

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 WEDNESDAY, 11TH OCTOBER 2017 - DAY 36

36

Gwen Malone Stenography
Services certify the
following to be a
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in the above-named
action.

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SERVICES

APPEARANCES

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

REGISTRAR: MR. PETER KAVANAGH

FOR THE TRIBUNAL: MR. DIARMAID MCGUINNESS SC
MR. PATRICK MARRINAN SC
MS. KATHLEEN LEADER BL
MS. ELIZABETH MULLAN, SOLICITOR

FOR THE COMMISSIONER: MR. MÍCHEÁL P. O'HIGGINS SC
MR. CONOR DIGNAM SC
MR. SHANE MURPHY SC
MR. DONAL MCGUINNESS BL
MR. NOEL WHELAN BL
MR. JOHN FITZGERALD BL

INSTRUCTED BY: MS. KATHY DONALD
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR TUSLA: MR. PAUL ANTHONY McDERMOTT SC
MS. SARAH MCKECHNIE BL

INSTRUCTED BY: ARTHUR COX
TEN EARLSFORT TERRACE
DUBLIN 2

FOR GARDA HARRISON: MR. MARK HARTY SC
MR. PETER PAUL DALY BL
MR. ANTHONY QUINN BL

INSTRUCTED BY: KILFEATHER & COMPANY SOLICITORS
THE HALLS QUAY STREET
GALWAY

FOR SUPT. ENGLISH: MR. PADRAIG DWYER SC
MR. BRIAN GAGEBY BL

INSTRUCTED BY: MR. CARTHAGE CONLON
M.E. HANAHOE SOLICITORS
SUNLIGHT CHAMBERS
21 PARLIAMENT STREET
DUBLIN 2

FOR INSP. SHERIDAN,
INSP. DURKIN
& SGT. MCGOWAN:
INSTRUCTED BY: MR. DESMOND DOCKERY SC
MR. MICHAEL HEGARTY
REDDY CHARLTON SOLICITORS
12 FITZWILLIAM PLACE
DUBLIN 2

FOR MARISA SIMMS:

INSTRUCTED BY:

MR. HUGH HARTNETT SC
MR. JOSEPH BARNES BL
MR. MARK MULLANEY
MULLANEYS SOLICITORS
1-2 TEELING STREET
SLIGO
IRELAND

FOR C/SUPT. MCGINN:

INSTRUCTED BY:

MR. CONOR POWER SC
MR. CATHAL Ó BRAONÁIN BL
DANIEL SPRING & COMPANY
50 FITZWILLIAM SQUARE
DUBLIN 2

FOR MS. RITA MCDERMOTT: MR. NIALL O'NEILL BL

1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 11TH
2 OCTOBER 2017:

3
4 MR. MCGUINNESS: Chairman, thank you for the time. I
5 should just explain where matters are at, at the 11:14
6 present. We received yesterday a number of documents
7 from An Garda Síochána, one of them was, amongst
8 others, of a collection of minutes of different
9 management accountability meetings, if I could put it
10 that way. One of them dated the 5th November refers to 11:14
11 a regional divisional meeting held in Dundalk at which
12 a number of senior Gardaí were present, and it's
13 recorded on, in one line of the minutes that Chief
14 Superintendent McGinn updated the meeting on the
15 investigation concerning Garda Keith Harrison. It 11:15
16 doesn't obviously explicitly relate or refer directly
17 to a HSE referral, but it's a sentence there in the
18 document and that's being circulated and disclosed to
19 all the parties.

20 11:15
21 Another minute relates to a divisional accountability
22 meeting at Letterkenny Garda Station on 29/11, and
23 among the participants were Chief Superintendent
24 McGinn, Superintendent McGovern, Superintendent Finan,
25 Superintendent Archbold, who is now deceased, Inspector 11:15
26 Harrison and Sergeant Duffy. And it appears from the
27 minutes that Mr. Gerry Hone from the HSE spoke to the
28 meeting, that arrangement having been made obviously
29 some time prior to the meeting, in relation to HSE

1 referrals. The minutes of that have been circulated.
2 Garda Harrison isn't referred to explicitly. It seems
3 to be more on the level of a general strategic-type
4 meeting of the type which has in fact already been
5 referred to in the evidence. 11:16

6
7 However, notwithstanding that, these documents appear
8 to the Tribunal counsel to fall within the scope of
9 being considered to be potentially relevant to some of
10 the witnesses, some of the evidence, perhaps, and they 11:16
11 were disclosed and circulated on that basis.

12
13 Obviously behind that is a concern about their
14 appearance at this stage of the matter, at least this
15 stage of the hearings, so I was going to suggest, 11:17
16 Chairman, that you would give an opportunity to both
17 the Garda Commissioner and counsel for the HSE to
18 explain, if they wish, and if they have the appropriate
19 instructions, to outline to the Tribunal where these
20 documents came from, how is it that they perhaps have 11:17
21 just come to light at this stage and their potential
22 relevance. And I should say in that context, it is the
23 intention of the Tribunal to recall a number of
24 witnesses so that you, Chairman, can make such inquiry
25 as you think fit in relation to the matters. 11:17

26 CHAIRMAN: If I could see the two documents, if anyone
27 has a copy of them here it would perhaps help to focus.

28 MR. MCGUINNESS: So, Chairman, that is all I would like
29 to say at the moment. Obviously from the point of view

1 of the Tribunal and the presentation of evidence, we
2 hope to make and take steps to recall any relevant
3 witness as soon as possible.

4 CHAIRMAN: All right.

5 MR. MCGUINNESS: But I would like to hear the parties. 11:18

6 CHAIRMAN: If you don't mind, let me go through these
7 so I know what I am talking about. So there is a
8 divisional accountability meeting in Letterkenny Garda
9 Station on 29th of November 2013 at 10:00am, and Chief
10 Superintendent McGinn is there, Superintendent McGovern 11:18
11 of Buncrana, Superintendent Finan, Superintendent
12 Archbold and Inspector Harrison, acting Milford
13 superintendent, Sergeant Peter Duffy, divisional
14 office. And then it goes through:

15 11:18

16 "Gerry Hone spoke to the meeting re HSE referrals. Big
17 increase in Garda referrals to HSE."

18

19 It says:

20

11:19

21 "29 referrals this year. Liaison between the Garda and
22 HSE is very good on the ground. New Freedom of
23 Information impact. Case conference on each referral.
24 MF -- "

25

11:19

26 who presumably is Michael Finan?

27 MR. MCGUINNESS: Yes.

28 CHAIRMAN: "-- suggested the referral form could be
29 improved so that more information would be included in

1 the referral."

2
3 Yes. Certainly historically I've had evidence that
4 happened.

5
6 "Where a referral is received the parents must be
7 informed of the existence of the referral. JH still a
8 9-5 service costing... sought."

9
10 Now, why is this potentially in any way relevant to
11 anything? I mean, you are saying it's relevant,
12 Mr. McGuinness, I am wondering why are you saying it's
13 in any way relevant?

14 MR. MCGUINNESS: well, it's arguably just potentially
15 relevant because it's a meeting concerning inter alia
16 the superintendent, Superintendent McGovern who made
17 the referral to Mr. Hone, who is speaking at the
18 meeting to him and the senior guards. It's in relation
19 to HSE referrals in a general sense of course and it
20 would seem on one interpretation perhaps to relate to
21 the type of referral that had been made by
22 Superintendent McGovern a number of -- two months ago,
23 to Mr. Hone, in fact. And obviously there is no
24 mention of Garda Harrison directly in that, but it
25 obviously at a general level touches on the sort of
26 concerns that were explored in evidence.

27 CHAIRMAN: Yes. well, it seems to be concerns may well
28 have been gone through -- just looking at the document
29 and where we might go in relation to it, where it might

1 go is that they are having, it seems, a high-level
2 meeting with Gerry Hone. By high level I don't know
3 that everyone is very important, I mean that it is to
4 do with policy, and basically how they are getting on.
5 I mean, it's heartening I suppose to realise that they 11:21
6 are having such meetings, but why has it anything to do
7 with what I am inquiring into? And that is what I am
8 wondering about. I mean, how potentially could it?
9 MR. MCGUINNESS: Well, I suppose, Chairman, it's a
10 matter as to whether any party might think it 11:21
11 appropriate to inquire whether Garda Harrison's case
12 was discussed at the meeting.
13 CHAIRMAN: It could be. It could be. But, it could
14 have been discussed at any other meeting as well.
15 well, maybe on this, can we just stick with this 11:21
16 document for a moment? I would like to hear
17 Mr. McDermott first of all. Thank you for drawing that
18 to my attention, Mr. McGuinness.
19 MR. MCDERMOTT: Chairman, the position of Tusla is,
20 this is a document which appears to have no relevance 11:21
21 whatsoever to the Tribunal's term of reference. We
22 have checked with Mr. Hone and his recollection is that
23 the minute is accurate, he was asked and attended a
24 meeting where they discussed at a very high level how
25 referrals were being made. He addressed this in his 11:22
26 evidence, you will recall, Chairman, where he said at
27 the time Tusla were concerned that they weren't getting
28 very much information in referrals, and that they
29 needed more information, and this document confirms the

1 accuracy of that evidence; which is, it appears he was
2 asked to attend a meeting where he made the point I
3 would like to get more information when you make
4 referrals. There is no mention of Garda Harrison
5 there. Mr. Hone doesn't recall any mention of Garda 11:22
6 Harrison at the meeting. And insofar as Tusla were
7 asked to discover documentation relating to Garda
8 Harrison, they discovered documentation relating to
9 Garda Harrison, and they didn't discover documentation
10 that doesn't relate to Garda Harrison, of which there 11:23
11 is clearly a very large volume existing. So that's the
12 simple position, and obviously Mr. Hone is more than
13 happy to make a statement or give evidence simply to
14 confirm that. But this appears to be a completely
15 irrelevant document. Clearly the Gardaí and the HSE 11:23
16 and Tusla are meeting all of the time about all kinds
17 of issues, but what this Tribunal is looking at is the
18 case of Garda Harrison, so here is a document that
19 doesn't mention him and there it is. But we will
20 obviously assist the Tribunal in any way we possibly 11:23
21 can, if somebody thinks this could in some way be
22 relevant. Mr. Hone is happy -- he can't put it any
23 further than that minute but would be more than happy,
24 if required, to make a statement or give evidence to
25 confirm that position. And what we haven't been able 11:23
26 to ascertain is, how he came to attend the meeting.
27 Presumably either somebody rang him or emailed him and
28 said will you attend and he attended. And that's the
29 minute; the minute is then what was discussed. So I

1 hope that's of some assistance to the Tribunal.

2 CHAIRMAN: Yes.

3 MR. MCDERMOTT: As I said, we will provide whatever
4 assistance we can if anybody wants to explore did A
5 phone B, did B phone A or any other issue relating to 11:24
6 how Mr. Hone came to attend a meeting where he was
7 indicating he'd like to get more information when
8 referrals are made.

9 CHAIRMAN: Yes. Is Mr. Hone available?

10 MR. MCDERMOTT: He is in Donegal at the moment, so not 11:24
11 immediately, but we will make him available as soon as
12 may be if anybody wants to explore it further.

13 CHAIRMAN: Well, Donegal, speaking from experience,
14 depending on where you are, is a five-hour drive away,
15 so it can't be today. 11:25

16 MR. MCDERMOTT: It wouldn't be today if he was
17 required.

18 CHAIRMAN: Yes. What other meetings, I wonder,
19 Mr. McDermott, were there between the Gardaí and
20 Mr. Hone in relation to, I suppose, policy matters 11:25
21 or that kind of thing? In other words, what is our
22 documentation like? Can we do it better? Where
23 potentially there might have been some reference to
24 this particular case as opposed to any one of the other
25 29 referrals up to November 2013. 11:25

26 MR. MCDERMOTT: Yes, Chairman, my instructions are we
27 have discovered everything relating to Garda Harrison.
28 Obviously if the Tribunal starts going down the road of
29 meetings that don't involve Garda Harrison or where he

1 is not mentioned, presumably Tusla and the Gardaí are
2 talking and meeting and interacting all of the time,
3 so -- yes.

4 CHAIRMAN: Yes. Mr. McDermott, what is the legal
5 definition of relevance? 11:25

6 MR. MCDERMOTT: I think, certainly in a court case, you
7 identify the issues by reference to the Pleadings.

8 There are no Pleadings in a tribunal, but a tribunal
9 has to have focus. And I think on a number of
10 occasions during the Tribunal when the Chair, when you, 11:26

11 sir, have engaged with counsel and said why are you
12 asking these things or what is the purpose of this, on
13 occasion the answer seems to have been this is

14 inquisitorial, therefore we can ask anything and raise
15 any issue. My understanding of an inquisitorial 11:26
16 process, even in a civil law system, is, it has to have

17 a focus, there has to be an issue. I know the courts
18 have said you shouldn't use the word allegations
19 because a tribunal isn't investigating allegations, but

20 it is investigating claims and there has to be a focus 11:26
21 and that is why you have a term of reference. So, the
22 term of reference relates to Garda Harrison and we have

23 sought to disclose documents and sought to give
24 evidence relating to Garda Harrison. And that's as far
25 as it goes. But of course, presumably the Gardaí and 11:27

26 Tusla in Donegal must have a huge number of
27 interactions that don't deal with Garda Harrison, and
28 that is the position. If one starts going down that
29 avenue we could be here for a very long time. But

1 obviously we will do whatever we are asked to do. But
2 I think we are satisfied you have heard the evidence
3 relating to Garda Harrison. There was a referral,
4 there was a meeting with Garda Harrison and Ms. Simms,
5 and then there was a follow-up meeting with the 11:27
6 children, they both went very well, and Tusla wrote a
7 letter saying that's the end of it, do you have any
8 queries? That is it. There isn't anything further
9 that we are aware of, sir.

10 CHAIRMAN: Mr. McDermott, if you go back and you think, 11:27
11 is there a focus to this? Well, it seems to me
12 yesterday I tried to outline what I was thinking of,
13 and that's not a bad exercise because if a judge
14 retires to write a judgment, the first question that
15 occurs to one's mind is: what exactly is this case 11:28
16 about? Now, I focused lastly on the letter to Minister
17 Zappone of the 10th February 2017, and in terms of
18 focus, and in terms of identifying what needs to be
19 decided, it's clear that it is said that the HSE were
20 influenced in their actions by the Garda Síochána 11:28
21 leaning on them. The HSE have said before the
22 Tribunal, no, in fact if the Gardaí had actually shown
23 us the statement or given us a proper précis in
24 relation to it we would have actually done a lot more.
25 How much more is up in the air because it wasn't 11:28
26 followed up, but certainly there would have been
27 separate meetings, there would have been no question of
28 Keith Harrison living with the children of Marisa
29 Simms. And what might have happened after that, I

1 don't know. But certainly it was a response on a
2 different level to having a chat in an office and
3 having a 15-minute chat in a house. But what is
4 claimed is that through very specific evidence relayed
5 by Marisa Simms to Garda Keith Harrison, one of the 11:29
6 social workers divulged that the Gardaí had leaned on
7 her. Now, I know Marisa Simms hasn't stood over that
8 and indeed the questions asked by counsel for Marisa
9 Simms seem to devolve down to not a communication in
10 words but something to do with the look on her face. 11:29
11 So the focus, if there is a focus, is: was there any
12 leaning at all? I suppose this is a meeting where
13 potentially one might say there could be such leaning,
14 it's a meeting we don't know about. I agree there may
15 be other meetings, but if one goes back to the classic 11:30
16 definition of a fact in issue, that is a fact upon
17 which the result of the case may turn; and relevance
18 means another fact which may influence the outcome of
19 the fact in issue. So, in a court case obviously
20 people would call evidence that is relevant to 11:30
21 themselves, in an inquiry one has to find out what
22 might be potentially relevant, and it looks to me as if
23 potentially this could be something where just such a
24 matter as whether or not the précis provided orally by
25 Sergeant McGovern to Tusla was or was not adequate and 11:30
26 could things have been improved. In other words, it
27 could come up as an example. So, therefore, I would be
28 happier to see Mr. Hone back and to see what the story
29 is in relation to that.

1 MR. MCDERMOTT: Of course, Chairman. Absolutely.

2 CHAIRMAN: Now, could I just ask the Garda
3 Commissioner, just dealing with this document alone,
4 please, for the moment, because we will get into a
5 tangle or my mind will get into a tangle if we have to 11:31
6 look at everything all at once. So, what is the
7 situation there? I mean, you are under an obligation,
8 as you appreciate, to cooperate with the Tribunal.

9 MR. DIGNAM: Yes, sir.

10 CHAIRMAN: You appreciate as well that you have to look 11:31
11 for everything that is potentially relevant. And, what
12 is the situation vis-á-vis this only coming late?

13 MR. DIGNAM: Yes, Chairman, and I will confine my
14 remarks at this stage to this document as the Tribunal
15 has requested. Chairman, in my respectful submission, 11:31
16 this document when disclosure was being made, simply
17 wouldn't have appeared relevant to anybody who looked
18 at it. I can appreciate, and readily appreciate, how
19 it has become of interest, if I put that way, and I
20 will address the test of relevance in just a moment, 11:32
21 but it has become of interest as the Tribunal has
22 progressed, as issues have been clarified and as issues
23 have been explored by the Tribunal. As Mr. McGuinness
24 has indicated, a number of the relevant Gardaí, if I
25 might put it that way, were present, and Mr. Hone, who 11:32
26 is obviously a witness for Tusla, for the HSE was also
27 present. So I can see how, as the organic process of
28 the Tribunal has proceeded, it has become of interest
29 and, as I say, I can appreciate why Tribunal counsel

1 have identified it as being a document of interest.

2
3 In relation to the strict legal sense of relevance --
4 So, in those circumstances, Chairman, if this document
5 had been looked at a number of months ago, it wouldn't 11:32
6 have appeared to be relevant and, therefore, wouldn't
7 have been expected to be provided to the Tribunal at
8 that stage.

9
10 In relation to the test of relevance, Chairman, one of 11:32
11 the ingredients of that is, if it reasonably gives rise
12 to a line of inquiry. And I think I can't gainsay or
13 dispute that, in light of the evidence that has been
14 given and in light of some of the submissions, for
15 example, that has been made by Mr. Harty, that it 11:33
16 doesn't reasonably give rise to a line of inquiry. It
17 may well be that Mr. Harty will want to inquire of the
18 people who were at that meeting what was discussed, was
19 Garda Harrison discussed, was Garda Harrison's case
20 discussed, and in those circumstances it is a matter 11:33
21 which is properly before the Tribunal at this stage,
22 and which Mr. Harty may wish to use in cross-examining
23 any relevant witnesses.

24 CHAIRMAN: well, of -- sorry, yes?

25 MR. DIGNAM: I might just conclude, Chairman, just one 11:33
26 point I would make in relation to the issue which the
27 Chair identified as being a possible line of inquiry,
28 is the fact that it is alleged that pressure was
29 brought to bear on -- it is alleged, sorry, that the

1 social worker said that pressure was brought to bear by
2 her on her -- on her management. I don't think it was
3 ever said that that pressure was brought to bear by
4 Mr. Hone and Mr. Hone was the only person present. So,
5 we are now going one step further. Because the case 11:34
6 that would have to be made is that Mr. Hone was
7 pressurised at a meeting with An Garda Síochána, he
8 then brought pressure on the social work team leader
9 who then brought pressure to bear on the social worker.
10 CHAIRMAN: Well, no, I appreciate nobody has alleged 11:34
11 that. But of the people at the meeting who is
12 available?
13 MR. DIGNAM: Superintendent McGovern obviously is
14 readily available, not today, Chairman.
15 CHAIRMAN: Well, he is up in Buncrana? 11:34
16 MR. DIGNAM: Yes.
17 CHAIRMAN: Chief Superintendent McGinn is here.
18 MR. DIGNAM: Yes. Sergeant Peter Duffy is here.
19 Superintendent Finan, I understand has gone back to
20 Donegal after giving evidence yesterday. 11:34
21 CHAIRMAN: He was here yesterday.
22 MR. DIGNAM: Yes. And the Tribunal will be aware of
23 that Superintendent Archbold has passed away.
24 Inspector Harrison, I would have to make inquiries in
25 relation to that, but he hasn't been in attendance at 11:35
26 the Tribunal, Chair.
27 CHAIRMAN: But he was just an acting inspector.
28 MR. DIGNAM: Yes.
29 CHAIRMAN: An acting superintendent.

1 MR. DIGNAM: Yes.

2 CHAIRMAN: Sergeant Duffy, haven't we had Sergeant
3 Duffy at some stage?

4 MR. DIGNAM: No, we haven't. But he is present.

5 CHAIRMAN: Yes. Well, I am actually mixing him up with 11:35
6 Garda Karl Campbell, who was here yesterday.

7 MR. DIGNAM: Yes. We did hear from a Sergeant Karen
8 Duffy in the last module.

9 CHAIRMAN: Oh, yes, that's right. So then turning to
10 Mr. Harty; Mr. Harty, do you want to have some of these 11:35
11 called? Let's just stick with one document at the
12 moment, so we won't get mixed up.

13 MR. HARTY: Firstly, Mr. Dignam very fairly set out the
14 test which ought to be applied in respect of the
15 discovery of documents, which is the train of inquiry 11:35
16 test. It, therefore, is a broader test than what would
17 appear to be material. And my worry is that Mr. Dignam
18 and Mr. McDermott have both indicated that they have
19 engaged in strictly material searches in relation to
20 matters to date, and that simply will not meet the 11:36
21 requirements of the Tribunal in carrying out its
22 investigation, because it is the question of a document
23 that leads to a train of inquiry is the relevant test.
24 And undoubtedly reference -- contacts between An Garda
25 Síochána and the HSE in respect of other cases would 11:36
26 not be material and would not lead to a train of
27 inquiry, but contacts between An Garda Síochána and the
28 HSE in relation to the manner in which contacts are
29 being made is a matter which would be directly relevant

1 in that they would lead to a train of inquiry.

2
3 what has not been clarified by Mr. McDermott - and I
4 appreciate he has had some short period of time to deal
5 with this - is how this meeting came about; Mr. Hone's 11:37
6 notes in relation to it; any documentation received by
7 Mr. Hone in relation to it. It would appear to be
8 clear that Tusla or the HSE have limited their searches
9 to documentation referencing An Garda Síochána and
10 Garda Harrison as a combined three-point search. And 11:37
11 that simply would not be sufficient to meet the tests
12 of the train of inquiry test for relevance.

13 Mr. Dignam, I think, appreciates that the train of
14 inquiry test is the appropriate test and certainly
15 contacts between Chief Superintendent McGinn, 11:38
16 Superintendent McGovern, on a lesser basis in this case
17 Superintendent Finan in that he indicated that he had
18 no awareness at all of the Tusla reference and didn't
19 know it was going to happen, they are clearly relevant
20 and as such, recalling the witnesses unfortunately will 11:38
21 not be sufficient absent full and proper searches of
22 train of inquiry relevance of documentation.

23 CHAIRMAN: So you are saying my test is Peruvian Guano?

24 MR. HARTY: Yes. It is still the test. It is still
25 the law in this jurisdiction. They have attempted to 11:38
26 change it in other jurisdictions.

27 CHAIRMAN: Am I not entitled to inquire into what I
28 feel is relevant myself. I mean, why am I bound by
29 Peruvian Guano? Is there any case which says Peruvian

1 Guano is the test which tribunals should follow? I am
2 asking that question -- I am asking that --
3 MR. HARTY: Obviously I can't make --
4 CHAIRMAN: I am continuing to speak Mr. Harty. I am
5 asking that question because in England and Wales they 11:39
6 have said this is ridiculous, that discovery will go on
7 forever and in consequence of that they have moved to a
8 reasonable search for documents. Now am I not entitled
9 to make any own inquiries on things? I mean, if this
10 appears to be relevant of course I am going to follow 11:39
11 what you say, but a train of inquiry that leads to a
12 train of inquiry, is that not too wide? That is my
13 only question.
14 MR. HARTY: The answer is that the courts in the UK and
15 Wales have thrown out Peruvian Guano, leading to 11:39
16 problems immediately. And the Irish courts, when
17 offered the same choice, have to date stuck with
18 Peruvian Guano and it remains the law in Ireland. And
19 in those circumstances -- and it is my view, that
20 Peruvian Guano in any event is the correct test. I am 11:39
21 not suggesting that anybody should swamp anyone with
22 documentation, but if the test is being -- if the
23 searches are being carried out on an incorrect basis,
24 then it is clear that there would be other
25 documentation that are relevant -- that is relevant, I 11:40
26 should say.
27 CHAIRMAN: Why do you say that? Why do you think
28 there's more documents some place? I mean, how are
29 they going to help on the issue as to whether the HSE

1 was lent on by the Garda? That is what I am inquiring
2 into.

3 MR. HARTY: The situation is that, as Chief
4 Superintendent McGinn was giving evidence we received
5 her diary entry, which didn't come up in the Garda 11:40
6 search because it didn't mention Tusla. This document
7 that we have before us still hasn't been produced or
8 the Tusla version of it, the Tusla side of it, still
9 hasn't been produced by Tusla because it doesn't
10 mention Garda Keith Harrison. But they are clearly 11:40
11 relevant in circumstances whereby evidence has been
12 given by Mr. Hone that he had no further contact. Now,
13 in fact, we do now know that he attended a meeting. I
14 still don't know what was at that meeting, how he came
15 to be there, why he came to be there. Was it reference 11:41
16 the Simms/Harrison family that gave rise to this
17 meeting being called? These are questions I don't --
18 train of inquiry, these are the questions that arise.

19 CHAIRMAN: No, no, Mr. Harty, I can't have a dialogue
20 with you if every time I try to speak you actually 11:41
21 interrupt me. It doesn't help. So please don't
22 interrupt. I am simply asking you this, and all I
23 wanted to interrupt and ask you a question was, and
24 it's pretty normal in exchanges with counsel: Look,
25 the meeting is actually headed, it says "re HSE 11:41
26 referrals", and it seems in general terms to be about
27 the whole notion of HSE referrals, now I mean are you
28 saying that Tusla and the HSE are actually in default
29 in not producing this document so far?

1 MR. HARTY: Yes, absolutely.

2 CHAIRMAN: You are. And in what way are they in
3 default?

4 MR. HARTY: Firstly, because I have questions that
5 arise instantly from it, which means that to an 11:42
6 inquiring mind they clearly give rise to a train of
7 inquiry. They are therefore relevant. And therefore,
8 they are in default. This is contact between four
9 witnesses to this Tribunal who have already given
10 evidence in respect of the issues of how Gardaí carry 11:42
11 out HSE referrals. If it gives rise to an inquiry it
12 is relevant. And even now, the HSE have not produced
13 the documentation giving rise to this meeting.

14 CHAIRMAN: You mean the email perhaps inviting Gerry
15 Hone? 11:42

16 MR. HARTY: Or, was it Gerry Hone who called the
17 meeting? Even that question I don't know the answer
18 to.

19 CHAIRMAN: Or the other way around, yes.

20 MR. HARTY: I literally don't know. 11:43

21 CHAIRMAN: Yes, okay.

22 MR. HARTY: So it is definitely relevant. And the
23 searches are clearly not being carried out on the
24 correct basis.

25 CHAIRMAN: Well, searches take an enormous amount of 11:43
26 time and trouble and, you know, there's debates about
27 what are the right search words, etcetera, and with
28 hundreds of thousands of emails, and I am sure in the
29 case of HSE or Tusla you are talking about millions of

1 emails, one has to narrow it down in some respect.
2 what is your suggestion, Mr. Harty, in relation to this
3 issue and what is your suggestion as to what I might
4 do?
5 MR. HARTY: In relation to the HSE, if I were doing -- 11:43
6 if I was suggesting search terms for an electronic
7 document search I would suggest that the names of any
8 of the Garda witnesses before this Tribunal, for a
9 limited period, obviously, from the start of October to
10 the start of March; the general meetings, and the 11:44
11 search terms in relation to that --
12 CHAIRMAN: Wait a minute. Just go back. From the
13 start of October when? And why October?
14 MR. HARTY: Because that is when the referral was made.
15 CHAIRMAN: I know. 11:44
16 MR. HARTY: The 8th October. The 8th October was the
17 date -- 8th October 2013.
18 CHAIRMAN: Until when?
19 MR. HARTY: 1st march I think would be a date that
20 would -- 11:44
21 CHAIRMAN: Why is the 1st March a good date?
22 MR. HARTY: Because we know that the HSE had closed its
23 file just the week prior, the 27th of February. So
24 that is the relevant period.
25 CHAIRMAN: Yes. So 27th February? 11:44
26 MR. HARTY: Yes. And in that regard it would strike me
27 that the appropriate Gardaí whose name should be
28 searched against are Chief Superintendent McGinn,
29 Superintendent McGovern, Inspector Sheridan and

1 Sergeant McGowan. In that there is no question of any
2 contacts by anybody else or involvement by anybody else
3 in relation to that, in relation to the Harrison case.
4 CHAIRMAN: You will appreciate at this stage,
5 Mr. Harty, that Marisa Simms did not stand over her 11:45
6 allegation that the social worker told her in her home
7 that she was leaned on, her principal, Bridgeen Smith,
8 was leaned on, and that what I am going on here is a
9 hearsay account of what allegedly Marisa Simms said to
10 Garda Keith Harrison in consequence of the social 11:45
11 worker going out the door. I mean, I am apparently
12 being expected to condemn social workers and the Gardaí
13 on the basis of a piece of evidence that the person who
14 is expected to know most about it isn't even prepared
15 to swear to, despite having written to a minister of 11:45
16 government to that effect in February of this year.
17 MR. HARTY: The Tribunal is -- and Mr. McDermott
18 referred to the €1 stamp. Had the €1 stamp been spent
19 what we would have received was documentation showing
20 that a referral was made and rejected, that there was 11:46
21 subsequently a meeting, that subsequent to that meeting
22 nothing was done until after a phone call was made on
23 the documentation by Donna McTeague asking about the
24 process of the criminal investigation, that is what the
25 documentation tells us, and then the following 11:46
26 meetings. What the evidence has told us is that
27 Sergeant McGowan now says that she made the phone call
28 to advise somebody in Tusla, and she didn't say who,
29 that the statement of Marisa Simms had been withdrawn.

1 Donna McTeague did not agree with her written evidence
2 in relation to it and said that it wasn't about the
3 process of the criminal investigation, and that while
4 it was misleading it wasn't quite why she made the
5 call. In relation to that, the €1 stamp would not have 11:47
6 answered our questions. The question of when somebody
7 may have put pressure or somebody else, whether or not
8 the pressure was put on and whatever is reported by way
9 of third parties, whether the pressure was put on
10 before the first office visit or between the office 11:47
11 visit and the home visit, is something that the
12 Tribunal has to assess on the basis of the evidence
13 before it. But it is patently clear that absent a
14 contact from An Garda Síochána to the HSE in January,
15 there is no other starting gun for the visit, the 11:48
16 contact made by Donna McTeague to Marisa Simms and
17 Keith Harrison.

18
19 So while it may not be stood over in relation to what
20 was said, this Tribunal has no proper explanation as to 11:48
21 the inertia on the part of the HSE between the 21st
22 October and the beginning of February.

23 CHAIRMAN: Well, these are very good closing
24 submissions, if I may say so, Mr. Harty, and very
25 interesting. Now the question before us is: what do 11:48
26 we do? And you suggest a fresh search.

27 MR. HARTY: I suggest a fresh search.

28 CHAIRMAN: And in terms of witnesses, what do you
29 suggest?

1 MR. HARTY: well, obviously a search precedes the
2 witnesses and the necessity for calling any witness may
3 be minimised on the basis of the search and what is
4 produced in that search.

5 CHAIRMAN: So who do you suggest should be called? We 11:49
6 are just again dealing with this document.

7 MR. HARTY: with this document.

8 CHAIRMAN: And at the moment I am finding it hard to be
9 suspicious, but I appreciate that you are making a case
10 here. It seems, as I say, to be a high-level meeting, 11:49
11 but of the people at the meeting who do you want to
12 have called?

13 MR. HARTY: who would be necessary --

14 CHAIRMAN: No, no, I think --

15 MR. HARTY: Sorry. 11:49

16 CHAIRMAN: -- you make the submission and I make the
17 decision. So, who do you think should be called? who
18 do you feel ought to be called?

19 MR. HARTY: Necessary in relation to that document, but
20 limited to that document on the basis of the search 11:49
21 that is being carried out, is Chief Superintendent
22 McGinn, Superintendent McGovern, in terms of
23 Superintendent Finan I don't see that he can be -- have
24 had the Harrison case or the Harrison/Simms case in his
25 mind when he didn't know that there was a 11:50
26 Harrison/Simms reference.

27 CHAIRMAN: well, I mean, that sounds to me to be
28 sensible because certainly he didn't know a great deal
29 about it when he gave evidence yesterday.

1 MR. HARTY: He knew nothing yesterday. And obviously
2 Mr. Hone.

3 CHAIRMAN: And you are happy to accept that?

4 MR. HARTY: well, I have no difficulty with the
5 evidence. His evidence was that the discussion in 11:50
6 relation to the HSE took place at sometime when he
7 wasn't present.

8 CHAIRMAN: So it's Chief Superintendent McGinn,
9 Superintendent McGovern and Gerry Hone of HSE?

10 MR. HARTY: And there is an argument and my solicitor 11:50
11 believes that Ms. Smith and Ms. McGowan ought perhaps
12 be recalled, perhaps as to the necessity for this
13 meeting and why this meeting had to take place.

14 CHAIRMAN: Ms. Bridgeen Smith?

15 MR. HARTY: Yes. 11:51

16 CHAIRMAN: And Sergeant McGowan?

17 MR. HARTY: Sergeant McGowan -- sorry, not Sergeant
18 McGowan, she wasn't at that meeting. Ms. Bridgeen
19 Smith I think is the -- she was the point of contact,
20 one below Mr. Hone. 11:51

21 CHAIRMAN: But she is not mentioned anywhere.

22 MR. HARTY: She is not mentioned anywhere, but the
23 necessity -- you see, I don't know how this meeting
24 came about. I am fishing in the absence of any
25 information as to potential. The document has caused a 11:51
26 train of inquiry in my mind and absent other
27 documentation the inquiry is broad reaching.

28 CHAIRMAN: well, that is the problem with inquiries,
29 that is a problem with tribunals and that is presumably

1 why some of them have gone on for decades. There has
2 to come a point where I am entitled to say no, enough.
3 MR. MCDERMOTT: Chairman, if it assists, I have checked
4 and Mr. Hone is available in the morning and it may be
5 this issue could be dealt with in five minutes. 11:52
6 CHAIRMAN: What do you say about a search,
7 Mr. McDermott.
8 MR. MCDERMOTT: If Mr. Hone gives evidence for five
9 minutes in the morning he will either say yes, the
10 minute is accurate, we just discussed high level things 11:52
11 and then he can be asked by Mr. Harty was there a
12 secret discussion not recorded in the minutes where you
13 actually all had a discussion about doing down Garda
14 Harrison, and Mr. Hone can then say yes, that is what
15 happened, or he can say, no, that didn't happen, and 11:52
16 that would be the end of the issue. In terms of
17 disclosure, we made disclosure on the basis of the term
18 of reference. The term of reference is to investigate
19 contacts between members of An Garda Síochána and Tusla
20 in relation to Garda Keith Harrison. And obviously, 11:52
21 the last six words of that sentence appear to be the
22 important ones, and the six words which give the rest
23 of the sentence its meaning. We are satisfied we have
24 disclosed documents that identify contacts between
25 members of the Gardaí and Tusla in relation to Garda 11:53
26 Harrison. Here is a minute of a meeting that doesn't
27 involve Garda Harrison, and therefore it wasn't
28 disclosed. That is as far as I can put it.
29 MR. HARTY: Sir, if I could reply to that briefly.

1 CHAIRMAN: Yes, I just wanted to ask him one question,
2 Mr. Harty, please. You are possibly aware of the quote
3 attributed to a famous professor of theology in
4 relation to a PhD by one of his students, I can't say
5 it in German I am afraid, something like for 'heaven's
6 sake, have the courage to leave gaps', by doing what
7 you suggest am I not leaving gaps? First question.
8 Secondly, am I entitled to leave gaps? That is a
9 question for you, Mr. McDermott.

11:53

10 MR. MCDERMOTT: Sorry, Chairman, I think the position
11 is, once you start getting into meetings that don't
12 involve Garda Harrison that is not a finite category of
13 inquiry or disclosure that can ever be made. The only
14 way we can assist the Tribunal is on the basis of a
15 defined subject matter. And, as we understood it, the
16 defined subject matter are contacts between the Gardaí
17 and Tusla in relation to Garda Harrison. But I think
18 the only way I can advance it and help the Tribunal,
19 which is obviously what we are trying to do, is to say
20 let Mr. Hone attend in the morning and within two
21 minutes we will quickly find out was this a meeting at
22 which Garda Harrison was discussed, in which case
23 Mr. Hone can and should be questioned as to: what did
24 you discuss about him? why did you discuss him? what
25 was said about him? Or, was it a meeting where he
26 wasn't discussed? In which case that would seem to be
27 the end of the matter. So, like all conspiracies, one
28 can perhaps talk all day about what might have
29 happened, and clearly any time a member of the Gardaí

11:54

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1 bumped into a member of Tusla in the street in Donegal,
2 they could have discussed Garda Harrison, every time
3 they were both in a petrol station filling up their
4 cars at the same time they could have discussed Garda
5 Harrison, every time they were in an ATM queue they 11:55
6 could have discussed Garda Harrison, but all we can
7 really do is try to identify any records or any
8 conversations we are aware of where Garda Harrison's
9 case was discussed, and we have done our best to do
10 that within the, I suppose, scope of human fallibility. 11:55
11 And we will continue to try to do that. But as I said,
12 the best we can do to assist is to make Mr. Hone
13 available at the earliest opportunity in the morning
14 and immediately identify what happened at the meeting
15 and did he phone and say, can I come to a meeting, or 11:56
16 did someone phone him and say, can you come to a
17 meeting. And I don't know if either answer will assist
18 anybody, but we will find out who called who.
19 CHAIRMAN: Yes. What do you say about Bridgeen Smith?
20 MR. MCDERMOTT: I can't understand why she would be 11:56
21 called to give evidence about a meeting she wasn't at.
22 And I surmise some attempt is now being made to recall
23 witnesses perhaps to make a case that was never made
24 when they were in the box. I mean, we are talking
25 about one minute of one meeting at which one of my 11:56
26 witnesses was present. And if we call Bridgeen Smith
27 we probably should recall every Tusla witness to say,
28 what do you know about the meeting you weren't at?
29 Presumably the answer would be relatively concise; I

1 don't know anything about the meeting I wasn't at. But
2 if there is an enthusiasm to pursue that for a few
3 hours again we will assist in any way that we can.
4 CHAIRMAN: Well, I don't want to ask somebody to get
5 into a car and drive down from Donegal. I mean, apart 11:57
6 from anything else, I feel for the risk of any accident
7 that might occur. So I don't want to call anybody
8 unless it's absolutely essential. I mean, that seems
9 to me to be the right test. So look, I have heard
10 submissions, unless anybody else wants to say 11:57
11 anything -- Mr. Harty, you wanted to reply briefly.
12 MR. HARTY: Firstly in relation to secret discussions
13 at meetings, I am not characterising anything as secret
14 or otherwise. In relation to what Mr. McDermott has
15 just said, it is clear that they have run the most 11:57
16 limited possible search terms in relation to this
17 documentation. He doesn't even look for documentation
18 referencing Simms.
19 CHAIRMAN: Have you done a search in relation to the
20 Simms? 11:57
21 MR. MCDERMOTT: Yes. Broad computer searches were done
22 to make sure we captured any document that could come
23 within the term of reference.
24 CHAIRMAN: All right.
25 MR. HARTY: Sorry, but in relation to the limit, this 11:57
26 meeting, which both the Tribunal and I agree is
27 relevant, as the Gardaí appear to agree is relevant,
28 there must be some HSE documentation in relation to it.
29 CHAIRMAN: There may be. I mean, one of the things

1 that one might expect is, say a letter or an email, I
2 beg your pardon, from somebody in divisional
3 headquarters saying, look, this whole subject of
4 referrals has got a bit chaotic and we want to have a
5 meeting and see can we sort it out. I mean, it would 11:58
6 seem in the ordinary course of events to be something
7 like that. It's not, however, in the slightest bit
8 likely that anyone would put in that anything to do
9 with Garda Keith Harrison or any plans that they had in
10 relation to it, but the meeting obviously just didn't 11:58
11 take place because a number of people happened to be in
12 the same queue at Family Meats, the famous butchers in
13 Donegal Town, so there must be something leading behind
14 it, and I am wondering, Mr. McDermott, why the HSE
15 haven't found that. And I am not saying any of this is 11:59
16 an alarm bell, I am not at all, but I am just raising a
17 query. So, do you have -- I mean, it's clear a meeting
18 can't take place without people arranging meeting, so
19 we don't have any arranging the meeting stuff.

20 MR. MCDERMOTT: No. And nor did we produce this 11:59
21 minute. It's because this was a meeting that didn't
22 involve Garda Harrison, and so, didn't appear to
23 involve or be relevant to an inquiry into Garda
24 Harrison. I can't put it any further than that, other
25 than making Mr. Hone available at the first opportunity 11:59
26 to indicate or to confirm that Garda Harrison wasn't
27 discussed at the meeting and if he wasn't discussed at
28 the meeting, it's not immediately obvious.

29 CHAIRMAN: Yes. Well, can you look for whatever led up

1 to the meeting?

2 MR. MCDERMOTT: We will ask him to bring tomorrow
3 anything relevant to the meeting.

4 CHAIRMAN: Yes, I think we'd need to have it. Now, the
5 burden unfortunately in relation to everything being 11:59
6 captured virtually electronically is that compared to
7 30 or 40 years ago there is a vast amount of
8 documentation. I appreciate that, and I appreciate how
9 difficult it is for people. But equally, the facility
10 that is available to get stuff together by email and 12:00
11 attach it, surely can be used in relation to this. So
12 you don't just come up with a bunch of stuff, you can
13 actually send it to the Tribunal and also just
14 distribute it by email yourself prior to anyone
15 arriving. I am sure you have Mr. Harty's email and 12:00
16 that can be done, can't it? So do you want more than
17 that, Mr. Harty? Are you suggesting I should do more
18 than that?

19 MR. HARTY: I think that the relevant searches would be
20 contacts between members of An Garda Síochána and -- 12:00
21 the identified members of An Garda Síochána and Tusla,
22 from October to March. And that is the relevant
23 searches that should be made. In relation to that, the
24 Tribunal will recall the startling evidence that even
25 though Sergeant Brigid McGowan said she was in regular 12:01
26 contact with Tusla, Ms. Bridgeen Smith says she didn't
27 have any contact, the principal social worker didn't
28 have any contact with Brigid McGowan from 21st October
29 until the day after the -- until the week after, I

1 should say, the closure of the investigation, HSE
2 investigation, into the Simms children.
3 CHAIRMAN: Yes.
4 MR. HARTY: And that would be relevant because that is
5 directly relevant to her evidence. And if there is 12:01
6 documentation in relation to that, that is directly
7 relevant and calls into question -- I don't believe
8 that it is possible to deal with this tomorrow, in
9 circumstances where the searches that have been carried
10 out have been so restrictive in the manner which they 12:01
11 have been carried out.
12 CHAIRMAN: What do you suggest?
13 MR. HARTY: I would suggest a broader search needs to
14 be carried out in relation to contact between, and as I
15 say, I have identified the -- 12:02
16 CHAIRMAN: Yes. But, can I tell you, Mr. Harty, I
17 actually don't want to know the HSE meeting the Garda
18 about the unfortunate cases that have been referred to
19 prior to and somewhere about children being locked up
20 in the dog cages that people tend to use nowadays and 12:02
21 the revelations during sexual education classes. I
22 mean, they are going on all the time and I am sure
23 there's hundreds and thousands of them. I don't want
24 to know about those. I mean, I don't see why I should
25 know about them. 12:02
26 MR. HARTY: And neither do I, but there aren't hundreds
27 and thousands. There is reference in this to 29
28 referrals in the year, 29th of November 2013.
29 CHAIRMAN: Well, should I look at every single one of

1 those?

2 MR. HARTY: I don't think we need to look at every
3 single one of them. I think we need documentation that
4 deals with the contacts in relation to them.

5 CHAIRMAN: But there has to be contacts in relation to 12:03
6 them. I mean, under the Children First Guidelines that
7 is what it says; it says there should be contact,
8 formal and informal. I mean, just, I don't know.

9 MR. HARTY: The Children First Guidelines also say that
10 records should be kept of all contacts and that is 12:03
11 something we now know didn't take place.

12 CHAIRMAN: All right.

13 MR. HARTY: So, I do not want myself to be journeying
14 through vast amount of documentation of which the
15 majority of which is blacked out. That is not 12:03
16 something I want, and the Tribunal will be fully aware
17 why I don't want it. Nor do I want the Tribunal -- but
18 I do want, if any witness is to be recalled, to ensure
19 that we aren't met with a situation whereby this
20 documentation, relevant documentation, isn't put. And 12:03
21 that is the chain of inquiry test in relation to it,
22 not a search which says Garda Síochána, Tusla, Garda
23 Keith Harrison, Marisa Simms. It's simply an
24 inadequate search.

25 CHAIRMAN: All right. Okay. well, thank you very much 12:03
26 everyone for your submissions, let's deal with this
27 document first. Now, there is, I think, two things
28 that someone who is conducting any inquiry ought to be
29 very well aware of, and the first is this: One can

1 inquire and inquire and dig and the more you dig the
2 larger the hole grows, but that doesn't necessarily
3 mean that you are going to discover what you need to
4 find. And so, there has to be a focus and the focus
5 has to be reasonable. The submission has been that I 12:04
6 am stuck with the Peruvian Guano test. Just to
7 enlighten those who may not know about the Peruvian
8 Guano test, it was a case in the 19th century, at a
9 time when typewriters hadn't been invented and when
10 people wrote to each other using possibly quill pens, 12:04
11 because again it was at a time when the fountain pen,
12 that wonderful invention, was still in its infancy, and
13 what that said was that the test for discovery is that
14 you discover documents relevant to the facts in issue,
15 which are defined in legal cases by the Pleadings, 'I 12:05
16 allege such-and-such' and the defendant denies
17 such-and-such, and furthermore, that you should
18 disclose documents which might lead to a document
19 relevant to an issue in the Pleadings. So in other
20 words, two-tier, not only what is directly relevant but 12:05
21 documents which might put people on a chain of inquiry
22 leading to another document. I think it's too broad,
23 but for the moment I am just going to apply it.

24
25 The second thing that a judge needs to be aware of is 12:05
26 this, it's very easily illustrated: In 1916 we had a
27 revolution in this city and a man called Patrick Henry
28 Pearse came out of the GPO and read a famous document.
29 If you read the book by that great historian Charles

1 Townsend, and if you look at the documents in the
2 military archives, you will realise that some people
3 said that he came out and stood on the steps of the
4 GPO, other people said that he went over to Nelson's
5 Pillar, other people put him in a different place, and 12:06
6 the reality is there was never any steps then and nor
7 are there any steps now at the GPO, so he couldn't have
8 been standing on the steps of the GPO. So, the fact
9 people make mistakes is not necessarily an indication
10 that they are lying; it is perhaps an indication that 12:06
11 in any eyewitness account there may be divergencies,
12 there may be mistakes in recollection, and what one is
13 looking for is the overall picture.

14
15 Now, what is to be done in relation to this? well, the 12:06
16 document came to light, it seems, yesterday. I have
17 examined it this morning. It's a divisional
18 accountability meeting at Letterkenny Garda Station on
19 29th November 2013. Potentially that could be at a
20 time when the HSE/Tusla investigation in relation to 12:06
21 the various domestic blisters, to use the words of Rita
22 McDermott, between Marisa Simms and Keith Harrison,
23 could have been in issue. He is not mentioned in the
24 document anywhere, but Gerry Hone is mentioned, and the
25 subject matter is: How are we doing referrals? Is 12:07
26 there any way we can do them better? And it is
27 possible in that context, just possible, and I put it
28 in the realm of possibility, certainly not even close
29 to probability, that somebody might have mentioned

1 something in relation to Keith Harrison. But the
2 meeting also had to come into being somehow. I mean,
3 it just didn't happen. I gave a colourful example
4 early on of people standing in a queue in Donegal Town
5 in the Family Meats Butchers and deciding to have a 12:07
6 meeting, that is not likely. So it seems to me there
7 probably are some documents missing and we will look at
8 it in the potential exercise of the possibility that
9 something might emerge from that. So I would ask for
10 that to be done. 12:08

11
12 Now, I have been asked to go further, which is to say
13 that, firstly, the searches conducted by the HSE/Tusla
14 were inadequate, but the term of reference is, Garda 12:08
15 Keith Harrison and contacts between the Garda and Tusla
16 in relation to him. So that is the search that has
17 been done and that is what has been thrown up. No, I
18 don't intend to ask for a search to be done in relation
19 to every Garda interaction over a four- or five-month
20 period -- October, November, December, January, 12:08
21 February, March, a six-month period, between the Garda
22 and Tusla, because I just don't see that it's relevant.
23 They have business interacting with each other. But I
24 am asking that a further search should be done in
25 relation to Garda Keith Harrison and any documents of 12:09
26 any kind which mention him over that five-month period
27 and I am asking as well that Gerry Hone should be
28 recalled. I am not asking for Bridgeen Smith to be
29 recalled, because I actually don't think that she has

1 anything to do with anything to do with this unless the
2 documents so indicate. And it seems to me that Chief
3 Superintendent McGinn and Superintendent McGovern
4 should also give evidence in relation to that. And
5 insofar as there may be officers journals or notebooks 12:09
6 in any way mentioning this, would they please just have
7 another look and see if there is any mention of this
8 and photocopy that? That can all be scanned into an
9 email and I would ask that the HSE be so kind as to
10 send that, not just directly to the Tribunal, please, 12:09
11 but also to the solicitors who are involved in the
12 Tribunal.

13
14 Now, when can we do that, is the next question? But we
15 have another issue, which is another document, and 12:10
16 let's discuss the question of time when we have looked
17 at that document. So maybe, Mr. McGuinness, you would
18 be so kind as to outline that document to us.

19 MR. MCGUINNESS: Yes, Chairman. That is the minutes of
20 a regional meeting held in Dundalk Garda Station on 5th 12:10
21 November of 2013. There is a wide attendance, starting
22 with Assistant Commissioner Kenny listed as I think
23 chairing the meeting, with all other relevant senior
24 officers from, it would appear, each district and
25 division within that region. Of note, if it is to be 12:10
26 noted, in fact, Chief Superintendent Sheridan was
27 there, Chief Superintendent McGinn was there, and we
28 have been furnished with the minutes of the meeting
29 which encompass a total of five pages of very, very

1 extensive minutes of a large number of policing issues
2 in the most general sense, with a report from each
3 division, and the final sentence of the report relating
4 to the Donegal division simply records that Chief
5 Superintendent McGinn gave an overview of the 12:11
6 investigation in relation to Garda Keith Harrison.
7 There is no express mention of a HSE referral or any
8 other issue as such. So that's a document which I
9 think the Garda Commissioner accepts ought to have been
10 previously furnished to the Tribunal in terms of its 12:11
11 potential for a line of inquiry.
12 CHAIRMAN: Where do you think the potential will bring
13 us or could potentially bring us, Mr. McGuinness?
14 MR. MCGUINNESS: Well, I suppose just anchoring it in
15 the evidence, obviously Chief Superintendent McGinn's 12:12
16 evidence is that she phoned Assistant Commissioner
17 Kenny after the meeting of the 8th October to keep him
18 informed, and the Tribunal had obviously received the
19 documentation which it circulated, which showed the
20 emails which went up to the assistant commissioner's 12:12
21 office from then on and including the reports which
22 have been referred to in the last few days. So in one
23 sense it's perhaps not surprising or in any way -- on
24 first viewing it is not in any way a matter of great
25 comment that the chief superintendent would be giving 12:12
26 an update at a divisional regional meeting. What Chief
27 Superintendent McGinn told them is another matter, it's
28 obviously not -- it's not gone into in any detail in
29 the --

1 CHAIRMAN: No. I wonder, how often do these meetings
2 take place? Have we any idea about that?

3 MR. MCGUINNESS: I think they are quarterly but I could
4 be wrong in that.

5 CHAIRMAN: Maybe someone might just take instructions 12:13
6 on that. Because this one is the 5th November and this
7 is the only one we have of a regional meeting, isn't
8 it?

9 MR. MCGUINNESS: That is of any relevance, yes.
10 Obviously on a practical level -- 12:13

11 CHIEF SUPERINTENDENT MCGINN: Chairman, they are
12 monthly meetings regionally.

13 CHAIRMAN: Okay. So it is a monthly management
14 meeting. Right.

15 MR. MCGUINNESS: On a practical level, I suppose given 12:13
16 that Chief Superintendent McGinn is to be recalled in
17 relation to the other document, certainly it seems an
18 appropriate inquiry to make about what was discussed
19 and why it was discussed, etcetera, and what records
20 there may be of it. Other than that, Chairman, I don't 12:13
21 see any possible relevance.

22 CHAIRMAN: Well, what am I supposed to do,
23 Mr. McGuinness? I mean, have you any potential
24 suggestion about it? I mean, we could look for months
25 for further regional -- I mean, potentially every 12:14
26 monthly management meeting the Gardaí hold, presumably
27 in Dundalk for the northern region, could have
28 mentioned Garda Keith Harrison.

29 MR. MCGUINNESS: In fact, Chairman, we have been shown

1 others and there is no potential relevance in any
2 others that we have been shown.

3 CHAIRMAN: And I don't want to look into them because I
4 don't feel it's any of my business as to what the
5 police are doing about various investigations or what 12:14
6 resources they have or whatever.

7 MR. MCGUINNESS: Yes.

8 CHAIRMAN: I just don't want to know. But it's Keith
9 Harrison that is the focus of this.

10 MR. MCGUINNESS: Yes. Now, obviously the other officer 12:14
11 who is recorded as being present there is Chief
12 Superintendent Sheridan and we could potentially
13 require the submission of a statement from Chief
14 Superintendent Sheridan and see what he says and/or
15 whether it leads to his recall is another issue. But I 12:15
16 see no real objection to recalling Chief Superintendent
17 McGinn on that issue.

18 CHAIRMAN: What about Mr. McGoey?

19 MR. MCGUINNESS: I don't see any relevance there.

20 CHAIRMAN: Well, he is the crime analyst, so it could 12:15
21 be that somebody mentioned the crimes allegedly
22 committed against Marisa Simms and he gave a view on
23 them. I mean, everyone else in the Tribunal has given
24 a view on that, why not Mr. McGoey?

25 MR. MCGUINNESS: It's my understanding he was there to 12:15
26 deal with different issues and obviously they are
27 redacted matters that just don't concern any work of
28 the Tribunal.

29 CHAIRMAN: Okay. So, Mr. Dignam, do you want to make a

1 submission? I mean, where are we at in relation to
2 this? I could probably stay now here for another week
3 and we would probably get more documents, in which case
4 I would be asked to do more things. Appreciating that,
5 you know, people look for things and they find things 12:16
6 and even in your own house if you have lost something
7 then something else will turn up even months later.
8 But even still.

9 MR. DIGNAM: Chairman, there is an express reference to
10 Garda Harrison in the document and there is an express 12:16
11 reference to an investigation. I think it is a matter,
12 I think it is a document which should have been
13 provided at an earlier stage. We will have to wait to
14 hear what Chief Superintendent McGinn says about what
15 she said, because it may have had nothing to do with 12:16
16 the referral to Tusla but obviously the interaction
17 between a referral to Tusla, a GSOC investigation and
18 possibly a criminal investigation is something which
19 Mr. Harty on behalf of Garda Harrison makes something
20 of and which the Tribunal has an interest in and a 12:16
21 legitimate interest in.

22 CHAIRMAN: Yes. I don't know whether you have had a
23 chance to have a chat with Chief Superintendent McGinn
24 this morning as to what her recollection of this is and
25 as to whether she wouldn't mind drawing up a brief 12:17
26 statement as to that. The worry that arises is: She
27 thought that that was the end of any involvement she
28 had with Garda Keith Harrison, then apart from the
29 reminders that she caused to be sent following the

1 appointment of Superintendent Murray, and this would
2 seem to indicate that she had some kind of involvement.
3 Now, if she was going to give an outline, I would
4 imagine for someone of her obvious application and
5 diligence, that she would have got someone to tell her, 12:17
6 look, what is the up-to-date on this thing? And again
7 you might say, well then, if that happened, well, where
8 is it?

9 MR. DIGNAM: Yes.

10 CHAIRMAN: So, there is the problem. 12:17

11 MR. DIGNAM: You will appreciate that Chief
12 Superintendent McGinn is separately represented, I
13 think Mr. Ó Braonáin can address you as to what --

14 CHAIRMAN: No, I know, but that doesn't mean you can't
15 talk to her. I can't talk to her because of my 12:17
16 position, but there is nothing to stop you talking to
17 her.

18 MR. DIGNAM: No, I appreciate that.

19 CHAIRMAN: After all, you do represent the Garda
20 Commissioner. 12:18

21 MR. DIGNAM: I do.

22 CHAIRMAN: Yes. Well, I should perhaps have addressed
23 that question to Mr. Ó Braonáin, but in any event.

24 MR. DIGNAM: In relation to documents in a broader
25 sense, you will recall, Chairman, that this document, 12:18
26 the awareness of this document came about because Chief
27 Superintendent McGinn said in evidence that she
28 probably discussed Garda Harrison's case at a
29 management meeting and that led to a discussion about

1 PAF meetings or PALF meetings being held at district
2 division and regional levels and in light of that
3 evidence a search was carried out for minutes of all
4 management meetings, otherwise known as PAF or PALF
5 meetings.

12:18

6 CHAIRMAN: So, that is what led to this?

7 MR. DIGNAM: That is what led to this, yes. And where
8 we stand at the moment, Chairman, is that the minutes
9 of regional meetings have been provided, although we
10 are still searching for two I think management
11 meetings, regional management meetings.

12:18

12 CHAIRMAN: Are they within the relevant period though?

13 MR. DIGNAM: They are, yes, Chairman. They are, yes.

14 CHAIRMAN: Because we are dealing with a very small
15 number of months.

12:19

16 MR. DIGNAM: Yes.

17 CHAIRMAN: I mean, one has to be realistic about this,
18 Mr. Dignam, and again I hope I am not coming across as
19 coming down on you, because I am not, and I am not
20 intending to, but I really have to try and keep some
21 kind of a focus on this. Because if you say okay, what
22 happened? well, look, I went through it yesterday, but
23 what happened was, there was the argument on the 28th
24 September 2013, everybody admits that. We know that it
25 came to the attention of the Gardaí shortly afterwards,
26 we know that Rita McDermott made a statement about it,
27 that she spoke to Sergeant Durkin in relation to it and
28 Garda McGowan. We know that a statement was made by
29 Marisa Simms in Letterkenny on 6th October, to what

12:19

12:19

1 extent or in circumstances is in dispute. And then we
2 know that on 8th of October there was a referral to
3 Tusla. And we know as well that the Gardaí are saying,
4 look, there had to be a referral to Tusla because that
5 is our duty under the Children First Guidelines and 12:20
6 this came, even at a minimal level, within it. And we
7 know that Tusla are saying they got some kind of
8 garbled account. We know that Sergeant McGowan says
9 no, it wasn't a garbled account. But what Tusla are
10 saying we would have done more had we got a fuller 12:20
11 account and then matters move on. But the question is:
12 In the event that things got stalled perhaps because of
13 other work in social work, but then were revived again,
14 could this have anything to do with it, this monthly
15 management meeting, such as any business that is acting 12:20
16 sensibly would have? So I mean, if this is something
17 to do with it, fine, but how could other management
18 meetings have anything to do with that? Because what
19 we are focusing on is the Gardaí allegedly, through
20 hearsay now, getting HSE involved in the Harrisons' 12:20
21 lives, Harrison/Simms lives.

22 MR. DIGNAM: I can assure you, Chairman, that the
23 searches are being conducted are for the relevant time
24 period. There is no question of us carrying out a
25 trawl for all management minutes for a long periods of 12:21
26 time, that wouldn't assist the Tribunal. We have also
27 I think provided the divisional management meetings for
28 the relevant period insofar as any of them might be
29 relevant to the work of the Tribunal, and we have also

1 gathered in all of the minutes of management meetings
2 for each of the districts in Donegal, they haven't been
3 reviewed as to whether there is anything relevant in
4 them to the work of the Tribunal, but that process is
5 being carried out currently, Chairman. 12:21
6 CHAIRMAN: Well, I mean -- yes.
7 MR. DIGNAM: But that does give rise to, we certainly
8 don't want to flood the Tribunal with any unnecessary
9 or irrelevant material.
10 CHAIRMAN: No. We all know the Supreme Court 12:21
11 pronouncements on discovery and we all know they
12 haven't worked.
13 MR. DIGNAM: Sorry, Chairman, when I say -- we don't
14 propose providing the Tribunal with volumes of
15 management committee meetings. 12:22
16 CHAIRMAN: Well, you know perfectly well I don't want
17 them.
18 MR. DIGNAM: No.
19 CHAIRMAN: I couldn't care less about them, frankly.
20 MR. DIGNAM: Yes. 12:22
21 CHAIRMAN: It's to do with Garda Harrison that I am
22 inquiring into.
23 MR. DIGNAM: Yes. And that is why they are being
24 reviewed currently; to see if there is anything
25 relevant in relation to the work of the Tribunal and 12:22
26 Garda Harrison.
27 CHAIRMAN: Yes. But you know, under normal
28 circumstances people nowadays agree the exchange of
29 documents and the rules provide that you should set out

1 issues. That of course has made everything worse
2 because you can make anything, it seems, relevant to
3 anything. And it used to be that these issues were
4 defined by the Pleadings. Now, we don't have any
5 Pleadings here, but you know and I know what is of
6 importance. 12:22

7 MR. DIGNAM: Yes.

8 CHAIRMAN: But you know as well that in consequence of
9 things coming to light, it seems at the moment in good
10 faith, that is certainly the presumption I am making in 12:23
11 consequence of evidence, that questions may be asked as
12 to the process. It may be that if you swore an
13 affidavit as to the process and you were prepared to
14 stand over the process in terms of the searches you
15 have made, that this would at least be something 12:23
16 against which a test could be made in the event that
17 other stuff is turned up which we are not aware of, in
18 which case a query can be made: well, you are
19 supposed, according to your affidavit, to have done
20 such-and-such and this didn't turn up but the reality 12:23
21 is if you did that then this would have turned up. And
22 those are the questions I think which one might be
23 entitled to ask.

24 MR. DIGNAM: I am happy to arrange that, Chairman, and
25 I have absolutely no difficulty in doing that. 12:23

26 CHAIRMAN: How long would it take to do? I am not
27 asking for an affidavit as to documents. I am trying
28 to follow the modern procedure of the High Court, which
29 is that people agree categories of documents which may

1 be relevant and then exchange them without the
2 necessity for an affidavit. But in this instance, can
3 you do an affidavit as to the methodology of the search
4 and the categories looked in with a view to assisting
5 the Tribunal? Can you do that? 12:24
6 MR. DIGNAM: Yes, Chairman.
7 CHAIRMAN: Can you do that within a week?
8 MR. DIGNAM: I don't see any difficulty within that,
9 Chairman.
10 CHAIRMAN: Will it take a week? 12:24
11 MR. DIGNAM: I would hope that I could do it in less
12 than a week, but without specific instructions as to
13 exactly how long it will take I don't want to guarantee
14 that I could do it in less than that.
15 CHAIRMAN: Well, it's nothing to do with my feelings 12:24
16 but I came in today hoping that I was going to be
17 finishing with this and could begin thinking about the
18 very serious issues that have arisen, and now it seems
19 we are into next week.
20 MR. DIGNAM: Chairman, if you could give me a week with 12:24
21 an assurance that if it can be done in less time than
22 that it will be done in less time.
23 CHAIRMAN: Yes. Thanks. So, Mr. Ó Braonáin, would you
24 like to help in any way?
25 MR. Ó BRAONÁIN: I am certainly happy, and Chief 12:24
26 Superintendent McGinn is certainly happy to assist the
27 Tribunal in any way that --
28 CHAIRMAN: Is it possible?
29 MR. Ó BRAONÁIN: In relation to a statement the

1 Tribunal suggested, I am sure there is no difficulty
2 about that.

3 CHAIRMAN: Well, is it possible that someone would have
4 a brief chat with her, perhaps, outside and see where
5 we stand in relation to that? What she now recalls, it 12:25
6 would be useful perhaps to know that now. Would you
7 agree, Mr. Harty?

8 MR. HARTY: I have no difficulty with somebody having a
9 chat with Chief Superintendent McGinn, and I have no
10 problem with that being informed to the Tribunal at 12:25
11 this stage. There is one issue in particular -- I am
12 very happy in relation to the suggestion of an
13 affidavit of methodology, something which is used in
14 the courts, and it's a very effective way of ensuring
15 that the process has the sufficient level of inquiry, 12:25
16 and I have no difficulty with that. There is one issue
17 which arises from this in relation to the witnesses
18 that would be required to be called, but I will address
19 that when --

20 CHAIRMAN: No, do. Do tell me. What do you say about 12:25
21 that?

22 MR. HARTY: Well, this is now the second clear mention
23 of an involvement on the part of Assistant Commissioner
24 Kenny. Chief Superintendent Terry McGinn obviously is
25 directly relevant in relation to it, and Chief 12:26
26 Superintendent Jim Sheridan, who, while it was a broad
27 general meeting, Chief Superintendent Sheridan had some
28 detailed interaction with Garda Harrison at an earlier
29 stage, and it would surprise me if his ears didn't at

1 least prick up when his name was mentioned at a
2 divisional management meeting, but I think of primary
3 concern to me in relation to it would be the state of
4 knowledge and the awareness of Assistant Commissioner
5 Kenny. The Tribunal will be aware that when we came
6 here, and it was put, and I think accurately put to
7 Garda Harrison at the time that there wasn't a
8 scintilla of evidence to suggest that the matter went
9 outside the Donegal division, on the basis of what
10 was --

12:26

12:26

11 CHAIRMAN: Yes. Well, it did go outside the Donegal
12 division, it had to. I mean, once there was a GSOC
13 referral, it had to go to up to -- and I think also in
14 relation to personnel, I mean, once the statement was
15 made I think it had to be referred to Headquarters.
16 But it's the influence of Headquarters.

12:27

17 MR. HARTY: Yes.

18 CHAIRMAN: They had to be kept informed, but that might
19 be like people sending in returns to the Revenue, you
20 know.

12:27

21 MR. HARTY: It could be. But it's only during the
22 evidence of Chief Superintendent McGinn that we learned
23 there was a phone call made to Assistant Commissioner
24 Kenny. We now know that it was a matter which was
25 brought up subsequent to that phone call at a meeting
26 of the 5th November. I don't know -- and if
27 Mr. McGuinness has had an opportunity of looking at the
28 PALF meetings in the surrounding months and if nothing
29 arises I am very happy with that. But the Tribunal

12:27

1 will be aware that this document was only produced
2 because it was in direct response to questions that
3 were raised on Garda Harrison's behalf to Chief
4 Superintendent McGinn, that these meetings were raised
5 by Chief Superintendent McGinn, giving rise to the 12:27
6 train of inquiry and at the end of that, Chief
7 Superintendent McGinn's evidence, the Tribunal directed
8 that Chief Superintendent McGinn produce the minutes of
9 the PALF meetings. But I would submit, and I think
10 it's accepted by Mr. Dignam, that these were clearly 12:28
11 relevant and, as such, I do feel that it is important
12 that a further search should be carried out, whereby
13 the integrity of it can be stood over by way of an
14 affidavit as to methodology.

15 CHAIRMAN: Yes. No, that makes sense. Well, for a 12:28
16 start, there is nothing to stop your solicitor,
17 Mr. Ó Braonáin, asking Chief Superintendent McGinn what
18 recollection she has, perhaps, of this meeting, if any,
19 and then a statement can be supplied. Certainly an
20 affidavit as to documents is a good idea. I am aware 12:28
21 that Assistant Commissioner Kenny is retired and is on
22 an extended holiday somewhere in the Far East. I think
23 the first step is, if we have a statement then he can
24 be asked over the telephone as to what his recollection
25 is in relation to that. I mean, that is what can be 12:29
26 done. In the event that he has something to add, well,
27 we are going to have to adjourn until such time as he
28 is available. If he doesn't -- if I am informed of
29 that and the basis for saying that, I will look at

1 that, but it seems to me also I think we do need to
2 have Chief Superintendent McGinn back on that, Chief
3 Superintendent Sheridan and who else do you suggest we
4 ought to inquire in relation to this? I mean, it is
5 sticking out a bit that if there is an update that 12:29
6 something might have been said at it, you know. So
7 what is your suggestion?
8 MR. MCGUINNESS: I think it's sufficient for present
9 purposes to get a statement from those, that the
10 Tribunal have mentioned; Chief Superintendent McGinn, 12:30
11 Chief Superintendent Sheridan and if possible an
12 account from Assistant Commissioner Kenny. If it's
13 necessary to go further I don't see it at the moment.
14 CHAIRMAN: Yes. So it's a question of softly, softly,
15 see where we are at, and then see what else needs to be 12:30
16 done.
17 MR. MCGUINNESS: I think so, Chairman. That seems to
18 be the extent necessary at present.
19 CHAIRMAN: It seems a terrible, you know, delay,
20 Mr. McGuinness, appreciating it's not your fault. 12:30
21 MR. MCGUINNESS: Yes. There are two ways of looking at
22 it, perhaps. One is, obviously Mr. Dignam will come up
23 with his affidavit of process and methodology for
24 searching and that can be provided then at the end of a
25 week from today. On the other hand, there is a view 12:30
26 that says, well, let's take the evidence of the
27 witnesses that are available as soon as we can and
28 proceed with their evidence tomorrow.
29 CHAIRMAN: Well, I am asked for a week in relation to

1 this affidavit, as to methodology of searching
2 documents.

3 MR. MCGUINNESS: Yes. But on one view --

4 CHAIRMAN: That brings us to next wednesday.

5 MR. MCGUINNESS: On one view the affidavit shouldn't 12:31
6 prevent the taking of evidence that is currently
7 available. And it shouldn't in fact influence it in
8 any way on one view. One difficulty, Chairman, that I
9 have to point out is the very practical one about next
10 week, is that next week is the only week where we don't 12:31
11 have the use of this large room. It's blocked off for
12 State use from 16th to 20th. So we wouldn't be able to
13 reconvene here in that week next week.

14 CHAIRMAN: Yes, all right. I think we have to have the
15 affidavits -- the affidavit as to the methodology of 12:32
16 search and documents before we go to these witnesses.
17 I think that is the only fair way to approach it. And
18 I think also that, as we have this time, Napoleon had a
19 suspicion in relation to lawyers and gave them strict
20 time limits, so you will forgive me for doing the same 12:32
21 thing, but I think we need that affidavit by this day
22 week, next wednesday. I think we also need Chief
23 Superintendent McGinn and any other witness available
24 who is in a position to say what happened at this
25 meeting. And I would actually like to include someone 12:32
26 who is outside the Garda loop and Mr. McGoey seems to
27 be outside the Garda loop, if he is available I would
28 like to see what he has got to say about this. And
29 they should also be available by next wednesday. By

1 next wednesday I mean 10:00 in the morning. Then we
2 can't sit unfortunately here next week. Look, it's
3 just impractical, so I am going to adjourn any further
4 evidence to Monday week and any submissions also to
5 Monday week to follow immediately after.

12:33

6
7 Now, there is just one other thing that is on my mind,
8 if I might mention it now. There was one witness left
9 behind from the HSE/Tusla from the last section of
10 evidence that we heard, and I am just wondering, she
11 had given birth I think, and is it possible to get her
12 in on Tuesday week and to have any submissions that
13 anyone wants to make in relation to the issue as to
14 influence by the Gardaí in relation to Sergeant McCabe
15 on Tusla/HSE on the Tuesday of that week as well?

12:33

16 MR. MCDERMOTT: Yes, Chairman. I think that is the
17 24th of October. And that should be fine. We will get
18 back if there is any difficulty. So I understand, the
19 Tribunal is proposing to sit in this module on the 23rd
20 of October, and then possibly --

12:34

21 CHAIRMAN: Well, I would do it on Monday, but I can't,
22 so you will appreciate that. You are not going to
23 accuse me of going on a week's holiday, Mr. McDermott,
24 others may.

25 MR. MCGUINNESS: Chairman, just on that issue,
26 obviously Sergeant McCabe's legal advisors aren't here
27 today, and I am not sure that they know --

12:34

28 CHAIRMAN: No, I appreciate that, but we have got to
29 get things to an end and we will put it on the website

1 and in the event that there is any difficulty people
2 can come back to us. But, Mr. McDermott, are you in a
3 position to say whether that young lady is available?
4 MR. MCDERMOTT: As far as we know, Chairman, she would
5 be available for the 24th of October and we will tell 12:34
6 you immediately if we are wrong about that. But off
7 the top of our heads we think she is around at the
8 moment.
9 CHAIRMAN: All right. Well, maybe it's safer to say
10 the Wednesday, is it? Because the submissions and 12:35
11 evidence could go on for two days and it would give
12 people time. I want to try and get things wrapped up
13 if at all possible, appreciating what you say,
14 Mr. McGuinness, but if it's on the website would that
15 cause a difficulty? We will certainly contact them as 12:35
16 well. I know Mr. Barnes is out, but he will be back
17 soon hopefully.
18 MR. MCGUINNESS: Yes. Obviously we will contact any
19 relevant party who was represented at the last module
20 and inform them immediately of the intention of the 12:35
21 Tribunal to deal with the matter on the 25th.
22 CHAIRMAN: Yes. All right. Well, I think that is the
23 best that can be done. There is no point in saying any
24 more.
25
26 THE TRIBUNAL THEN ADJOURNED TO MONDAY, 23RD OCTOBER
27 2017 AT 10:00AM
28
29

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