about various incidents on

1 the 2nd and 4th, about other incidents, isn't that  
2 correct?

3 A. That's correct, yes.

4 980 Q. And then I think you spoke on the 27th September to  
5 Superintendent McGovern, isn't that correct, and you 18:02  
6 expressed your intention to appoint Inspector Sheridan?

7 A. Yeah. He called me in relation to information that he  
8 had and he was wondering was I aware as the divisional  
9 officer that a serving member of An Garda Síochána was  
10 behaving in such a fashion and I undertook to ring him 18:03  
11 back when I collected all the reports and studied them  
12 and considered them, I would come back to them. which  
13 I did in my afternoon and I told him of my intention to  
14 appoint Inspector Sheridan.

15 981 Q. In fact, it wasn't until 2nd October 2013 you spoke to 18:03  
16 Inspector Sheridan and communicated that to her, isn't  
17 that correct?

18 A. That's correct. Inspector Sheridan wasn't on duty in  
19 Letterkenny at the time.

20 982 Q. And just for completeness I think you also received a 18:03  
21 report of the 1st October 2013, and that's at page 323  
22 of the papers before the Tribunal, in relation to other  
23 matters?

24 A. That's correct, Judge, yes.

25 983 Q. Yes. So it was also suggested during cross-examination 18:03  
26 that Inspector Sheridan did not ask anybody about the  
27 Bogle incident. But I think you read the statement of  
28 Marisa Simms and I think at page 80 of the booklet  
29 before the Tribunal it seems that Marisa Simms was

1 asked about that Bogle incident, isn't that correct?

2 A. Yes.

3 984 Q. Are you aware of that? Do you recollect that?

4 A. Yes. But I didn't brief Inspector Sheridan, she  
5 obviously accessed the information via another route,  
6 but I didn't provide it to her.

18:04

7 985 Q. Very good. Yes. Okay. But in any case it comes up at  
8 the -- it comes up in the course of the statement of  
9 the 6th October 2013?

10 A. Yes.

18:04

11 986 Q. In relation to that statement, it's been put to you on  
12 several occasions that that statement was expressed by  
13 you to be for your eyes only and wouldn't go to anybody  
14 else.

15 A. I completely refute that, Judge. I didn't say that. I  
16 have no information that was said, until 7th October in  
17 Sergeant Wallace's report. But it is certainly not  
18 words that I expressed. I wasn't in the station when  
19 the statement was taken and I didn't instruct Inspector  
20 Sheridan how to go about her business in taking the  
21 statement.

18:04

18:04

22 987 Q. Do you do that to people who come to the station and  
23 make statements; do you tell them that reports will be  
24 for your eyes only notwithstanding you don't know the  
25 content of the reports or that they might disclose  
26 serious crimes?

18:04

27 A. Absolutely not. It's very clear to a person when they  
28 come to the Garda station the purpose why they are  
29 there, what's going to happen with the statement and

1 they are specifically told how the investigation will  
2 progress.

3 988 Q. In relation then to the force being a disciplined  
4 force, I think it was put to you that by dint of being  
5 a disciplined force you could govern your Garda members 18:05  
6 in your division by diktat as such and put down the  
7 mutiny, as Mr. Harty referred to it, in terms of Garda  
8 Harrison's continued presence in the station. I wonder  
9 though is there more than diktat involved in running a  
10 Garda division and the interpersonal relationships 18:05  
11 between you and more junior members of the force?

12 A. Running a Garda division is very complex, in the sense  
13 that as a chief superintendent you have a number of  
14 hats which you need to wear. You have your criminal  
15 responsibilities in terms of investigation, you have 18:05  
16 statutory responsibilities in terms of section 30,  
17 issuing firearms, different statutory functions you  
18 carry out; but you also have then your employment hat  
19 where you are the person on the ground delivering out  
20 the policing service. So it's very important that you 18:06  
21 run an effective team, that the team is working well,  
22 and that the team is getting on with the business of  
23 policing and not being diverted by other issues. So,  
24 therefore, it is important that we deal with things  
25 quickly, we action them and that we make the decisions 18:06  
26 that are necessary to lead out and deliver on policing  
27 for the division of Donegal.

28 989 Q. But in doing that, in terms of your governance as such  
29 of your members in that, it's not just by diktat, it's

1 a mutual trust relationship and people management also?  
2 A. Oh, absolutely. And that you, you know, can have that  
3 openness and transparency in your interactions with  
4 them. But we are all of the understanding that we have  
5 a particular job to do and that our job is policing and 18:06  
6 that we try and do that in an effective way that we can  
7 and to provide a service to the people of Donegal.  
8 990 Q. And then in your memorandum of the 10th October 2013,  
9 to the Chief Superintendent McLoughlin of internal  
10 affairs, that was copied to the Assistant Commissioner 18:07  
11 Kenny, isn't that correct?  
12 A. That's correct yes.  
13 991 Q. Now that was his first particular involvement I think  
14 in writing in that, but it is clearly copied to him and  
15 stated to be copied to him in the terms of that letter, 18:07  
16 isn't that correct?  
17 A. Well, I would have had telephoned him on the 8th to  
18 advise him, you know, about my meeting, to keep him in  
19 the loop, and I was also aware that in relation to the  
20 threatening phone calls on the 4th and 5th, 18:07  
21 Superintendent English's report to Superintendent Coll  
22 he would have had sight of that as well to his office  
23 and then follow up with my report of the 10th.  
24 992 Q. Yes. And your report was copied to him and so it's  
25 there, his name is on the report for all to see and 18:07  
26 that was disclosed to the Tribunal?  
27 A. Oh, absolutely. He was fully aware.  
28 993 Q. Very good. And I think just as a point of correction,  
29 chief superintendent, I think you mentioned earlier in

1 your evidence that divisional PAF meetings are held on  
2 a weekly basis, and I think it is district meetings  
3 that are held on a weekly basis, is that right?

4 A. That's correct. They are in the district and the  
5 divisional is monthly, and regional is monthly.

18:08

6 994 Q. Yes, that is right. So, the district are weekly,  
7 rather than divisional, they are monthly?

8 A. Yes.

9 995 Q. Just to correct that. Thank you very much,  
10 superintendent.

18:08

11 A. Thank you.

12

13 CHIEF SUPERINTENDANT MCGINN WAS CROSS-EXAMINED BY  
14 MR. DIGNAM AS FOLLOWS:

15 996 Q. MR. DIGNAM: Chief superintendent, I just have very,  
16 very brief questions. Firstly, just to clarify: Did  
17 you direct, in relation to the Tusla referral and  
18 meeting of the 8th October did you direct  
19 Superintendent McGovern to make the Tusla referral?

18:08

20 A. No, Judge. No.

18:08

21 997 Q. No. It was suggested to you by Mr. Harty that your  
22 evidence in that regard was contrary to Superintendent  
23 McGovern's evidence. What Superintendent McGovern said  
24 about it is on day 31, page 50, line 16.

25 CHAIRMAN: Yes, he said it was his responsibility to do  
26 it.

18:08

27 MR. DIGNAM: Yes. And the term was tasked --

28 CHAIRMAN: And the chief superintendant said it was  
29 only my responsibility to see that people weren't

1 neglecting it.

2 MR. DIGNAM: Yes.

3 A. That's it, Judge, yes.

4 998 Q. In relation then to the conclusion of the Tusla  
5 referral, and I may be overly sensitive to language, 18:08  
6 but Mr. Harty asked you o referred to the Tusla  
7 referral, to Tusla having rejected the referral. The  
8 response of Tusla to the referral is in fact on page  
9 148 of the booklet and this is a letter to Sergeant  
10 McGowan, and Tusla state that: 18:09  
11  
12 "The outcome of the initial assessment is there are no  
13 ongoing identifiable child welfare and/or child  
14 protection concerns at this time. Consequently this  
15 case will now close to the Social Work Department." 18:09  
16  
17 As I say, I may be overly sensitive to language --

18 A. Yes.

19 999 Q. -- but do you consider that to be a rejection of the  
20 referral by Tusla? 18:09

21 A. No. I take it that Tusla carried out their functions  
22 in terms of their roles and responsibility, they  
23 evaluated it and they were happy then to close the file  
24 after their evaluation and assessment.

25 1000 Q. In relation to the referral to GSOC, I will be quite 18:09  
26 direct, chief superintendent: when you used section  
27 102, as the appropriate section, and you've explained  
28 your position in relation to that, did you have a  
29 belief that that would in some way prevent GSOC from

1 speaking to Ms. Simms?

2 A. No, absolutely not. I would have expected GSOC as part  
3 of section 91 inquiries to make contact with Ms. Simms  
4 in relation to the matter.

5 CHAIRMAN: which indeed they did. 18:10

6 A. Yes.

7 1001 Q. MR. DIGNAM: And then finally, chief superintendent, in  
8 relation to your appointment of Superintendent Murray,  
9 I think she was nominated by the assistant  
10 commissioner, is that correct? 18:10

11 A. That's correct, yes.

12 1002 Q. And then you carried out the appointment?

13 A. That's correct.

14 1003 Q. And I think is it correct to say that you met  
15 Superintendent Murray in Blacklion to personally inform 18:10  
16 her of that appointment and to provide her with the  
17 relevant papers?

18 A. That's correct. I was hoping maybe to meet her in  
19 Manohamilton that day, I was at an emergency management  
20 meeting, but she couldn't meet me at that time and we 18:10  
21 had a later meeting in Blacklion where I gave her the  
22 papers, statement of Marisa Simms and Rita McDermott  
23 and any paperwork. But I didn't direct her about how  
24 to go about her business. That was a matter for  
25 herself to carry out the investigation. 18:11

26 1004 Q. And then just in relation to the correspondence from  
27 internal affairs, which came to you, and then you wrote  
28 to Superintendent Murray, is that a line management  
29 issue? Does internal affairs write to you because you



1 are the appointing officer?

2 A. Because I'm the appointing officer, that they write to  
3 me, but I wouldn't be interfering or directing her  
4 investigation. Because she obviously has to present  
5 back to me as the appointing officer and I have to make 18:11  
6 certain recommendations as the appointing officer.

7 1005 Q. Thank you.

8 MR. MCGUINNESS: I have nothing further for the chief  
9 superintendent.

10 CHAIRMAN: There it is. Thank you. 18:11

11

12 THE WITNESS THEN WITHDREW

13

14 what are we going to do about Garda Campbell? Can we  
15 scoot through that evidence by agreement? I mean, the 18:11  
16 majority of any questions that need to be put can be  
17 put. If you find, Mr. Harty, you need him back  
18 tomorrow, let's come back to him tomorrow. I think  
19 what we should do is, we should have minimal evidence  
20 now and let's see if we can get through it. If we 18:11  
21 can't, we can't. I'm very sorry, Garda Campbell, if  
22 you have to stay in a hotel overnight, but that will be  
23 arranged for you by the Tribunal. I hope, at this late  
24 juncture, somebody is going to do it. We can put you  
25 in the Shelbourne if you have to stay overnight. I 18:12  
26 know that is a thrill.

27

28 GARDA KARL CAMPBELL, HAVING BEEN SWORN, WAS DIRECTLY  
29 EXAMINED BY MS. LEADER AS FOLLOWS:

1 1006 Q. MS. LEADER: Garda Campbell's statement is 2464 of the  
2 evidence. If you would explain, Garda Campbell, I  
3 understand from April 2009 you were transferred to  
4 Letterkenny Garda Station and you were assigned to the  
5 divisional office there. That's what it says in your 18:12  
6 statement?

7 A. Yeah. Maybe it was April 2009. It's in around that  
8 time, yeah, yeah.

9 1007 Q. Okay. You had been in the Gardaí since 1998, is that  
10 correct? 18:13

11 A. That's correct, yes.

12 1008 Q. Could you explain what your job was and still is in the  
13 divisional office in Letterkenny?

14 A. Well, on behalf of the chief superintendent I manage  
15 the files. 18:13

16 1009 Q. I'm sorry, if you wouldn't mind speaking into the mic.  
17 CHAIRMAN: You're speaking into the wrong bit of the  
18 desk.

19 A. I apologise. On behalf of the chief superintendent I  
20 manage files in relation to internal discipline files, 18:13  
21 GSOC complaints, legal action files and secret and  
22 confidential files; sort of four categories in the  
23 portfolio.

24 1010 Q. MS. LEADER: Okay. And do you make any decisions on  
25 your own in relation to any of those files? 18:13

26 A. No. On like maybe very minor decisions but not, not  
27 any operational decisions, no.

28 1011 Q. And minor decisions, would you send reminders or  
29 something like that?

1 A. Exactly, exactly, yes.

2 1012 Q. Now if I can go ahead to the 8th October 2013, I  
3 understand you attended a meeting in Letterkenny Garda  
4 station on that day?

5 A. That's correct. 18:14

6 1013 Q. And if you would tell the Tribunal what you remember  
7 from that meeting and what you understood your function  
8 to be in attending that meeting please?

9 A. Okay. I started work that morning I wasn't aware that  
10 there was a meeting and the chief, Chief Superintendent 18:14  
11 McGinn, rang over to the office from her own office,  
12 and asked me would I attend a meeting that was ongoing  
13 at that stage. I'm not too sure how long it was  
14 actually convened. I went over, it's just around the  
15 corridor and I went over to the office and she informed 18:14  
16 me that they had a statement from Ms. Simms in relation  
17 to Garda Keith Harrison and that there basically would  
18 be matters involved, or you know matters being  
19 discussed, that I would potentially be dealing with in  
20 the future, there were internal discipline matters, 18:14  
21 matters in relation to GSOC and then there was the  
22 other matter of the threats that were received on the  
23 4th and 5th October, which came under the confidential  
24 file category and again, would be dealing with that.  
25 So I was asked to attend, just basically so that I 18:15  
26 would be aware of files that I would be potentially  
27 dealing with.

28 1014 Q. Okay. what can you remember was discussed at the  
29 meeting?

1 A. Well, I recall the discussion in relation to the 102  
2 referral and whether it was the right avenue to be  
3 going through, or you know the right process to be  
4 dealing with it. And then there was a discussion in  
5 relation to the threats and the telephone calls that 18:15  
6 had been received on the 4th and 5th. Like, you know,  
7 the meeting, I can't recall exactly how long the  
8 meeting went on for. My role was basically to observe  
9 whenever -- you know, when they were going through  
10 Ms. Simms' statement, which was quite long, and there 18:15  
11 was a lot of detail in it, just basically to take note  
12 of things that I would be dealing with and potentially  
13 have to put on to appointment forms or would have to be  
14 aware of in the future.

15 1015 Q. Did you take any notes of the meeting? 18:16

16 A. No, I didn't. I had a copy of her statement at the  
17 time, and when they were going through it I was just  
18 basically following it as well. I didn't make any  
19 notes in relation to it.

20 1016 Q. Did you contribute in any way to the conversation about 18:16  
21 the GSOC referral?

22 A. Well, yes, I was asked, you know, I had -- while I  
23 wouldn't actually have dealt with 102 referrals, as  
24 they're mainly done by -- well, they're not mainly  
25 done, they're done purely by the superintendent in the 18:16  
26 district for which the incident happened. We would get  
27 copies of files in relation to 102 referrals and, you  
28 know, I was asked whether it -- 102 or section 85 was  
29 the most appropriate. Section 85 I thought wasn't

1 serious enough. It's usually, you know, if you get a  
2 complaint maybe that a guard was rude to somebody, or  
3 hung up the phone on them, something minor in nature,  
4 you would usually send by section 85, but given the  
5 content of the statement of Ms. Simms it was felt 18:17  
6 that -- and due to the seriousness of the allegations  
7 contained in it, that section 102 was the most  
8 appropriate avenue to forward the file.

9 1017 Q. And did you actually tell the meeting that that was  
10 your view about it? 18:17

11 A. I agreed with them, that whenever they came to the  
12 conclusion that 102 was the best, was the most  
13 appropriate, most appropriate manner of referring it.

14 1018 Q. Okay. Did you have any input in relation to the HSE  
15 referrals? 18:17

16 A. No. Absolutely none. None at all.

17 1019 Q. Did you understand that they were going to be made?

18 A. I don't actually recall. That could have been prior to  
19 my arrival, I don't recall any conversation in relation  
20 to HSE or Tusla referrals. 18:17

21 1020 Q. And could you tell us who do you remember was at the  
22 meeting?

23 A. Well, the Chief Superintendent McGinn, Superintendent  
24 Eugene McGovern, Superintendent Michael Finan,  
25 Detective Inspector Pat O'Donnell and Inspector 18:17  
26 Sheridan.

27 1021 Q. Do you remember anything else about the meeting? Were  
28 you given any task coming out of the meeting?

29 A. No, no, no. The way I understood it was, basically it

1 was for, just so I would be aware and there was no need  
2 for me to take notes. Basically, I just manage the  
3 files that come into the office, I have no hand, act or  
4 part in the investigation process or anything else in  
5 relation to it. So any correspondence that would have 18:18  
6 been received in the office in relation to the file I  
7 would have dealt with on behalf of the chief. So I  
8 didn't -- you know, I would have basically -- whatever  
9 happened in the future I would have dealt with it as it  
10 appeared. There was nothing for me to do, you know, to 18:18  
11 progress anything at that stage.

12 1022 Q. You've heard in the evidence here today a reference to  
13 a report that Chief Superintendent McGinn sent to the  
14 chief superintendent internal affairs dated 10th  
15 October 2013? 18:18

16 A. Yes.

17 1023 Q. Are you familiar with that report?

18 A. I am, yes.

19 1024 Q. Did you help put it together?

20 A. I did. 18:19

21 1025 Q. What sources did you refer to when you were helping put  
22 that report together?

23 A. Well, basically Ms. Simms' statement and the report  
24 from Superintendent English in relation to the threats  
25 and then any of the disciplinary files that I had, that 18:19  
26 were being kept in the office in relation to previous  
27 matters, in relation to the court conviction and the  
28 and subsequent disciplinary action. So, it would have  
29 been all files that were at hand in the office.

1 1026 Q. Okay. And in relation to a personnel file was there  
2 one in the office that you could refer to?

3 A. There is. It's a form D6 I think it's called, that is  
4 kept -- or D7, I'm not too sure which, that is kept in  
5 the office. It would have minor details, it wouldn't 18:19  
6 have a huge amount of -- the member's personnel file is  
7 actually kept in the district headquarters and we would  
8 have a smaller file in the divisional office, but all  
9 the actual personal records would have been kept in  
10 Ballyshannon, which is the district headquarters for 18:20  
11 Donegal Town.

12 1027 Q. Did you go to Ballyshannon to --

13 A. No.

14 1028 Q. -- help you put together that report?

15 A. No, I didn't require -- no, anything that was in that 18:20  
16 report was from the files that I, that we had in the  
17 office, we had at hand in the office.

18 1029 Q. Okay. Did you draft that report for the chief  
19 superintendent?

20 A. I did, yes. 18:20

21 1030 Q. In relation to an email you sent to Inspector Goretta  
22 Sheridan, I think it's at page 931 of the materials,  
23 it's dated 7/11/2013, it should come up on the screen  
24 in front of you shortly.

25 CHAIRMAN: Just take out volume 3 if you want, 18:20  
26 sometimes the thing goes on the blink, it's going on  
27 the blink now. Do you want to take out volume 3, page  
28 931?

29 A. There's nothing on the screen now.

1 CHAIRMAN: I know that, if you look at 931. It's there  
2 now.

3 1031 Q. MS. LEADER: It's an email which you sent to Inspector  
4 Sheridan re Keith Harrison. You say:

5 18:21

6 "Goretti  
7 Has there been anything further in the westport thing?  
8 GSOC have reverted and stated that Marisa Simms was  
9 contacted by them and replying stating that she would  
10 not be cooperating with their inquiry, so therefore 18:21  
11 they are closing their file on the matter. A request  
12 will be forwarded from this office to the assistant  
13 commissioner Sligo to appoint a superintendent from  
14 outside the division to investigate all aspects of this  
15 matter so we need to gather up as much as we can in 18:22  
16 anticipation of such an appointment. Karl."

17  
18 That's your email, is that correct?

19 A. That's correct, yes.

20 1032 Q. And if you could explain what you were gathering up 18:22  
21 there in anticipation?

22 A. Well, we were, I think all matters were going to be  
23 sent to the assistant commissioner and basically all  
24 the allegations that were contained in Ms. Simms'  
25 statement, you know we were trying to put together 18:22  
26 whatever information we had in relation to it. And I  
27 was aware that Inspector Sheridan was carrying out some  
28 inquiries in westport with the hotel.

29 1033 Q. Yes.



1 A. I am not too sure what I was aware exactly at the time,  
2 because I've only seen this email recently, but I was  
3 basically looking for an update. The chief had asked  
4 me to compile this report or compile a report in  
5 relation to it, and I was looking for an update on 18:22  
6 anything further she had to add, so that we could  
7 include it with the document or the report going to the  
8 assistant commissioner.

9 1034 Q. Okay. I should have asked you in relation to the last  
10 report, that's the report of the 10th October, I think 18:23  
11 you forwarded that to Superintendent McGovern --

12 A. Yes.

13 1035 Q. -- on the 10th as well?

14 A. That's correct, yes.

15 1036 Q. Why was that the case? 18:23

16 A. Because he had made the 102 referral and because there  
17 was points pertinent to the 102 referral and if he  
18 wanted, for any observations or anything that he wanted  
19 included or taken out or anything that he felt should  
20 be included. So basically see if he had anything 18:23  
21 further to add.

22 1037 Q. Okay. You're perhaps maybe more familiar than most of  
23 us in this room with the Garda disciplinary  
24 regulations, but is there anything wrong with the  
25 consideration of the matter of transfer or suspension 18:23  
26 when you're at the same time forwarding a report in  
27 relation to discipline?

28 A. Sorry?

29 1038 Q. So, for instance, the report of 10th October 2013, it's

1 "Re Garda Síochána discipline regulation suspension  
2 from duty"?

3 A. Yes.

4 1039 Q. And it's at the very end of it, there is a question of  
5 an alternative to suspension, would be to transfer 18:24  
6 Garda Harrison?

7 A. Yes.

8 1040 Q. Is that something which you would see within the ambit  
9 of the power of the chief superintendent in internal  
10 affairs? 18:24

11 A. Do you mean, is it a decision for chief superintendent?

12 1041 Q. Yes.

13 A. Yes, yes. You would send the file up there for their  
14 consideration, yes.

15 1042 Q. And would you think it would be something properly to 18:24  
16 be for his consideration in internal affairs?

17 A. For serious matters like that, yes. They would go to  
18 internal affairs, to the chief super internal affairs  
19 for decision.

20 1043 Q. And he's perhaps the person who would have power to 18:24  
21 transfer people, separately from disciplinary matters?

22 A. Well, I think it's more a case that the chief  
23 superintendent internal affairs is the sort of  
24 go-between for assistant commissioner HRM who is the  
25 next one to the commissioner. And it's basically the 18:25  
26 channel that this consideration -- you know, that this  
27 report would follow, and ultimately it would be the  
28 Commissioner's decision, but it would be through  
29 internal affairs. I don't think the decision would be

1 internal affairs, it would be their actual decision,  
2 they would probably get it from elsewhere.

3 1044 Q. So it would be the channel which matters like that  
4 would be considered under?

5 A. Yes, yes. 18:25

6 1045 Q. And do you think there would be anything wrong with  
7 that?

8 A. No. That would be the protocol when considering  
9 matters like that. That would be the channel you would  
10 take. 18:25

11 MS. LEADER: Okay. If you would answer any questions  
12 Mr. Harty might have for you.

13 A. Right.

14

15 CHAIRMAN: Do you have any questions, Mr. Harty? 18:25

16 MR. HARTY: I have got a number of questions.

17 CHAIRMAN: Well, what are we going to do then? I mean,  
18 are you going to be an hour, half an hour, five  
19 minutes?

20 MR. HARTY: I will be more than half an hour. 18:25

21 CHAIRMAN: Garda Campbell, is it imperative that you  
22 get home tonight?

23 A. No.

24 CHAIRMAN: All right. Well, I'm going to try and -- I  
25 don't know what the situation is, because I will try 18:25  
26 and get you a hotel.

27 A. I'm sure I'll be able to organise something.

28 CHAIRMAN: Well, yeah. Somebody will give you whatever  
29 help is necessary in that regard. I understand we have

1 an arrangement with some hotel just across the road, so  
2 we would be paying as opposed to -- well, the people of  
3 Ireland of course. So we will see what can be done. I  
4 will just speak to Ms. Ni Ghabhann and see what we can  
5 do for you. There is no point in going on. Thank you  
6 very much, Ms. Kelly, for going on.

18:26

7  
8 THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 10TH OCTOBER  
9 2017 AT 10:00AM

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