

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

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 25TH OCTOBER 2017 - DAY 38

38

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

GWEN MALONE STENOGRAPHY
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I N D E X

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1 THE TRIBUNAL RESUMED, AS FOLLOWS, ON WEDNESDAY, 25TH
2 OCTOBER 2017:

3
4 CHAIRMAN: My understanding is that people were delayed
5 by traffic, which happens. I have also seen the baby 10:28
6 and the baby is looking very well.

7 MR. MARRINAN: Sir, the first witness this morning is
8 in relation to term of reference (d), which we are
9 returning to.

10 CHAIRMAN: Yes. 10:28

11 MR. MARRINAN: Ms. Lisa O'Loghlen please. Her
12 interview with the Tribunal investigators and statement
13 to the Tribunal is to be found at volume 5, at page
14 1418.

15 10:28
16 MS. LISA O'LOGHLEN, HAVING BEEN SWORN, WAS
17 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

18
19 1 Q. MR. MARRINAN: would you just state your professional
20 qualifications, please? 10:29

21 A. I am professionally qualified social worker, Masters in
22 social work.

23 2 Q. How long had you been working in HSE and Tusla?

24 A. Since 2007, June 2007.

25 3 Q. what roles did you have during that period of time? 10:29

26 A. I started off in child protection in Dublin North for
27 five years, and then I moved to the regional office as
28 social work team leader, then I was in Child Protection
29 as a team leader before moving to regional office again

1 to start with the Sexual Abuse Regional Team in April
2 2016.

3 4 Q. Would you just mind moving a little bit closer and
4 speak into the microphone, please.

5 A. Yes.

10:29

6 5 Q. Because some of the parties might have difficulty
7 picking up your evidence. If we could then go to the
8 role that you had in May or June of 2016, what role did
9 you have at that time?

10 A. So, the Sexual Abuse Regional Team was being developed.
11 I began the post at the end of April 2016. It was just
12 me. So, for the first couple of months it was about
13 developing policies and procedures and guidance around
14 what the team was going to look like, and then also
15 recruiting staff. So, the end of June, Clare Tobin
16 started on the team, and it was myself and Clare for
17 July and August and then I had two other team members
18 join in September. So, in the July and August myself
19 and Clare were going out auditing files and doing
20 reviews and taking on some cases and putting them into
21 low, medium and highest, what needed to be prioritised
22 so that we could allocate them come September to the
23 new staff that were coming on board.

10:30

10:30

10:30

24 6 Q. All right. We will come to that in due course, but I
25 think that at the time you were reporting to your line
26 manager, who was Lisa Anderson, is that right?

10:31

27 A. That's correct.

28 7 Q. She has the title of being a Principal Social Worker,
29 and she reports to Linda Creamer, who is the Service

1 Director, is that right?

2 A. That's correct.

3 8 Q. I think that she had the role of examining unallocated
4 cases that had arisen in your region, is that right?

5 A. Lisa Anderson? 10:31

6 9 Q. Pardon?

7 A. Lisa Anderson had the role?

8 10 Q. No, Linda Creamer had overall responsibility?

9 A. Overall responsibility for every case in the region,
10 yeah. 10:31

11 11 Q. Just to summarise that, would it be fair to say that it
12 was noted in your region that there are a large number
13 of unallocated cases, is that right?

14 A. That's correct. Linda Creamer identify a gap in the
15 service, that a lot of retrospective cases were not 10:31
16 being prioritised due to child protection cases, so
17 that was the rationale for developing the SART team.

18 12 Q. You covered Cavan, Louth, Monaghan, Meath, Dublin north
19 and Dublin North City, is that right?

20 A. That's correct. 10:32

21 13 Q. This team was set up with a view to dealing with those
22 unallocated cases, is that right?

23 A. With the unallocated cases, yeah, prioritising what
24 cases needed -- some were able to be closed. It was to
25 support the local areas in managing and taking on some 10:32
26 of the cases, the ones that we were able to prioritise.

27 14 Q. Ms. O'Loughlen, if you could help me with this, we heard
28 from Clare Tobin, who was working with you, isn't that
29 right?

1 A. That's correct.

2 15 Q. I think that she had been on maternity leave and
3 returned towards the end of June -
4 A. 2016.

5 16 Q. - of 2016, and she was working alongside you in the 10:32
6 examination of the Maurice McCabe file?
7 A. Well, I am her manager.

8 17 Q. Pardon?
9 A. I am her manager.

10 18 Q. Yes. 10:33
11 A. Yeah.

12 19 Q. She has given very helpful evidence to the Tribunal.
13 But in terms of actually what was being reviewed, were
14 the cases being reviewed or were the files being
15 reviewed? Do you understand that there might be a 10:33
16 distinction between the two?
17 A. No, could you explain, cases and files.

18 20 Q. One could be reviewing the actual referral, all right.
19 So, you're looking in to the referral and you're
20 dealing with it because it has remained unallocated for 10:33
21 a period of time.
22 A. Mm-hmm.

23 21 Q. Okay?
24 A. Yes.

25 22 Q. Or else one could be actually reviewing the file and 10:33
26 the manner in which the file was dealt with by the
27 Social Work Department, do you understand?
28 A. Yes, I do. Our role was the Section 3 policy, to see
29 had it been put in place on each case, and, if it

1 hadn't, why it hadn't, and was it suitable for the
2 case. So, it wasn't to review the whole file and look
3 at everything that had gone wrong and everything that
4 had gone right, it was to look at the section 3 policy
5 and if there was an allegation there, had it been 10:34
6 investigated, had it been done properly, and, if it
7 had, whether it could go on to close or whether we
8 needed to do fresh investigations, and some had never
9 been started.

10 23 Q. You say had it been investigated properly? 10:34

11 A. Correct.

12 24 Q. So that was part of the issue that you were looking
13 into?

14 A. Yes, because a section 3 was in place in September
15 2014, but I think it's been given evidence that 10:34
16 training hadn't been given out, so staff weren't all
17 confident in using it. So it was inconsistent around
18 the region as to whether it had been applied or not.

19 25 Q. All right. I am still a little bit unclear in
20 relation to this and if we could sort of nail it down. 10:34
21 It was anticipated that on looking at the file, if you
22 deemed that it was suitable, that the matter would be
23 investigated by your team?

24 A. Correct.

25 26 Q. In other words, the allegation that had been made by 10:35
26 the complainant would be investigated and that the
27 issue would be brought to some finalisation and the
28 file dealt with, is that right?

29 A. Correct.

1 27 Q. But part of that was a review of how the investigation
2 had been conducted up until that time?
3 A. There was an audit to see, so we developed an audit
4 form as the SART team and we looked through what had
5 and hadn't been done. We weren't reviewing the full 10:35
6 file, we weren't going off looking for details, we were
7 focusing on the Section 3 policy and the allegation
8 that was on the file.

9 28 Q. Well, did you have a dual role then; you had an
10 investigative role and you had - 10:36
11 A. An audit role.

12 29 Q. - a role as an auditor of the file?
13 A. Mm-hmm.

14 30 Q. But not in any great detail?
15 A. No. 10:36

16 31 Q. Is that what you're conveying to the Tribunal?
17 A. Exactly, and I would have audited hundreds of files and
18 I would have escalated a number of files up to the
19 service director and any concerns brought up in those
20 risk escalators were for the local area and service 10:36
21 director to manage.

22 32 Q. In any event, you started working on this on a
23 preliminary basis in May and June and the first couple
24 of months involved setting up policies and procedures
25 that the team would adopt, is that right? 10:36
26 A. That's correct.

27 33 Q. It was determined that any cases that were deemed to be
28 high risk would be escalated to your principal social
29 worker and the service director, Linda Creamer?

1 A. Not all high risk ones were escalated, some were --
2 they were all -- my principal social worker was
3 informed about all of them, but some of them I was able
4 to work immediately and within a couple of phone calls
5 they could be de escalated to medium or low. But the 10:37
6 ones that were high and for serious reasons were risk
7 escalated up to the service director.

8 34 Q. I am going to return to this later on, but when you
9 refer to high risk, what are you actually referring to
10 there? 10:37

11 A. It's professional judgment when you're reviewing a file
12 and I'd experience in these cases, so if I saw that
13 possibly a child could be at risk or long delays of
14 cases and no fair procedures not being given, where a
15 case may have started and then drifted for long periods 10:37
16 of time. So, it just depended, each file was treated
17 individually.

18 35 Q. Well, there are two issues that perhaps arise there.
19 In the first instance there is an issue in relation to
20 a high risk to children and the possibility of that? 10:37

21 A. Yes.

22 36 Q. All right. And then you're indicating that there's an
23 additional high risk, namely high risk in circumstances
24 where the matter hadn't been properly investigated?

25 A. Correct. 10:38

26 37 Q. That perhaps the accused, if I can put it that way, or
27 I think the alleged accused hasn't been written to, but
28 that that really is an administrative matter, is it
29 not?

1 A. No. It was that if the case wasn't managed properly,
2 because if it's on a duty system it should be regularly
3 reviewed. Some cases weren't reviewed for long, long
4 periods of time.

5 38 Q. The use of the term high risk does not necessarily 10:38
6 involve a reference to high risk to children?

7 A. No.

8 39 Q. Or to any individual?

9 A. It could be an unknown risk, until you make your few
10 phone calls to assess that. 10:38

11 40 Q. Well, is it that there's a potential high risk of an
12 injustice being caused, is that included?

13 A. Possibly.

14 41 Q. Yes. So perhaps there could be a high risk to the
15 organisation because a criticism could be levelled at 10:39
16 it for not completing the various tasks that have been
17 assigned to it, is that right?

18 A. Yes. Some of the risk escalations were organisational
19 risks.

20 42 Q. So, there's high risk obviously to perhaps the welfare 10:39
21 of children or to an individual?

22 A. That's the priority.

23 43 Q. There's high risk of unfairness that could be
24 perpetrated against somebody who might be accused and
25 not afforded fair procedures, and then there's a high 10:39
26 risk to the organisation of adverse criticism being
27 levelled against it.

28 A. Correct.

29 44 Q. Is that a fair assessment?

1 A. That is, yes.

2 45 Q. Yes, all right. So in any event, I think in July of --
3 and we've heard evidence from Clare Tobin in relation
4 to this, sorry, on 27th June of 2016, you went down to
5 the Cavan Social work Department, is that right? 10:40

6 A. I think it was the 28th June.

7 46 Q. The 28th June?

8 A. She started on the 27th.

9 47 Q. You went down there, do you recall that?

10 A. I do recall that. 10:40

11 48 Q. That was with a view to looking at files that had been
12 prepared for you?

13 A. Yes, that's correct.

14 49 Q. Now, before you went down, had you been in discussion
15 with anybody from that region? 10:40

16 A. Michael Cunningham, the Duty Team Leader at the time,
17 he was preparing the files that were coming down, he
18 was organising booking the room.

19 50 Q. So you had been in contact with him to arrange to meet
20 him? 10:40

21 A. To arrange to meet him in the Cavan office.

22 51 Q. With a view to going through the files. Had you been
23 in contact with anybody else?

24 A. No.

25 52 Q. Had Linda Creamer advised you that perhaps you might be 10:40
26 going down to look at a particularly sensitive file?

27 A. No, absolutely not.

28 53 Q. So, as far as you were concerned, you were going down
29 to Cavan to the Social work Department there, to meet

1 with Mr. Cunningham, with a view to looking at files
2 that he prepared, is that right?

3 A. Well, he was contacting other social work team leaders
4 in the region to see which unallocated retrospective
5 cases were in the region and he would have them ready 10:41
6 for us to audit once we got there. The same was done
7 for Louth, Meath, all of the areas.

8 54 Q. I suppose in a way what you were looking for were cases
9 that perhaps had been measuring the pressure system, I
10 think it's called, is that right? 10:41

11 A. Anything that was open and unallocated.

12 55 Q. The use of the word unallocated would be a file that
13 had been sitting there and that there hadn't been any
14 movement on for a period of time?

15 A. Correct. 10:41

16 56 Q. Is that right?

17 A. Correct, or a case maybe that the area was struggling
18 in and it was drifting, that SART were there to offer
19 our support.

20 57 Q. In circumstances where you could see that a case had in 10:42
21 fact been allocated, would you have taken it on?

22 A. Yes. As I said, if the workers were really struggling
23 with it and because they weren't as confident, some
24 people in the section 3 policy, we would either offer
25 to co-work it, if they had the capacity to do that, or 10:42
26 we would take it from them.

27 58 Q. So, in any event, you meet with Mr. Cunningham and we
28 have heard evidence from Mr. Cunningham and he has
29 advised the Tribunal that he had prepared or had a list

1 of and the files available for your inspection, 15
2 files?

3 A. Approximately.

4 59 Q. And that he added to that list at the request of Kay
5 McLoughlin, who is the Principal social worker who had, 10:42
6 in fact, been dealing with the file. When you spoke to
7 him at the time, did he brief you in relation to each
8 of the files?

9 A. Some of the ones that he had been working, he gave a
10 brief background, but we were there to read through the 10:43
11 files and to do our own audits. But he was just
12 answering a couple of questions that we might have had
13 then at the end of our audit to clear things up if it
14 wasn't clear from the file. Only his cases that he had
15 knowledge of. 10:43

16 60 Q. He has given evidence to the Tribunal that he was aware
17 that this file referred to Sergeant Maurice McCabe?

18 A. Yes.

19 61 Q. Who is the Garda whistleblower?

20 A. Yes, correct. 10:43

21 62 Q. When you were presented with this file, were you aware
22 at that time that it referred to --

23 A. I was.

24 63 Q. -- Sergeant McCabe?

25 A. I was. 10:43

26 64 Q. You were.

27 A. Mr. Cunningham said, this file is from Kay McLoughlin
28 and it's Maurice McCabe file.

29 65 Q. In what sort of context was he saying that to you?

1 A. He said he knew nothing about it, it wasn't his case,
2 he had just been asked to pass it from Kay to us and we
3 said we would audit it and go from there and we would
4 contact Kay if we needed to.

5 66 Q. He was sort of flagging the fact that this -- was he 10:44
6 flagging that this might be controversial?

7 A. No, he was just saying, these are my files and this one
8 is from Kay, I haven't had any management of it, so I
9 can't answer any queries, if you have any.

10 67 Q. Well, you see, who Sergeant McCabe may or may not have 10:44
11 been was really quite irrelevant, wasn't it?

12 A. For us, yes.

13 68 Q. Yes.

14 A. Yes.

15 69 Q. So was it just out of interest, that you might be 10:44
16 interested that this was being conveyed to you, have
17 you any reason why it would be conveyed to you that it
18 was Sergeant Maurice McCabe?

19 A. He was just saying -- well, it was a high profile --
20 like I knew who it was, Mr. Cunningham knew who it was, 10:44
21 so he was just letting us know. Normally if it's
22 either a guard or a social worker or a high
23 professional, he would point it out, that it's someone
24 within a --

25 70 Q. He told you that Kay McLoughlin had been dealing with 10:44
26 it?

27 A. Correct.

28 71 Q. You and Clare Tobin then, you were sitting down and you
29 reviewed --

1 A. Audited, with our audit form.

2 72 Q. With the files?

3 A. That day.

4 73 Q. And it would have been apparent to you on reviewing the
5 file that a letter had been sent by Kay McLoughlin on 10:45
6 29th December of 2015 to Sergeant McCabe?

7 A. It was Clare that audited the file that day. I think
8 you've spoken to her about that, it's her handwriting
9 on the audit, but she would have discussed it with me
10 and we would have taken it back to nexus, where I would 10:45
11 have looked at it further from there.

12 74 Q. Well, I mean, Mr. Cunningham is advising you that this
13 is Kay McLoughlin's file, right?

14 A. Correct, yes.

15 75 Q. And that she had been dealing with it? 10:45

16 A. Mm-hmm.

17 76 Q. A very quick review of the file to determine what stage
18 has this got to, you would have seen that the file had
19 been, in fact, brought to the stage where Kay
20 McLoughlin had written out to Sergeant McCabe, advising 10:46
21 him of the allegation, in fact the wrong allegation,
22 that had been made against him?

23 A. Mm-hmm.

24 77 Q. All right?

25 A. Correct. 10:46

26 78 Q. There had been a response from Séan Costello & Company
27 solicitors to that?

28 A. Mm-hmm.

29 79 Q. That would have been apparent to you, wouldn't it?

1 A. Yes, yeah.

2 80 Q. And I'm just wondering why perhaps you didn't raise a
3 query at that time to say well, look, you know, this
4 case has obviously been allocated, it's obviously been
5 brought to the stage where Kay McLoughlin has actually 10:46
6 written out to the accused, why are we getting involved
7 in this?

8 A. On many cases, if a case hasn't been worked properly
9 through the section 3 policy, often, from my
10 experience, another team will be asked to take it on 10:47
11 and a new assessment done, because the workers' views
12 could have been tarnished from how they worked it. So,
13 that my opinion at the time. I rang my principal
14 social worker to talk about the high cases from that
15 Kay in general and we agreed to take it from there. 10:47

16 81 Q. You referred the section 3 policy?

17 A. The section 3 policy it hadn't been followed properly.

18 82 Q. What do you mean by the section 3 policy?

19 A. The allegations of abuse and neglect, the
20 investigations that we do, that's the primary role of 10:47
21 my team. The September 2014 allegations against --

22 83 Q. Well, I am just wondering, I need to thrash this out to
23 know why this file was taken on by you at all.

24 A. Fair procedures hadn't been followed. Timelines and
25 the details were given wrong and it was clear that the 10:47
26 file was not in a proper order, and we felt it
27 needed --

28 84 Q. Was that all apparent to you from a quick view of the
29 file when you were up in Cavan?

1 A. Yes.

2 85 Q. It was?

3 A. Yeah.

4 86 Q. When you say fair procedures hadn't been adopted, what
5 fair procedure are you referring to? 10:48

6 A. We could see that responding to the solicitors and
7 Mr. McCabe wasn't being done in a timely fashion.

8 87 Q. All right. So there wasn't a response to the
9 solicitor's letter that came in, in January of 2016?

10 A. Correct. 10:48

11 88 Q. So what other fair procedure do you think wasn't
12 adhered to?

13 A. Well, the wrong details were given to Mr. McCabe. It
14 was clear that the worker hadn't read the file in total
15 and hadn't dealt with it properly and that he hadn't 10:48
16 been given --

17 89 Q. I will just return to that when we come to look at the
18 actual risk escalation, as to what was available to you
19 at the time. But you say that you were able to
20 determine this from reading the Maurice McCabe file? 10:49

21 A. Clare Tobin read it she was informing me, yes.

22 90 Q. Did you have access to what we now know was Ms. D file?

23 A. No, not that day.

24 91 Q. Did you have access to the CSA file which refers to
25 Ms. D? 10:49

26 A. No, I never saw that file.

27 92 Q. Are you sure about that? Because Ms. Tobin thought
28 that she had sight of the Ms. D file?

29 A. She did have sight, but not on that day, at a later day

1 she did go down to Monaghan and see the file. I never
2 personally saw the file, but she did go and view the
3 file in Monaghan.

4 93 Q. Because again, Mr. Cunningham says that he was a
5 hundred percent certain Ms. D's file wasn't made 10:49
6 available at that initial meeting?

7 A. And I'm hundred percent certain as well.

8 94 Q. You're certain?

9 A. A hundred percent.

10 95 Q. All right. So, the file is then taken away to be 10:50
11 looked into in some detail by you, is that right?

12 A. Yes, back to regional office, with a number of other
13 files.

14 96 Q. If you don't mind, if we could just look at some 10:50
15 documents that you have supplied to the Tribunal, and
16 have become available. At page 1442, this is a letter
17 by you to -- I think it's a memo, is it, for yourself?

18 A. It's just a note of a meeting with Tara Downes. I
19 brought a number, a number of cases from the region to
20 the Brunell, our national office, to talk to Ms. Downes 10:50
21 about. And I just made a note that Mr. McCabe's file
22 was one of those cases and that what I had been
23 instructed to do.

24 97 Q. So this is after a review of the file, you had a
25 meeting with Tara Downes and you were discussing the 10:51
26 various files and then the Maurice McCabe file arose
27 during the course of discussions, is that right?

28 A. Correct.

29 98 Q. And her advice to you was that you should write out to

1 Ms. D --

2 A. Correct.

3 99 Q. -- and offer her an appointment?

4 A. And restart the process.

5 100 Q. So, effectively you're going back to square 1, as it 10:51
6 were, is that right?

7 A. Correct.

8 101 Q. At that time you were -- or, were you aware of the fact
9 that this matter had been looked into by the HSE in
10 2006 and 2007? 10:51

11 A. Yes, I knew, and I knew about the DPP and the no
12 prosecution, but it wasn't clear from the file that
13 Ms. D had been met with or attempted to be met with.

14 102 Q. Were you aware of the fact that Kay McLoughlin had
15 written out to Ms. D seeking to arrange appointments 10:52
16 with her --

17 A. Yes.

18 103 Q. -- in 2015?

19 A. Yes. And that Ms. D hadn't been able to meet, that she
20 wanted to arrange an appointment at a later date. So, 10:52
21 that indicated to me that she possibly would meet with
22 us, hence why we said that we'd try.

23 104 Q. So, if we could just then perhaps just come to the
24 following page, page 1443, this is the risk escalation
25 document. We can see there that it is headed "serious 10:52
26 incident other than HIQA and risk escalation", it has
27 "Maurice McCabe", his date of birth "unknown", then
28 address, "Child and Family Agency" and then the contact
29 details and yours are there?

1 A. Mm-hmm.

2 105 Q. The regional director Linda Creamer. Then it says:
3
4 "Nature of incident giving rise to escalation."
5 10:53
6 It says:
7
8 "Report made to the Social Welfare Department in 2006
9 regarding an allegation of child sexual abuse made by
10 Ms. D." 10:53
11
12 And her date of birth.
13
14 "Against detective Sergeant Maurice McCabe."
15 10:53
16 we know that --
17 A. That's an error, yeah.
18 106 Q. -- that's an error but it's of little consequence.
19
20 "...who was allegedly sexually inappropriate towards 10:53
21 Ms. D, aged 7 at the time of alleged abuse.
22 D/Sergeant McCabe and DPP gave no prosecution."
23
24 You discerned that from the examination of the Ms. D
25 file, is that right? 10:54
26 A. I never saw the Ms. D file.
27 107 Q. You never saw it?
28 A. Clare Tobin did, but I never saw it.
29 108 Q. And:

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"The Social Work Department finding was inconclusive at that time on file but no report as to how the social welfare came to that conclusion?"

10:54

A. Correct.

109 Q. And then it says:

"In 2013 --"

10:54

A. It was meant to be 2015.

110 Q. " -- Ms. D was attending therapy."

In fact, that's a mistake, is it?

10:54

A. A typo, 2013, it should read.

111 Q. 2013.

"...was attending therapy and made disclosure to therapist, who referred the matter to SW Department in Cavan. SW Department received a copy of Ms. D Garda statement taken on 5th December 2006 and used this to write to D/Sergeant McCabe in December 2015."

10:54

where did that come from?

10:55

A. Okay. So, what I meant by that was that Ms. McLoughlin's rationale for writing to Mr. McCabe was because the 2006 Garda investigation had never been investigated, in her view, by Tusla, that we had never

1 met with Mr. McCabe and put the concerns to him. So,
2 that should read that -- not the contents of the Garda
3 statement was used in the letter but that was her
4 rationale for the assessment.

5 112 Q. But this clearly is saying something completely
6 different, isn't it? 10:55

7 A. Well, it's missing a couple of words and I can totally
8 understand why, to everyone else I can see how it -- I
9 have written it wrong. But the Garda statement taken,
10 her rationale was used -- she used this to write to 10:55
11 Mr. McCabe, that was her rationale for writing to him
12 in December 2015, because of the Garda statement that
13 had never been put to Mr. McCabe by Tusla.

14 113 Q.

15 "However, unfortunately inaccurate details of the 10:56
16 disclosure were given in the letter. Detective
17 Sergeant McCabe has Séan Costello & Company solicitors
18 involved and they are highly dissatisfied that this is
19 being reinvestigated and wrong information being sent
20 to their client." 10:56

21
22 Then you go on to deal with the assessment of relevant
23 protective factors, and you point out:

24
25 "D/Sergeant McCabe has never been met with by our 10:56
26 department. He has five children, aged 8 to 22 years,
27 with his wife and notes on file that his wife should
28 have been met in 2006 but no evidence this occurred and
29 there is no justification to informing Mrs. McCabe of

1 concern at this stage, given ten years have passed and
2 no foundation of allegations to date."

3
4 Then under:

5
6 "Actions taken or plan to address immediate safety
7 issues:

8 Stabilise client, mitigate injuries, prevent further
9 harm and timeframes for same.

10
11 SART sought legal advice on this matter given the case
12 was investigated ten years ago, approximately, but the
13 information is scant and now Ms. D has come forward
14 again given Detective Sergeant McCabe received a lot of
15 media attention in recent years as a Garda
16 whistleblower."

17
18 where did that information come from?

19 A. That came from Kay McLoughlin. That was written on the
20 file, that that's the reason. So, I was taking
21 information from the file and putting it onto my risk
22 escalation.

23 114 Q. Did you speak to Kay McLoughlin?

24 A. No, not in detail.

25 115 Q. Pardon?

26 A. No, not in detail, no. There's a couple of emails but
27 I didn't speak to her. But that was on the file, about
28 the media attention and that that was the reason why.

29 116 Q. I will return to that in a minute.

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"Séan Costello & Company Solicitors are quite aggressive in the defence of their client and the incorrect details of the letter sent. Detective Sergeant McCabe's legal team has referred this correspondence to the Chief Executive of Tusla in the expectation that decent standards of public administration will be adhered to. Tusla legal have advised SART to seek to meet Ms. D to assess whether her disclosure is credible to proceed the matter to investigation."

10:58

10:58

And then:

"Tusla legal will respond to D/Sergeant McCabe's legal team."

10:58

Then we go over the page to 1445, then:

"Subject of serious incident risk."

10:58

In fact, the wrong name appears there, isn't that right?

A. Yes.

117 Q. It has been redacted, but it's actually the wrong name entirely.

10:58

"Describe any internal/external investigation reviews initiated to date. SART completed audit July 2016 and

1 considered it a high concern given complex legal issues
2 and D/Sergeant McCabe's profession and high media
3 profile."

4
5 You thought it appropriate, did you, to highlight the 10:59
6 fact that he was a detective, he was a member of An
7 Garda Síochána and that he had a high media profile?

8 A. Yes, it was an organisational risk, I felt, to Tusla.

9 118 Q. It's not suggested there that it's been risk escalated
10 as a result of any concern for Maurice McCabe's 10:59
11 children, isn't that right?

12 A. No, but that wasn't my role.

13 119 Q. It doesn't appear that at that stage there is any
14 concern that this case could become a high priority
15 case and be risk escalated because of any concern for 11:00
16 the welfare of the children?

17 A. I didn't have any immediate concern for his children.

18 120 Q. Sorry?

19 A. I didn't have any immediate concern for his children
20 from what was on the file. 11:00

21 121 Q. So, really at this stage the complaint that had been
22 made by Ms. D was secondary to your considerations, is
23 that right?

24 A. It hadn't been investigated, there was no foundation to
25 it. 11:00

26 122 Q. Yes, I know, but you had an opportunity to look back at
27 the history of it?

28 A. Yeah.

29 123 Q. You were in a position to see that it had, in fact,

1 been investigated in 2006/2007?

2 A. By the Gardaí.

3 124 Q. That she had attended the HSE?

4 A. Mm-hmm.

5 125 Q. And that she had attended and been assessed at that 11:00
6 time?

7 A. I didn't have those -- I didn't have that file or the
8 details of Ms. D having been met with.

9 126 Q. That, in fact, effectively the Ms. D file had been 11:01
10 closed in 2007, with a note on the file indicating that
11 Maurice McCabe hadn't been contacted. Were you aware
12 of that?

13 A. No.

14 127 Q. Are you disappointed that you weren't informed of these 11:01
15 things?

16 A. Yes. My risk escalation, they reflect what was on the
17 file. If we had had all of the details, they could
18 have been different.

19 128 Q. I mean, your colleague Clare Tobin gave evidence to the 11:01
20 Tribunal that she was horrified how the case had been
21 managed?

22 A. I think it was poorly managed.

23 129 Q. But I'm not getting that flavour from you. If we just
24 continue on then.

25 11:02

26 "I identify difficulties being experienced or anticipated
27 regarding serious incident."

28

29 And then:

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"Fair procedures have not been followed and our investigation ten years ago proceeded without ever meeting Detective Sergeant McCabe and with no formal closure. Again we wrote to detective Sergeant McCabe in December 2015, despite re-opening the file in August 2013 and wrong information was given and Ms. D was not met with. It is likely Detective Sergeant McCabe has a strong argument that procedures had been dealt with inappropriately." 11:02

And then it deals with:

"Anticipated completion date for overall management of serious incident." 11:03

SART has allocated case high priority, so will endeavour to contact alleged victim in August 2016."

That's sent to Lisa Anderson, is that right? 11:03

A. Correct.

130 Q. With a view to be sent to Linda Creamer. I suppose you're aware from the work of the Tribunal and from general knowledge in the media that there were a litany of errors that were made in relation to the Sergeant McCabe file, isn't that right? 11:03

A. That's correct.

131 Q. I suppose they were internal errors within Tusla and the HSE and only surfaced twice really externally; once

1 was when a letter was written to Sergeant McCabe on the
2 29th December of 2015.

3 A. Mm-hmm.

4 132 Q. And the other time is when a referral was made to the
5 Gardaí, a Garda notification was sent. We've heard 11:04
6 evidence in relation to the fact that the wrong
7 information was sent to the Gardaí, that Ms. D became
8 aware of that, that she corrected it, she went to her
9 counsellor, Laura Brophy, that Laura Brophy was in
10 contact with Eileen Argue and that steps were taken to 11:04
11 rectify the error, and that ultimately Seamus Deeney,
12 in June 2014, sends a correct notification, an amended
13 notification to the Gardaí which highlights the error
14 that had been made up until then. And that the file is
15 then put back into the drawer, apparently, in a filing 11:05
16 cabinet and left there until it is taken out of the
17 drawer by Kay McLoughlin. None of that is referred to
18 in your risk escalation?

19 A. My role was the Section 3 and had the investigation
20 been investigated properly, or the allegation been 11:05
21 investigated properly. It wasn't to do a full review,
22 as I said earlier, of all the errors, and I didn't have
23 access to all of that either, the Garda notifications.

24 133 Q. Do you mind if we just return to that, because I am not
25 going to go through the whole file with you, but I am 11:06
26 just going to point out certain documents. This is the
27 file that you would have had. It's probably easier for
28 you, I will put it up on the screen if you like, but it
29 might be easier if you follow the folder. This is in

1 volume 9 and it's headed -- there are two volume 9s
2 there, for some reason, it's pages 2189 to 2484?
3 A. 2189.
4 134 Q. Yes. As I say, I'm not going to go through the whole
5 document with this, Clare Tobin has already dealt with 11:06
6 this, but there are certain documents that she has
7 indicated that she doesn't believe were not on the file
8 when she received it from Mr. Cunningham. I would just
9 like your comment in relation to it. You can see there
10 the file reference number at the front, at page 2307. 11:07
11 It's file reference number 0208/2013. If we could just
12 in the first instance go to page 2309. This is a
13 document Clare Tobin believes wasn't on the file when
14 she looked at it. You will see there that it's
15 Cavan-Monaghan, a Social Work Department case review. 11:07
16 We haven't been able to ascertain who actually dealt
17 with this, but it's believed that it was in the writing
18 of a Louise Byrne, in her handwriting and it's headed
19 the children's name and refers to Maurice McCabe. Then
20 you will see: 11:08
21
22 "Activity services provided. Garda notification
23 corrected in May 2014 due to --"
24
25 This should be 2319. Scroll there, thank you very 11:08
26 much. There you see it refers to:
27
28 "Garda notification corrected in May 2014 due to
29 misinformation from Rian."

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You see there?

A. Yes.

135 Q. Then:

"Social work recommendation."

It says:

"Awaiting allocation. Case discussion to include Rhona and Keara."

And then:

"Contact Garda re DPP decision 2007 clarification."

Do you believe that document was on the file when you --

A. No, I don't recall that document.

136 Q. Pardon?

A. I don't recall this document.

137 Q. CHAIRMAN: well, is it possible for you to say definitively it just wasn't on the file?

A. Yeah, it wasn't on the file. I don't remember anything about that Garda notification, so.

138 Q. MR. MARRINAN: well, you see, we are going to deal with this by reference to your risk escalation?

A. Okay.

139 Q. I have just pointed out to you that the only reference

11:09

11:09

11:09

11:09

11:09

1 to misinformation refers to the statement, that you
2 refer to the statement that had been made by Ms. D, and
3 that that was used in preparation of the letter that
4 was sent to Maurice McCabe on 29th December of 2015?

5 A. That's not correct. 11:10

6 140 Q. Pardon?

7 A. That's not correct.

8 141 Q. That's not correct, yeah?

9 A. Yeah.

10 142 Q. Clare Tobin doesn't believe that she saw any of the 11:10
11 Garda notifications other than a draft notification.
12 which I will come to?

13 A. And I'm the same.

14 143 Q. I'm just wondering whether or not these, in fact, had
15 been removed from the file, do you understand? 11:10

16 A. I don't know whether they were removed from the file,
17 but most likely it was that they just weren't put on
18 the file.

19 144 Q. Most likely?

20 A. Is that they weren't put on the file, which can happen 11:10
21 in lots of cases, that there's delay in putting
22 paperwork on files, it's not done until a later date.
23 It wouldn't be my way of working but from doing audits
24 around the region, there was lots of paperwork that
25 wasn't on file that should have been. 11:11

26 145 Q. Had you considered this before you came to give
27 evidence today? Have you considered this matter?

28 A. I have.

29 146 Q. Because it is of concern. We have established through

1 Clare Tobin that when you had finished with the file,
2 that the file would then have been closed?

3 A. Correct. 11:11

4 147 Q. And would have been returned --

5 A. Correct. 11:11

6 148 Q. -- to Cavan, all right, and that it was then
7 effectively closed and kept safe, all right?

8 A. Archived, yeah.

9 149 Q. And that is the file that we have been presented with,
10 right? 11:11

11 A. Mm-hmm.

12 150 Q. I am going just to go through these documents with you.
13 You have had time to consider these documents, as to
14 whether or not they were on the file, have you?

15 A. Yes, I had a look, yes. 11:11

16 151 Q. I mean, I am not springing this on you now?

17 A. No, I did have a look, yes.

18 152 Q. Yeah, I am sure you did, arising out of the evidence
19 that had been given by Clare Tobin, you would have been
20 concerned about this. 11:12

21 A. Mm-hmm.

22 153 Q. So I am sure you have given this some considerable
23 thought, have you?

24 A. Yes.

25 154 Q. Because it would be quite serious if documents were 11:12
26 taken away and out of the file and those documents were
27 the only documents on the file that referred to the
28 notification to the Gardaí being made in error?

29 A. I don't recall notifications being on the file.

1 155 Q. Right.

2 A. I have said in my risk escalation that the information
3 on the file was scant, it was a small file, it was
4 clear that there was missing information.

5 156 Q. If we just go on then in relation to 2337, please. 11:12
6 This is the --

7 A. This is the draft, no?

8 157 Q. This is the draft notification. Clare Tobin believes
9 that this was on the file.

10 A. Mm-hmm. 11:13

11 158 Q. Do you have a recollection of seeing that on the file?

12 A. No.

13 159 Q. No?

14 A. I don't recall, it could have been, but I just looked
15 at the file with my risk escalation. Clare would have 11:13
16 held the file and had it more and I would trust her
17 judgment, if she says it was on the file.

18 CHAIRMAN: Mr. Marrinan, I just got a message, you'll
19 be about another half an hour, 20 minutes or
20 thereabouts. 11:13

21 MR. MARRINAN: Yes.

22 CHAIRMAN: It's just you have duties.

23 A. Okay.

24 CHAIRMAN: We are going to rise for 10 or 15 minutes to
25 enable you. 11:13

26 A. Yes.

27

28 SHORT ADJOURNMENT

29 AFTER A SHORT ADJOURNMENT, THE TRIBUNAL RESUMED, AS

1 FOLLOWS:

2

3 160 Q. MR. MARRINAN: Thank you, Ms. O'Loughlen. If we could
4 go back to the file, please, that you were examining.
5 You have it there, yes?

11:38

6 A. Yes, yeah.

7 161 Q. Page 2337, this is a notification. In fact, Clare
8 Tobin believes this wasn't on the file, and that's a
9 Garda notification and it sets out the history?

10 A. That was on the file, the draft notification?

11:39

11 162 Q. Sorry?

12 A. I thought that she thought that the draft notification
13 was on the file.

14 163 Q. No, this isn't the draft notification?

15 A. Oh, sorry, okay.

11:39

16 164 Q. This is the notification. You say:

17

18 "Our department forwarded a formal Garda notification
19 to the Bailieboro Garda Station in relation to
20 allegations received by Laura Brophy."

11:39

21

22 Then it goes on and sets out the history of it. She
23 believes that that document wasn't on the file, right,
24 do you recall that document being on the file?

25 A. I don't remember seeing any Garda notification on the
26 file.

11:39

27 165 Q. Then, if we could look at page 2340, please. She also
28 believes that this document wasn't on the file, it's a
29 notification of suspected child abuse, again to the

1 Gardaí, and you'll see:

2

3

"Laura Brophy, counsellor with Rian Counselling Service, reported the following information."

5

11:40

6

And it, in fact, contains the wrong information and I'm not going to go through it with you in detail, but she believes that that wasn't on the file.

7

8

9

A. Again, I don't recall any Garda notifications on the file.

10

11:40

11

166

Q. That is signed over the page, at 2341, by Seamus Deeney, and is dated 2nd May 2014, but, in fact, was signed by him in June 2014. Then, at page 2342, this is a draft document. And again, at the operative part, it says:

12

13

14

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11:40

16

17

"Laura Brophy, counsellor with Rian Counselling Service, reported the following information to the Child and Family Agency in August 2013."

18

19

20

11:41

21

And again it has the wrong allegation in it, but appears to be only a draft, right?

22

23

A. Yes.

24

167

Q. Do you recall whether that was on the file when you examined the file?

25

11:41

26

A. No.

27

168

Q. You don't recall?

28

A. I don't recall it being on the file.

29

169

Q. You don't?

1 A. I don't recall any Garda notifications being on the
2 file. But, as I said, Clare Tobin would have held the
3 file, she would have been looking at it a lot more
4 regularly, so I would trust her judgment.

5 170 Q. Then if we go on to page 2355, please? 11:41

6 CHAIRMAN: That's the one that Clare Tobin said was on
7 the file as far as she remembered, isn't that right?

8 MR. MARRINAN: Yes, she believes it was on the file.

9 CHAIRMAN: Yes.

10 171 Q. MR. MARRINAN: 2355, this is an email, Clare Tobin 11:41
11 indicated that she believed that there were emails that
12 weren't on the file?

13 A. Mm-hmm.

14 172 Q. This is from Laura Brophy to Eileen Argue, and it says:

15 11:42

16 "Following our phone conversation yesterday, I'm
17 contacting you to inform you that I had another call in
18 relation to the retrospective report which, as you are
19 aware, contains a clerical error. I was informed that
20 the superintendent in the jurisdiction referred to in 11:42
21 the report was not yet aware of the clerical error and
22 has been asked to meet with the Garda Commissioner in
23 relation to the case. I have agreed to send the
24 superintendent the amended and correct report by
25 registered post today. If you have any queries 11:42
26 relating to this, please don't hesitate to call me."

27

28 And it's signed off by Laura Brophy. Do you believe
29 that was on the file?

1 A. No.

2 173 Q. You believe it wasn't? Then, over the page, again
3 Clare Tobin believes that these weren't on the file,
4 you'll see an email from Eileen Argue to Gerry Lowry,
5 who is the Regional Director, and then it says in the
6 third paragraph:

11:43

7
8 "A Garda notification was forwarded by our department
9 based on the information received from Laura Brophy,
10 Rian Services. As stated below, Laura Brophy contacted
11 our department today in relation to her referral and
12 the content of same. She advised that there was
13 information provided which did not relate to and was in
14 relation to another person against another man and not
15 the man MMcC. This notification needs to be amended as
16 soon as possible and the relevant superintendent needs
17 to be updated with regard to same."

11:43

11:43

18
19 Signed off by Eileen Argue. You believe that wasn't on
20 the file

11:44

21 A. No.

22 174 Q. And then below it, from Pamela Armitage:

23
24 "Dear Eileen.

25
26 Laura Brophy, Rian, just called to say that she had
27 made an error in a report to us re --"

11:44

28
29 That's Ms. D

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" -- the line that the abuse involves digital penetration, both vaginal and anal is an error and should not be in the referral, it is, in fact, a line from another referral on another adult that has been pasted in, in error. Laura has apologised and is sending us the amended report ASAP. "

11:44

Again, can you say whether or not that was on the file?

A. No.

11:44

175 Q. If we could then turn to page 2403, this is an email from Kay McLoughlin to Emer O'Neill. It says:

"Dear Emer.

I am following up in relation to Garda Maurice McCabe, who, you may remember, made allegations against in 2007. From the file I understand the Garda statement was given to you by the parents back in 2007 and was to prevent Ms. D having to go through the allegations again. I wonder if I could have a copy or view the statement as currently I am assessing what risk, if any, Maurice McCabe poses to his children. "

11:45

11:45

Clare Tobin wasn't sure whether or not that document was on the file. Do you recall seeing that on the file?

11:45

A. No.

176 Q. Do you believe it wasn't on the file?

1 A. I don't think so.

2 177 Q. And then if we could go over to page 2410. This is
3 from Gerard Lowry to Kay McLoughlin:
4
5 "Dear Kay. 11:46
6
7 Thanks for the update and bringing this matter to my
8 attention.
9
10 I have a memory that this matter was reported to An 11:46
11 Garda Síochána at some stage, so we would need to
12 coordinate with them before taking the steps outlined
13 below.
14
15 I will discuss with you." 11:46
16
17 Signed off by Gerry Lowry. Clare Tobin doesn't believe
18 that that was on the file.

19 A. No. I don't believe it was on the file.

20 178 Q. You don't believe it was on the file when you were 11:46
21 given the file?
22 A. No.

23 179 Q. That deals with the file. The documents that both of
24 you seem to believe were not on the file, that you had
25 referred to the matter going outside to An Garda 11:47
26 Síochána and the Garda referral, isn't that right?
27 A. Sorry, can you repeat that?

28 180 Q. The matters that you and Clare Tobin seem to be in
29 agreement on that were not on the file, are matters

1 that refer to the file or to the Garda notification and
2 the matter going to the Gardaí, the issue being
3 corrected by Ms. D and Laura Brophy then seeking to
4 deal with the matter?

5 A. Yeah. Well, it was clear that the wrong information 11:47
6 had been sent, but not through those documents.

7 181 Q. Well, it's not clear from your risk escalation that
8 there had ever been a Garda referral?

9 A. No.

10 182 Q. Isn't that right? 11:47

11 A. That's correct.

12 183 Q. You don't refer to it?

13 A. No.

14 184 Q. At all?

15 A. No. 11:47

16 185 Q. And, in fact, in all the documentation that you have
17 provided to the Tribunal, that you were responsible
18 for, and I will come to your final report in relation
19 to this matter, there is absolutely no reference to the
20 matter being referred incorrectly to the Gardaí, isn't 11:48
21 that right?

22 A. That's correct.

23 186 Q. Even though it appears that there were a large number
24 of documents on the file that we now have?

25 A. Mm-hmm. 11:48

26 187 Q. That dealt with this aspect of the history of the file,
27 isn't that right?

28 A. It appears that way, yes.

29 188 Q. These were substantial matters that had occurred,

1 errors that had occurred within the HSE/Tusla, isn't
2 that so?

3 A. Yes. But again, that wasn't, like, my function.

4 189 Q. Well, they were matters that, first of all, caused
5 upset to Ms. D, because she was the person who was 11:48
6 confronted with them by her father and had to ring
7 Laura Brophy?

8 A. And had the investigation proceeded and we had met
9 Ms. D, these matters may have arisen more for us then,
10 but because they didn't. 11:49

11 190 Q. Don't cast the blame on Ms. D not pursuing these
12 matters. This was back on a review of the file. If
13 you had all the documents, a review of the file would
14 disclosed material that suggested that Ms. D's
15 allegation had been misrepresented in a referral to the 11:49
16 Gardaí?

17 A. Yes.

18 191 Q. And that she had to correct it in circumstances where
19 the error was brought to her attention by her father
20 and that she had got on to Laura Brophy, who had then 11:49
21 writ answer number of letters, some of which don't
22 appear to have been on the file, that she wrote letters
23 to Eileen Argue seeking to correct it. That would have
24 been of concern in relation to the management of the
25 case? 11:50

26 A. Yes. I'm not in any way blaming Ms. D.

27 192 Q. Yes.

28 A. What I am saying is, I just reported what was on the
29 file and it wasn't on the file. Had it come to my

1 attention, I may have done another risk escalation.

2 193 Q. The error couldn't in any circumstances be regarded as
3 a fair procedure for Sergeant Maurice McCabe, isn't
4 that right?

5 A. That's right. 11:50

6 194 Q. In terms of what we were dealing with in relation to
7 your review, in terms of this has been a risk to the
8 organisation, it was substantial, isn't that right?

9 A. It was.

10 195 Q. So, here we have three matters, all of which cover the 11:50
11 reason for your audit, all of which have been flagged
12 and the red flags are flying, aren't they?

13 A. They are, yes, it's very concerning.

14 196 Q. But you don't refer to any of these in your risk
15 escalation or ultimately, which I'll come to in a 11:51
16 minute, in your report, do you?

17 A. Because I didn't see them.

18 197 Q. Yes. Well, that's what I am coming to, and we really
19 do need to nail this down, because we can't have it
20 just sitting out there. 11:51

21 A. Mm-hmm.

22 198 Q. Because there is a suggestion that somebody
23 deliberately interfered with the file and removed these
24 documents from the file in order to cover up the
25 substantial errors that caused upset to Ms. D, that 11:51
26 Sergeant McCabe is now aware of, and which were
27 embarrassing to Tusla/HSE. You understand?

28 A. I understand.

29 199 Q. That suggestion is there. Then one looks at your

1 report in relation to the case, your risk escalation
2 report, and I'll come to it in a minute, your
3 comprehensive review of the file to your superiors, you
4 don't make any reference at all to this debacle that
5 had occurred in 2014. I'm just really suggesting to 11:52
6 you, because you seem to have dealt with the matter
7 competently, that you would have made a reference to
8 this had you been aware of it?

9 A. I agree with that. I just see myself as reporting any
10 concerns, I reported was on the file and that's why I 11:52
11 don't believe that they were on the file.

12 200 Q. So, I mean, having considered this before you came
13 here, because you knew it was going to be an issue,
14 having considered it, do you believe that there had
15 been an interference with the file and that these 11:52
16 documents had been revolved so that you wouldn't have
17 sight of them?

18 A. I don't see why it would have made -- I think it's more
19 that they weren't put on the file in the first place.
20 That would be my -- but I can't say for sure. 11:53

21 201 Q. Well, these are the only documents that appear to have
22 been removed from the file, you understand?

23 A. Okay.

24 202 Q. So it would appear to have been something that was done
25 deliberately, because they're all focused on the Garda 11:53
26 referral?

27 A. Okay.

28 203 Q. All right?

29 A. They should have been on the file.

1 204 Q. So it's not a matter of -- they should have been on the
2 file?
3 A. Yes.
4 205 Q. CHAIRMAN: Yes.
5 A. Yeah. 11:53
6 206 Q. MR. MARRINAN: But it's a little bit more than that. I
7 mean, do you believe, you're the person who was dealing
8 with this, you reviewed this file, you did the best
9 that you could do in terms of your review --
10 A. Mm-hmm. 11:53
11 207 Q. -- of dealing with all the issues that arose, of
12 writing out to Ms. D, perhaps looking at errors that
13 happened along the way, and you have highlighted them
14 in your final report that you provided to the Tribunal.
15 There's a hole in your report insofar as this matter 11:54
16 isn't dealt with, isn't that right? You agree with
17 that?
18 A. Yes.
19 208 Q. And it's not your fault, because the documents aren't
20 on the file? 11:54
21 A. That's correct.
22 209 Q. So they weren't there for your consideration, isn't
23 that right?
24 A. And if this was the only file in the region that had
25 difficulties, I may think that, but there was a lot of 11:54
26 files I came across that were missing information,
27 important information wasn't on the file and that's why
28 it went to staff, they just hadn't been put on files.
29 So, this wasn't the only file where details, important

1 details were missing off files, not just in
2 Cavan-Monaghan, in our region.

3 210 Q. This isn't just a matter -- I think you know it's just
4 not a matter of detail, this is a matter of substance?
5 A. Mm-hmm. 11:54

6 211 Q. All right. You can see it, can't you?
7 A. Yes, I can.

8 212 Q. That on the face of it, it looks as though those who
9 were involved in 2014 in referring the matter to An
10 Garda Síochána and who had made error after error in 11:54
11 relation to it?
12 A. Mm-hmm.

13 213 Q. It looks on the face of it --
14 A. It does.

15 214 Q. -- as though they have attempted to remove -- or they 11:55
16 have removed documents from the file that is going to
17 you to be audited, isn't that right?
18 A. Or they were never put on it.

19 215 Q. Or?
20 A. Or they were never put on the file in the first place. 11:55

21 216 Q. Well, you appreciate and I'm pointing out to you that
22 we are given the file in circumstances where it has
23 been kept secure after being signed off by your
24 department?
25 A. Yes. 11:55

26 217 Q. Or your team. All right, you're not going to put the
27 matter any further, are you?
28 A. Only to the best of my knowledge or recollection.

29 218 Q. CHAIRMAN: I think the point is, if I can just

1 intervene at this point. There's a lot of things that
2 obviously can go wrong with cases and one of them is,
3 failing to speak to Maurice McCabe and the
4 allegation initially made.

5 A. Absolutely.

11:55

6 219 Q. CHAIRMAN: Okay, the Gardaí had done that, people
7 should have been aware of that. Then signing off on
8 the file without actually completing any assessment of
9 any risk that there might be back in 2007, that's
10 another thing.

11:56

11 A. Yes.

12 220 Q. CHAIRMAN: And then we come to 2013 and you get the
13 pasting error, but the pasting error goes to the
14 Gardaí.

15 A. Yes.

11:56

16 221 Q. CHAIRMAN: So, the person who at most was accused of,
17 you know, a fully clothed encounter, which might be a
18 misconception on a couch, is suddenly in a completely
19 different category. In other words, you move from not
20 even being on the ladder of sex abuse, if it's a
21 ladder, you're way up there at number 7 or number 8,
22 you know.

11:56

23 A. Yes.

24 222 Q. CHAIRMAN: And that gets notified to the Gardaí. But
25 every bit on the file that you're reviewing when it
26 comes to the SART team historical child allegations,
27 every bit that records the error going to the Gardaí;
28 in other words the digital anal and vaginal penetration
29 is somehow removed.

11:56

1 A. Okay.

2 223 Q. CHAIRMAN: Then it comes back sealed, the Tribunal gets
3 it and lo and behold the documents you haven't seen,
4 which are the worst red flag of all the red flags you
5 could come across -- 11:57

6 A. Yes.

7 224 Q. CHAIRMAN: -- are back on the file.

8 A. Okay.

9 225 Q. CHAIRMAN: So, what conclusion is one to reach? I mean
10 it is a very, very stark set of facts confronting you. 11:57
11 I suppose you don't have to take the fence if you don't
12 want to take the fence, but I may have to take the
13 fence and that's why Mr. Marrinan asked you the
14 question. I mean, it's really -- weird, is not the
15 word. 11:57

16 A. Yeah. No, I can see how it looks that way and it was
17 very poorly managed in my opinion, from the start in
18 2006 right through.

19 226 Q. CHAIRMAN: I know, but, you know, there's the chaos
20 theory and there's a conspiracy theory. 11:58

21 A. Yes.

22 227 Q. CHAIRMAN: Let's say there's a chaos theory, there's a
23 conspiracy theory and there's the cover-up theory.

24 A. Okay.

25 228 Q. CHAIRMAN: The cover-up theory, you know, it has to be 11:58
26 supported by something before you reach that
27 conclusion. But in the event that the worst thing that
28 happened is not on the file when you're reviewing it in
29 your professional capacity.

1 A. Yes.

2 229 Q. CHAIRMAN: And reviewing it competently, I think
3 everybody accepts, that suddenly when the file is
4 sealed, it reappears on the file.

5 A. Yeah. 11:58

6 230 Q. CHAIRMAN: It's kind of hard to reach the conclusion
7 isn't it --

8 A. Yes, yes, I accept that.

9 231 Q. CHAIRMAN: -- that somehow these documents were lost,
10 all about the same thing, and suddenly come back in the 11:58
11 right order in the file. That's the problem. I don't
12 know whether you would like to comment on that. That
13 was the whole purpose of Mr. Marrinan's questions.

14 A. Yes.

15 232 Q. CHAIRMAN: would you like to? 11:58

16 A. I can absolutely see how it looks that that is the way
17 that it happened, yes. I just can't point a finger at
18 any individuals in particular.

19 MR. MARRINAN: very well.

20 233 Q. CHAIRMAN: So, I mean, so your view is it looks like a 11:59
21 cover-up but you can't say who was doing the cover-up.

22 A. Yeah, because if they'd been on the file I absolutely
23 would have reported on them, and that's why I'm so sure
24 that they weren't on the file.

25 234 Q. CHAIRMAN: And do you think it was a cover-up? 11:59

26 A. I don't think that there is a -- between Tusla and the
27 guards no. I do think it was poor management and
28 incompetence.

29 235 Q. CHAIRMAN: well, I mean, if anybody makes a mistake, I

1 mean it's hard to own up to it, but sometimes one also
2 can cover oneself in paper or remove the paper --
3 A. Yes.
4 236 Q. CHAIRMAN: -- that shows the mistake.
5 A. Yes. 11:59
6 237 Q. CHAIRMAN: In administration we all realise that that
7 kind of thing happens. Does it look as if this has
8 happened here? Without having to point the finger at
9 anybody, does it look as if that's what happened.
10 A. That there was a cover-up? 11:59
11 238 Q. CHAIRMAN: Yes.
12 A. It looks that way to me, yes.
13 239 Q. CHAIRMAN: But you can't say who may have --
14 A. I can't say, yeah. I can't.
15 CHAIRMAN: Fair enough. 12:00
16 240 Q. MR. MARRINAN: If we could have page 1453 on the
17 screen. This was a letter, 8th September 2016, from
18 Séan Costello & Company, solicitors for Maurice McCabe?
19 A. What page?
20 241 Q. Writing to -- 12:00
21 A. What page, sorry?
22 242 Q. Could you deal with the screen?
23 A. Sorry, yeah.
24 243 Q. 1453?
25 A. Okay. 12:00
26 244 Q. This is a letter addressed to Kay McLoughlin but I
27 think that it came to you, isn't that right?
28 A. That's correct, yeah.
29 245 Q. You subsequently dealt with that, and I'll come to that

1 in a moment, but if we could go over to page 1454, just
2 identify these. These were a case supervision record,
3 isn't that right?

4 A. Yes.

5 246 Q. This is yours, is that so? 12:00

6 A. That's mine.

7 247 Q. Then it's headed "Maurice McCabe" and it's dated the
8 14th September, is that right?

9 A. If you just scroll down. Yes, 14th September, yeah.

10 248 Q. Then it refers to: 12:01

11

12 "Wrote to Ms. D to offer appointment and she does not
13 want to proceed".

14

15 okay, that had become clear, we have the documentation, 12:01
16 I'm not going to go through it, but Ms. D was written
17 to?

18 A. Yes, and she telephoned our office, yeah.

19 249 Q. She contacted the service and indicated that she didn't
20 want to proceed, and we already have evidence in 12:01
21 relation to that. Then, under that, I can't read your
22 handwriting?

23 A.

24 "Liaised with Tusla legal and write to Maurice McCabe's
25 solicitors closing." 12:01

26

27 250 Q. Closing?

28 A. And then the decisions were to follow up with Tara in
29 the legal office and prepare the file for close.

1 251 Q. And then if we go over to page 1455. This is an email
2 sent by you to Mr. Costello, dated 20th September 2016:

3
4 "I acknowledge receipt of your correspondence dated 8th
5 September 2016, which was addressed to Ms. Kay 12:02
6 McLoughlin. I would like to advise you that the case
7 was received by the regional social work team for
8 review following the concerns raised in your
9 correspondence with Ms. McLoughlin."

10
11 Is that really the basis on which you were brought in
12 to review the case? 12:02

13 A. Because of the difficulties with how Ms. McLoughlin had
14 managed the case?

15 252 Q. No, you say there: 12:03

16
17 "To advise you that this case was received by the
18 regional social work team for review following the
19 concerns raised in your correspondence with
20 Ms. McLoughlin." 12:03

21
22 A. When we did our audit, that was part of what we audited
23 and saw was a concern.

24 253 Q. 12:03
25 "I can inform you that the review has been completed
26 and correspondence outlining the outcome of that review
27 will be forwarded to you by the end of this week."
28

29 Then, if we just over to page 1456, this is your

1 report, isn't that right?

2 A. That's correct.

3 254 Q. It's headed:

4

5 "SART review of file."

12:03

6

7 And then 2/8/2013 and 3/9/2005, what's that a reference
8 to?

9 A. That would have been the ex-reference file to the case
10 back in 2006. Does it say 5? That was the date that
11 must have been on the ex-reference.

12:04

12 255 Q.

13 "Case was transferred to SART in July 2016. Purpose of
14 this review: To assist legal in their response to
15 Mr. McCabe's legal team and outline how the case has
16 been managed since re-opening."

12:04

17

18 The re-opening there refers to the re-opening in 2013,
19 is that right?

20 A. That's correct, yeah.

12:04

21 256 Q.

22 "Along with Children First, the Child and Family
23 Agency's policy and procedures for responding to
24 allegations of child abuse and neglect September 2014,
25 is the policy the agency must use when responding to
26 referrals of historical allegations of child sexual
27 abuse.

12:04

28

29 On reviewing the file that led to Ms. Loughlin's letter

1 to Mr. McCabe on 29th December 2015, the following was
2 established.

3
4 First of all, with regard to the allegations by Ms. D
5 in 2006, the HSE Social Work Department at that time 12:05
6 did not complete a child protection investigation into
7 the allegations made by Ms. D. There is no evidence on
8 the file to indicate that they met with Mr. McCabe to
9 discuss what had been alleged and to subsequently give
10 him an opportunity to respond to what had been 12:05
11 alleged."

12
13 All right. So you're dealing with the position in 2006
14 there and a review when the file was first dealt with,
15 isn't that right? 12:05

16 A. That's right.

17 257 Q.

18 "A standard report was then received by the Child and
19 Family Agency in August of 2013, which outlined
20 allegations made by Ms. D of historical child sexual 12:05
21 abuse. It would appear from the file that the case
22 remained on a waiting list unallocated following that
23 referral."

24
25 That's Laura Brophy's referral? 12:06

26 A. Correct.

27 258 Q.

28 "The referral made in 2013 contained information that
29 was not correct and which was subsequently amended by

1 the referrer in May 2014 and forwarded for the
2 attention of the Social Work Department accordingly.
3 The case remained unallocated."

4
5 Had there been any reference on the file that you 12:06
6 examined to the Garda notification, that's where it
7 would have appeared, isn't that right?

8 A. Yes.

9 259 Q.

10 "The file was reviewed on 7th May 2015, a decision was 12:06
11 made to respond to the referral received in line with
12 the aforementioned policy. This led to
13 Ms. McLoughlin's correspondence to Mr. McCabe on 29th
14 December 2015.

15 12:07
16 There is no evidence on file to indicate that Ms. D was
17 dealt with by the Social Work Department to corroborate
18 the information received in 2013 and subsequently
19 amended in 2014. Ms. McLoughlin's letter to Mr. McCabe
20 detailed information that was contained in the initial 12:07
21 referral in 2013. It is not clear why Ms. McLoughlin
22 relied on that referral information as opposed to the
23 amended information sent in 2014. It is also not clear
24 as to why a decision to proceed with the allegation was
25 made without cooperation and corroboration of the 12:07
26 alleged victim and without having formed some opinion
27 with regard to credibility of the allegation that was
28 referred."
29

1 Had you at any time spoken to Kay McLoughlin in
2 relation to how she had dealt with the file?

3 A. No.

4 260 Q. Was there any reason for that?

5 A. Because I had risk escalated my concerns to Linda 12:08
6 Creamer, so those matters would have been dealt with by
7 Linda and the Local Area Manager.

8 261 Q. Did you think of perhaps asking for an explanation from
9 Kay McLoughlin as to why these matters hadn't been
10 dealt with? 12:08

11 A. I could have asked, but I assumed it was human error.

12 262 Q. Were you aware of what we've termed the five-point plan
13 that had been put in place by Gerry Lowry and Seamus
14 Deeney in 2015, in May?

15 A. I don't recall that. 12:08

16 263 Q. CHAIRMAN: It's just a letter just with five points on
17 it.

18 MR. MARRINAN: Yes.

19 CHAIRMAN: This is what we need to do.

20 A. Okay. 12:08

21 264 Q. CHAIRMAN: I think one of them was, we can't proceed
22 without verifying what Ms. D is actually saying.

23 A. Okay.

24 265 Q. MR. MARRINAN: The first one was, yes, the very first
25 one. 12:08

26 A. Okay.

27 CHAIRMAN: which was kind of a sensible thing to do.

28 A. Yes, that's the first step.

29 CHAIRMAN: Given there were two different things

1 floating around on the 4file.

2 266 Q. MR. MARRINAN: Because there may have been an ambiguity
3 there. If you had seen that on the file and you had
4 examined it, you would have seen that Gerry Lowry and
5 Seamus Deeney were giving instructions to Kay 12:09
6 McLoughlin on how to proceed with a case that she was
7 troubled with at the time because it had been sitting
8 there for so long. The first point in the plan,
9 indeed, it appears to be how you went about your
10 business? 12:09

11 A. Yes.

12 267 Q. Is to write out to the complainant and to meet her, and
13 then to conduct an assessment?

14 A. Mm-hmm.

15 268 Q. And then consequent on that, writing to the accused, 12:09
16 isn't that right, or the alleged?

17 A. If there's any foundation 4to the allegation, yeah.

18 269 Q. So, the plan that was put in place wasn't adhered by
19 Kay McLoughlin, but looking at the file, you will see
20 that there were letters sent by Kay McLoughlin to Ms. D 12:09
21 and that there was notes on the file as to
22 conversations between Ms. D and staff in Tusla and it's
23 not clear that she is refusing to attend but she
24 certainly seems reluctant to attend.

25 A. Mm-hmm. 12:10

26 270 Q. Did you notice that?

27 A. That Ms. D was reluctant? Yes, I did, I saw that, but
28 she was willing to attend, and that's why we made our
29 efforts at a later date. I think her mother

1 contacted --

2 271 Q. I wasn't sure about that, but in any event, you
3 decided -- was it a conscious decision that you made
4 not to discuss the matter with Kay McLoughlin?

5 A. I spoke with my principal social worker and then 12:10
6 because it was risk escalated, I'm not Kay's manager,
7 Ms. McLoughlin's manager, it's up to Linda Creamer and
8 Gerry Lowry to speak to and then come back to me.

9 272 Q. You then go on to deal -- the next bullet point:

10

12:10

11 "While it has been presented as information of
12 significance from the correspondence of Mr. Séan
13 Costello dated 28th January 2015, most likely a typo,
14 and meant to be 2016..."

15

16 which is, in fact, correct, given the timeline of
17 events.

18

19 "...the DPP directed no prosecution and the DPP clearly
20 stated that no criminal offence had been described or 12:11
21 disclose (referring to the allegation made by Ms. D in
22 2006). There is no evidence on file that this
23 information was communicated to the HSE Social Work
24 Department at the time by An Garda Síochána.

25 Withstanding that, the HSE will continue to have a 12:11
26 statutory duty under Children First policy to
27 investigate all allegations of child abuse referred to
28 its department."

29

1 The next bullet point is:

2

3 "It is important to note at this point that a Garda
4 investigation and child protection investigation are
5 two separate investigations and although both agencies 12:11
6 work collaboratively in responding to allegations of
7 child abuse, the outcome of one agency's investigation
8 does not dictate the outcome of the other agency's
9 investigation."

10

12:12

11 That would appear to be the situation. But certainly
12 communication between both agencies in relation to the
13 same complaint is encouraged, isn't that right?

14 A. Absolutely.

15 273 Q. You didn't think of contacting the Gardaí when you were 12:12
16 doing this report?

17 A. It had been investigated, Séan Costello, it was clearly
18 it had been investigated and there was no prosecutions,
19 so there was no need.

20 274 Q. Then: 12:12

21

22 "In summary, it is clear that Mr. McCabe was not
23 offered fair procedures with regard to the allegation
24 made by Ms. D initially in 2006 and which was
25 re-referred to the Social Work Department in 2013 as a 12:12
26 result of a standard reporting procedure.

27

28 The Child and Family Agency under Children First has a
29 duty to respond appropriately to all allegations of

1 child abuse received in its department, current and
2 historical. While it was appropriate to respond the
3 concerns that were referred in 2013, given that they
4 were not previously addressed by the HSE Social Work
5 Department, this is an assessment that should have been 12:13
6 completed in 2006/2007, when the allegation was first
7 made.

8
9 The file does not present any evidence of a credibility
10 assessment with regard to the allegation made in 12:13
11 2006/2007.

12
13 This should have been completed prior to any contact
14 being made with Mr. McCabe in December 2015."

15 12:13
16 Next bullet point:

17
18 "The case was reviewed by the --"

19
20 CHAIRMAN: Sorry, Mr. Murrinan, can I just stop you 12:13
21 there, if you wouldn't mind.

22 MR. MARRINAN: Yes.

23 275 Q. CHAIRMAN: Early on in this, and it is months ago now,
24 I was told all kinds of things, like if someone goes to
25 the trouble of making a statement to the Gardaí, social 12:14
26 workers just take the statement at face value, that was
27 one thing I was told. Other people have subsequently
28 told me, at your level, that's nonsense.

29 A. Mm-hmm.

1 276 Q. CHAIRMAN: Another thing I was told was, look, it's
2 really difficult to interview teenagers, so we don't
3 interview teenagers, I mean that's again nonsense, I
4 presume.

5 A. Yes.

12:14

6 277 Q. CHAIRMAN: And I presume you're saying both of those
7 things are nonsense.

8 A. Absolutely.

9 CHAIRMAN: All right. Fair enough.

10 278 Q. MR. MARRINAN:

12:14

11

12 "The case was reviewed by the sexual abuse regional
13 team in Dublin Northeast, which was established in
14 April 2016 and who has responsibility for retrospective
15 child sexual abuse cases.

12:14

16

17 The Sexual Abuse Regional Team offered Ms. D an
18 appointment to meet with a member of the Sexual Abuse
19 Regional Team to discuss the allegation made. The
20 purpose of the meeting was to corroborate the
21 information received in the standard report form,
22 amended version, sent in May 2014, gather further
23 relevant information and assess the credibility of the
24 allegation being made, explain the role of the Sexual
25 Abuse Regional Team and the process the team follows
26 when responding to allegations of abuse and to
27 establish her wish to proceed and engage in the
28 process. "

12:14

12:15

29

1 Then over the page, at 1458:

2
3 "Ms. D failed to attend for her scheduled appointment.
4 She later made contact with the Social Work Department
5 and advised that she did not wish to pursue the matter 12:15
6 further.

7
8 In the absence of Ms. D's cooperation and the inability
9 of the Sexual Abuse Regional Team to complete an
10 assessment with regard to the credibility of the 12:15
11 allegation being made, the case will now close to the
12 Sexual Abuse Regional Team and the Child and Family
13 Agency.

14
15 It should be noted at this point that in the event 12:16
16 Ms. D comes forward in the future to make a complaint
17 with regard to the allegation initially made in 2016,
18 the Child and Family Agency will be obliged to re-open
19 the matter and follow the necessary procedures as are
20 outlined in the policy previously referred to. " 12:16
21

22 I think that remains the position, is that right?

23 A. That's correct.

24 279 Q. And you signed off on that?

25 A. Yes. 12:16

26 280 Q. As did Clare Tobin, as being your report in relation to
27 the matter. And it is comprehensive, but, as I've
28 already indicated to you, it doesn't deal with a
29 significant aspect in terms of the history and how the

1 file had been dealt with and the errors that had been
2 made which gave rise to lack of fair procedures for
3 both Ms. D and also for Sergeant McCabe.
4

5 Is there anything you would like to add -- 12:17

6 A. No.

7 281 Q. -- that might be of assistance to the Tribunal?

8 A. Not that I can think of, no.

9 MR. MARRINAN: would you answer any questions, please.

10 12:17
11 MS. LISA O' LOGHLEN WAS CROSS-EXAMINED BY MR. McGARRY,
12 AS FOLLOWS:

13
14 282 Q. MR. McGARRY: Thank you. Paul McGarry is my name, I am
15 one of the lawyers representing Maurice McCabe and I 12:17
16 have a few questions for you. I just want to go back
17 to a question you were asked at the outset by
18 Mr. Marrinan in relation to the concept of high risk
19 and what SART was set up to do. I think you agreed
20 that there were three types of risks in essence; a risk 12:17
21 to children, a risk to the person against whom an
22 allegation had been made, you referred to fair
23 procedure and the like, and then you talked about a
24 risk to the organisation. You referred, I think, a few
25 times in your evidence to organisational risk. would 12:18
26 it be fair to characterise your evidence as amounting
27 to -- or an acceptance that what you were looking at
28 here was in the third category, the risk to the
29 organisation?

1 A. Yes.

2 283 Q. That was as a consequence of, as you understood it all
3 along, the inadequacies or the poor management, as you
4 describe it, of the file?

5 A. Correct. 12:18

6 284 Q. Are there any criteria by which SART looks at what is
7 the risk to the organisation?

8 A. No, it's just from experience and professional
9 knowledge. I had worked a lot of these cases and I
10 deemed this to be one of organisational risk and others 12:18
11 of child protection risk, there's no criteria that was
12 set out.

13 285 Q. Your concern is to ensure that the organisation carries
14 out its functions properly?

15 A. Yes. There's a policy to be followed and from my audit 12:18
16 that wasn't being followed from within the region,
17 hence the purpose of my team to try and roll out that
18 policy and up-skill staff in the local areas to use it,
19 because it is a fair procedure policy, it offers
20 everyone fair procedure. 12:19

21 286 Q. Is it fair to say that one of the concerns that have
22 you is to ensure that the organisation isn't subject to
23 any criticism because of the way it manages its files
24 and documents?

25 A. Yeah, absolutely, that's part of my role. 12:19

26 287 Q. What sort of sanction does SART have within the
27 organisation?

28 A. Can you explain to me?

29 288 Q. Well, perhaps I will ask the question a different way.

1 Supposing you had seen on the file the various things
2 that we now know were not on the file in relation to
3 the Garda notification, what would your report have
4 said?

5 A. It would have been in the risk escalation that there 12:19
6 was details sent back and forth between Tusla and
7 Gardaí that was not correct and it would have been up
8 to higher management to follow up on that.

9 289 Q. Would your report have gone so far as to criticise the
10 local team for the way in which they had managed the 12:20
11 case?

12 A. That's not in my nature, to criticise any individuals
13 in particular. But, this case was badly managed and I
14 think I got that across in my risk escalation.

15 290 Q. In the context of what SART is trying to do, which was 12:20
16 to create a scenario whereby criticism of Tusla can be
17 avoided, is it part of what SART can do, to identify
18 who is responsible for making these mistakes and point
19 that out in the report?

20 A. Well, I named people in my risk escalation. 12:20

21 291 Q. Let me take it a step further: Supposing you had
22 discovered that the documents that weren't on the file
23 at the beginning when you were looking at them,
24 subsequently reappeared on the file before you put your
25 report together, what then would your report have said? 12:20

26 A. I would have reported that to my Principal Social
27 worker, that was a concern, that there was very
28 important missing information from the file, and
29 decided whether that needed to be then further risk

1 escalated.

2 292 Q. would that not have prompted you to enquire as to who
3 had taken the files -- sorry, taken the documents off
4 the file?

5 A. That's not my role, that's the role of above me to do 12:21
6 that. I report what I have found. It's not up to me
7 to discipline people. Like, the people that I was
8 dealing with down in the local area in Cavan-Monaghan
9 were on the same level as me. So, I risk escalate my
10 concerns and it's up to management above me to do the 12:21
11 discipline, if there is.

12 293 Q. I'm not talking about you personally disciplining
13 people, Ms. O'Loughlen, all I'm asking about is, would
14 you not have considered it appropriate for you to
15 enquire as to how come these documents were not on the 12:21
16 file?

17 A. If that had occurred.

18 294 Q. Yes?

19 A. Yes, I may have enquired why they weren't on the file.

20 295 Q. And that would have extended to asking who had been 12:22
21 responsible for these documents at the time?

22 A. Yes, because I most likely would have then risk
23 escalated, so I would have needed to know the details
24 before I risk escalated it, so I would have asked those
25 questions had that happened. 12:22

26 296 Q. Knowing now that they weren't on the file, who do you
27 think had carriage of these documents such that they
28 weren't on the file?

29 A. Individually?

1 297 Q. Yes.

2 A. Well, either the team leaders or the managers, between
3 the team leaders and the principal social workers, they
4 are normally in our offices who holds the Garda
5 notifications. It's not social workers, it's team 12:22
6 leaders and principals.

7 298 Q. But there is only one file, isn't that right?

8 A. That I saw, yes.

9 299 Q. Well, procedurally there is only one file?

10 A. Yeah, there should be, but then across the area, people 12:22
11 had different -- there could be two or three files,
12 depending.

13 300 Q. Leave aside the question of the emails for a moment,
14 the Garda notifications and the draft Garda
15 notifications, they're physical documents; isn't that 12:22
16 right?

17 A. Yes.

18 301 Q. So they are pieces of paper, isn't that so? So, if
19 they are not on this file, they must be somewhere?

20 A. Yes, because when you print them off, well in our 12:23
21 Dublin offices, you get three copies, one is for the
22 file and one should be kept by the team leader and one
23 is sent to the guards. So, that should be how --

24 302 Q. So somebody physically has to have possession of them?

25 A. Absolutely, yes. 12:23

26 303 Q. If they're not in this file?

27 A. Yes.

28 304 Q. They're not on any other file, isn't that right,
29 because there isn't any other file?

1 A. No.

2 305 Q. Okay. But now that we know, as Mr. Marrinan has
3 pointed out, that by the time the Tribunal comes to
4 investigate, they are on the file?

5 A. Yes, that's factual, yes. 12:23

6 306 Q. CHAIRMAN: I suppose the problem we face is that the
7 file is so widely circulated here, there and
8 everywhere?

9 A. So many different hands.

10 307 Q. CHAIRMAN: Saying that something happened is one thing 12:23
11 but pointing the finger of blame as to who did it is
12 very ding.

13 A. It's different, yes.

14 CHAIRMAN: Yes.

15 308 Q. MR. MCGARRY: well, I suggest to you that by the time 12:24
16 it comes to you there are only a very small number of
17 people that have control of the file?

18 A. well, I say there's a large amount of names on that
19 file of who it had passed between over the years.

20 309 Q. well, I'm not going to go back into the issue of 12:24
21 coincidence and the documents themselves. So, you're
22 saying that it's no part of what SART has to do to
23 identify or to apportion any responsibility for what
24 might or might not have happened to documents on the
25 file? 12:24

26 A. If I had uncovered that I would have risked escalated
27 it and I would have seen that the higher management
28 would have taken it from there in terms of -- but I
29 would have had to enquire as to what was missing and

1 why was it missing to report that to my line
2 management.

3 310 Q. Can you say anything now about your own view of what
4 happened, having regard to the fact that certain very
5 specific documents were not on the file when you a look 12:24
6 at it?

7 A. As in were they deleted or were they taken off the
8 file?

9 311 Q. Yes.

10 A. I don't know whether they were ever put on the file. 12:25
11 They may have been removed from the file when the error
12 was seen because they were thought that they don't need
13 to be on the file, or they may have been removed.

14 312 Q. Okay. Ms. Tobin, I think, used the word horrified to
15 describe her reaction to what had happened here? 12:25

16 A. We were both very -- yes, it was a file that stood out
17 to us as one that would have been one of the worst
18 managed in the region.

19 313 Q. At the time?

20 A. Yes, and I audited a lot of files with the team. 12:25

21 314 Q. This is before you even discover as you now have --

22 A. Exactly.

23 315 Q. -- that these documents were taken off the file?

24 A. Yes, and we only heard about that at a very later date.
25 We weren't aware of that. 12:25

26 316 Q. So, it was already one of the worst managed files you
27 had come across?

28 A. Yes.

29 317 Q. Before you discover about the file?

1 A. Within the ones that I audited, yes.

2 318 Q. So, during the course of the discussions you had, I
3 think you had some contact with the legal advisers,
4 isn't that right? You said that in your report.

5 A. Tara Downes, yes. 12:26

6 319 Q. Yes. And the legal advice that you say you got was, I
7 think we should interview Ms. D?

8 A. Basically to restart the assessment, using the Section
9 3 policy.

10 320 Q. You see, I'm suggesting to you that that's an 12:26
11 indication of an attempt to try to make things look
12 better from the perspective of the organisation?

13 A. No. That's about a new team restarting the
14 investigation so that fair procedures can be offered
15 and that we would begin at the start without -- 12:26

16 321 Q. But you have accepted in your evidence that this was an
17 organisational risk?

18 A. Yes.

19 322 Q. This wasn't a child protection issue.

20 A. No, but Mr. McCabe hadn't been offered fair procedure 12:27
21 and that was our role then, was to offer him fair
22 procedure.

23 323 Q. Ms. O'Loughlin, you have already accepted that that
24 wasn't the concern, the concern was not the fair
25 procedures issue vis-à-vis Mr. McCabe and not the child 12:27
26 protection issues, it was the way in which the file had
27 been managed?

28 A. Yes, but I have said in my risk escalation as well that
29 the fair procedures was a concern, that he hadn't been

1 offered them.

2 324 Q. You see, it's in that context that I was suggesting to
3 you that the only reason why you would think, or the
4 organisation would think, well, let's go and interview
5 Ms. D, as if she had never been interviewed from the 12:27
6 beginning, is to protect the perception of the
7 organisation?

8 A. No, because, again, if this was the only file that I
9 audited and worked, I can see that, but I audited
10 hundreds of files and we had to do the same in a number 12:27
11 of cases, we had to restart the investigation because
12 it hadn't been managed properly.

13 325 Q. Except that this all happens after you have been
14 corresponded with by Mr. Costello complaining about all
15 of this? 12:28

16 A. Hence we would have thought that is what would have
17 been the fairest way, would to give Mr. McCabe the fair
18 procedures and restart the investigation, because he
19 was never offered them, he was never met by anyone in
20 Tusla and we wanted to offer that. 12:28

21 326 Q. Are you aware of any subsequent enquiry in relation to
22 the absence of the documentation on the file?

23 A. Subsequent enquiry by?

24 327 Q. By anybody.

25 A. No. 12:28

26 328 Q. CHAIRMAN: In other words, an internal review?

27 A. I think there's an internal review being done within
28 Tusla.

29 329 Q. CHAIRMAN: At the moment.

1 A. At the moment.

2 330 Q. MR. McGARRY: You weren't at the meeting with
3 Mr. Deeney in September of this year that Ms. Creamer
4 went to, were you?

5 A. No, I'm on maternity leave since June. 12:28

6 331 Q. Right. Did you see the emails from January of this
7 year, 24th January, enclosing briefing notes and
8 chronologies?

9 A. No, I wasn't involved in any of those meetings or those
10 emails. I would have sent on our review and as part of 12:29
11 what they would have been discussing, but I wasn't part
12 of those discussions.

13 332 Q. So, when you finished your final report, that was the
14 last time you spoke to anybody about the subject
15 matter? 12:29

16 A. No. At later dates, when they started to have those
17 meetings, they were asking us to send on -- we were
18 emailed to send on the review or the reports that we
19 had, was there anything else that we had? And we gave
20 everything that we had, but it was already on the file. 12:29
21 These are just copies.

22 333 Q. Did you provide any additional information other than
23 the information that's --

24 A. No, I didn't have any additional information. I closed
25 and archived the file in September 2016. I didn't 12:29
26 complete any further actions after that.

27 MR. McGARRY: Thanks.

28 CHAIRMAN: Did you want to ask anything.

29 MR. McDERMOTT: When the evidence is finished, sir.

1 CHAIRMAN: Are there any questions?

2 MR. DIGNAM: Chairman, I have two areas I wanted to ask
3 Ms. O'Loughlen about.

4

5 MS. LISA O'LOGHLEN WAS CROSS-EXAMINED BY MR. DIGNAM, AS 12:30
6 FOLLOWS:

7

8 334 Q. MR. DIGNAM: There are two areas I wanted to ask you
9 about. The first is, and I listened carefully to your
10 evidence and, indeed, the documents that have been 12:30
11 opened to you by Mr. Marrinan, can I take it that you
12 consider interviewing Ms. D to have been an important
13 step to have taken?

14 A. Yes.

15 335 Q. Yes. Can I take it from that, that if you had been a 12:30
16 social worker or social work team leader who received
17 the referral in August 2013, that you would have
18 considered interviewing Ms. D to be very important step
19 to take?

20 A. Yes, absolutely. 12:30

21 336 Q. Can I take it that, in fact, it would have been the
22 first thing that would you have done?

23 A. First thing.

24 337 Q. Yes.

25 A. You can't go by third party referrals because that's 12:30
26 information that is coming from someone else and their
27 interpretation of someone's allegation, we need to get
28 it direct, if possible, from the complainant.

29 338 Q. You had an exchange with Mr. Marrinan and the Chairman

1 in relation the documents which weren't on the file
2 when you saw them, and you very fairly said you don't
3 know whether they were on the file before you received
4 the file or whether they were taken off the file before
5 it was given to you. The Chairman asked you did you 12:31
6 think it was a cover-up and you said "I don't think
7 there is between Tusla and An Garda Síochána"?

8 A. No.

9 339 Q. Can I take it that that is your opinion?

10 A. That is my opinion. 12:31

11 340 Q. Yes. Then there was a further exchange between you and
12 the Chairman, and the Chairman said, look, that when
13 people make a mistake, it's hard to own up to it but
14 sometimes one also -- sorry, the Chairman said , well I
15 mean, if anyone makes a mistake, I mean it's hard to 12:31
16 own up to it, but sometimes one can also cover oneself
17 in paper or remove the paper that shows the mistake.

18

19

20 A. Yes. 12:32

21 341 Q. And you were asked then:

22

23 "Without having to point the finger at anybody, does it
24 look as if that's what happened?"

25

26 In other words, that somebody removed the paper. The
27 mistakes in relation to the information and what was
28 contained in notifications and referrals have been
29 accepted by all of the relevant Tusla/HSE witnesses to 12:32

1 have been mistakes made by Tusla or HSE people. In
2 response to that question, whether there was a cover-up
3 to cover that mistake, you said:

4
5 "It looks that way to me, yes."

12:32

6
7 To the extent that you express a view there that there
8 may have been a cover-up, can I take it, that cover-up
9 is to cover-up mistakes that were made?

10 A. Yes.

12:32

11 342 Q. And that that cover-up could only have been a HSE and
12 Tusla cover-up?

13 A. Yes.

14 343 Q. Thank you.

15 CHAIRMAN: That's it. Mr. McDermott.

12:33

16 MR. McDERMOTT: Yes, Chairman, it is perhaps not a
17 question for the witness, but really just a question of
18 clarifying the record for the Tribunal, only because
19 it's been, I think, a couple of months since we've
20 heard any evidence in this module and obviously an
21 issue has come up today about whether or not the file
22 given to SART was complete but in particular whether if
23 it wasn't complete, some unknown person deliberately
24 removed certain material from it. Just purely because
25 of the passage of time, I just wanted to remind the
26 Tribunal that Kay McLoughlin, who is the person who had
27 custody of the file before it was handed over to SART,
28 made an additional statement to the Tribunal in which
29 she said:

12:33

12:33

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"I wish to state under oath, I did not remove any document from the file. I did not try to sanitise the file. I did not try to pretend things weren't as bad as they were. I did not cover up anything in relation to the Maurice McCabe file. I have no knowledge of anyone else removing documents from this file and returning them at a later date."

12:34

And when she was questioned on day 18, at page 19 of the transcript:

12:34

"Q. Is it your evidence you removed nothing from the file.

A. Yes.

12:34

Q. Did you try to sanitise the file?"

And she confirmed that her position was that she didn't. And also Mr. Gerry Lowry, when the matter was raised with him, indicated that he wasn't aware of anything being removed the file. I think the particular thesis put forward this morning, which is that it must have been deliberate because it related to Garda communications, I don't think that was put to either of those witnesses. But in any event, the Tribunal has their evidence, I'm sure will take it into account before forming any conclusions.

12:34

12:35

The only other observation I wanted to make was

1 obviously insofar as the word cover-up is being used, a
2 file was given to SART, they immediately saw the
3 problems, they immediately said Mr. McCabe hadn't been
4 given fair procedures, so there was no cover-up in that
5 sense, but I appreciate all of these matters are 12:35
6 matters of fact and they are entirely matters for you,
7 Chairman, but I purely wanted to make those
8 observations simply because it has been so many weeks
9 since that evidence was heard, people may have -- it
10 may not be to the forefront of everybody's mind. That 12:35
11 is all I want to do, Chairman

12 CHAIRMAN: Yes, Mr. McDermott, I appreciate that
13 intervention and obviously I will think very carefully
14 about whether or not documents were deliberately
15 removed from the file. There are a number of startling 12:36
16 coincidences, they are, perhaps, the most difficult to
17 deal with and one that has to be thought about is the
18 biggest red flag with the deepest colour, namely the
19 referral of the errors to the Gardaí, wasn't reported
20 on by somebody who, at the moment, in light of the 12:36
21 evidence I heard so far, Ms. O'Loughlen strikes me as
22 being a highly competent person and someone who would
23 do that.

24
25 As regards the send point, as to those who have said, 12:36
26 look, I didn't alter the file, well, that's fine, it
27 may be that the conclusion I reach on the first - and
28 I'm not saying what it is, and I can't say that now -
29 may be such that I find myself in a position where I

1 can't say how it happened, if I find that it did
2 happen. But it's very helpful to have that observation
3 because it reminds one of the difficulty of I
4 suppose --

5 MR. McDERMOTT: May it please the Tribunal. 12:37

6 CHAIRMAN: -- condemning people simply on the basis of
7 a hunch and I'm certainly not going to do that. But
8 thank you.

9 MR. McDERMOTT: Thank you.

10 MR. MARRINAN: Nothing further arising. 12:37

11 CHAIRMAN: Thank you very much for coming.

12 A. Thank you.

13

14 THE WITNESS THEN WITHDREW

15

12:37

16 CHAIRMAN: Yes.

17 MR. MARRINAN: That's the evidence that we have for
18 today, sir.

19 CHAIRMAN: Rather than breaking for lunch, I think I
20 will be aware because of the correspondence that I 12:37

21 received and also because of what the Tribunal has set
22 out to other people, that this is not really a question
23 of finalising things today, because we have to look at
24 this in the light of a lot of other evidence that we're
25 trying to get into shape and put in place, but the 12:37

26 observation just made, for instance, by Mr. McDermott
27 is helpful, I didn't want people to give me closing
28 submissions on this today in the same way as I got
29 closing submissions in relation to the matter of the

1 Garda in Donegal, which is unrelated to this,
2 yesterday, but in the event that anyone had any
3 observation to make because this is the point at which
4 I think a new page is turned, I would be very happy to
5 hear such an observation, similar, for instance, to 12:38
6 that given to me just now by Mr. McDermott, but if
7 people feel they don't want to, I understand that, and
8 certainly I feel that any final submissions, which
9 hopefully, and hope sometimes evaporates, will in due
10 course, and due course is an alarming thought at this 12:38
11 point, be brief, they can make an observation now or
12 not. It is not a question of, like the Anglican
13 marriage ceremony, speaking now or forever holding your
14 peace. So, if anyone wants to make an observation,
15 please do, and if they don't, well then we have the 12:38
16 sound of silence instead.

17 MR. McDOWELL: Chairman, can I briefly say this: That
18 we certainly will have observations to make but we
19 regard it as premature for us to make them at this
20 point. 12:39

21 MR. CUSH: Sorry, Chairman, if I may just indicate, we
22 had envisaged saying something because we thought that
23 the Tribunal had decided that this was the appropriate
24 time, we were always intending to be very short, but if
25 it's to go back for a more complete observation, it's 12:39
26 probably preferable, for example, that I might hear
27 Mr. McDowell make his submissions before making
28 submissions. So, on that basis perhaps it's best to
29 leave it over.

1 CHAIRMAN: Yes. Well, I mean, look, we've got to the
2 point where we discovered the report of Ms. D, how that
3 was dealt with in 2006, we've got the again referral,
4 self-referral in consequence of what her mother felt
5 was her being troubled in 2013. 12:40

6 MR. CUSH: Yes.

7 CHAIRMAN: What was taken down then, the word
8 processing error, that's what everyone is saying that
9 it is, what happened to the word processing error,
10 where it went, the attempts to correct it following 12:40
11 upon it being discovered in the Garda station, the
12 futility apparently of those attempts. Notwithstanding
13 those attempts, the letter to Maurice McCabe on 29th
14 December 2015, and then we have now this issue of the
15 file, when the review comes to be made by 12:40
16 Ms. O'Loughlin, which doesn't contain the referral to
17 the Gardaí. So, those are the things, I suppose, that
18 are uppermost in my mind. I don't think that will come
19 as a surprise to anybody.

20 MR. CUSH: No. 12:40

21 CHAIRMAN: But if you want to hold back. Sorry,
22 Mr. McDowell, I'm tempting you, it seems.

23 MR. McDOWELL: If those are the issues on which
24 submissions are sought or observations are sought at
25 this juncture, we would need time to consider it. 12:41

26 CHAIRMAN: That's fine. That's fine. But I mean you
27 realise those --

28 MR. McDOWELL: Apparently there will be time. You're
29 not going to start --

1 CHAIRMAN: well, you will have time, I won't have time.
2 MR. McDOWELL: You're not going to start -- sorry, you
3 won't have time but we will have time to do that.
4 CHAIRMAN: Yes.
5 MR. McDOWELL: I would prefer to take that time. 12:41
6 CHAIRMAN: Do those points seem to you to be sane and
7 sensible?
8 MR. McDOWELL: Yes, except there are some --
9 CHAIRMAN: Additional things.
10 MR. McDOWELL: -- hanging threads. 12:41
11 CHAIRMAN: what are you worried about?
12 MR. McDOWELL: I will make that clear when I make my
13 observations, Judge.
14 CHAIRMAN: All right. Okay. So, does anyone else want
15 to say anything? If there were hanging threads, for 12:41
16 instance, Mr. McDowell, that you were worried about,
17 like you feel that we haven't perhaps focused on
18 particularly, I mean if you feel that there are those
19 things there, I mean there's the ordinary way of
20 communicating with Mr. Murrinan or Ms. Leader or 12:41
21 Mr. McGuinness.
22 MR. McDOWELL: Indeed.
23 CHAIRMAN: That's always very helpful. And then the
24 other thing is, if you want to, you can write a letter,
25 I must say, I prefer the first rather than the second, 12:42
26 but you're not going to be ignored, that's for sure if
27 it's half reasonable.
28 MR. McDOWELL: Certainly. We will make our views known
29 one way or the other, Judge.

1 CHAIRMAN: All right. And similarly.

2 MR. DIGNAM: Judge, I think in the circumstances
3 there's no point in me making submissions or
4 observations rather than them all being taken together.
5 I propose to hold off. 12:42

6 CHAIRMAN: As you are there, I mean one of the major
7 things is: what happened internally in the Gardaí --

8 MR. DIGNAM: Yes.

9 CHAIRMAN: -- when the very serious allegation came in
10 and it led obviously in the context of what was 12:42
11 happening to other things, including a face-to-face
12 meeting in Garda headquarters with Sergeant McCabe in
13 circumstances where what was then identified as a
14 complete and catastrophic error wasn't, in fact,
15 notified to those whom he was talking to in Garda 12:42
16 headquarters. I mean, that's a very, very big thing in
17 my mind and I should maybe tell you that now.

18 MR. DIGNAM: I appreciate that, Chairman, and I also
19 suspect that is probably one of the hanging threads
20 that Mr. McDowell is referring to. I will take that on 12:43
21 board, Chairman.

22

23 Just in relation to today's evidence and I don't
24 propose to get into it in any great detail and the
25 suggestion of removal of documents and cover-ups, 12:43
26 etcetera, as the Tribunal will know and fully
27 appreciate, nothing of that was ever put to any of the
28 Garda witnesses.

29 CHAIRMAN: Again, I have to try and be sane insofar as

1 that's possible.

2 MR. DIGNAM: Yes.

3 CHAIRMAN: But no one is saying that the Garda had --

4 the Garda didn't have the file.

5 MR. DIGNAM: Yes. 12:43

6 CHAIRMAN: They had no access to the file, unless they

7 engaged in some kind of subterfuge they couldn't have

8 taken documents off the file. Then even if they did,

9 how in heaven's name were they going to get them back?

10 MR. DIGNAM: Yes. 12:43

11 CHAIRMAN: I don't believe it's my job to jump the

12 Grand Canyon in terms of facts and I don't propose to

13 do that.

14 MR. DIGNAM: No. And, in fact, those are the points I

15 was going to make to you. 12:43

16 MR. BUCKLEY: Niall Buckley for Ms. G. I think our

17 position is much the same as Mr. Cush's, we had

18 anticipated making very brief submissions today,

19 nothing the Tribunal has said in terms of its current

20 thinking poses any concern but it's to be deferred back 12:44

21 to another date to make fuller submissions, it seems be

22 more appropriate to be done then.

23 CHAIRMAN: well, it may be that everything to do now

24 with Ms. D is finished and, if you like, I mean I don't

25 see that Ms. D is going to be coming up again, I think 12:44

26 that's all done now and there has to come a point where

27 you say, right, that's it, but if you wanted to make

28 submissions on that and you clearly don't have to come

29 back, it may be all irrelevant to you from here on in,

1 you'll need to look at the shape of the witness list
2 and any documents obviously to decide that, but that's
3 the way it's looking to me at the moment. If you, for
4 instance, wanted to simply make written submissions, I
5 would accept written submissions as well if that was 12:44
6 more convenient.

7 MR. BUCKLEY: Okay. Very well, Chairman. I suppose we
8 will just see what is being proposed by the other
9 parties in terms of their representations at a later
10 date and what is the most efficient means of addressing 12:45
11 them. Thank you.

12 CHAIRMAN: All right. The Tusla is going to be in the
13 same position as the HSE effectively. Okay. Well,
14 that is it then.

15 MR. MARRINAN: That's it. 12:45

16 CHAIRMAN: I can't promise anything in terms of what
17 we're going to be working on.

18 MR. MARRINAN: No, not at the moment.

19

20 THE TRIBUNAL THEN ADJOURNED TO BE CONFIRMED 12:45

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