

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON MONDAY, 15TH JANUARY 2017 - DAY 41

41

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

GWEN MALONE STENOGRAPHY
SERVICES

APPEARANCES

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

REGISTRAR: MR. PETER KAVANAGH

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

FOR SGT. McCABE: MR. MICHAEL McDOWELL SC
MR. PAUL MCGARRY SC
MR. BREFFNI GORDON BL

INSTRUCTED BY: SEAN COSTELLO & COMPANY
HALIDAY HOUSE
32 ARRAN QUAY
DUBLIN 7

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

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

FOR ANNMARIE RYAN: MR. COLM Ó HOISÍN SC
MR. PETER SHANLEY BL

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

FOR MR. JOHN BARRETT: MR. JOHN ROGERS SC

INSTRUCTED BY: MR. FELIX MCTIERNAN
NOBLE SOLICITORS
FRANKFORT BUILDING
DUNDRUM ROAD
DUBLIN 14

FOR MR. COLM SMYTH SC
MR. MICHAEL MacNAMEE BL
MR. GARRET BYRNE BL:

MR. PAUL SREENAN SC
MS. ELLEN GLEESON BL
MS. CATHERINE DONNELLY BL

INSTRUCTED BY:

MS. GERALDINE CLARKE
MR. RONAN O'BRIEN
GLEESON MCGRATH BALDWIN
29 ANGLESEA STREET
DUBLIN 2

FOR MS. FRANCES FITZGERALD
MR. MICHAEL FLAHIWE
MR. KEN O'LEARY
MR. NOEL WATERS
MR. CHRISTOPHER QUATTROCIOCCHI
MR. MARTIN POWER:

MR. PATRICK MCCANN SC
MR. GERARD MEEHAN BL

INSTRUCTED BY:

MR. CHARLES WALLACE
CHIEF STATE SOLICITOR'S
OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

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1 THE HEARING RESUMED ON MONDAY, 15TH DAY OF
2 JANUARY, 2018 AS FOLLOWS:

3
4 MR. KEN RUANE CONTINUED TO BE EXAMINED BY MR. MARRINAN:

5
6 MR. MARRINAN: Mr. Ruane, please. Just, sir, in
7 relation to Mr. Ruane, I asked a number of questions on
8 Friday in relation to meetings prior to the
9 commencement of the O'Higgins Commission, at which
10 Mr. John Barrett may or may not have been present, 12:02
11 along with Mr. Cyril Dunne, and I asked Mr. Ruane to
12 make available any notes that he may have in relation
13 to those meetings and he has provided the Tribunal this
14 morning in circumstances where, unfortunately, there
15 was a bereavement in his family and he had to attend a 12:03
16 funeral in Limerick, so he wasn't able to deal with it
17 over the weekend, and that is perfectly understandable.
18 Unfortunately, the documents that he has provided are
19 handwritten and he has agreed that he is going to do --
20 they are effectively illegible, unfortunately, so he is 12:03
21 going to type those out for the Tribunal. And he has
22 also made available some emails, on a quick perusal of
23 them it appears the Tribunal already had those emails
24 and they have been circulated. So what we propose to
25 do this morning is just simply continue on with 12:04
26 Mr. Ruane's evidence, and should any matters emerge
27 after we have perused the typewritten notes and they
28 have been made available to the parties, he will make
29 himself available to be recalled, if necessary.

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1 Q. And Mr. Ruane, I think that you want to say something arising out of your evidence on Friday dealing with the discovery and disclosure aspect, leading up to the O'Higgins Commission?

12:04

A. Yes, thank you, Mr. Marrinan. Just, I will be very brief, just to re-emphasise again in terms of the disclosure and the discovery, in respect of civil litigation cases that would always fall to me in terms of my responsibility to get material, for example, to the Chief State Solicitor's Office, but certainly in the context of commissions and inquiries, and I am not going to labour the point, the responsibility for making the discovery always rests with the liaison officer. And to give a number of examples, I had mentioned the, for example, the Smithwick Tribunal, certainly my office had no involvement in relation to the running of that; the Fennelly Commission, there was an assistant commissioner appointed to liaise directly with the Commission, so that's -- I am not going to waste time, that's the first point I am making.

12:04

12:05

12:05

In terms of establishing a legal team to represent the Commissioner, yes, that was my responsibility, and I took that on board. In fact, I had sent an email on the 1st April with the sanction seeking my client's instructions as to whether I would put in place a legal team, and I got instructions back two weeks after. In fact, my email of the 15th April was a reminder prompt

12:05

1 to say can I please have instructions, either in the
2 positive or negative. And I just wanted to make that
3 point.

4
5 In terms of the discovery, what I will say is that I 12:06
6 suppose a lesson out of the O'Higgins Commission was to
7 get documentary counsel in a lot sooner for inquiries
8 and that's something I have put in place myself for a
9 number of inquiries since then.

10 12:06
11 And finally, all I would say is that Mr. O'Hagan, David
12 O'Hagan, who was the solicitor for the O'Higgins
13 Commission, who I knew as a colleague having worked for
14 him in the Chief State's office, first contacted me on
15 the 12th February 2015 following the formal 12:06
16 establishment of the Commission. And his inquiry, his
17 preliminary inquiry at that point with me, he was
18 trying to effectively crack the code -- Mr. Guerin had
19 used codes, various codes for various members in his
20 report and Mr. O'Hagan, quite correctly, rather than 12:07
21 going to Mr. Guerin, was coming to An Garda Síochána to
22 try and see if we could assist. And I know that on
23 12th of February I sent an email to the Commissioner
24 and to the Deputy Commissioner, to who I was reporting,
25 effectively referencing the call from Mr. O'Hagan, and 12:07
26 my understanding is that Assistant Commissioner Kenny
27 was appointed liaison officer on that date. And at
28 that point it would have been his responsibility
29 effectively to get a team up and running. And I am not

1 going to waste -- sorry, to take your time.

2 2 Q. You have --

3 A. But I just wanted to make the point, you will see from
4 March and April I was certainly attending meetings and
5 doing my best providing legal assistance to get that 12:07
6 discovery up and running, but it would remain the
7 responsibility of the liaison officer. Corporately, I
8 will agree with you, there was a delay getting the
9 documentation down, but I just wanted to make the
10 point. I was actually dealing with, at the time, one 12:08
11 of the longest running jury civil cases in the High
12 Court, I had responsibility of that, so...

13 3 Q. Yes. No, no, I think I brought you through the time
14 frame on Friday --

15 A. Yes, yes. 12:08

16 4 Q. -- first of all in relation to Mr. Guerin's inquiry --

17 A. And what I would say to that, certainly again, my
18 experience is, subsequent to the O'Higgins Commission I
19 have seen inquiries within An Garda Síochána where
20 liaison officers are appointed, but my experience from 12:08
21 a corporate point of view, and it may be a compliance
22 issue, that generally the organisation doesn't move
23 until there is a first contact from the Tribunal or the
24 Commission, but -- and that may be something to be
25 looked at down the line. 12:09

26 5 Q. Well, I suppose the reason that I was asking you the
27 questions on Friday in relation to the timescale, first
28 of all, starting on the 27th February 2014 with Seán
29 Guerin commencing his examination --

1 A. Yes.

2 6 Q. -- of the papers that had been provided and disclosed
3 to him by the Gardaí, and then to the 6th of May of
4 2014, when he reported, and then the Government's
5 response to the report and eventually the draft terms 12:09
6 of reference being laid before the House on 19th of
7 December, was perhaps to indicate that the Guards
8 hadn't, in fact, prepared adequately to disclose the
9 material to the O'Higgins Commission?

10 A. And I will -- you know -- 12:09

11 7 Q. What you are saying is that --

12 A. You have a valid point, but what I am saying is, the
13 responsibility for that is -- it never fell within my
14 office. If we're talking about a civil case I'm the
15 person here. And in the context of dealing with the 12:10
16 discovery, one would have thought that all of the
17 documentation was actually in the northern region there
18 and ready to go for the -- but, you know, in terms of
19 corporate responsibility, yes, I would say An Garda
20 Síochána, there are issues there. But I was just 12:10
21 trying to make the point, the commissions and tribunals
22 don't normally fall within my area of responsibility.

23 8 Q. Yes. And it was mid-February that you, on the 12th of
24 February, that you first heard of this from
25 Mr. O'Hagan? 12:10

26 A. It was my first contact from Mr. O'Hagan.

27 9 Q. He was ringing you in relation to something entirely
28 separate?

29 A. No. Well, no, he was ringing me to try and break down

1 the codes.

2 10 Q. Yes.

3 A. But I take it that was the -- but I acted immediately
4 when Mr. O'Hagan contacted me.

5 11 Q. Yes. And your response, as you say, was immediate to 12:11
6 it?

7 A. Same day.

8 12 Q. And then you gave evidence on Friday that it didn't
9 necessarily follow just simply because a commission of
10 investigation had been set up that the Gardaí would be 12:11
11 represented at it?

12 A. Yes.

13 13 Q. So a consideration was then given in relation to how
14 the Commission was going to go about its business?

15 A. Yes. 12:11

16 14 Q. And I think that you made the point that it wasn't an
17 adversarial commission, but, at the same time, the
18 manner in which the modules were set up and the
19 examination --

20 A. Yes. 12:11

21 15 Q. -- it became clear that individual members were going
22 to have to be represented --

23 A. Yes.

24 16 Q. -- but also the organisation as a whole?

25 A. That's the view I took. 12:11

26 17 Q. And you made that point?

27 A. I did.

28 18 Q. And arising out of that, you then, I think it was the
29 30th of March that you had a conversation with the

1 Commissioner?

2 A. It was actually, when I -- my email to the Deputy
3 Commissioner was referencing a phone call with him, it
4 was the Deputy Commissioner.

5 19 Q. Deputy Commissioner? 12:12

6 A. Who was AC Kenny at the time.

7 20 Q. Yes.

8 A. I suppose I felt, Mr. Marrinan, it would have been
9 remiss of me not to ask the question.

10 21 Q. So then it was the 1st of April that you emailed? 12:12

11 A. I did, and I had copied the -- --

12 22 Q. We have those materials.

13 A. Yeah. In other words, I suppose, the point I am
14 making, on the 1st of April, nobody -- and this is not
15 a criticism of anybody, I am just -- nobody picked up 12:12
16 the phone on the 1st of April in the afternoon and
17 said, yeah, Ken, go ahead. It was over two weeks later
18 I got a reply to proceed, so...

19 23 Q. And we have in the materials that we have circulated,
20 we can see -- 12:12

21 A. You have all of that.

22 24 Q. -- that there was trouble brewing with the Commission,
23 if I can put it that way --

24 A. Absolutely.

25 25 Q. -- and an impatience growing because -- 12:13

26 A. There was. But on the 6th of May I had a telephone
27 call with Mr. O'Hagan which hopefully you have that
28 note as well, where it was late in the day but he said
29 he was happy with the progress that had been made with

1 the discovery on that date.

2 26 Q. And in ease of the position of the Gardaí, I think, and
3 again there was an indication of this on Friday, namely
4 that Assistant Commissioner Kenny had originally been
5 given the task of acting as liaison officer? 12:13

6 A. He had. And actually I had attended a meeting on the
7 11th of May which I know you have notes of, Chief
8 Superintendent Healy who had come into the -- he was in
9 fact the third liaison officer because the second
10 liaison officer had also encountered considerable 12:13
11 difficulties. And I did attend a meeting in April
12 where he had contacted the Commissioner's office
13 looking for more support. But Chief Superintendent
14 Healy had made a comment at a meeting on 11th of May
15 that with respect to AC Kenny, I have it in my own 12:14
16 notes, we lost six weeks. So I am not sure exactly
17 what he meant by that. There may have been a
18 perception arising out of the fact that the chief
19 superintendent, who was the liaison for the Guerin
20 Report, there may have been a perception that all of 12:14
21 the documentation was necessary -- necessarily collated
22 at that point. I simply don't know. But those
23 questions would have to go to Assistant Commissioner
24 Kenny or Chief Superintendent Ward.

25 27 Q. Okay. 12:14

26 A. But what I will agree, the issue of a documentary
27 counsel probably would have resolved matters a bit
28 sooner but the other point is, you need to have all of
29 the documentation in some sort of format before you

1 bring documentary counsel in to look at relevance and
2 privilege, but I will agree with that point.

3 28 Q. Mr. Ruane, you will appreciate that this arose in
4 circumstances where I was pointing out on Friday that
5 Annmarie Ryan of the Chief State Solicitor's Office 12:15
6 wasn't assigned to the case until 27th of April?
7 A. Absolutely.

8 29 Q. And it wasn't until the following day an application is
9 made for a nomination of counsel and counsel weren't
10 nominated until the 1st May? 12:15
11 A. Yes.

12 30 Q. And I think didn't receive papers until 6th May?
13 A. And again, I had asked sometime certainly before 6th of
14 May for papers to be made available to me from the
15 Commission liaison office. 12:15

16 31 Q. And this was in the context of proceedings to commence
17 on the 14th of May?
18 A. Yes.

19 32 Q. Okay. Just one other matter before I come to deal with
20 the meeting of the 11th May? 12:15
21 A. Yes.

22 33 Q. You recall that I brought you briefly through a meeting
23 that you attended with Sergeant McCabe and where the
24 Commissioner gave him support?
25 A. Yes. 12:16

26 34 Q. And you referred then to another support matter
27 involving Mr. Kieran Mulvey?
28 A. Yes.

29 35 Q. If I could just deal with that --

1 A. Yes.

2 36 Q. -- because there's just a few matters that arise from
3 it. If I could have page 3723 on the screen, please.
4 This is an email from you to John Barrett --

5 A. Yes. 12:16

6 37 Q. -- dated 19th March of 2015 at 22:10, and it's copied
7 to Cyril Dunne --

8 A. Yes.

9 38 Q. -- John Twomey, Anthony McLoughlin, Alan Mulligan, John
10 Walsh, the Commissioner and John Keegan and Fiona 12:17
11 Broderick?

12 A. Yes.

13 39 Q. They are all members of An Garda Síochána, isn't that
14 right?

15 A. Yes. 12:17

16 40 Q. With the exception of Mr. Cyril Dunne?

17 A. Well, he is a civilian member of An Garda Síochána.

18 41 Q. Yes, he is a civilian member. I will just read from
19 it:
20 12:17

21 "John
22 I understand that you have finalised terms of reference
23 for the appointment of Mr. Kieran Mulvey in respect of
24 examining certain matters pertaining to Sergeant
25 Maurice McCabe. You will also be aware that the 12:17
26 Commissioner has also made a decision, as I understand,
27 to engage the services of Mr. Anthony Kerr,
28 barrister-at-law, to examine the current bullying and
29 harassment policies within An Garda Síochána and advise

1 or issue recommendations as to whether they are robust
2 and in line with industry norms.

3
4 As it is proposed that Mr. Kerr will examine policies
5 and procedures that fall within your ownership, it is 12:18
6 vital that both Chief Superintendent Internal Affairs
7 and Mr. Alan Mulligan have an input into both the terms
8 of reference for Mr. Kerr and also the process that it
9 is processed he will engage with. Your office will be
10 in a position to advise on any recent development in 12:18
11 terms of current reviews that are currently underway
12 already.

13
14 I will provide the necessary legal advice on any issues
15 that arise in respect of the terms of reference. I do 12:18
16 not believe we need to get the views of the Attorney
17 general's office or the Minister for Justice in respect
18 of the terms of reference for Mr. Kerr, but would
19 appreciate any views you have on that.

20 12:19
21 As stated, given that Mr. Kerr will be engaged to
22 examine a policy that falls within HRM domain, I am of
23 the view that it is vital that your office has an input
24 into framing those terms of reference. Perhaps the
25 broad terms of reference you had suggested for 12:19
26 Mr. Mulvey might now form the basis for the terms of
27 reference for Mr. Kerr. In this regard, and to assist
28 me in advising on the terms of reference for Mr. Kerr,
29 I would appreciate if a copy of the finalised terms of

1 reference for Mr. Mulvey would be forwarded to me for
2 information at your earliest convenience."

3

4 And you have signed that.

5 A. Yes.

12:19

6 42 Q. So there were two terms of reference: There were terms
7 of reference for Mr. Mulvey?

8 A. As I had understood it, it was proposed that Mr. Kerr
9 would come in and do a paper review of the various HR
10 policies within An Garda Síochána, a general review of 12:20
11 the various policies to examine their robustness and
12 whether there was room for improvement. Mr. Mulvey's
13 terms of reference were more specific in relation to
14 work -- proposals for workplace issues, as I recall,
15 for Sergeant McCabe and there was -- there was input 12:20
16 from both the AG's office and the Department of Justice
17 in that respect.

18 43 Q. Yes. So if we just turn to page 3718. Are these the
19 terms of reference that had been drafted by
20 Mr. Barrett?

12:20

21 A. Yeah, I do know, my understanding is the then-chief
22 administrative officer, Mr. Dunne had an input into the
23 terms of reference for Mr. Mulvey.

24 44 Q. Are these the ones for Mr. Mulvey?

25 A. Yes.

12:20

26 45 Q. Yes.

27 A. I believe -- I think, I am not sure if they were the
28 finalised ones. It did become a shorter, but yes.

29 46 Q. We will just look at the narrow terms:

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"Draft terms of reference for the programme of work to be conducted by Mr. Kieran Mulvey

To consider and make recommendations on a range of issues raised by Sergeant Maurice McCabe in the context of the current Garda policy, Working Together to Create Positive Working Environment. 12:21

To consider and make recommendations on the context of the policy, the training, support structures in place, to support it and its influence in the Garda Síochána workplace." 12:21

And then:

"To review and consider the specific workplace relationships which are highlighted by the experience reported by Sergeant Maurice McCabe at the Divisional Headquarters in Mullingar Garda Station in County Westmeath since January 2014, and to draw conclusions and mark recommendations from such review." 12:21

And then there are broad terms of reference. First of all, with respect to the Garda policy:

"Working together to create positive working environment; consider all pertinent matters relating to recent cases of alleged bullying and harassment in the workplace; and other conclusions and recommendations... 12:22

1 and specific matters arising; review all aspects
2 relating to the Garda policy and make recommendations
3 for the improvement of the policy and its application
4 in An Garda Síochána; provide to the Commissioner of An
5 Garda Síochána any recommendations for management 12:22
6 improvement of workplace relations arising from the
7 wide-ranging review."
8

9 If we could just turn to page 3716, and we will see
10 there at the bottom, first of all, there is an email 12:23
11 from you to Richard Barrett in the Attorney General's
12 office dated 6th March of 16:36, and it says:
13

14 "Richard
15 I would be obliged for your views on the enclosed." 12:23
16

17 Those were the enclosed draft terms of reference, is
18 that right?

19 A. Yes.

20 47 Q. And then there is another email above it, and it's 12:23
21 again:
22

23 "Richard
24 Mr. Barrett, the executive director of human resources
25 and people development, has asked in advance of a 12:23
26 meeting here to discuss the above which is scheduled
27 for tomorrow. Would it be possible to get a
28 preliminary view or otherwise in relation to the
29 proposed terms of reference for Mr. Mulvey? I am

1 grateful for your assistance to date."

2
3 And that was sent to Richard Barrett and it's copied to
4 Mr. Liam O'Daly in the Attorney General's office. And
5 this was a proposed meeting that was to take place with 12:24
6 Mr. Barrett at which Mr. O'Daly was to attend, is that
7 right?

8 A. The 11/3, let me just -- my understanding is, it was to
9 get a view, because I certainly -- I attended a meeting
10 with Mr. Barrett, Mr. Barry O'Brien and then-Assistant 12:24
11 Commissioner John Twomey in Mr. Barrett's office on
12 12/3/2015 to discuss the proposed terms of reference.
13 No, there was no meeting the following day,
14 Mr. Marrinan, with the AG's office but there was an
15 internal meeting. 12:24

16 48 Q. Okay. But just dealing with this, Mr. Mulvey was being
17 tasked with making recommendations in relation to
18 dealing with Sergeant Maurice McCabe, is that right?

19 A. It was certainly proposed, yes.

20 49 Q. Yes. Why was the Attorney General's office involved in 12:25
21 this?

22 A. Really, I suppose, to -- you know, within An Garda
23 Síochána, you would always look for an external view on
24 certain matters and it was a significant development
25 bringing in an external expert, somebody with 12:25
26 Mr. Mulvey's expertise, and it was really to see was
27 there anything the organisation was not including that
28 should be included or anything that was being included
29 that shouldn't be -- shouldn't be. And I suppose,

1 Mr. Marrinan, it was part of a -- there was engagement
2 with the Attorney General's office and the Department
3 in relation, generally in relation to the workplace
4 issues concerning. It wouldn't be unusual.

5 50 Q. If we just go to page 3715, because -- sorry, on the 12:26
6 previous page, 3716, that last email that I read was
7 copied to Mr. Flahive in the Department of Justice and
8 having received a copy of that on 11th March, at 3715,
9 we will see that Mr. Flahive sent an email to you
10 saying: 12:26

11
12 "Ken
13 Thank you for copying me with the draft terms of
14 reference. I know you were seeking Richard's views but
15 I might also offer some thoughts. 12:26

16
17 Clearly, Sergeant McCabe's specific issues must be
18 looked at but I wonder if this would be a good
19 opportunity given the stature and experience of Kieran
20 Mulvey to invite him to also make any more general 12:27
21 recommendations that occur to him. I say this because
22 clearly there needs to be in place a procedure to deal
23 with any such difficulty case in the future.

24
25 I understand that Garda Management have been in 12:27
26 discussions with the Garda Associations on a revised
27 bullying and harassment policy, but as I say, this may
28 be an opportunity for independent expert advice.
29

1 If this approach were followed, the draft terms of
2 reference could perhaps look something like this:

3 1. To examine Sergeant Maurice McCabe's concerns that
4 he is being subjected to bullying and harassment and to
5 make recommendations on how these concerns might best 12:27
6 be addressed.

7
8 2. To assess the adequacy of the procedures in place
9 in the Garda Síochána to deal with the issue of
10 bullying and harassment and to make recommendations on 12:27
11 how such procedures might be enhanced.

12
13 I realise that there are a number of different
14 possibilities in the wording of the terms of reference
15 and a number of policy conversations involved and this 12:28
16 is simply one possibility which might be considered.

17
18 Regards
19 Michael"

20 12:28
21 why were the Department in the loop in relation to
22 this?

23 A. Well, there's two issues, I suppose, with that
24 generally in terms of HR issues and such sensitive and
25 significant issues. I think you could be criticised 12:28
26 more for not keeping the Department and the Minister
27 informed as to what was being proposed in relation to
28 not to -- and also, the Department were very much aware
29 of the overall issues pertaining to Sergeant McCabe and

1 certainly I am of the view it would have been prudent
2 to -- it wouldn't have been unhelpful to get their
3 views in relation to these matters.

4 51 Q. So was there -- am I sensing sort of a scenario here
5 where matters concerning Sergeant McCabe arise, because 12:29
6 there are so many issues that concern him that, for
7 instance, the Attorney General's office might be
8 involved in giving legal advice?

9 A. Yes, and in fact I can assist you. Generally,
10 certainly in my experience as Head of Legal Affairs, 12:29
11 the Attorney General's office would pretty much take
12 the view in terms of legal advice to An Garda Síochána
13 if it was an issue that had an impact on the Department
14 and the Minister, that the Department would be in the
15 loop, effectively. 12:29

16 52 Q. Yes. So, a sense here, because there were many issues,
17 that you had other files in relation to Sergeant
18 McCabe, isn't that right?

19 A. Yes.

20 53 Q. And you -- the Attorney General's office had been 12:29
21 alerted to those as well, isn't that right?

22 A. Well, generally -- some, certain files are still alive,
23 but generally the Chief State's office would represent
24 An Garda Síochána.

25 54 Q. Yes. 12:30

26 A. Yes. But the Department, if the Department are a named
27 party they would be involved as well, yes.

28 55 Q. So is there a sense here that any matter that arises in
29 relation to Sergeant McCabe, that the Attorney

1 general's office will be notified and consulted and the
2 Department of Justice will be notified and consulted?

3 A. I can't say that every matter, but certainly -- this
4 was significant, it was proposed to bring in an
5 external expert. I do recall at this period in time, 12:30
6 Mr. Marrinan, and you may have correspondence,
7 certainly I understand the Commissioner was doing --
8 considering preparing a report to the then-Minister for
9 Justice in relation to workplace contacts, the
10 frequency and what was happening, so it may have been 12:31
11 part that have.

12 56 Q. You say you would be aware of the fact, and from our
13 opening in relation to this, that when it came to a
14 legal strategy that was adopted at the O'Higgins
15 Commission, that the Attorney General's office was 12:31
16 advised and consulted --

17 A. Mm-hmm.

18 57 Q. -- and also the Department of Justice was advised and
19 apparently consulted by the Commissioner?

20 A. Mm-hmm. Yes. 12:31

21 58 Q. And I'm wondering whether that was something that was
22 exceptional or whether that was something that was
23 perhaps the norm when it came to Sergeant McCabe,
24 because any issues concerning him, because of the
25 sensitivity and because of the public profile, were 12:31
26 immediately referred to the Attorney General's office
27 and to the Department of Justice --

28 A. Yes.

29 59 Q. -- for joint consideration?

1 A. Yes. I suppose in terms of making a distinction
2 between general advice in relation to Sergeant McCabe
3 about these workplace issues and you had referenced the
4 Commission, I suppose generally my experience again
5 with the tribunals and the commissions, a solicitor 12:32
6 from the Chief State's office is normally appointed to
7 advise and they take their instructions directly from
8 the Garda Commissioner, from the Commissioner's office.
9 I am not sure in what context generally the Attorney
10 general's office would direct in terms of inquiries. 12:32

11 60 Q. If we could just come to the meeting on the 11th May.

12 A. Yes.

13 61 Q. Again, just if I could recap very briefly your evidence
14 on Friday in relation to the Garda attitude or the
15 attitude of the Garda organisation towards Sergeant 12:33
16 McCabe prior to this meeting on the 11th May. I think
17 that you had agreed with me that in terms of the
18 matters that had been reported on by Byrne and McGinn,
19 that Sergeant McCabe's motivation wasn't questioned,
20 isn't that right? 12:33

21 A. I agreed with you on that, yes.

22 62 Q. The matter had gone to Mr. Seán Guerin and he had
23 identified the issues of fact that were of concern in
24 relation to Cavan-Monaghan and policing there, isn't
25 that right? 12:33

26 A. Yes.

27 63 Q. So there was no issue in relation to Sergeant McCabe's
28 motivation for bringing the complaints that he did into
29 the public domain, isn't that right?

1 A. That's correct.

2 64 Q. And the Commissioner had been supportive of Sergeant
3 McCabe on the 12th February and had acknowledged his
4 contribution, isn't that right?

5 A. That's correct. 12:34

6 65 Q. And particularly in relation to the fixed charge
7 penalty issue, isn't that so?

8 A. Yes.

9 66 Q. And certainly as far as you were concerned, there was
10 no meeting that you attended which would -- prior to 12:34
11 the 11th May, either with the Commissioner or with
12 Mr. John Barrett or with Mr. Cyril Dunne, or any other
13 members of An Garda Síochána, which would suggest that
14 Sergeant McCabe's motivation was to be called into
15 question, isn't that right? 12:35

16 A. That's correct.

17 67 Q. So, if we could just turn then to page 3755 of the
18 material. In the first instance, I am just going to go
19 through these notes with you.

20 A. Yes. 12:35

21 68 Q. And it may be necessary then to refer to some of
22 Anmarie Ryan's notes at the same meeting because they
23 appear to be in somewhat greater detail. It reads the
24 11th May 2015 and it concerns the O'Higgins Commission
25 and it's at 2:10, and it's held in the Four Courts, and 12:35
26 then who are the initials there?

27 A. Chief Superintendent Fergus Healy, I believe Michael
28 MacNamara, P Lynch --

29 69 Q. That is Inspector Michael MacNamara?

1 A. Yes, I wasn't sure whether it was Michael MacNamee, but
2 I think it was Inspector MacNamara was there.

3 70 Q. Yeah.

4 A. I think it was Garda Paul Lynch, he was part of the
5 O'Higgins Commission office as such, myself, Kenneth 12:36
6 Ruane, Wayne Butler, who was a Garda member from my
7 office, Garda C Slattery, Annmarie Ryan, CSSO, Chief
8 Superintendent Seán Ward and then the counsel, Colm
9 Smyth and Garret Byrne.

10 71 Q. Yes. And then we have -- counsel weren't present at 12:36
11 that stage, isn't that right?

12 A. They arrived a couple of moments later, yes.

13 72 Q. Yes. Some ten minutes later you noted it at the bottom
14 of the page?

15 A. Yes. 12:36

16 73 Q. So Annmarie Ryan mentions the issue of a documentary
17 counsel, isn't that right?

18 A. That's correct.

19 74 Q. And Fergus Healy, there was an agreement by the
20 Commissioner for documentary counsel and that had been 12:37
21 discussed the previous Friday, is that right?

22 A. Yes.

23 75 Q. And then: "Annmarie Ryan, Bridewell, FH --" Fergus
24 Healy "-- to discuss room beside the Commission."

25 A. Yes. 12:37

26 76 Q. And then you introduced this topic which we touched on,
27 on Friday: "Legal representation is to be provided
28 ST --" what does that mean?

29 A. Subject to.

1 77 Q. "-- subject to conflict of interest."
2 A. Yes.
3 78 Q. And then: "Fergus Healy will provide instructs com --"
4 A. The instructions going forward.
5 79 Q. Right. So just coming back to the issue of conflict of 12:37
6 interest, I think perhaps there are two areas where
7 this could potentially arise; where there were issues
8 of fact to be determined by the Tribunal, and two
9 persons that were represented by the Garda Commissioner
10 were at odds in relation to those facts and were not in 12:38
11 agreement, there would obviously be a conflict then
12 between we will say two superintendents over a given
13 fact, isn't that right?
14 A. That is, potentially, yes.
15 80 Q. And once that is identified, obviously a conflict 12:38
16 arises because those matters couldn't be pursued with
17 any sort of enthusiasm by counsel for both. So, it
18 would be necessary to instruct another legal team,
19 isn't that right?
20 A. Yes. Well, I think the conflict-of-interest issue 12:38
21 would be where, in terms of some issue that had
22 occurred that, say, for example, if the Commission was
23 looking at one particular module and within that module
24 looking at the paperwork HR, within An Garda Síochána,
25 had sent an instruction to a superintendent or a chief 12:39
26 superintendent to say this is the way that a discipline
27 must be pursued, and if a superintendent or a chief
28 superintendent had not gone in accordance with those
29 directions or said I don't agree with these, I am doing

1 it my own way, that could potentially raise a conflict
2 of interest.

3 81 Q. well, it's the same scenario --

4 A. Yes.

5 82 Q. -- that I am talking about. 12:39

6 A. Yes.

7 83 Q. There is a conflict in relation to --

8 A. Between the actions of the individual member and I
9 suppose the organisation, yes.

10 84 Q. There is a conflict of fact that needs to be resolved 12:39
11 and there are two separate parties who have the same
12 legal representation and the matter can't be thrashed
13 out if the same team represent both?

14 A. If there is a conflict, yes.

15 85 Q. Yes. So once that conflict has been identified, if 12:39
16 it's a significant conflict, it would be necessary
17 either to ignore the conflict and keep the same team,
18 or, alternatively, to bring in a new legal team, isn't
19 that right?

20 A. well, I think I think, I suppose the client, the 12:40
21 ultimately client, the Commissioner, would be consulted
22 to say we think there is a potential conflict here, you
23 may have to get advice from your legal team, your
24 lawyers, as such, to see whether they can continue to
25 represent the organisation, and an individual member, 12:40
26 or whether an individual member should be then advised
27 to go and get individual representation.

28 86 Q. Yes. well, you are sort of jumping ahead of me a wee
29 bit there.

1 A. Okay, sorry.

2 87 Q. What I'm suggesting to you is: Where there is a
3 conflict on the facts of a substantial nature between
4 two individuals or the organisation and one individual
5 that is represented by the Garda Commissioner's legal 12:41
6 team at the Commission of Investigation that it may be
7 necessary for one of the parties to get separate legal
8 representation?

9 A. Yes, I agree with that.

10 88 Q. And that is the matter, you are raising that issue and 12:41
11 you are flagging that issue?

12 A. I do the same with all our civil litigation cases.

13 89 Q. But there is a second circumstances where there is a
14 possibility of a conflict of interest, all right?

15 A. Yes. 12:41

16 90 Q. And that is where individuals who are represented by
17 the Commissioner's legal team may have a view of the
18 facts that they wish to proceed or they may have a view
19 of the character or motivation of one of the witnesses,
20 in this case Sergeant McCabe, and they wish to 12:41
21 undermine the motivation or challenge the motivation
22 and undermine the credibility of that witness by doing
23 that?

24 A. Yes.

25 91 Q. And in those circumstances, they would be at odds, not 12:42
26 with the factual position adopted by the Commissioner
27 but the policy of the Commissioner to support that
28 particular witness and a witness who had been
29 acknowledged by the Commissioner and by Byrne and

1 McGinn as being somebody who was acting out of proper
2 motives, do you understand?

3 A. I do, and I agree with you, yes.

4 92 Q. That doesn't appear to have been addressed here at this
5 meeting? 12:42

6 A. No, this -- yes, this was effectively the first meeting
7 with, with counsel and certainly I think the main focus
8 was on the first module that the O'Higgins
9 Commission --

10 93 Q. Well, I will come to it in a minute but because I am on 12:43
11 this point, you will have read your own notes in
12 relation to this --

13 A. Yes.

14 94 Q. -- and I am going to go through them all?

15 A. Yes. 12:43

16 95 Q. And you will have read Annmarie Ryan's notes in
17 relation to this matter?

18 A. I am not sure if I have seen Ms. Ryan's notes,
19 apologies.

20 96 Q. You haven't. Well then, I will just postpone it and 12:43
21 come back to the point. Then:
22

23 "Fergus Healy, pages of the occurrence book were gone
24 through, all documents, duplicating material, statement
25 of facts, reply from Internal Affairs." 12:43
26

27 And then Anne Marie Ryan raises the issue of the
28 stenographer.

29 A. Yes.

1 97 Q. No objections and the costs would have to be paid.
2 A. Yes.

3 98 Q. Superintendent Healy indicates that he will take
4 instructions from the Commissioner. Is that in
5 relation to the stenographer? 12:43
6 A. Yes, I believe so, yes.

7 99 Q. And then, there is here a number of initials, would you
8 just go through those.
9 A. Yes. LB, I think that is Lorraine Browne.

10 100 Q. Yes. She was a witness? 12:44
11 A. Yes.

12 101 Q. And that is James MacGuill, solicitor, is it?
13 A. Yes.

14 102 Q. He was representing her?
15 A. Yes. I took these down because I presume somebody else 12:44
16 was reading them out to me, but: "GF, MCR, S Delaney,
17 Hughes Murphy."

18 103 Q. That is Garda McCarthy, who was the probationary Garda
19 in the first module. And he is represented by Delaney
20 Hughes & Murphy, is that right? 12:44
21 A. Yes.

22 104 Q. And then Sergeant Regina McArdle --
23 A. Yeah.

24 105 Q. -- who was also involved in the first module?
25 A. Yes. 12:44

26 106 Q. And then Pat O'Connell?
27 A. Yes. Apologies, I am not sure if Pat O'Connell is
28 another Garda member or a legal representative,
29 apologies.

1 107 Q. And then again Fergus Healy introduces AC Clancy --
2 A. Yes.

3 108 Q. -- Rooney and Superintendent Heller --
4 A. Yes.

5 109 Q. Sergeant Miller. 12:45
6 A. "Miller" it appears to be, I would imagine that is
7 Hegarty Solicitors, AGSI.

8 110 Q. And then Cadigan and McMahon, and then Superintendent
9 Noel Cunningham I think that is --
10 A. Yes. 12:45

11 111 Q. -- and Superintendent Lernihan?
12 A. Lernihan, yes.

13 112 Q. And Sergeant McCabe?
14 A. Yes.

15 113 Q. And then "Donal Spring x2"? 12:45
16 A. Yes.

17 114 Q. I think that Mr. Spring was representing --
18 A. Assistant Commissioner Byrne and Chief Superintendent
19 McGinn.

20 115 Q. Yes. And GSOC had Mason Hayes & Curran Solicitors? 12:45
21 A. Yes.

22 116 Q. So then, there is a discussion obviously there about
23 the legal teams and all the personnel who were being
24 represented, isn't that right?
25 A. That's correct. 12:46

26 117 Q. And it had already been decided that the Commissioner
27 would represent anybody of superintendent rank and
28 above, is that right?
29 A. Yes, but also, and it's documented, I had indicated if

1 any other member came along, that that represented
2 could be considered also.

3 118 Q. And then, it has Annmarie Ryan, JR, Sergeant McCabe
4 that is, is it?

5 A. Yes. 12:46

6 119 Q. What is the JR, do you know?

7 A. There was a reference to a potential judicial review.

8 120 Q. And then, that she had spoken to Mr. O'Hagan I think on
9 the Friday prior to this meeting, is that right?

10 A. Yes. 12:46

11 121 Q. And you note that Messrs. Smyth, MacNamee and Byrne
12 arrive ten minutes after the commencement of the
13 meeting at 2:20?

14 A. Yes.

15 122 Q. And you have "CS" then? 12:46

16 A. That is Mr. Colm Smyth, senior counsel.

17 123 Q. Yes. And there is Kingscourt, then there is some issue
18 in relation to fees and then there is an issue in
19 relation to reading the booklet of the schedule --

20 A. Yes. 12:47

21 124 Q. -- and then confirming that representing superintendent
22 and upwards and retired?

23 A. And retired, yes.

24 125 Q. And then Superintendent Healy introduces again the
25 question of the conflict of interest? 12:47

26 A. Yes. He had again, my recollection at that time, there
27 was some -- there was a specific issue in relation to
28 module 1 in relation to Chief Superintendent Rooney.

29 126 Q. Yes.

1 A. And it was in relation to, I think it was whether an
2 instruction from HR had been followed or not followed
3 in relation to certain disciplinary matters.

4 127 Q. And then, Annmarie Ryan, McArdle and Connell, is that
5 right? 12:48

6 A. Yes.

7 128 Q. And there is a further discussion, we can see it there,
8 then there is: "Fergus Healy, bullying complaint,
9 integrity, investigation (Guerin)."

10 A. Yes. 12:48

11 129 Q. What does that concern?

12 A. Certainly the second part of it, obviously Mr. Guerin
13 had expressed issues in his report about the integrity
14 of certain investigations, and I am not sure what the
15 reference to the bullying complaints is. 12:48

16 130 Q. And then: "Annmarie Ryan, O'Doherty, GSOC, MH and
17 Curran."

18 A. Yes.

19 131 Q. And then Mr. Smyth says that module 1 relates to
20 incompetence, is that right? 12:48

21 A. Yes, yes.

22 132 Q. And then Fergus Healy refers to the probationer Garda
23 incidents, that is Garda McCarthy, discipline training,
24 Sergeant, superiors, probation, Chief Superintendent
25 Rooney investigation, injured party £50 compensation, 12:49
26 withdrew statement, how An Garda Síochána dealt with
27 it, fell between two stools.

28 A. Yes.

29 133 Q. Right. So there is no issue in relation to that. You

1 are talking about the facts giving rise to --

2 A. To module 1 --

3 134 Q. -- to module 1. And then Fergus Healy says: "Training
4 sergeants and students." And then the quality and
5 discipline, isn't that right? 12:49

6 A. Yes.

7 135 Q. These were matters and issues that potentially could
8 arise?

9 A. Yes.

10 136 Q. And then Mr. Smyth says -- mentions a serious character 12:49
11 breach. Have you any idea what that refers to?

12 A. I am just looking at the next piece that follows, it
13 may have been -- again, it may have been the fact that
14 I alluded to, about whether the instructions from HR in
15 relation to the discipline were followed or not, 12:50
16 whether there was a breach of the instructions. I am
17 just looking at the next piece where Chief
18 Superintendent Fergus Healy was talking about did the
19 chief superintendent disobey HR or make a mistake with
20 the directions from HR. 12:50

21 137 Q. Okay. We will move on to it. And then: "Mr. Smyth,
22 probationer, shadow senior Garda and under
23 supervision." And then we have Sergeant O'Connell and
24 I think that relates to a sexual assault investigation,
25 is that right? 12:51

26 A. Yes.

27 138 Q. And then we have, I think that this is -- is this
28 Michael MacNamee or is it Inspector MacNamara, McArdle
29 and Sergeant O'Connell, training sergeant?

1 A. Yeah, I think it possibly could have been Inspector
2 MacNamara, my apologies, I can't say for definite.

3 139 Q. Yes, yes. And then again, Chief Superintendent Healy
4 raises the issue of Chief Superintendent Rooney and a
5 conflict with a question-mark there? 12:51

6 A. Yeah.

7 140 Q. And then: "Back to human resources? Did he disobey
8 instructions?"

9 A. Yes.

10 141 Q. And then, Mr. Smyth: "would McCarthy investigate?" 12:51
11 That is in relation to Garda McCarthy. Okay. And
12 then, again, Superintendent Healy refers to the fact
13 "under supervision", would that relate to Garda
14 McCarthy?

15 A. I would imagine so, yes. 12:52

16 142 Q. who was then a probationer. And then: "Chief
17 Superintendent Donegal, outside division, bullying
18 external, chief superintendent." And then it says
19 "McC" presumably that is McCabe, is it?

20 A. That would be Sergeant McCabe, yes. 12:52

21 143 Q. "Management CS Rooney."

22 A. Yes.

23 144 Q. Do you recall what that related to?

24 A. I can only -- just presumably he was under the
25 management of Chief Superintendent Rooney. 12:52

26 145 Q. Then it says: "B and H procedures." what is that?

27 A. Bullying and harassment.

28 146 Q. And then: "One-third issues in favour, two-third no
29 issues."

1 A. Yes.

2 147 Q. Does that relate to the Byrne and McGinn report?

3 A. I'm not sure. It obviously relates to the outcome of

4 some investigation. "Two boxes."

5 148 Q. "Two boxes." 12:53

6 A. Possibly Byrne and McGinn, yes.

7 149 Q. And then there is: "Two boxes data Pulse."

8 A. Yes. I think that related to -- there was an issue in

9 relation to boxes that Assistant Commissioner Byrne had

10 taken control of. 12:53

11 150 Q. "Road traffic and penalty points, complaint AC Byrne,

12 filed to the DPP, no prosecution."

13 A. Yes.

14 151 Q. So this was all referable talking about Sergeant McCabe

15 at this juncture? 12:53

16 A. Yes.

17 152 Q. And so, the Pulse data, the fixed charge penalty

18 system, the Commissioner barred two members from Pulse?

19 A. Yes.

20 153 Q. This is actually nothing to do now with the O'Higgins 12:54

21 Commission and the matter --

22 A. No, it doesn't.

23 154 Q. -- that Mr. Justice O'Higgins is looking into, sure it

24 doesn't?

25 A. Not in that -- no, it doesn't. 12:54

26 155 Q. "In Mullingar traffic unit." This is talking about

27 Sergeant McCabe?

28 A. Yes.

29 156 Q. "Allegation filed to the DPP. Doubtful crime at all,

1 indecent assault." And then: "Highly thought of role
2 sergeant."

3 A. Yes.

4 157 Q. And you point out that he, Sergeant McCabe, has brought
5 litigation, namely defamation and civil litigation -- 12:54

6 A. Yes.

7 158 Q. -- is that right? And then, Mr. Smyth refers to the
8 Cunningham investigation of Maurice McCabe, is that
9 right?

10 A. That's correct. 12:55

11 159 Q. So really now, these are discussions about Sergeant
12 McCabe that have absolutely nothing to do with the
13 O'Higgins Commission; this is a focus on Sergeant
14 McCabe that we are seeing here?

15 A. Yes, well, Chief Superintendent Healy is giving a 12:55
16 background to issues that I will agree with you, they
17 are not connected with certainly module 1 or the
18 matters in the O'Higgins Commission.

19 160 Q. Well, there is no background information here in
20 relation to module 1? 12:55

21 A. Yes, I will agree with.

22 161 Q. This is talking about --

23 A. Yes, it's background information in relation to
24 Sergeant McCabe.

25 162 Q. You then go on: "Fergus Healy allegation, indecent 12:55
26 assault." This is nothing to do with the O'Higgins
27 Commission of Investigation, sure it hasn't?

28 A. No, it's not.

29 163 Q. If I could just turn, because you don't record anything

1 further of that part of the discussion, and I would
2 just like to bring you to Annmarie Ryan's notes of the
3 same date and if we could have, yes, page 3756 up on
4 the screen, please. No, I am sorry, I have got the
5 wrong reference. 3778, please. If we could just go to 12:57
6 the top of the page here, it has a reference to Ferghal
7 McCarthy, who was the probationer Garda, he is still in
8 the force.

9
10 "Probationary Gardaí can under supervision investigate 12:57
11 complaints, matters."

12
13 And then:

14
15 "Chief Superintendent Terry McGinn in Donegal. i.e. 12:57
16 outcome of the Byrne-McGinn report. Outcome of McCabe
17 investigations. Hotel room in Monaghan. Maurice
18 McCabe taken into room and told there was merit in
19 approximately one-third of his complaints/allegations.
20 McCabe left the room and arrived back with banker boxes 12:57
21 (two) of Pulse data relating to Bailieboro incidents
22 that he says were not investigated, not penalty
23 points."

24
25 That seems to have been a much fuller note of -- 12:58

26 A. It is.

27 164 Q. This again had nothing to do with module 1 which was
28 about to commence at the O'Higgins Commission of
29 Investigation?

1 A. That's correct.

2 165 Q. "Assistant Byrne was in the room and will in due course
3 let us know what happened in that room. McCabe claimed
4 he was assaulted and false imprisonment. (Noel
5 Cunningham investigated this assault.)" 12:58

6

7 And then:

8

9 "Deputy Commissioner Rice investigated this and the
10 file was sent to the DPP and there was no prosecution." 12:58

11

12 who is providing or who is speaking and providing this
13 information? Is it Chief Superintendent Healy?

14 A. It would have been Chief Superintendent Healy, yes.

15 166 Q. And then: 12:59

16

17 "(Daughter was a minor at the time of incident,
18 daughter of work colleague in Bailieboro, late
19 '06/early '07.)"

20

21 You were of course familiar with the fact that this
22 allegation had been made and had been investigated, the
23 file had gone to the Director of Public Prosecutions
24 and the Director had directed no prosecution?

25 A. That's correct. 12:59

26 167 Q. And this was history, it was confined to history. Were
27 you not surprised that it was being introduced at a
28 consultation with senior counsel and three juniors who
29 had just come afresh to the case -- sorry, two juniors?

1 A. Certainly Chief Superintendent Healy, that's correct,
2 he was giving a background to Sergeant McCabe.

3 168 Q. That is not what I am asking you. I am asking you,
4 were you surprised?

5 A. Well, I can see why Chief Superintendent Healy would 13:00
6 inform counsel about this, because if -- it's possible
7 that if other witnesses made reference to it, that they
8 would have -- that they would have heard it from a
9 non-interested party as such. And I suppose the point
10 I would make, Mr. Marrinan, if a witness had made 13:00
11 reference to it or if it came up in the context of the
12 Commission, and counsel hadn't been -- didn't know
13 about certain issues, they could possibly criticise the
14 liaison officer at that point.

15 169 Q. Well, this is the first meeting with counsel. 13:00
16 A. Yes.

17 170 Q. You are in attendance.
18 A. Yes.

19 171 Q. You don't attend the other meetings.
20 A. No. 13:00

21 172 Q. But you are there at this meeting. And the chief
22 superintendent is there to give a factual instructions
23 to counsel about module 1, which was about to commence.

24 A. Correct.

25 173 Q. And here we see a focus by him almost entirely on the 13:01
26 introduction to the background to Sergeant McCabe?

27 A. Yes, he was giving a background to Sergeant McCabe.

28 174 Q. And I will just go on:
29

1 "McCabe from outset was subject of an allegation. The
2 file sent to DPP and DPP found no crime. Allegation of
3 indecent assault made against him. McCabe has issues
4 as the way this allegation was investigated. McCabe
5 sought access to his file and was refused the file." 13:01
6
7 And then it refers to John Wilson, who was a sergeant
8 as well, is that right?
9 A. Yes.
10 175 Q. And it refers to him as being "a Garda in Clones" and 13:02
11 "was a union man"?
12 A. Yes.
13 176 Q. And then: "Wilson and McCabe appear to have been
14 working together."
15 A. Yes. 13:02
16 177 Q. Then it says, it makes a derogatory comment about
17 Wilson, which I won't read out, and then:
18
19 "Wilson had a judicial review for disciplinary matters
20 and also a PI case. Get info background for counsel." 13:02
21
22 All right?
23 A. Yes.
24 178 Q. I mean, this has absolutely nothing to do with the
25 factual matters that are going to be investigated by 13:02
26 the O'Higgins Commission, sure they don't?
27 A. No.
28 179 Q. And here we are at the very first meeting with counsel,
29 Chief Superintendent Healy is alerting them to the fact

1 that Sergeant McCabe had a criminal investigation
2 conducted back in 2006/2007 and about the DPP's
3 directions, about apparently that he was dissatisfied
4 with the investigation, that he wanted access to the
5 file, and then another Garda, who also happens to have 13:03
6 been in the public domain as a whistleblower is
7 mentioned, his background is mentioned?

8 A. Yes.

9 180 Q. A derogatory comment calling into question his
10 integrity is mentioned, isn't that right? 13:03

11 A. Yes.

12 181 Q. And then there is almost a suggestion that maybe there
13 is some form of collusion between the two of them?

14 A. Well, I just don't know from that meeting who is asking
15 the questions and who's -- it doesn't say whether 13:04
16 counsel are asking for information and the question is
17 being answered.

18 182 Q. So, we just move on. And it says "To Do" and then:
19 "McCabe said to Derek Byrne "I will bring this job to
20 its knees". " 13:04

21

22 I presume that wasn't counsel who introduced that, that
23 it was Chief Superintendent Healy?

24 A. It would have to have been Chief Superintendent Healy,
25 yes. 13:04

26 183 Q. "McCabe has two pending litigation, defamation,
27 bullying and harassment.
28 * send details to counsel."
29

1 a relations between Sergeant McCabe and senior
2 officers.

3 188 Q. Aren't all the matters that we have read there
4 questioning Sergeant McCabe's motivation, isn't that
5 right? 13:07

6 A. I don't know if they are all -- if I could agree that
7 they are addressing motivation.

8 189 Q. Isn't that the thrust of it?

9 A. Well, it's -- it's giving an indication as to maybe a
10 background to what led to a break down in certain 13:07
11 relations between Sergeant McCabe and other members
12 within the force.

13 190 Q. It goes further than that, surely, Mr. Ruane:

14

15 "McCabe said to Derek Byrne "I will bring this job to 13:07
16 its knees"."

17 A. Yes, I will agree with you, yes.

18 191 Q. Did you not consider perhaps that there was an undue
19 focus on Maurice McCabe?

20 A. Again, it's not -- it doesn't show there what questions 13:07
21 were coming for counsel, but it may be that counsel had
22 taken a view that something, something had led to a
23 break down in relations between Sergeant McCabe and the
24 senior officers. It's just not clear from that.

25 192 Q. Well, whether it's Chief Superintendent Healy or 13:08
26 counsel --

27 A. Yes.

28 193 Q. -- isn't it clear that exploring Sergeant McCabe's
29 motivation goes entirely against the finding of Byrne

1 and McGinn and the stated position of the Garda
2 Commissioner at the meeting on 12th February?
3 A. Well, what I would say with that is that, again, if
4 counsel were asking these questions and the information
5 was being provided by Chief Superintendent Healy, it 13:08
6 would then have been a decision as to whether what
7 issues were raised by counsel at the Commission, as
8 such.
9 194 Q. Well --
10 A. But I agree with you, the position in February was 13:08
11 supportive of -- certainly supportive of Sergeant
12 McCabe.
13 195 Q. Well, in hindsight, do you not think that it might have
14 been helpful if you had have stepped in at that stage
15 and had said to counsel, no, just a minute, Byrne and 13:09
16 McGinn accept Sergeant McCabe's motivation and the
17 Garda Commissioner on behalf of the organisation is
18 fully behind Sergeant McCabe and isn't questioning his
19 motivation?
20 A. Possibly. But what I would say is that ultimately I 13:09
21 certainly would have expected that before any issues
22 were raised formally at the Commission, that Chief
23 Superintendent Healy would take instructions from the
24 Garda Commissioner in respect of what -- what arguments
25 were to be made. 13:10
26 196 Q. When you left the meeting, were you in any way unhappy
27 that the consultation had gone down that particular
28 road?
29 A. I will be honest with you, at that point in time, there

1 was no indication -- counsel were looking for
2 information, information was being provided, there was
3 certainly no instruction at that meeting that, whilst
4 Chief Superintendent Healy did go through a number of
5 matters, there was no instruction at that meeting and 13:10
6 there couldn't have been, that these matters were to be
7 raised.

8 197 Q. You see, it doesn't appear that anybody had advised
9 counsel of the Commissioner's policy in relation to
10 Sergeant McCabe, do you understand? 13:11

11 A. Yes. But again, there would have been nobody more
12 acutely aware of her position than the Garda
13 Commissioner. So what I am saying, at that meeting
14 there was certainly no, no instructions given or
15 directions given to counsel that these matters were to 13:11
16 be raised.

17 198 Q. After the meeting, did you go to the Garda Commissioner
18 or correspond with her?

19 A. No. Well, again, at that meeting I had attended,
20 because it was a hand-over between Chief Superintendent 13:11
21 Seán Ward, who was the second liaison officer, and
22 Chief Superintendent Healy. So from that meeting
23 effectively Chief Superintendent Healy took over in
24 terms of the conduct of the Commission.

25 199 Q. As far as you were concerned, Chief Superintendent 13:11
26 Healy was dealing -- was liaison officer between the
27 Garda Commissioner personally and the Tribunal -- and
28 the Commissioner's legal team?

29 A. Well, the Commissioner and her office, yes.

1 200 Q. And you were aware of the fact that she was to be sent
2 transcripts on a daily basis from the Commission, isn't
3 that so?

4 A. Well, certainly they were being distributed to all
5 parties, as I had understood it, yes. Yes, sorry, 13:12
6 there was discussions, I will agree with you there.

7 201 Q. They were sent to you, isn't that right?

8 A. They were sent to me initially.

9 202 Q. Yes.

10 A. Very first. But thereafter to -- thereafter to Chief 13:12
11 Superintendent Healy directly. That is my
12 understanding. Or through Ms. Ryan in the Chief
13 State's office.

14 203 Q. If we could just move on then because I think that you
15 had no further dealings then -- 13:13

16 A. No.

17 204 Q. -- in relation to this and the Commission commenced its
18 hearing on the --

19 A. 14th.

20 205 Q. -- 14th of May. And subsequently you received a 13:13
21 telephone call late at night on 16th of May of 2015?

22 A. Yes.

23 206 Q. Is that right?

24 A. Yes.

25 207 Q. And your note of that phone call is at page 3759. Will 13:13
26 you just tell us, first of all, with the aid of the
27 note, exactly what happened?

28 A. There was a missed call on my phone and there was a
29 voicemail message, as I recall, from Ms. Ryan to ring

1 her back.

2 208 Q. You knew Ms. Ryan from the Chief State Solicitor's
3 Office?

4 A. Yes.

5 209 Q. You had had previous dealings with her, is that right? 13:14

6 A. Yes, I would have known her. I worked in the Chief
7 State's office.

8 210 Q. You had known her from your time in the Chief State's
9 office?

10 A. Yes. 13:14

11 211 Q. Would it have been unusual for her to be phoning you at
12 11:00 on a Saturday night?

13 A. Yes.

14 212 Q. It would be. So it would have been something
15 important, isn't that right? 13:14

16 A. Yes, that's correct.

17 213 Q. And would you just tell us then what the conversation
18 was that you recall having with her?

19 A. Ms. Ryan had said that a contentious issue had arisen
20 and she explained effectively what had happened, where 13:14
21 an issue had come up and that Chief Superintendent
22 Healy had to take instructions directly from the
23 Commissioner and that counsel had advised full
24 background issues were necessary to explore. And that
25 was in relation to the file to the DPP and the 13:15
26 directions that had issued and where Mr. McDowell had
27 asked are these the instructions of the Commissioner
28 and Colm Smyth had advised they were relevant matters.
29 And Ms. Ryan effectively, even at that stage, was

1 conscious I think of the confidentiality of the
2 Commission, so that is why she had asked me to ring
3 Chief Superintendent Healy, who could fill me in as to
4 what had happened.

5 214 Q. And how did you receive that information? 13:15
6 A. Sorry, how did I receive the?

7 215 Q. How did you receive it? I mean, what was your attitude
8 when you heard that this issue had erupted at the
9 O'Higgins Commission?

10 A. Well, it was obviously a very sensitive issue that had 13:15
11 arisen and for Ms. Ryan to be ringing me at that hour,
12 it was obviously contentious, as I had said.

13 216 Q. And exactly why do you think she was ringing you?
14 A. Well, she was obviously ringing me just to let me know,
15 I suppose she -- and I am the head of legal affairs, 13:16
16 she was ringing me by way of information and my main
17 concern in respect of that phone call with Ms. Ryan was
18 effectively was the Commissioner aware of what had
19 happened at the Commission. But I suppose it was
20 ringing me after the fact. She wasn't ringing looking 13:16
21 for instructions in relation to the matter.

22 217 Q. So it was clear from that phone call that Annmarie Ryan
23 was concerned that this issue had blown up at the
24 Commission, is that right?

25 A. She was, yes. 13:16

26 218 Q. And the issue concerned the motivation of Sergeant
27 McCabe?

28 A. It did.

29 219 Q. So it would appear that the consultation that you had

1 attended on the 11th of May had spilled over or the
2 matters that had been discussed had spilled over into
3 the Tribunal or the inquiry's --
4 A. well, certainly --
5 220 Q. -- hearing? 13:17
6 A. Certainly counsel -- it would appear that counsel --
7 instructions had been taken from the Commissioner to
8 raise a certain issue, yes.
9 221 Q. Was that made clear to you at the time?
10 A. It was. 13:17
11 222 Q. And did it appear to you at the time that Annmarie
12 Ryan's phone call to you was perhaps along the lines
13 that maybe this ought to be reviewed or maybe that you
14 ought to speak to the Commissioner about her decision?
15 A. No -- well, no, I would have to say if -- if it had 13:17
16 been that phone call, that phone call would have come
17 to me on the Friday afternoon, where it was happening.
18 223 Q. Well, I am just wondering, you know, why did you
19 believe that you were being consulted or advised? It
20 wasn't just for your information, because this is 11:00 13:18
21 o'clock --
22 A. Yes.
23 224 Q. -- on a Saturday night and it's unusual?
24 A. Well, yes, it's unusual but I think she was -- I
25 certainly took it that, just for information, as such. 13:18
26 I wasn't asked -- she wasn't looking for further
27 instructions on the matter from me.
28 225 Q. And did she appear to be totally dissatisfied with the
29 state of affairs at that time?

1 A. Not dissatisfied, but she was certainly concerned that
2 the issue had arisen.

3 226 Q. And she asked you to speak to Chief Superintendent
4 Healy, is that right?

5 A. Yes. 13:18

6 227 Q. What were you to speak to him about?

7 A. Well, again, I think my view at that time, that
8 Ms. Ryan was even speaking to me, she was mindful of
9 the confidentiality and the Commission, so it was to --
10 the issue that had arisen, effectively she was asking 13:19
11 me to ring Chief Superintendent Healy to get further
12 information on that.

13 228 Q. And then, following on from that phone call did you
14 ring Chief Superintendent Healy?

15 A. I did. 13:19

16 229 Q. And the note for that conversation is at page 3760, if
17 I could have that on the screen, please. And will you
18 just tell us the conversation that you had with Chief
19 Superintendent Healy?

20 A. Yes. Again, Chief Superintendent Healy had confirmed 13:19
21 to me that instructions had been obtained from the
22 Commissioner and counsel had provided written advices.
23 "Counsel wanted to know how did this begin and what
24 started all of this allegation of assault, Maurice
25 McCabe, and file to the DPP no prosecution, issue re 13:20
26 DPP directions. Counsel advised in writing and
27 Commissioner gave instructions. KR has transcript. AM
28 Ryan CSSO also has transcript. FH needs documentary
29 counsel urgently to assist".

1 230 Q. And again, could you just give us a flavour of the
2 phone call?
3 A. Yeah.

4 231 Q. Were you expressing your concern that Annmarie Ryan had
5 phoned you? 13:20
6 A. Well, no, I had told, obviously told Chief
7 Superintendent Healy that it was a follow-on call from
8 Ms. Ryan, who had asked me to contact Chief
9 Superintendent Healy. And he effectively used that
10 phrase, "counsel had wanted to know how did this begin 13:20
11 and what started all of this." And that the issue, the
12 issue was in relation to Sergeant McCabe wanting to see
13 a copy of the full DPP directions that had issued. So
14 at that point in time, it was the -- Chief
15 Superintendent Healy had confirmed to me that he had 13:21
16 spoken directly to the Commissioner and that counsel
17 had provided written advices in relation to the matter.

18 232 Q. And did you think or did it occur to you that maybe you
19 should contact the Commissioner yourself?
20 A. Well, at that point in time, it was confirmed to me 13:21
21 that not only had Chief Superintendent Healy spoken to
22 the office of the Commissioner, but he had spoken -- he
23 had spoken directly to the Commissioner and that it
24 was -- there were follow-up written advices from
25 counsel, which was something certainly in my own area, 13:22
26 in the civil litigation cases that I would deal with,
27 that I would always recommend. And I considered that
28 the -- I hadn't received any call on the day before or
29 indeed over the weekend from the Commissioner on the

1 matter.

2 233 Q. So were you happy to leave matters stand?

3 A. Yes.

4 234 Q. Now, I think on the 21st May, a letter had been sent by
5 the O'Higgins Commission -- 13:23

6 A. Yes.

7 235 Q. -- to the Garda Commissioner?

8 A. Actually, to row back, to be honest with this, in
9 respect of the issues that had been dealt with, the HR
10 issues, in February, March and April, and as you have 13:23
11 referred to, the policy that the Commissioner had
12 adopted, with hindsight perhaps, although they
13 weren't -- it wasn't a legal issue, the Commissioner
14 had obviously received legal advice directly on the
15 Friday, but perhaps, looking back, a phone call to the 13:23
16 Commissioner or certainly a communication in respect of
17 the directions, the instructions that had been given as
18 opposed to the policy that had been adopted earlier,
19 may have warranted one from me. But again, and I said
20 that there was no more -- no person more acutely aware 13:24
21 of the corporate policy that had been adopted up to
22 then, than the Garda Commissioner, who Chief
23 Superintendent Healy had spoken to directly.

24 236 Q. Sorry, would you mind just expanding on the last point
25 that you made there. 13:24

26 A. Yes, I suppose Chief Superintendent Healy had indicated
27 that the Commissioner had given instructions directly
28 to him in relation to this matter. So, the issues in
29 terms of the overall approach that she adopted to

1 Sergeant McCabe certainly, I couldn't have envisaged
2 that she wouldn't have considered those issues before
3 she gave the instructions as well.

4 237 Q. All right. So, as I indicated, on 21st of May 2015 a 13:25
5 letter had been sent by the O'Higgins Commission to the
6 Garda Commissioner in relating to issues of ongoing --
7 A. Yes, that's correct.

8 238 Q. -- disclosure issues. I am not going to open the
9 letter --
10 A. Yes, disclosures. 13:25

11 239 Q. -- but it was in very strong terms, to put it mildly,
12 isn't that right?
13 A. It was, it was, yes.

14 240 Q. And in it, the letter outlined that the Commission was
15 considering exercising its powers to bring an 13:25
16 application pursuant to section 16 of the Commissions
17 of Investigation Act of 2004 in relation to disclosure,
18 isn't that so?
19 A. That's correct.

20 241 Q. I think that you had discussed this on the 26th May of 13:25
21 2015 with Chief Superintendent Fergus Healy --
22 A. Yes.

23 242 Q. -- together with an unrelated matter, isn't that right?
24 A. Yes.

25 243 Q. And you sent a text message on the 26th May of 2015 to 13:26
26 yourself, is that right, as an aide-memoire?
27 A. Yes.

28 244 Q. And that's to be found at page 3746 of the material, I
29 think. You see it there?

1 A. Yes.

2 245 Q. 26th May of 2015, 10:50am, you sent this in two parts
3 to yourself, isn't that right?

4 A. Yes.

5 246 Q. "Phone call Fergus Healy. Independent Review 13:27
6 Mechanisms." what does that refer to in the
7 conversation that you had?

8 A. Well, I am not sure exactly, but I do know at the time
9 Chief Superintendent Healy was also the liaison officer
10 for the -- or he was -- he had a responsibility for the 13:27
11 various files that were being sought under the
12 Independent Review Mechanism.

13 247 Q. And then you go on "Commission of Investigation"?

14 A. Yes.

15 248 Q. And then "merger"? 13:27

16 A. "Merger", there was myself and Chief Superintendent
17 Healy, certainly management were asking us to consider
18 whether both offices would merge at the time.

19 249 Q. And then "section 41"?

20 A. Yes. 13:27

21 250 Q. That is of the Garda Act 2005, is it?

22 A. It is.

23 251 Q. And that was a concern that you had that it may be
24 referred, the letter that had been sent to the --

25 A. Yes. 13:28

26 252 Q. -- by the Commission to the Commissioner, that that
27 might be -- should be referred to the Department of
28 Justice?

29 A. Well, the Commissioner should bring it to the

1 Department of Justice attention, yes.

2 253 Q. And then part 2, 26th May 2015, 11:13am, again phone
3 call Fergus Healy, and "letter comfort"?

4 A. It was actually all the one phone call, I just sent the
5 details in two separate messages, yes. 13:28

6 254 Q. "Letter comfort counsel," is that right?

7 A. Yes.

8 255 Q. Just tell us about that?

9 A. What I had understood from that was that was the
10 written advices that had come in, in respect of the 13:28
11 instructions that had been given on the previous
12 Friday.

13 256 Q. And then: "Commissioner private meeting last week with
14 counsel."

15 A. Yes. 13:29

16 257 Q. Would you just tell us about that and your
17 conversation?

18 A. Again, from what I recall, just Chief Superintendent
19 Healy had confirmed that the Commissioner had had a
20 meeting with counsel and I presume the reference to 13:29
21 private meeting would mean that the Chief State
22 Solicitor's Office wasn't present at that meeting.

23 258 Q. I think the next dealing that you -- that you had in
24 relation to this matter was -- if we could have page
25 2033 up on the screen. And this was a letter to you -- 13:29

26 A. Yes.

27 259 Q. -- from Frank Walsh, the superintendent's -- the
28 Commissioner's private secretary, isn't that right?

29 A. Yes.

1 260 Q. And these related to inquiries from RTE concerning
2 Sergeant McCabe and the O'Higgins Commission?

3 A. Yes.

4 261 Q. And this was on the 7th April -- sorry, no, it was on
5 the 7th July of 2015, isn't that right?

13:30

6 A. Yes.

7 262 Q. And included in that was, at page 2034, a letter that
8 had been sent by John Burke, who is a journalist with
9 RTE news?

10 A. Yes.

13:30

11 263 Q. And it had been sent to Andrew, is that Andrew
12 McLindon?

13 A. That is the director of communications.

14 264 Q. Yes. And it concerned:

15

13:30

16 "One, RTE understands that Sergeant McCabe has
17 contacted Garda Headquarters to request that he be
18 released from the new role heading up the traffic unit
19 at Mullingar. What is your response to this and your
20 understanding of the circumstances behind Sergeant
21 McCabe's decision?

13:31

22

23 Secondly, and separate to the above, RTE's this week
24 understands at a recent session of the Justice Kevin
25 O'Higgins inquiry, counsel for the Garda Commissioner
26 raised questions over the motivation of Sergeant McCabe
27 for bringing certain matters regarding alleged Garda
28 misconduct to attention. Does this amount to the view
29 of the Garda Commissioner in terms of her view as to

13:31

1 why Sergeant McCabe raised these issues in the first
2 instance?

3
4 I would appreciate your response."

5
6 And an indication it was their intention to report on
7 these matters on the This Week radio programme the
8 following day, Sunday, 5th July 2015. 13:31

9 A. Yes.

10 265 Q. And it was sent to you for your information only, is 13:31
11 that right?

12 A. I wonder if could you scroll up and just see where --

13 266 Q. Page 2033?

14 A. Yes, I have it. If I could go back up to where it was
15 sent to me. Apologies. Yes. I think, my recollection 13:32
16 of that is that the director of communications had
17 prepared a response and it was sent for -- being sent
18 for information. I am not sure if I drafted anything.

19 267 Q. Yes. Just finally, Mr. Ruane, in terms of your 13:32
20 dealings with all this, just to summarise it, you were
21 involved primarily from a logistical point of view up
22 until the 11th May --

23 A. Yes.

24 268 Q. -- of trying to put in place a legal team?

25 A. Yes. 13:32

26 269 Q. But had been involved with Sergeant McCabe's issues
27 with An Garda Síochána for some considerable period of
28 time?

29 A. Yes.

1 270 Q. And that you were aware of the Commissioner's view on
2 behalf of the organisation to Sergeant McCabe, isn't
3 that right?

4 A. Yes.

5 271 Q. From just examining you in relation to what occurred on 13:32
6 the 11th May, going through in particular Anmarie
7 Ryan's notes, are you in any way unhappy that this
8 issue of Sergeant McCabe's motivation was introduced at
9 that meeting?

10 A. Well, it was introduced -- it was introduced as part of 13:33
11 an overall background for Sergeant McCabe's
12 interactions with Garda Management, but in terms of the
13 general policy that the Commissioner had in respect of
14 Sergeant McCabe prior to the Commission up and running,
15 it was certainly inconsistent and at odds with that 13:33
16 policy.

17 272 Q. It's totally inconsistent, isn't it?

18 A. I would have to agree with you, yes.

19 273 Q. So any examination of --

20 A. But I would say again at that meeting, it was 13:34
21 information that was being exchanged but there was
22 certainly no instructions given at that meeting to
23 counsel to raise these issues.

24 274 Q. It was entirely inconsistent with any challenge to
25 Sergeant McCabe's motivation at the O'Higgins 13:34
26 Commission, isn't that right?

27 A. The policy that had been a --

28 275 Q. Yes.

29 A. Yes.

1 276 Q. So any departure from that policy --
2 A. Yes.
3 277 Q. -- would need very clear evidence, isn't that right?
4 A. Well, there would have to be something significant,
5 yes, to depart from that policy. 13:35
6 278 Q. In hindsight and in reviewing this, are you unhappy
7 that these matters were pursued with Sergeant McCabe at
8 the O'Higgins Commission?
9 A. Well, in terms of, and I suppose when I go to the phone
10 call on the 16th, the night of the 16th, there's two 13:35
11 things I will say: I certainly envisaged that the --
12 the reaching out that had occurred to Sergeant McCabe,
13 January, February, March, April, that I didn't see how
14 that could continue. It was going to be -- it was a
15 significant -- it was going to create significant 13:36
16 difficulties in that respect, yes.
17 279 Q. Well --
18 A. And with hindsight, perhaps I should have, perhaps I
19 should have contacted the Commissioner and said, you
20 really need to think about this. 13:36
21 280 Q. Well --
22 A. But again, what I would say is, that wouldn't have
23 been -- it would have been -- that wouldn't have been a
24 legal opinion, it would have been a corporate opinion,
25 effectively. 13:36
26 281 Q. Well, you are aware of the fact, probably from reading
27 the papers and probably from your overall knowledge of
28 the various files in relation to Sergeant McCabe, that
29 as soon as this matter arose on the 14th May --

1 A. 15th.

2 282 Q. -- 15th of May, sorry, that he had a meeting the
3 following week with Superintendent Murray, I think it
4 is, and Sergeant McCabe indicated that he couldn't
5 return to his normal duties in traffic because he could 13:37
6 no longer trust the Garda Commissioner and that he was
7 constrained in what he could say --

8 A. Yes.

9 283 Q. -- because the matter had arisen at the O'Higgins
10 Commission and he was bound to secrecy in relation to 13:37
11 that?

12 A. Yes.

13 284 Q. But that he felt that anything that he would do, he
14 would be blamed, the blame would be put on him?

15 A. Yes. 13:37

16 285 Q. So certainly, that was the view that he had immediately
17 after this, that relations were set at nought, really,
18 with management and with the Garda organisation?

19 A. Yeah, it's fair to say.

20 286 Q. And your view also from the other side was that 13:37
21 everything was set at nought once you challenged
22 Sergeant McCabe's motivation at the O'Higgins
23 Commission?

24 A. Well, I certainly -- whether they were set at nought, I
25 certainly saw great difficulties. 13:38

26 287 Q. It was a major setback?

27 A. It was a major setback.

28 288 Q. Okay. Thank you.

29

1 THE WITNESS WAS CROSS-EXAMINED BY MR. MCDOWELL:

2

3 289 Q. MR. MCDOWELL: Good afternoon, Mr. Ruane. I have only
4 a small number of issues to raise with you, but I would
5 ask you to deal firstly with the reference to the 13:38
6 private meeting that you understood had taken place
7 between counsel and the Commissioner prior to -- in the
8 week prior to the 15th May?

9 A. I think it was the subsequent week, Mr. McDowell --

10 290 Q. Sorry? 13:39

11 A. I think it was the subsequent week.

12 291 Q. Subsequent to the 15th May?

13 A. Yeah, my apologies.

14 292 Q. Two things arise out of that: were you told at any
15 stage that the Attorney General's office was under the 13:39
16 impression that the initial position taken at the -- at
17 the O'Higgins Commission on Friday the 15th May was
18 going to be subject of further legal advice and
19 consideration? We know that now, don't we?

20 A. Sorry? 13:39

21 293 Q. The Attorney General's office, Mr. Dreelan and
22 Mr. Barrett --

23 A. Yes.

24 294 Q. -- seemed to be under the impression that there was
25 going to be a reconsideration of this matter over the 13:39
26 weekend, isn't that right?

27 A. Yeah, I don't know if that was specifically mentioned
28 to me, but I would have been aware that there would
29 have been an opportunity, certainly, to consider it.

1 295 Q. Yes.

2 A. Absolutely, yes.

3 296 Q. Because it is -- I mean, would you not agree with me
4 that it's slightly strange that they should be under
5 the impression that this legal strategy was going to be 13:40
6 reconsidered, that you were phone -- you were called in
7 relation to it and yet no reconsideration really seems
8 to have taken place?

9 A. But certainly when I received the call, Mr. McDowell,
10 it wasn't that -- it wasn't indicated to me that we 13:40
11 need further instructions from the Commissioner on
12 this. I had been told the Commissioner had given
13 instructions on the Friday, the 15th.

14 297 Q. Well, what did you understand Ms. Ryan was -- what was
15 her anxiety, as you understood it, at the time that 13:40
16 would get her to ring you in the late hours of a
17 Saturday evening in relation to this matter?

18 A. Well, certainly the fact that the issue had arisen at
19 all, that there was -- it obviously had got very
20 contentious between counsel and it was a sensitive 13:41
21 issue, as such.

22 298 Q. But you were the legal advisor, isn't that right --

23 A. I am the head --

24 299 Q. -- to the Commissioner?

25 A. Yes, but what I would say, the liaison officer had 13:41
26 spoken directly to the Commissioner the day before.

27 300 Q. But with the greatest of respect to Superintendent
28 Healy, he was not a lawyer, isn't that right?

29 A. That's correct.

1 301 Q. And secondly, he was not somebody who would be aware of
2 the legal implications of what was being done?
3 A. Well, he had been the chief superintendent over a
4 section called the crime policy -- chief
5 superintendent, Legal Section, Crime Policy and 13:41
6 Administration, who would have liaised itself directly
7 with the Attorney General's office over years on
8 certain operational and investigative matters.

9 302 Q. I am not suggesting that he would be a total naive
10 legally -- 13:41
11 A. No. And nor am I.

12 303 Q. -- I am putting it to you that if there were going to
13 be any reconsideration of this strategy over the
14 weekend, it would probably entail the Commissioner
15 getting legal advice from somebody on the matter? 13:42
16 A. Well, if there was to be a reconsideration, it would
17 probably have entailed the Commissioner either meeting
18 with her legal team as such again over the weekend or
19 having a further consultation with the legal team over
20 the weekend. 13:42

21 304 Q. Now, I think your notes at the time indicate that you
22 had access to the transcript of what had happened at
23 the time?
24 A. Yes, I did.

25 305 Q. Did you look at the transcript to see what was 13:42
26 happening at the O'Higgins Commission?
27 A. I certainly -- I believe I did the next day or
28 certainly on Monday, yes.

29 306 Q. And Superintendent Healy had access to that?

1 A. Well, my understanding was that he would have obtained
2 access from Ms. Ryan in the Chief State's office.

3 307 Q. And that was available to the -- that was available to
4 the Commissioner as well, isn't that right, that
5 transcript?

13:43

6 A. Well, it would have been, if it had been sent on, yes.

7 308 Q. So if any reconsideration at all was going to take
8 place over that weekend, the transcript, exactly what
9 had happened was clear --

10 A. It would have been available, yes.

13:43

11 309 Q. -- was clear to the people who were going to do the
12 reconsidering, isn't that right?

13 A. Yes.

14 310 Q. And as far as you are concerned, now, you understood
15 that the dye was cast, so to speak, that the decision
16 had been made, you weren't being asked to intervene to
17 second-guess the decision?

13:43

18 A. Well, I wasn't asked, I didn't get any phone call on
19 the Friday either from Chief Superintendent Healy or
20 from the Commissioner.

13:43

21 311 Q. I see. So you did, though, contact Superintendent
22 Healy?

23 A. I did.

24 312 Q. And did he express any doubt about the appropriateness
25 of what had happened?

13:44

26 A. Well, he told me that the issue had been raised,
27 counsel had -- counsel had advised in relation to the
28 matter and that he had spoken directly to the
29 Commissioner and obtained instructions from her.

1 313 Q. I see. And did he express any -- did he express any --
2 did he say anything to you which would have given you
3 to believe that the matter was under reconsideration or
4 that they were open to re-thinking whether this was a
5 wise thing to do? 13:44

6 A. No, the issue of reconsideration certainly wasn't,
7 wasn't discussed.

8 314 Q. Because as I think you have very fairly conceded to --
9 when being questioned by Mr. Marrinan, the decision to
10 impugn Sergeant McCabe's motivation flew in the face of 13:45
11 everything the Commissioner was trying to do on paper?

12 A. It did, and you know, I will concede, Mr. McDowell,
13 with hindsight, perhaps I should have. There is
14 nothing -- there was nothing to stop me picking up the
15 phone to the Commissioner but the point I would make, 13:45
16 the Commissioner had been involved in all of those
17 discussions, February, March and April, in respect of
18 the workplace issues and she would have been very much
19 aware herself of the instructions that were given in
20 respect of the previous position. 13:45

21 315 Q. Can we go backwards a little bit to the meeting where
22 you heard the discussion between counsel and
23 Superintendent Healy --

24 A. Yes.

25 316 Q. -- about the background and about Sergeant McCabe -- 13:45

26 A. Yes.

27 317 Q. -- and the like? Are we absolutely agreed that you did
28 not draw from that conversation that any instruction
29 was being given by counsel to impugn Sergeant McCabe's

1 motivation on foot of those issues?
2 A. Absolutely not. They would have had to have -- the
3 instructions would have had to have gone, if there was
4 any instruction to that effect, that would have to have
5 gone to the Commissioner. 13:46
6 318 Q. I see. So, when do you think the actual change of
7 heart took place and a decision was made to impugn
8 Sergeant McCabe's motivation?
9 A. Well, obviously something happened in between the 11th
10 and the 14th and 15th, so I can only surmise there were 13:46
11 consultation -- there were consultations with witnesses
12 where certain information was raised.
13 319 Q. And as far as you know, the Commissioner was not
14 present at those consultations?
15 A. Certainly not that I am aware of, but that could be 13:47
16 confirmed.
17 320 Q. And as far as you know, her only source of knowledge of
18 what was happening would have been Superintendent
19 Healy, is that right?
20 A. That's correct. I am not aware of what discussions he 13:47
21 had, I am not aware of what discussions the
22 Commissioner had with Chief Superintendent Healy that
23 week, apart from the one that I was told about on the
24 16th, but...
25 321 Q. But it's fair to say, without putting any exaggerated 13:47
26 language into your mouth, that it would appear that a
27 very major change in policy/strategy towards Sergeant
28 McCabe had taken place in the period between the
29 consultation you attended and the Friday the 15th of --

1 A. Certainly in the context of the position that the
2 Commissioner had adopted prior to the O'Higgins
3 Commission getting up and running, it must have been
4 significant, I would imagine, for her to give those
5 instructions.

13:48

6 322 Q. I see. Now, you refer in your email of the 26th May,
7 which would have been nearly -- sort of ten days after
8 these events, to two matters. One, you say:

9

10 "Phone call Fergus Healy, Independent Review Mechanisms
11 Commission investigation, a merger." 13:48

12

13 Could you explain -- this is at page 3746, could you
14 explain what those notes refer to?

15 A. Yes. I simply can't recall whether the Independent 13:49
16 Review Mechanisms -- I do know I had dealings with
17 Chief Superintendent Healy in respect of the overall
18 Independent Review Mechanisms, because there were some
19 old civil litigation files in our office but it's
20 possible -- it is possible that -- I just can't recall, 13:49
21 Mr. McDowell, it's possible that that reference to
22 Independent Review Mechanisms could have been a
23 reference to Sergeant McCabe's file having been -- or a
24 file having been reviewed by the Independent Review
25 Mechanisms. Unfortunately, I can't put it further. 13:49

26 323 Q. Yes. Well, I have got to suggest to you that that is
27 at least a quite likely interpretation of your
28 knowledge because you then say "Commission
29 investigation" and you then use the word "merger"?

1 A. The merger -- I do know at the time that we were
2 discussing a merger between the two offices, but I will
3 concede, certainly the Independent Review Mechanisms,
4 that is possibly a reference to the specific file as
5 opposed to the general. 13:50

6 324 Q. And were you acquainted with the IRM process as it
7 applied to the allegation made by Ms. D of improper
8 investigation of the sexual assault claim she was
9 making against Sergeant McCabe?

10 A. No, Mr. McDowell. That wouldn't have come in. 13:50

11 325 Q. No, but were you aware of it?

12 A. Was I aware of it?

13 326 Q. Yes.

14 A. I don't recall being aware.

15 327 Q. Put it this way: The Independent Review Mechanisms -- 13:50
16 and you say it may well have referred to Sergeant
17 McCabe?

18 A. Possibly, yes.

19 328 Q. In what respect?

20 A. Well, I only -- I have it there but it's possible that 13:50
21 it was in respect of the Independent Review Mechanism
22 having reviewed the file. It was the 26th May '15, so
23 I am not sure if at that point whether the Independent
24 Review Mechanisms had concluded, whether it was
25 finalised, I don't know. 13:51

26 329 Q. Well, let's take this step by step. Were you aware
27 that the IRM process had been applied to that complaint
28 against Sergeant McCabe and the way it was
29 investigated?

1 A. I certainly don't recall being aware, no, Mr. McDowell,
2 I don't. I certainly wouldn't have had interaction in
3 relation to that particular issue but it's possible --
4 330 Q. Sorry, you have said a moment ago it may well have
5 referred to Sergeant McCabe? 13:51
6 A. Sorry, Superintendent Healy in his phone call may well
7 have referenced, that could be a reference to Sergeant
8 McCabe, yes.
9 331 Q. Well, but I am trying to -- I am not trying to badger
10 you at all. 13:52
11 A. No, absolutely.
12 332 Q. I am trying to elucidate how there could be a
13 connection.
14 A. Well, what I can say, it's possible from that note,
15 but -- it's possible that Chief Superintendent Healy 13:52
16 was telling me that the Independent Review Mechanism
17 had found there was no issue with the investigation.
18 333 Q. Yes.
19 A. It's possible, yes. Again, I am looking at the date
20 and I'm not sure if the Independent Review Mechanisms 13:52
21 had concluded at that point or whether they were
22 ongoing.
23 334 Q. Superintendent Healy was the liaison officer, wasn't
24 he?
25 A. He was, for the -- 13:52
26 335 Q. For the O'Higgins Commission?
27 A. For the O'Higgins Commission, and I understand for
28 the -- certainly he was assisting in forwarding
29 documentation from the organisation in respect of the

1 other cases under the Independent Review Mechanism.

2 336 Q. But as I understand it, you were not conscious at the
3 time that the IRM process had finished in respect of
4 Sergeant McCabe?

5 A. No, I most definitely wasn't. 13:53

6 337 Q. I see. Could you have thought that it was ongoing in
7 respect of Sergeant McCabe?

8 A. Again, it's possible, yes.

9 338 Q. I see. And can you just indicate again what the note
10 about section 41 would have been? 13:53

11 A. That was most definitely in respect of the
12 correspondence, the stern correspondence that had come
13 in from the Commission about the disclosure
14 difficulties. I am satisfied with that because, I am
15 not sure if I -- 13:53

16 339 Q. Just let's take it step by step again.

17 A. Yes.

18 340 Q. Section 41 is a process whereby there is a duty on the
19 Commissioner to notify the Minister for Justice of any
20 development -- 13:54

21 A. Yes.

22 341 Q. -- of a certain level of importance which the Minister
23 is entitled to know in his or her supervisory function,
24 isn't that right?

25 A. Yes. 13:54

26 342 Q. So can you tell us, is the use of section 41, or was it
27 then, an a usual or unusual step?

28 A. It's an unusual step.

29 343 Q. would it have been highly unusual at that stage? I

1 mean, were you aware of any prior section 41
2 notifications at that time?

3 A. Yeah, I was broadly familiar with section 41,
4 absolutely, yes.

5 344 Q. Yes. And how often would it have been invoked or used? 13:54

6 A. It wouldn't arise that often.

7 345 Q. Well, would it be once a year, kind of thing?

8 A. It could be a handful during the year, Mr. McDowell.

9 346 Q. I see. Yes. Now, you say you sent your note in two
10 parts, and I'm not -- 13:54

11 A. Yes.

12 347 Q. -- doubting you, but the second bit is "Phone call, F
13 Healy"?

14 A. Yes.

15 348 Q. Is that in respect of the same phone call? 13:55

16 A. It's the same phone call. I think I had just put in,
17 when I was typing it in I put in "phone call F Healy"
18 just to show it was a continuation of the phone call.

19 349 Q. And then you have "letter comfort counsel"?

20 A. Yes. 13:55

21 350 Q. Now, there was a discussion, you probably heard it, the
22 other day as to what was legal advice and what was a
23 letter of comfort.

24 A. Yes.

25 351 Q. Could I suggest to you that the term "letter of 13:55
26 comfort" connotes legal advice, the existence of which
27 would be a matter of comfort to the Commissioner if she
28 was ever challenged afterwards about the strategy she
29 had adopted?

1 A. Yes, that's correct.

2 352 Q. And we know that that so-called -- and we are referring
3 to the three-paragraph email, isn't that right?

4 A. That is my understanding of what that referred to, yes.

5 353 Q. And that letter of comfort only came into existence 13:56
6 after the matter had become contentious --

7 A. It did.

8 354 Q. -- on the afternoon of Friday the 15th?

9 A. It did. That is my understanding, yes.

10 355 Q. So are we clear then that it was -- that you saw that 13:56
11 document as something that the Commissioner had sought,
12 so to speak, to have available to justify at a later
13 stage, if the matter arose, the course of action which
14 was being adopted at the Commission?

15 A. Well, it would suggest that the letter -- the letter 13:56
16 that had come from counsel was certainly dealing with a
17 very significant issue and that's why it was requested
18 that the matter be put in writing.

19 356 Q. And that was at 15:29pm, this email on the afternoon of
20 the 15th May? 13:57

21 A. Yes.

22 357 Q. So am I right in thinking that it would appear that no
23 written advice was sought before the impugning of
24 Sergeant McCabe's motivation commenced on that day?

25 A. It certainly would appear to be the case, that there 13:57
26 was no written advice sought prior to that, yes.

27 358 Q. And from what you have told us earlier, the strategy of
28 impugning Sergeant McCabe's motivation must have
29 developed in pretty short order before the 15th May

1 because it was a very limited timeframe?

2 A. Yes, either within that timeframe or on the 15th May, I
3 just don't know.

4 359 Q. would you agree with me, and again I'm not implicitly
5 criticising you in any way, that it should have been 13:58
6 obvious to anybody involved in pursuing that line of
7 legal strategy that it had implications for the way in
8 which whistleblowers were treated and seemed to
9 directly contradict all known norms for the sympathetic
10 treatment of whistleblowers? 13:58

11 A. It was certainly inconsistent with the position that
12 had been adopted in terms of dealing with the workplace
13 issues and the general interactions with Sergeant
14 McCabe prior to that.

15 360 Q. And at any time before or after those events occurred, 13:59
16 did you discuss that inconsistency with the
17 Commissioner?

18 A. I didn't, Mr. McDowell, and perhaps with hindsight,
19 perhaps I should.

20 361 Q. She never sought legal advice on this from you? 13:59

21 A. No, she didn't, Mr. McDowell. Sorry, I would say, if I
22 could --

23 362 Q. Sorry --

24 A. -- the morning, the morning of the 4th November, as I
25 understand it, in 2015, when the Commissioner was going 13:59
26 to give evidence at the Commission, I was contacted by
27 the Commissioner and she asked me to have --
28 effectively have a look at the motivation, the letter
29 that counsel had written in.

1 363 Q. Could I -- I will come back to that if I may because
2 there are some questions that I want to put to you
3 about that.

4 A. Yes.

5 364 Q. Could I ask you in relation to the -- at page 3746, the 14:00
6 reference to, in your second memo to yourself?

7 A. Yes.

8 365 Q. "Commissioner private meeting last week with counsel."
9 Could I ask you, in relation to that reference, was
10 that something about which Superintendent Healy had 14:00
11 informed you or were you aware of it some other way?

12 A. No, I wasn't aware, that that would have come in the
13 phone call on the 26th May '15.

14 366 Q. And insofar as you interpret the phrase "private
15 meeting" as being one where counsel wasn't attended by 14:01
16 a solicitor, did you understand it to be a formal
17 meeting or just a casual encounter on the street or
18 something like that?

19 A. I certainly -- private meeting, I took it as an
20 informal meeting. 14:01

21 367 Q. An informal meeting?

22 A. Yeah, because normally, as you would know, you would
23 use the word meeting or consultation.

24 368 Q. Well, was Superintendent Healy saying that the
25 Commissioner had bumped into counsel -- 14:01

26 A. No.

27 369 Q. -- or that the Commissioner --

28 A. No, certainly I would've --

29 370 Q. -- asked for a meeting with counsel?

1 A. -- asked for a meeting. There would have been a
2 meeting with counsel, yes.

3 371 Q. And would there be any good reason of which you were
4 aware of, it was customary for the Commissioner when
5 she was engaging counsel in a matter to meet privately 14:01
6 with the counsel rather than with the Chief State
7 solicitor in attendance?

8 A. I suppose I'm surmising here or speculating, it could
9 have been just the legal team that had been appointed
10 just to -- a formal introduction type, meet and greet. 14:02
11 I simply don't know, Mr. McDowell.

12 372 Q. I see.

13 A. But in terms of the civil litigation that I deal with,
14 it wouldn't -- you wouldn't normally have a meeting
15 like that. It would be normally, obviously, a 14:02
16 consultation, if necessary.

17 373 Q. Because Superintendent Healy was telling you about it?

18 A. He was.

19 374 Q. And it would hardly be just a purely meet and greet
20 matter if he was also telling you about the email that 14:02
21 you describe as a letter of comfort?

22 A. Well, yes, I have the letter of comfort with counsel
23 just before it, so that certainly would suggest that
24 that may have been discussed, I simply don't know.

25 375 Q. But we have no record of that meeting or reference to 14:02
26 it in any statement apart from your own?

27 A. Well, I am satisfied I was certainly told that
28 because --

29 376 Q. Now, can you tell the Tribunal whether the transcript

1 of the O'Higgins Commission was made available to you
2 regularly throughout the Commission?

3 A. At the initial stages, it was sent to me by
4 Mr. O'Hagan. I think on the first -- certainly I had
5 the transcript for the 15th, the following Monday and 14:03
6 the Tuesday and, thereafter, it was sent directly to
7 Chief Superintendent Healy.

8 377 Q. And can you indicate why that was, that you were sent
9 it? Were you sent it electronically?

10 A. I was sent it by email, yes. 14:04

11 378 Q. Yes. And can you indicate how it was that it stopped
12 going to you and started going to Superintendent Healy?

13 A. Well again, if I could put it forward, that in terms of
14 tribunals and commissions, it's normally the case that
15 the tribunal liaison officer liaises directly with the 14:04
16 Commissioner in terms of instructions. But I am aware,
17 I did send an email, I believe, to Ms. Ryan in the
18 Chief State's, just to say, look, it was okay for the
19 transcripts to go directly to Chief Superintendent
20 Healy, because I wasn't -- I wasn't providing the 14:04
21 instructions on behalf of the Commissioner at that
22 point.

23 379 Q. I see. Could I ask you to look at page 3126 and 3127?

24 A. Yes.

25 380 Q. At line 246, the Commissioner, in response to 14:05
26 questions, says:
27
28 "I had a number of consultations with counsel prior to
29 my own appearance as a witness before the Commission on

1 4/11/2015 in my capacity as Assistant Commissioner,
2 HRM, and up to the period in or around the publication
3 of the report. At all other times Chief Superintendent
4 Healy was my primary conduit with the legal team for
5 the duration of the O'Higgins Commission. Having 14:05
6 reviewed my e-calendar I note that there is an entry
7 for a meeting on 21st May 2015 with Mr. Smyth and Chief
8 Superintendent Healy. Other than the reference in my
9 e-calendar I have no recollection of that meeting
10 taking place." 14:06

11
12 well, first of all, would it appear that is the meeting
13 Fergus Healy was telling you about?

14 A. It would appear to be, yes.

15 381 Q. And just so that -- he led you to believe that such a 14:06
16 meeting had taken place, is that right?

17 A. Yes.

18 382 Q. Now, in the run-up to the Commissioner's own appearance
19 you say that on the morning of her appearance she asked
20 you to review, is it, the letter of comfort? 14:06

21 A. I think what she had described it as, the letter
22 relating to motivation.

23 383 Q. But we are talking about -- was it the long form
24 document or the short form document she was asking you
25 to -- 14:06

26 A. I actually -- it's helpful I suppose on the 4th
27 November, I had sent a text message to Chief
28 Superintendent Healy at 9:48am:

29

1 "Fergus, I just spoke with Mick MacNamara. The
2 Commissioner has asked me to look at the advice that
3 was received from counsel regarding pursuing the
4 motivation issue. I don't have a copy of same but note
5 in any event that this was discussed with the 14:07
6 Commissioner at a consultation last night. Regards,
7 Ken."

8 384 Q. I see. And did you have a look at the documentation?
9 A. No. Because I understand that that day, Mr. McDowell,
10 certain matters were clarified before the Commissioner 14:07
11 got into the witness-box and -- but I didn't.

12 385 Q. You see, were you aware that Mr. Justice O'Higgins,
13 either through his counsel or through Mr. O'Hagan, had
14 indicated that he required clarification of that issue
15 from the Commissioner at that time? 14:07

16 A. On the 4th November?

17 386 Q. Yes.
18 A. Was I aware? No, no. Not until that morning.

19 387 Q. Well, were you aware on that morning that your
20 counsel -- or sorry, that the Commissioner's counsel 14:08
21 had advance knowledge that clarification of her
22 position would be required before she got into the
23 witness-box?

24 A. I assumed that counsel had raised it with her at the
25 consultation the night before. I wasn't aware that 14:08
26 Mr. Justice O'Higgins had looked for clarification on
27 the matter.

28 388 Q. I see. Because the transcript shows that Mr. Justice
29 O'Higgins, when the Commissioner was due to give

1 evidence, interposed to seek clarification on this
2 matter, isn't that right?

3 A. This is the transcript on the --
4 389 Q. Of Commission for the 4th November.
5 A. I am sorry, I did read it at one point. I accept it 14:08
6 did, yeah.

7 390 Q. He raised the matter with Mr. Smyth?
8 A. Oh, I am certainly aware that there was -- there were
9 discussions before the Commissioner had got into the
10 witness-box. Yes. 14:08

11 391 Q. Yes. And you see, I'm suggesting to you that that is
12 why your work became redundant that morning, that
13 you -- you became aware that --
14 A. I became aware, I can't recall whether it was through
15 Ms. Ryan or Chief Superintendent Healy that the matter 14:09
16 had been clarified.

17 392 Q. Yes. I mean, just to give you the exact wording,
18 Mr. Justice O'Higgins said, he said:
19
20 "Good morning everybody. Thank you for your continued 14:09
21 assistance. We have a long day's work ahead of us
22 today. First of all, I regret the lateness of the
23 sitting, there were a number of matters, technical and
24 otherwise, that caused us to be in arrears, I regret
25 that. Before we commence there is one matter I would 14:09
26 like a bit of assistance and clarification on from you,
27 Mr. Smyth. It is in relation to a question that has
28 been dormant for some time concerning the integrity of
29 Sergeant McCabe and his mala fides or bona fides in

1 making his complaint."
2 A. Yes.
3 393 Q. And he then read out, Mr. Smyth, passages of what had
4 happened. And I am suggesting to you that what
5 actually happened on that morning was that Mr. Smyth 14:10
6 knew he was going to be asked about this and had an
7 opportunity to consult with the Commissioner on this
8 subject?
9 A. That's possible. I just wasn't aware, Mr. McDowell.
10 394 Q. I see. And we know that prior to that, that another 14:10
11 meeting had been held with counsel to discuss the
12 motivation issue by the Commissioner, isn't that right?
13 A. I think it was the night before, yes.
14 395 Q. The night before?
15 A. I wasn't at that -- 14:10
16 396 Q. We have seen Ms. Ryan's note, she was in attendance on
17 that occasion?
18 A. I would imagine so, yes.
19 397 Q. But you weren't there?
20 A. I wasn't there, Mr. McDowell. 14:10
21 398 Q. And tell me, we now know that Mr. Smyth informed the
22 Commission that insofar as he had used the term
23 integrity, that was an error on his part?
24 A. Yes.
25 399 Q. Was that error ever spotted in the previous four months 14:11
26 in Garda Headquarters, as far as you were concerned?
27 A. Not that I'm aware of, no.
28 400 Q. But the transcript was there, the transcript you saw --
29 A. I did, it was there, yes.

1 401 Q. -- clearly indicated that his integrity was under
2 attack, so to speak?

3 A. I believe that the word integrity was used on the 15th.

4 402 Q. Yes. And just for clarity's sake, the term mala fides
5 was introduced by the Judge, not by counsel for 14:11
6 Sergeant McCabe, isn't that right?

7 A. Yeah, I accept -- I accept what you are telling me,
8 yes.

9 403 Q. Well, I'm just wondering, you had seen Mr. Smyth in
10 writing, you had seen an account of him questioning 14:12
11 Sergeant McCabe's integrity --

12 A. Yes, I had seen the transcript of the 15th?

13 404 Q. -- and saying that that was going to be an issue right
14 the way through across, if not all but most modules,
15 isn't that right? 14:12

16 A. Yes.

17 405 Q. Did that, so to speak, make the hair stand on your head
18 when you read it?

19 A. Well, again, going back to the point I made, it
20 certainly -- I certainly took the view that the other 14:12
21 issues that I had been giving advice on, the bringing
22 in the external expert, the interaction with Sergeant
23 McCabe, that I didn't see those proceeding.

24 406 Q. Well, you must have got a bit of a shock when you read
25 the transcript, surely? 14:13

26 A. It was -- well, it was certainly inconsistent with the
27 approach that had been taken to date.

28 407 Q. Radically inconsistent and utterly inconsistent with
29 the in-house policy?

1 A. I will accept that, yes.

2 408 Q. And what I am suggesting to you is that it's very
3 strange that this -- I mean, you can look at the
4 19-paragraph letter and argue that there was a
5 misunderstanding of instructions, but it was very, very 14:13
6 clear that there had been a radical decision on the
7 part of Mr. Smyth that he had a mandate to challenge
8 Sergeant McCabe's integrity, isn't that right?

9 A. Well, I know he had certainly taken instructions,
10 instructions had been taken directly from the 14:13
11 Commissioner on the --

12 409 Q. And he told Mr. Justice O'Higgins that he wasn't taking
13 this from the air, that he was acting on instructions,
14 isn't that right?

15 A. Yes, he did, yes. 14:14

16 410 Q. And everybody who had access to that transcript in the
17 Phoenix Park, including yourself for two days --

18 A. Yes.

19 411 Q. -- knew that he had done this?

20 A. Yes. 14:14

21 412 Q. And are you aware of anybody signalling, look, for
22 heaven's sake, this is going off the tracks, you don't
23 have such instructions and it's wrong that Mr. Justice
24 O'Higgins should think that across all the modules you
25 are going to impugn Sergeant McCabe's integrity? 14:14

26 A. No, I'm not.

27 413 Q. And I think we do know that from the notes of the
28 meeting on the 3rd November, that Sergeant McCabe's
29 motivation and credibility were still to be kept in

1 issue, isn't that right?

2 A. I haven't seen the notes of the 3rd, apologies.

3 414 Q. You haven't seen them?

4 A. I haven't seen them, I wasn't present at the meeting,
5 apologies. 14:15

6 415 Q. I won't ask you about them if you haven't seen them
7 then. But I am just asking you why it was that if this
8 aberration was taking place at the Commission, why it
9 was that nobody intervened for three or four months,
10 for more than that, in fact, nearly six months, to 14:15
11 correct the record in the Commission when it was so
12 alarmingly at odds with the -- with what you say was
13 the general strategy of An Garda Síochána in respect of
14 whistleblowers?

15 A. I simply don't know, Mr. McDowell, I don't have a reply 14:15
16 to that question.

17 416 Q. Yes. And since you weren't at the meeting on the 3rd
18 November, you don't know -- you aren't aware, but I
19 think it's fairly clear from all of the material that
20 the challenge to his motivation and credibility was to 14:16
21 be maintained?

22 A. Again, I'm -- apologies, I simply -- I simply don't
23 know.

24 417 Q. If you didn't read it, you didn't read it. I am not
25 criticising you. 14:16

26 A. No, I certainly didn't have access to the minutes of
27 that meeting.

28 418 Q. But going back to what you agreed with Mr. Marrinan, as
29 far as you were concerned, forgetting about integrity

1 completely and -- that, as far as you were concerned,
2 there was no place in the ordinary dealings of An Garda
3 Síochána with somebody who had made a disclosure of the
4 kind that had been made here, that the result would be
5 that their motivation and their credibility would be
6 impugned? 14:16

7 A. Well, I certainly -- I -- in terms of the new 2014 Act
8 that is there now, in terms of looking at whether a
9 particular complaint falls into a protected disclosure,
10 the Act deems that motivation is irrelevant. 14:17

11 419 Q. Well, quite apart then from protected disclosure, apart
12 from that, the Commissioner was saying, even without
13 the -- that statutory nudge, so to speak --

14 A. Yes.

15 420 Q. -- she was adopting the position that whistleblowers 14:17
16 would not be treated in that way, isn't that right?

17 A. She was certainly adopting the position that
18 whistleblowers would be supported, yes.

19 421 Q. I see.

20 MR. MCDOWELL: Thank you very much. 14:17

21
22 MR. KEN RUANE WAS CROSS-EXAMINED BY MR. MURPHY:

23
24 422 Q. MR. MURPHY: Could Mr. Ruane be please shown document
25 3755, please, which Mr. Marrinan referred to earlier. 14:17
26 Mr. Ruane, I think this is a note which you have dealt
27 with some time ago when answering Mr. Marrinan's
28 questions.

29 A. Yes.

1 423 Q. First of all, can I just ask you to confirm that your
2 role in attending the meeting on the 11th May of 2015
3 was effectively to ensure that the legal team was up
4 and running?
5 A. In place, yes. 14:18

6 424 Q. Yes. You were not going to take part in the management
7 of the Commission or representation thereafter?
8 A. No.

9 425 Q. I think you have confirmed in your evidence, therefore,
10 that that meeting was really the last point of any 14:18
11 significant detailed involvement on your part in
12 relation to legal matters?
13 A. Yes.

14 426 Q. And in relation to the briefing which took place on
15 that day, had the barristers received papers in advance 14:18
16 of that consultation?
17 A. I understand they had. I am sorry, I am just --

18 427 Q. I think you have very considerable experience of
19 litigation.
20 A. Yes. 14:18

21 428 Q. And would you agree with me that it's important when
22 attending an initial background briefing of this kind
23 that lawyers are provided with as much background
24 information as may be possible for them to assess and
25 understand the nature of the challenge that they face? 14:19
26 A. Well, my view, that certainly it would be -- I have
27 seen issues, I have had cases, unfortunately, where
28 issues would come up during a case and, for whatever
29 reason, counsel may well turn around and say 'how come

1 I wasn't told about this?' or -- what I would say is,
2 background matters would come from an impartial officer
3 as opposed to witnesses --

4 429 Q. Yes.

5 A. -- who would be involved in matters, yes. 14:19

6 430 Q. But you would agree, I think, that background is very
7 important when assessing a briefing of barristers --

8 A. Yes.

9 431 Q. -- in relation to litigation, and it was important in
10 this case? 14:19

11 A. Yes.

12 432 Q. And insofar as background is concerned, it was your
13 word I think, in this case I think you will agree with
14 me that the note indicates that there was background
15 given in relation to other litigation that might be 14:19
16 outstanding by Sergeant McCabe?

17 A. Yes, I had indicated to counsel that there was
18 litigation, yes. I would always do that.

19 433 Q. And that would be a totally normal thing to do?

20 A. Absolutely. 14:20

21 434 Q. And in terms of other aspects of the dispute or other
22 historical events at that meeting, is it your
23 understanding that relevant background information was
24 given to the barristers and they were asking questions?

25 A. It was relevant background information. They were 14:20
26 asking questions and it was to do with the interactions
27 that Sergeant McCabe had had with management --

28 435 Q. Yes.

29 A. -- generally.

1 436 Q. And, in particular, I think some of the other notes
2 which you have been referred to suggest that counsel
3 were asking, where did this all come from?
4 A. Well, it would appear that it would be consistent with
5 what Chief Superintendent Healy had indicated to me in 14:20
6 the phone call on the Saturday night, how did this
7 start, where did it all begin?

8 437 Q. Yes. Now, in terms of the assessments at that meeting,
9 I think you made reference to Chief Superintendent
10 Rooney. I think you will agree with me that your note 14:20
11 doesn't suggest that Superintendent Healy said that
12 Superintendent Rooney had, in fact, disobeyed orders;
13 he simply raised an issue?

14 A. It was potentially an issue he was looking at, yes.

15 438 Q. And in terms of the background information, can you 14:21
16 recall whether any information was given about the
17 Byrne/McGinn report in the course of that briefing?

18 A. Certainly, some of the issues would have touched on
19 matters that would have been dealt with in the
20 Byrne/McGinn report, absolutely, yes. 14:21

21 439 Q. And if we just pause. Therefore, at the end of that
22 meeting, where the background information had been
23 given, that really ended your involvement in the
24 ongoing conduct of representation of An Garda Síochána
25 at the Commission? 14:21

26 A. Yes, and that would -- I made the point about the
27 Smithwick Tribunal, when that was up and running there
28 was a legal team in place that would have gone directly
29 through a liaison to the Commissioner for instructions,

1 so I am making the distinction between commissions and
2 inquiries and civil litigation, which I deal with.

3 440 Q. Yes. And insofar as the papers were briefed to the
4 barristers were concerned, they were aware of the
5 issues that were raised before the Commission? 14:21

6 A. Yes.

7 441 Q. They were aware of the scope and nature of the
8 allegations which had been made by Sergeant McCabe?

9 A. Yes, absolutely.

10 442 Q. They were aware of the fact that those allegations did 14:22
11 not merely confine themselves to allegations of
12 incompetent policing but also extended to allegations
13 of corruption?

14 A. Well, certainly I am aware there were certainly
15 complaints against very senior officers, yes. 14:22

16 443 Q. And, in particular, and the source for this is
17 paragraph 3.6 of the O'Higgins Commission report, the
18 report noted that:

19

20 "Complaints were made by Sergeant McCabe of corruption 14:22
21 against the Commissioner, Martin Callinan, Assistant
22 Commissioner Byrne, Chief Superintendent Rooney and
23 Superintendent Clancy."

24 A. Yes.

25 444 Q. And in the Byrne/McGinn report, that report had dealt 14:22
26 exclusively, I think, with allegations in relation to
27 incompetent policing or errors in relation to policing?

28 A. Yes.

29 445 Q. And I think at the end of that process - and I can

1 provide this, Chairman, to you after the break -
2 Sergeant McCabe was presented with a document by
3 Assistant Commissioner Byrne, and that contained
4 reference to 42 different allegations which had been
5 made by Sergeant McCabe and which had been investigated 14:23
6 by the Byrne/McGinn report?

7 A. Yes, I don't have the detail, but I accept what you are
8 saying.

9 446 Q. Yes. And that indicated in the form of relevant comms,
10 some findings were upheld and others were not upheld? 14:23

11 A. Yes.

12 447 Q. And that that was notified to Sergeant McCabe?

13 A. Yes.

14 448 Q. But none of those matters involved allegations of
15 corruption? 14:23

16 A. Again, I am taking -- I am accepting what you say, yes.

17 449 Q. Now, in terms of the actual approach towards the case
18 itself, you have indicated that, when taking
19 instructions, that lawyers can provide advice verbally
20 or in writing. In your experience, would you agree 14:23
21 with me that it's often very important to have a
22 background briefing before any advice is given?

23 A. Yes, I would agree with that, yes.

24 450 Q. Would you agree that, often, advice can be given
25 verbally and to be confirmed later in writing? 14:23

26 A. Yes, that happens, yes.

27 451 Q. Insofar as there may have been meetings or
28 consultations in relation to the preparation of the
29 Commission between 11th and 15th May, you were not

1 involved in any of those matters?

2 A. No.

3 452 Q. And therefore, insofar as Mr. Marrinan has asked you
4 questions about motivation or credibility, they are not
5 matters that you addressed with the Garda legal team 14:24
6 between the 11th and 15th May?

7 A. No.

8 453 Q. In terms of your interaction with Chief Superintendent
9 Healy, I think the position is that he effectively
10 would have taken over all of the liaison duties after 14:24
11 11th May?

12 A. Well, absolutely, and that is consistent with previous
13 inquiries and commissions and current commissions and
14 inquiries.

15 454 Q. Yes. Now, in terms of the allegations that were made 14:24
16 by Sergeant McCabe at that time, in particular the
17 allegations of corruption, was it your understanding
18 that those allegations were to be tested in the
19 Commission?

20 A. It was my understanding that, apart from malpractice, 14:25
21 other issues were going to certainly come up in
22 relation to complaints against senior officers, yes.

23 455 Q. Well, would you agree with me that it was absolutely
24 clear that the Commissioner didn't accept that her
25 predecessor had been guilty of corruption in the way it 14:25
26 was alleged by Sergeant McCabe?

27 A. Sorry, Mr. Murphy?

28 456 Q. Would you agree with me that the Commissioner did not
29 accept that the allegations of corruption against

1 Commissioner Callinan were well-founded?

2 A. Yes, I accept that, yes.

3 457 Q. And we know now that, as the process went on, that
4 Mr. Justice O'Higgins rejected those allegations?

5 A. Yes, I'm aware some were rejected and some were 14:25
6 withdrawn and some were --

7 458 Q. But again, you weren't privy to the actual conduct of
8 those hearings yourself?

9 A. No.

10 459 Q. Just again in terms of the structure of responsibility 14:25
11 within An Garda Síochána, I think the position is that,
12 under Section 26 of the Garda Síochána Act of 2005, the
13 Commissioner of An Garda Síochána is directly
14 accountable to the Minister for Justice, isn't that
15 correct? 14:26

16 A. Yes.

17 460 Q. I think the phrase, if I could read it to you,
18 Section 26(3):
19
20 "The Garda Commissioner is accountable to the Minister 14:26
21 for the performance of the Commissioner's functions and
22 those of the Garda Síochána."

23 A. Yes.

24 461 Q. And that is standard practice?

25 A. Yes. 14:26

26 462 Q. So in respect of all of her duties, the Commissioner
27 has that legal obligation?

28 A. Yes.

29 463 Q. And you would be aware of that from your advice given

1 to her in the course of your duties in Garda
2 Headquarters?

3 A. Yes, I am aware of the provisions of the Act, yes.

4 464 Q. Now, in terms of the material information that was
5 provided then to the Commission itself, is it correct 14:26
6 to say you didn't attend any of the Commission
7 hearings?

8 A. No, I -- sorry, an issue had arisen on the 21st
9 October, I believe, where I came down to the Commission
10 but the matter was resolved and I didn't attend 14:27
11 anything further after that.

12 465 Q. So insofar as the issue of challenging a whistleblower
13 is concerned, in terms of the allegations, for example,
14 of corruption --

15 A. Yes. 14:27

16 466 Q. -- would you agree with me that, in a commission of
17 investigation, if such an allegation is denied, that it
18 can be legitimately the subject matter of a challenge?

19 A. Yes, well, certainly it would be legitimate to
20 cross-examine a witness to -- if it was of assistance 14:27
21 in determining whether that complaint should be upheld
22 or not, yes, I would agree with you.

23 467 Q. Yes. And that would be notwithstanding the 2014 Act?

24 A. No -- yes, the distinction I was making, the 2014 Act
25 determines whether a complaint is admissible as a 14:27
26 protected disclosure. In fact, I was looking at the
27 Act over the weekend. There is -- the only reference
28 to motivation in the Act is if somebody is dismissed
29 for making a protected disclosure, the Act -- there is

1 a provision in the Act that damages for dismissal can
2 be reduced if motivation is shown to have been for
3 other purposes than...

4 468 Q. And I think, as a matter of fact, I think the
5 Byrne/McGinn report made an express finding that 14:28
6 Sergeant McCabe was not guilty of any malice in what he
7 said, but thereafter, I think, Sergeant McCabe
8 continued to make complaints against Assistant
9 Commissioner Byrne, which formed the subject matter of
10 the Commission of Investigation? 14:28

11 A. Yes.

12 469 Q. And, in fact, I think many of those complaints were
13 withdrawn by him in the course of the Commission
14 hearing?

15 A. I am certainly aware some were withdrawn. 14:28

16 470 Q. But not until then?

17 A. I think -- I believe they were withdrawn during the
18 Commission, yes.

19 MR. MURPHY: Yes. Thank you.

20 MR. MCDOWELL: Chairman, arising out of that, if nobody 14:28
21 else wants to?

22

23 THE WITNESS WAS FURTHER CROSS-EXAMINED BY MR. MCDOWELL:

24

25 471 Q. MR. MCDOWELL: I think you are aware that the O'Higgins 14:29
26 Commission at the paragraph referred to by Mr. Murphy
27 indicated that Sergeant McCabe had not used the term
28 'corruption' in terms of a criminal offence, or had
29 stated that, isn't that right?

1 A. I don't have the report in front of me, but I will --
2 if you are telling me, I accept it.

3 CHAIRMAN: I have read it, Mr. McDowell. I do have
4 that.

5 A. Yes, I will accept that, yes. 14:29

6 472 Q. MR. MCDOWELL: Just to put it in context, there was a
7 single global breach of Garda discipline which has
8 referred to corruption and malpractice, is that right?

9 A. There are, yeah, there were corruption and malpractice
10 regulations, yes. 14:29

11 473 Q. There has been extensive internal Garda debate when
12 such a charge was put, that it should specify whether
13 it was corrupt in the criminal sense or malpractice in
14 the non-criminal sense, isn't that right?

15 CHAIRMAN: I know, and Mr. Justice O'Higgins actually 14:30
16 does go into that, and I know that.

17 MR. MCDOWELL: I just want that email clarified for the
18 purposes -- I fully understand, Judge, that you know
19 this, but people reporting today's proceedings might
20 not appreciate that Sergeant McCabe had never levelled 14:30
21 an allegation of criminal corruption against anybody in
22 the Tribunal, isn't that right?

23 A. That is why I was making the distinction between --

24 CHAIRMAN: well, insofar as, then, any elucidation is
25 needed, the allegation, as I understand it, against 14:30
26 Commissioner Callinan was that a particular
27 superintendent, who Sergeant McCabe thought was not
28 very good, was put on a promotion list for chief
29 superintendent, and this was regarded as inappropriate

1 conduct, which is the other thing apart from
2 corruption, not effectively corruption as we know it,
3 which is like taking bribes, or whatever.

4 MR. McDOWELL: I fully understand, Chairman, that you
5 follow the point I am making, and I think the witness
6 does --

7 A. I --

8 CHAIRMAN: Well, let's wait, but I am not going to
9 write the newspapers' reports for them, Mr. McDowell.

10 MR. McDOWELL: I know you are not, but insofar as I can
11 dampen down an incorrect inference, I have to do it,
12 because I am here to protect good names --

13 CHAIRMAN: Yes. Well, we are going to have a tennis
14 match now. I am sorry, Mr. Murphy, do you --

15 MR. McDOWELL: No, no, I am just dealing with --

16 CHAIRMAN: No, I am referring to Mr. Murphy coming back
17 at you coming back, so I am going to allow it to finish
18 at just -- my hope was that people would get exhausted
19 and this witness would -- and we will then have a
20 break, but it's not happening so far.

21
22 MR. MURPHY: Sorry, if I could just make two points,
23 sharing Mr. McDowell's concern for the fourth estate.
24 If I could just make one point, which is that insofar
25 as the report is concerned, Chairman, I did refer to
26 this the other day, that from paragraphs 13.86 onwards,
27 Mr. Justice O'Higgins canvassed and dealt with the
28 argument which Mr. McDowell has just made to you, but
29 he rejected it, because he said:

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"This does not alter the fact that a complaint of corruption subsisted."

And then he details how that was maintained and then rejects it. And, in addition, in terms of the complaint that was made, it was made pursuant to the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, and in the course of the letter supporting that, Sergeant McCabe said:

"I state once again the evidence relates to corruption as defined under the confidential reporting charter for a person with... course to justice and attempting to pervert the course of justice on a massive scale."

So that was the allegation that was made, and it was rejected.

CHAIRMAN: I know. Mr. Murphy, I do see the point, but, honestly, Mr. Ruane has been here long enough and much of what he is asked about is his opinion or what does he think about this, that or the other, and I appreciate that it is allowed in tribunals, but I would hear a submission on that certainly towards the end, and it's as well to remind me, because there may be a point there that I need to know, and thank you for that. Mr. Murrinan, had you any other questions?

MR. MARRINAN: Yes, just very briefly, sir.

1 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN:

2

3 474 Q. MR. MARRINAN: Just in relation to the point that was
4 made by Mr. Murphy in his examination of you, the
5 O'Higgins Commission didn't question the motivation of 14:33
6 Sergeant McCabe in its final report?

7 A. That's correct.

8 475 Q. Isn't that right?

9 A. That's correct.

10 476 Q. Byrne and McGinn, similarly, didn't question Sergeant 14:33
11 McCabe's motivation, isn't that right?

12 A. That's correct.

13 477 Q. In their report?

14 A. In their report.

15 478 Q. So the only time that this arose was during the course 14:33
16 of hearings when he was cross-examined on the basis
17 that he was acting out of an improper motive, isn't
18 that right?

19 A. Yes.

20 479 Q. And that was rejected before the O'Higgins Commission 14:33
21 by Byrne and McGinn and was rejected by Mr. Justice
22 O'Higgins at the Commission, isn't that right?

23 A. It was rejected, yes, at the O'Higgins Commission.

24 480 Q. Yes. Now, just in relation to your statement at page 14:34
25 2, 3259, at paragraph 2, just you make the following
26 statement:

27

28 "I would receive regular phone calls from the Garda
29 Commissioner seeking legal advice on a wide variety of

1 issues, but on this occasion no such request for advice
2 was received in relation to the matter arising at the
3 O'Higgins Commission."

4 A. Yes.

5 481 Q. You have put that in your statement. Were you 14:34
6 surprised that you weren't consulted on the 15th May?
7 A. Well, the Commissioner had received legal advice from
8 her professional legal team - a senior counsel,
9 assisted by junior counsel. She had spoken directly to
10 the Commission liaison officer, and I will be very 14:34
11 honest with you, I suppose what I would have felt or
12 taken from that is that, normally, in certain cases,
13 the Commissioner might ring me and say, 'what do you
14 think about this or should we get an external opinion?'
15 So it would -- it would suggest that the Commissioner 14:35
16 was certainly happy with the legal advice that she had
17 got and the instructions she had given.

18 482 Q. When did you first become aware of the fact that she
19 had consulted with two officials in the Department of
20 Justice, Noel Waters and Ken O'Leary? 14:35

21 A. I certainly wasn't aware of that.

22 483 Q. When did you first become aware of that?

23 A. When did I first become aware --

24 484 Q. Was it at the Tribunal?

25 A. I presume at the Tribunal, yes. 14:35

26 485 Q. And then, finally, just in relation to going forward to
27 May of 2016 when the matter arose.

28 A. Yes.

29 486 Q. And we heard evidence yesterday in relation to the

1 Commissioner waiving, or initially waiving her right to
2 legal privilege over communications between herself and
3 her lawyers on the 15th May. Were you consulted by the
4 Commissioner in relation to that?

5 A. What I can say, I'm -- again, I will have to take -- I 14:36
6 will try to be as helpful as possible. In terms of
7 the -- there were requests for legal advice, and legal
8 advice being given, but the document that I saw, which
9 I believe referenced the Commissioner offering to put
10 the legal advice into the -- I was surprised by that, 14:36
11 because, without going into what the advice was, I can
12 tell you there was extensive legal issues as to whether
13 privilege would be waived or not at that time.

14 487 Q. And setting a precedent, I suppose --

15 A. Yes, absolutely. 14:36

16 488 Q. -- it might be undesirable --

17 A. Absolutely. But I was surprised by the document.

18 MR. MARRINAN: Thank you very much, Mr. Ruane.

19 A. Thank you.

20
21 MR. KEN RUANE WAS QUESTIONED BY THE CHAIRMAN:

22
23 489 Q. CHAIRMAN: Mr. Ruane, I have a couple of questions for
24 you, and it's traditional that I should go last,
25 certainly in a court case, and that should be the end 14:37
26 of it, but, heaven knows, today it might not be.

27
28 Can I just ask that 3778 be put on the monitor, and
29 there was just two things I wanted to ask you about.

1 Now, is that -- is that 3778? Yes. As I understand
2 it, just the two things I wanted to ask you about was
3 this: If you go down a wee bit, and it starts "AC
4 Byrne was in the room", and will in due course let us
5 know what happened in the room, "McCabe claimed he was 14:37
6 assaulted and false imprisonment." And then arising
7 out of that, there was - and I am quoting, by the way -
8 and "arising out of that had investigated this and file
9 sent to DPP and no prosecution."

10 A. Yes. 14:38

11 490 Q. CHAIRMAN: Now, just to put that in sequence, I
12 understand on the 11th October 2010 Maurice McCabe and
13 Assistant Commissioner Byrne and Chief Superintendent
14 McGinn met in the Hillgrove Hotel, County Monaghan.
15 You are probably aware of that? 14:38

16 A. Yes, Chairman.

17 491 Q. CHAIRMAN: And then that was to report the findings to
18 Sergeant McCabe of the Byrne/McGinn investigation. In
19 respect of 42 complaints, 11 were upheld. That,
20 historically, I think, is correct? 14:38

21 A. Yes.

22 492 Q. CHAIRMAN: But in the course of that meeting, Sergeant
23 McCabe produced a box full of Pulse printouts.

24 A. Yes.

25 493 Q. CHAIRMAN: And as I understand the reference here, in 14:38
26 the meeting of the 11th May 2015, there was annoyance
27 expressed, and I put it no further than that, by
28 Assistant Commissioner Byrne to Sergeant McCabe, there
29 was some waving of hands, perhaps. It could be sub

1 judice, so I will go no further.

2 A. Yes.

3 494 Q. CHAIRMAN: And I think he was told that he wasn't going
4 out of the room without surrendering the box, which is
5 confidential to the Gardaí, is that -- 14:39

6 A. That is my understanding, yes.

7 495 Q. CHAIRMAN: And arising out of that, as I understand it,
8 one of the pieces of litigation that was issued was a
9 claim of assault on him and that he was falsely
10 imprisoned in the room. 14:39

11 A. Yes.

12 496 Q. CHAIRMAN: Yes. Now, the only reason that might be
13 brought up at a prior-to-the-start-of-a-long-case-type
14 consultation would be to say, look, this is perhaps
15 someone who tends to exaggerate things or perhaps tends 14:39
16 to get excited about things and you should be aware of
17 that, would that be right?

18 A. That is possible, yes, Judge.

19 497 Q. CHAIRMAN: Well, you were there. I mean, I wasn't
20 there. 14:39

21 A. I can't remember exactly why that was brought up.

22 498 Q. CHAIRMAN: Well, it's hard to imagine how it could
23 possibly have anything to do with anything that was
24 ever going to be decided, one way or the other, about
25 the 12 events that Ms. Leader spoke of? 14:40

26 A. Yes, I will agree with you.

27 499 Q. CHAIRMAN: Yes. Because it doesn't have anything to do
28 with any --

29 A. No, it doesn't.

1 500 Q. CHAIRMAN: It might have something to do with Pulse and
2 penalty points being cancelled, et cetera, and that
3 emerging from Pulse, certainly?
4 A. Yes.

5 501 Q. CHAIRMAN: But again, those are questions of fact. 14:40
6 They are nothing to do with Maurice McCabe and his
7 temperament or character?
8 A. Yes, I would agree with you on that.

9 502 Q. CHAIRMAN: well, that seems to be related to his
10 temperament or character? 14:40
11 A. It does, yes.

12 503 Q. CHAIRMAN: Yes. And the other thing is this: if you
13 look at that page, there is two references to the
14 incident about the alleged encounter on the couch,
15 which would have been a long time, if it ever happened, 14:40
16 or, indeed, if hide and seek was ever happening, it
17 would have been sometime around 1998, but the
18 references there are, again I am quoting:
19
20 "Deputy Commissioner Rice investigated this and file 14:41
21 sent to DPP and no prosecution."
22 A. I think Deputy Commissioner Rice had investigated the
23 AC Byrne issue.

24 504 Q. CHAIRMAN: All right. well, that is a reference to the
25 false imprisonment allegation as a criminal offence? 14:41
26 A. That is my understanding, yes.

27 505 Q. CHAIRMAN: Okay, I understand. In fact, it was Noel
28 Cunningham who investigated the allegation by Ms. D,
29 isn't that correct?

1 A. Yes.

2 506 Q. CHAIRMAN: So it's accurate to say file sent to DPP and
3 found no crime, it's accurate to say allegation of
4 indecent assault made against him?

5 A. Yes. 14:41

6 507 Q. CHAIRMAN: The DPP found it wasn't, if it ever
7 happened, an indecent assault as such?

8 A. Absolutely.

9 508 Q. CHAIRMAN: And then it says, and I am quoting here:
10
11 "McCabe had issues as to why this allegation was
12 investigated in the case, sought access to his file and
13 was refused the file." 14:41

14 A. Yes.

15 509 Q. CHAIRMAN: I can't imagine where that came from
16 because I don't know how that ever -- that never
17 happened, as far as I know. 14:41

18 A. Unless the "sought access to the file" was an incorrect
19 reference to access to the directions and was refused
20 the directions. I certainly -- I don't recall an issue 14:42
21 about access to the file. It was access to the
22 directions.

23 510 Q. CHAIRMAN: Yes. Well, I mean, I have read a lot and I
24 have heard a lot of evidence, and whereas the
25 Independent Review Mechanism certainly looked at the 14:42
26 file, certainly I have looked at the file --

27 A. Yes.

28 511 Q. CHAIRMAN: -- Sergeant McCabe never sought access to
29 the file, and 'file' is a pretty obvious word for a

1 lawyer to use as shorthand.

2 A. Yes.

3 512 Q. CHAIRMAN: Did somebody say that?

4 A. I would have to accept, it certainly wasn't -- I didn't
5 say it. It may have been Chief Superintendent Healy. 14:42

6 513 Q. CHAIRMAN: Yes.

7 A. Yes.

8 514 Q. CHAIRMAN: But it --

9 A. It's possible he used the word 'file' interchangeably
10 with the DPP directions, but I agree with you, they are 14:43
11 two very significant -- distinct issues.

12 515 Q. CHAIRMAN: Sure. They seem to be. But that would seem
13 to kind of indicate he is a bitter man, he can't let it
14 go type thing; it's not just that he wanted the DPP's
15 direction to be sent in such a way that it would calm 14:43
16 down, for instance, the D family, or that, if he had
17 the letter himself, I don't know, he might show it to
18 his wife or perhaps to close colleagues, who -- after
19 all, he had been confronted in public twice.

20 A. As I had understood it, he had been vindicated 14:43
21 completely and perhaps wanted the directions to --

22 516 Q. CHAIRMAN: I am not saying any of this, by the way; I
23 am just trying to explore what might have been there.
24 And then there is the reference to, the very end of the
25 page: 14:43
26

27 "McCabe's initial sexual assault incident re
28 colleague's minor daughter, Noel Cunningham will give
29 us full details of this."

1 A. Yes.

2 517 Q. CHAIRMAN: But I would tend to wonder why you would
3 need full details of that given that the DPP ruled,
4 look, there wasn't an assault at all?

5 A. Yeah, again, I can only surmise, that unless it was in 14:43
6 relation to the interactions that happened after the
7 DPP had -- certainly, there was no -- certainly, I
8 would be very clear about that, that there was no
9 suggestion that the sexual assault issue would be -- it
10 may well be that it was the issues in relation to 14:44
11 seeking the directions.

12 518 Q. CHAIRMAN: Possibly. And then if you go down to the
13 middle, and this is the last thing I wanted to ask you
14 about, there is a reference to - and, after all, it's
15 fair that I ask you this because you were there - 14:44
16 reference to John Wilson. Now, as I understand it,
17 there was never any interaction in terms of anything we
18 are looking at between, is it Sergeant John Wilson and
19 Sergeant Maurice McCabe?

20 A. I believe it was -- I am not sure, my apologies, what 14:44
21 rank, was John Wilson a garda. I believe he was at
22 garda rank, but the -- certainly -- sorry, my
23 apologies, Chair, if you could repeat the question.

24 519 Q. CHAIRMAN: Well, it says Wilson and McCabe were working
25 together, appear to have been working together. 14:45
26 A. Yes.

27 520 Q. CHAIRMAN: Again, I don't understand that vis-à-vis
28 anything, such as anything that was referred to
29 Byrne/McGinn, anything that was referred to the

1 O'Higgins Commission, anything that was referred to the
2 Independent Review Mechanism, Sergeant McCabe and Garda
3 Wilson were never on the same case, never on the same
4 unit?

5 A. No, I know that -- my understanding is, both Sergeant 14:45
6 McCabe and Garda Wilson had raised issues in relation
7 to penalty points, but nothing to do with the
8 Byrne/McGinn or matters pertaining to the O'Higgins
9 Commission, that's correct.

10 521 Q. CHAIRMAN: And then there is the reference to "I will 14:45
11 bring this job to its knees". I mean, let's suppose
12 one puts on one's barrister hat or you put on your
13 solicitor hat and you are sitting there and you are
14 getting instructions from a client, it would seem that
15 there was a certain thrust in that consultation, to the 14:45
16 effect that he is a bitter man and --

17 A. Well, again, I don't know --

18 522 Q. CHAIRMAN: -- bitterness, as you know, leads to emotion
19 and can lead to perhaps unconscious bias, or whatever.

20 A. Again, I don't know if that was counsel, I just can't 14:46
21 recall if that was counsel saying to -- effectively
22 asking the meeting what caused the breakdown in
23 relations between Sergeant McCabe and senior
24 management.

25 523 Q. CHAIRMAN: But again, it's easy -- 14:46

26 A. But I take your point, I agree with you, I agree with
27 you.

28 524 Q. CHAIRMAN: Well, it's easy to be very wise in hindsight
29 and it's easy to kind of sit in judgement on people and

1 give ringing declarations, but it may be that, given
2 this stuff was coming up and it was so liable to muddy
3 the waters, that a very clear boundary should have been
4 put around it to say, look, this may be background but
5 it's certainly nothing to do with anything that is 14:46
6 going to come up in front of Mr. Justice O'Higgins and
7 there is only two or three particular things where what
8 Sergeant McCabe says is contradicted by anybody else?
9 A. I have to agree with you there.
10 525 Q. CHAIRMAN: And do you think maybe that should have been 14:47
11 said or someone should have shouted that out?
12 A. With hindsight, possibly, yes.
13 526 Q. CHAIRMAN: Do you think it did muddy the waters?
14 A. As -- again, I don't know what happened in between the
15 11th and the 15th in terms of consultations or the -- 14:47
16 obviously, as I said, counsel had raised the issue,
17 counsel seemed to -- senior counsel seemed to have
18 taken a view that something must have --
19 527 Q. CHAIRMAN: Triggered it off?
20 A. Triggered it. 14:47
21 528 Q. CHAIRMAN: Yes. But, I mean, there is a difference
22 between triggering off a chain of bitter allegations
23 that are untrue and, on the other hand, something that
24 I suppose makes you think, no matter what I do, the
25 incompetence I see around me is not going to be 14:48
26 addressed by those who are supposedly in charge?
27 A. Yes.
28 529 Q. CHAIRMAN: And again, it's easy to say that distinction
29 now in hindsight, but, again, was there a certain

1 muddying of that?

2 A. I -- it's possible that the -- when counsel were
3 raising issues, that they were influenced by what they
4 had been told at that meeting, yes.

5 530 Q. CHAIRMAN: Yes. All right. Well, unless people want 14:48
6 to not follow the rules, that's it. Thank you. So can
7 we take a break for 30 minutes for the stenography, et
8 cetera, 30 to 40 minutes.

9

10 THE HEARING ADJOURNED FOR LUNCH 14:49

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1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 MR. MCGUINNESS: Chairman, the next witness is a
4 Ms. Annmarie Ryan.

5 15:38

6 MS. ANNMARIE RYAN, HAVING BEEN SWORN, WAS DIRECTLY
7 EXAMINED BY MR. MCGUINNESS:

8
9 531 Q. MR. MCGUINNESS: Ms. Ryan, thank you for your statement
10 of December 2017 in relation to this matter. During
11 the course of the examination, I will be asking you to
12 look at certain documents and you have a choice as to
13 whether you would like to look at them in hard copy or
14 on the screen, and I will direct you to the appropriate
15 volume. Can I ask you this, Ms. Ryan: I think you're
16 currently employed as a solicitor in the office of the
17 Chief state solicitor? Perhaps, could you pull the
18 microphone slightly towards you. You're employed in
19 the office of the Chief State solicitor?

15:38

15:39

20 A. I am.

15:39

21 532 Q. And I think you've been so employed there for a number
22 of years?

23 A. Since 2005.

24 533 Q. Since 2005?

25 A. Yes.

15:39

26 534 Q. And at the time we're talking about, you were a
27 solicitor in which section of the --

28 A. In Garda litigation.

29 535 Q. Garda?

1 A. In the justice division.

2 536 Q. In the justice division?

3 A. Yes.

4 537 Q. And that's a very busy division of work within the
5 Chief State's Office, I think? 15:39

6 A. It is, particularly during that time.

7 538 Q. Yes.

8 CHAIRMAN: Ms. Ryan, I notice you have your coat on.
9 That, I presume, doesn't mean you're going to bolt out
10 the door, but it is rather cold in here, so don't be 15:39
11 nervous, and if you wouldn't mind just trying to throw
12 your voice into the microphone.

13 A. I will.

14 CHAIRMAN: There's no particular magic. I'm sure you
15 will be a better lawyer after having given evidence at 15:40
16 the Tribunal, so look on it as experience.

17 539 Q. MR. MCGUINNESS: Ms. Ryan, you refer to it being busy,
18 and at this particular time I think there were a number
19 of very significant pieces of litigation going on,
20 including the Bailey matter, isn't that correct? 15:40

21 A. There was, yes.

22 540 Q. And also the Fennelly Commission, which was being
23 serviced as well through the Chief State's Office?

24 A. There was.

25 541 Q. Yeah. 15:40

26 A. There was also the MacLochlainn Commission, and there
27 was a 102 arising out of a suicide in Donegal, so there
28 was an inquiry there as well.

29 542 Q. Yes.

1 A. All within the same year.

2 543 Q. Yes, yes. And I think at this time you were assigned
3 to deal with the O'Higgins Commission in April 2015, is
4 that correct?

5 A. That is correct. I don't have my file on me, so I 15:40
6 can't give the precise dates.

7 544 Q. Yes. Well, could I ask you to look at a document, it's
8 in volume 8 of the documents and it's at page 4029.

9 A. Sorry, yeah.

10 545 Q. And this is an email, in fact, from Mr. Ruane, who was 15:41
11 the previous witness, to Mr. Fleming, and I think
12 Mr. Fleming worked in the Chief State's Office as well?

13 A. Yes, Paul Fleming was an Assistant Chief State
14 Solicitor at the time over the justice division.

15 546 Q. Yes. And I think you reported to him or worked under 15:41
16 him, is that correct?

17 A. I worked under Mr. Billy Fogarty --

18 547 Q. Mr. Fogarty.

19 A. -- the section head, and Paul would have been the
20 divisional head. 15:41

21 548 Q. Divisional head?

22 A. The assistant chief, yeah.

23 549 Q. Can I ask you, can you see the handwriting on the page
24 there at page 4029, is that your handwriting?

25 A. Yes, it is. 15:41

26 550 Q. Okay. And this is obviously an email from Mr. Ruane to
27 Mr. Fleming and it's expressing a view that An Garda
28 Síochána have delayed in providing documentation, and I
29 think you write a note on that then, is that to

1 Mr. Fleming, Paul? Could you just read that out --

2 A. Yes.

3 551 Q. -- for the record?

4 A. "Paul informed me he had expected to hear from AGS,
5 which would be An Garda Síochána, in January, seeking 15:42
6 representation. He had been in contact with them on a
7 number of occasions requesting letters seeking
8 representation. AGS delay will put us under serious
9 pressure. He said they have a lot on." I presume.

10

15:42

11 "Bailey and Fennelly but no excuse. I said I will do
12 my best to get up to speed on matters."

13

14 And that's 23rd April '15, and my signature.

15 552 Q. Yes. And had you had any previous discussion with 15:42
16 Mr. Fleming about what might be involved in the
17 Commission?

18 A. Paul came to me before Christmas. It wasn't the week
19 before Christmas, it may have been maybe the week
20 before that again, and he -- it was definitely 15:43
21 December, maybe about two weeks before Christmas, and
22 he asked would I take on this matter and I said I
23 would. He said it'll be January when it starts.

24 553 Q. Okay.

25 A. So between January, maybe -- ah, a couple of times I 15:43
26 would have had, where's the file, what's the story?

27 554 Q. Yes, yes.

28 A. And I actually -- I think there may have been some
29 reference that maybe it's going to be like the Fennelly

1 Commission.

2 555 Q. Yes.

3 A. I don't know. Actually, when it arrived --

4 556 Q. Yes.

5 A. -- I had given up. I didn't -- I had forgotten about 15:43

6 it.

7 557 Q. Yes. And certainly it would appear from what you are

8 saying there, Ms. Ryan, that the Chief State's Office,

9 Solicitor's Office, had been expecting to be asked to

10 provide representation at a much earlier stage than had 15:43

11 actually happened?

12 A. Oh, yes, it was definitely mentioned to me. It could

13 have been the second week.

14 558 Q. Yes.

15 A. It was definitely December. 15:44

16 559 Q. Yes. And you mention the Fennelly Commission there.

17 Were you familiar with how Judge Fennelly was

18 conducting that in terms of representation and

19 hearings?

20 A. I was actually, yeah. 15:44

21 560 Q. You were?

22 A. I had a colleague in the office who --

23 561 Q. Yes, yes.

24 A. -- was on that.

25 562 Q. And he wasn't, I think, doing it on a multi-party sort 15:44

26 of hearing basis; he was interviewing individual

27 witnesses through his own counsel --

28 A. He was, yes.

29 563 Q. -- as I understand it? Without --

1 A. Yes.

2 564 Q. -- extensive, either participation, attendance or
3 cross-examination of the witness?

4 A. Yes. I remember I had a conversation with Paul,
5 because I would have had a handful of them in the new 15:44
6 year, and there was reference to it may be -- there was
7 reference to the Fennelly Commission, that's how I
8 became aware of how Fennelly was running.

9 565 Q. Yes.

10 A. That maybe that's what's happening here, so... 15:44

11 566 Q. Yes. May I ask you, at this stage had there been any
12 discussion with Mr. Fennelly as to who you would be
13 representing or what parties?

14 A. Mr. Fleming?

15 567 Q. Yes. 15:45

16 A. Yes. Well, we'd always be representing the
17 Commissioner of An Garda Síochána and the organisation.

18 568 Q. Yes.

19 A. No, absolutely not.

20 569 Q. All right. 15:45

21 A. I -- no.

22 570 Q. Okay. Well, could I ask you to turn to page 4033, if
23 you don't mind. This, I think, is the email that
24 Mr. Ruane had sent on to Mr. Fleming and it was
25 forwarded to you, and he was providing you with the 15:45
26 details as set out therein?

27 A. Yes.

28 571 Q. Okay. And if we turn to page 4035, Mr. Ruane was still
29 emailing Mr. Fleming here, and Mr. Fleming forwarded on

1 Mr. Ruane's email of the 24th April to you. And that
2 was giving you an outline of what the O'Higgins
3 Commission was demanding at that point in time and the
4 delays that had taken place on the Garda side to some
5 extent. Do you see that? 15:46

6 A. Yes.

7 572 Q. Okay. Mr. Fleming notes there that he had informed
8 Mr. Ruane of your appointment at that time --

9 A. Yes.

10 573 Q. -- to represent An Garda Síochána. And if you would 15:46
11 turn to page 4037 of the documents, I think this is an
12 email from you to Garda Butler, from the Legal Action
13 section of Garda HQ?

14 A. It's Garda Butler to me.

15 574 Q. Is that correct? 15:47

16 A. 4037?

17 575 Q. 4037 at the top there.

18 A. Yeah. It's printed off from my email, but it's from
19 Legal Affairs, that would be Ken Ruane's section down
20 in HQ, to me. 15:47

21 576 Q. Yes. It seems to be signed or sent by Garda Butler, is
22 that right?

23 A. Yes.

24 577 Q. Yes. And he is attaching an information letter from
25 the Inquiry, which had been sent to the Commissioner? 15:47

26 A. Yes.

27 578 Q. And that's a letter which goes over a number of pages,
28 and we don't need to go into detail of it there --

29 A. Yes.

1 579 Q. -- as to what documents that they had been given. But
2 if one turns to page 4040.

3 A. Yes.

4 580 Q. This is from Chief Superintendent Ward now, who was
5 acting as liaison officer then. He says: 15:47
6
7 "On the 27th April 2015, Ken Ruane advised me that
8 Mr. O'Hagan required all of the documents/information
9 in respect of every module by next Friday, 11th May."
10 15:47

11 And I take it, when you saw that, you knew that there
12 were going to be difficulties in relation to meeting
13 that deadline for all the modules?

14 A. Oh, immediately.

15 581 Q. Yes. 15:48

16 A. Yeah. Well, I don't know if I even knew what way
17 modules were going to be worked, but --

18 582 Q. Yes.

19 A. Yes.

20 583 Q. I think the following day you received from Garda 15:48
21 Butler, at page 4041, on the 28th April, at 10:22 in
22 the morning, you got a synopsis of events or
23 correspondence, in order for you to seek the nomination
24 of counsel?

25 A. Yes. 15:48

26 584 Q. And he was currently copying the correspondence between
27 the Commission and An Garda Síochána. And I think
28 there was enclosed with that, was there, a letter from
29 the Commission -- or, I'm sorry, this is a letter --

1 this is your letter seeking a nomination of the 28th
2 April, is that correct, page 4042?

3 A. Arising out of that --

4 585 Q. Yes.

5 A. -- I suppose my first letter over to the Attorney 15:49
6 General's office seeking nomination would be that
7 letter. Yes, I think the Gardaí, had they recommended
8 one or two people? But that was the first letter going
9 over to the Attorney seeking nomination.

10 586 Q. Yes. In any event, you attach a number of relevant 15:49
11 documents there.

12 A. Yes.

13 587 Q. And in the second-last substantial paragraph on page
14 4043, you say:

15 15:49

16 "Due to the late notification from An Garda Síochána
17 requesting legal representation, we are under pressure
18 to prepare for the hearing of Module 1, which is
19 scheduled to commence on 14th May. I would be obliged
20 if this request for nomination of counsel could be 15:49
21 given priority."

22

23 You followed that up then with a letter on the 30th
24 April, at page 4044.

25 A. Yeah. 15:50

26 588 Q. And you're still -- you're still awaiting confirmation
27 of a number of matters there, as set out in that
28 letter?

29 A. Yes. At this stage I knew that a second junior would

1 probably be required, and I may have already, I'd have
2 to look at the file, I may have already got the name of
3 one or two counsel.

4 589 Q. Yes.

5 A. But I was waiting for An Garda Síochána to confirm that 15:50
6 they would allow me to take on a second junior.

7 590 Q. Yes.

8 A. I believe that may have arose out of a conversation
9 with Paul Fleming.

10 591 Q. Yes. I think certainly by the 1st May you had counsel 15:50
11 who had accepted a nomination there, if one looks at an
12 email that you sent on the 1st May, at page 4045.

13 A. Yes. There would have been over two or three, maybe
14 two days --

15 592 Q. Yes. 15:51

16 A. -- I rang around and that was -- I probably must have
17 got that confirmation. I sent them the same email.

18 593 Q. And this is an email sent to each of the counsel, is
19 that correct?

20 A. No. It was sent to all of them in the one email. 15:51

21 594 Q. In the one email?

22 A. But I suppose I was cutting time to let them see who
23 was nominated, see who their colleagues are.

24 595 Q. Okay. And it's noted there that you're arranging to
25 forward each of them by this afternoon, "copy papers to 15:51
26 include all correspondence and the Gardaí together with
27 copy of the Guerin Report."
28
29

1 A. Yes.

2 596 Q. And that you're presently waiting to hear with
3 discovery documentation, and in the final paragraph you
4 say:
5
6 "I would hope we would have an initial consultation
7 with the clients about the middle of next week, subject
8 to us receiving the documentation."
9 A. That's correct.

10 597 Q. And I think you then sent a letter out at page 4046 to 15:51
11 Mr. Smyth?

12 A. The same letter would have gone to -- identical letter
13 would have gone to three counsel, yes.

14 598 Q. Yes. And just in terms of what is included there, or
15 what is not included perhaps, there's no instructions 15:52
16 from the Garda Commissioner or An Garda Síochána as
17 such, isn't that correct?

18 A. No. Whatever is included is what I had in my file at
19 the time.

20 599 Q. Yes. Just on that point, obviously the Commission, you 15:52
21 had seen from the Commission's correspondence what
22 their terms of reference were and what their rules and
23 procedures were. Did you yourself have an
24 understanding as to whether Sergeant McCabe's
25 complaints, and therefore Sergeant McCabe himself, 15:52
26 would become the subject of scrutiny before the
27 Commission?

28 A. I had no understanding bar what I had read in the media
29 and what I had read in Guerin, I had no knowledge

1 whatsoever in relation to any of these matters.

2 600 Q. All right.

3 A. The Guerin Report, sorry.

4 601 Q. All right. So the scope of the inquiry wasn't a matter
5 of immediate concern as far as you were concerned at 15:52
6 that time?

7 A. My immediate concern was to get papers from the client.

8 602 Q. Yes, yes. And just in terms of the papers, obviously
9 you knew that Sergeant McCabe had been referred to as a
10 whistleblower, there was a lot of publicity about 15:53
11 Sergeant McCabe --

12 A. There was.

13 603 Q. -- etcetera. Did you ever receive any instructions as
14 to how someone in his position, or he particularly,
15 would be treated or would be dealt with at the 15:53
16 Commission by the Commissioner?

17 A. No. I mean, what I had at this stage was what you're
18 looking at.

19 604 Q. Okay.

20 A. And the documentation. I don't believe I had any phone 15:53
21 call at this stage with anybody from An Garda Síochána.

22 605 Q. Okay.

23 A. And if I did, it was, 'when are you getting the
24 documents to me?' or 'where are you?', so...

25 606 Q. Okay. So you were concerned to be able to get whatever 15:53
26 documents were relevant, get them to the Commission,
27 get them to your counsel?

28 A. Well, get them to my counsel.

29 607 Q. And get ready for consultations?

1 A. Yes.

2 608 Q. All right. I think you -- did you receive from An
3 Garda Síochána then on the 6th May a list of members
4 who would be able to assist in the first module? If
5 you look at page 4048. 15:54

6 A. Yes, I'm looking at this. I'd have to check the file
7 exactly, but I know David O'Hagan had been in touch
8 with the Gardaí and he gave me a call over to say,
9 Annmarie, we need a list of -- arising out of the
10 Guerin Report, they were coded -- 15:54

11 609 Q. Yes.

12 A. -- the individuals, except one or two people, like
13 Byrne and McGinn and whatever, but he wanted the names
14 or who they were and we were to identify them, and
15 unfortunately An Garda Síochána didn't have that list 15:54
16 to hand. I believe it's probably with the Taoiseach's
17 office, or whatever. We, the client, did not have
18 it --

19 610 Q. Yes.

20 A. -- so it took them some time to try and identify who 15:54
21 they were.

22 611 Q. Yes. Certainly by this point in time, they had a
23 clear -- Headquarters, in terms of Legal Affairs, had
24 identified who those were?

25 A. I recall David O'Hagan complaining of the delay in even 15:55
26 getting this information.

27 612 Q. Yes. I think you received an email then also on the
28 6th May, it's at page 4050, that's from Mr. Ruane to
29 you, at 16:55 in the afternoon. And he says:

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"Thank you, Annmarie, for your email. I have requested the documentation from Module 1 and await same and note that you are not in a position to brief counsel without same. I am informed these documents will be delivered to you tomorrow. I am currently preparing a submission to the Commissioner on the basis that the Chief State Solicitor's Office would provide representation for members at the rank of a superintendent and higher and also retired officers. If a member below the rank of superintendent wishes to come under representation being afforded to the Commissioner, that can be considered on a case-by-case basis. I should also point out that should any conflict of interest arise regarding the representation of any member or retired member during the course of evidence, then the continued representation of that member or retired member by counsel appointed on behalf of the Commissioner may need to be reviewed. I will revert formally with instructions upon receipt of same by the Commissioner. I would suggest a consultation between An Garda Síochána and your office/counsel early next week and suggest Garda HQ as a venue for same."

15:55

15:56

15:56

15:56

And that was sent in reply to your email earlier that day, it would appear, at the bottom there?

15:56

A. Yeah.

613 Q. Is that correct?

A. Yes, it must be, yes.

1 614 Q. At the bottom of page 4050.
2 A. Yes, David -- sorry, yes, correct.
3 615 Q. Yes, you had received from Mr. O'Hagan the Commission's
4 witness list, inter alia, that you're forwarding on?
5 A. Yes, attaching it. 15:57
6 616 Q. And that's at page 4052.
7 A. Yes.
8 617 Q. That's to Mr. O'Hagan, in fact, at page 4052?
9 A. 4052, yes.
10 618 Q. Yes. And that's confirming what counsel are acting for 15:57
11 you and that you will be representing the following
12 witnesses?
13 A. Yes.
14 619 Q. Catherine Clancy, Colm Rooney, Chief Superintendent 15:57
15 Heller, Superintendent Cunningham, Maura Lernihan. And
16 that is dated 13th May, that letter to Mr. O'Hagan,
17 isn't that correct?
18 A. That's correct.
19 620 Q. Now, you had, I think, at that stage, had your first 15:57
20 meeting with counsel in the case on the 11th May, is
21 that correct?
22 A. We had a meeting in the Four Courts, counsel and
23 various - I'd have to look at the notes - various
24 people at it.
25 621 Q. Yes. And I think you did keep notes of your various 15:58
26 consultations and attendances at the Commission?
27 A. Yes. Well, it wasn't possible to keep notes of
28 everything, but what was possible.
29 622 Q. Yes, indeed. If you could turn to page 3777.

1 A. On what volume?
2 623 Q. Which is in -- I'm sorry, that is volume 7.
3 A. 7. 3777?
4 624 Q. Yes.
5 A. Yes. 15:59
6 625 Q. And this is a typed copy of your notes, and the
7 original are available in your own handwriting, should
8 you wish to consult them.
9 A. Thank you.
10 626 Q. But it records who is in attendance there, and there 15:59
11 was Chief Superintendent Ward there, who was ceasing to
12 be liaison, and Chief Superintendent Healy, who was, as
13 it were, coming on board, and had you met either of
14 those before?
15 A. No, I had never met either of them before. I had no 15:59
16 dealings whatsoever with them before.
17 627 Q. Okay. There appears to be, towards the bottom of the
18 page, a discussion in relation to representation, who
19 the Module 1 witnesses would be for the first couple of
20 days. 16:00
21 CHAIRMAN: Mr. McGuinness, do you mind me interrupting
22 just to ask a question and maybe you can help me on
23 this. There's been discussion as to whether counsel
24 were briefed. I don't know whether there was
25 individual bundles, as they say in England, or 16:00
26 lever-arch files prepared for each of the modules at
27 this stage or how far along was anybody in doing that?
28 In other words, had counsel had a chance to read
29 themselves in prior? I know Mr. Murrinan asked the

1 question.

2 MR. MCGUINNESS: Yes.

3 CHAIRMAN: But I'm not sure as to what the exact
4 situation was. It's my fault.

5 MR. MCGUINNESS: Yes. 16:00

6 628 Q. I think the modus operandi operated by the Commission
7 was that a statement of facts would be prepared in
8 relation to each module and a document, or a core book
9 of documents?

10 A. Yes. 16:00

11 629 Q. Booklet of documents as well. And can you recollect,
12 at this stage had you received the core book and the
13 statement of facts in relation to Module 1 and sent
14 them to counsel in advance of this?

15 A. My file will show exactly whatever I received, there 16:01
16 would have been no delay, it would have been sent on
17 immediately.

18 630 Q. Yes.

19 A. What date I received it, I'd have to check the file.

20 631 Q. Yes. It's certainly my understanding that they had 16:01
21 received them at this point in time.

22 A. Yeah.

23 632 Q. But we can clarify that.

24 A. Well, everything will be recorded on the file --

25 633 Q. Yes. 16:01

26 A. -- in that respect.

27 634 Q. Yes.

28 A. In relation to the discovery, no. They received just
29 the core booklet, I would expect. It would be on the

1 file, the date.

2 635 Q. Yes. If one turns to the next page, 3778, it refers to
3 Garda McCarthy, who was the probationer guard, it
4 refers to Chief Superintendent Terry McGinn and the
5 outcome of the Byrne/McGinn report. Can you recollect 16:01
6 had counsel seen or had you received a copy of the
7 Byrne/McGinn report?

8 A. It is my recollection, I think this meeting was on a
9 Monday, and I had received discovery, it was late on
10 Thursday the previous week, or was it Friday morning? 16:02
11 I'd have to check the file for that.

12 636 Q. Yes.

13 A. I had received discovery in four lots, it was 12 boxes,
14 and -- well, there was 10 boxes full and then there was
15 two boxes not much in them. And I remember Friday 16:02
16 morning, I may have called counsel to say I have the
17 material, how will I get it to you? And one counsel
18 was calling to collect it, and I said I'd better open
19 up this, to see what's in it. And anyhow, it ended up
20 being returned to An Garda Síochána. 16:02

21 637 Q. Okay.

22 A. I could not make head nor tail out of it.

23 638 Q. All right. It had to be resorted and rescheduled and
24 reindexed, I think?

25 A. You would have needed a month on your hands and knees 16:03
26 going through it to look at it. No, there was no way I
27 was giving it to counsel. I wanted to try and hold on
28 to them.

29 639 Q. Okay. In terms of what you've recorded here now on

1 this page, can you recollect who was providing this
2 background information?

3 A. At that stage, I didn't know any of them.

4 640 Q. Right.

5 A. I don't -- I don't -- I wouldn't be able to say who 16:03
6 provided what.

7 641 Q. All right.

8 A. I would have been there listening to it all.

9 642 Q. Yes.

10 A. I may not have even hardly known their names at that 16:03
11 stage, there was a large room of them, so...

12 643 Q. Yes. I can well imagine. There's a heading there
13 "Outcome of McCabe Investigation", and the first one
14 seems to relate to, I think it's to Hillgrove Hotel in
15 Monaghan. Had you any knowledge of or awareness of 16:04
16 what was alleged to have happened there when Assistant
17 Commissioner Byrne and Chief Superintendent McGinn met
18 Sergeant McCabe?

19 A. I was aware that there had been the Byrne/McGinn report
20 and Sergeant McCabe was not happy with the outcome of 16:04
21 it.

22 644 Q. Yes.

23 A. And Derek Byrne will give us details in due course,
24 so...

25 645 Q. Yes. There's then, a few lines down, a reference to, 16:04
26 in brackets:
27
28 "(Daughter was a minor at the time of the incident,
29 daughter of work colleague in Bailieboro, late

1 '06/early '07. McCabe from outset was subject of an
2 allegation."

3

4 It goes on then down the page:

5

16:04

6 "File sent to DPP. DPP found no crime."

7

8 Etcetera, etcetera. Was that something that you had
9 been previously aware of?

10 A. No, I had absolutely no knowledge of that --

16:04

11 646 Q. All right.

12 A. -- whatsoever.

13 647 Q. Okay. And just down towards the bottom of the page, at
14 the end of the page there, there's McCabe's initials,

15

16:05

16 "Sexual assault incident re colleague's minor daughter,
17 Noel Cunningham will give us full details of this."

18

19 Is it likely that all of this information was provided
20 by Chief Superintendent Healy?

16:05

21 A. I'll be honest with you --

22 648 Q. All right.

23 A. -- I was in a room with a lot of people. I would not
24 be able to say who said what.

25 649 Q. All right.

16:05

26 A. At that stage, I didn't even know two of my counsel
27 prior to this. So I knew Ken Ruane there.

28 650 Q. Yes.

29 A. That was about the only person I actually knew.

1 651 Q. Yes. Okay. Anyway, it is quite possible that you've
2 recorded information that has come from different
3 members of An Garda Síochána there?
4 A. Well, counsel would have been asking a certain amount
5 of questions and -- 16:05

6 652 Q. Yes.
7 A. -- I'm recording information in that context.

8 653 Q. Yes. We'll see in a few minutes a note that Mr. Ruane
9 made of a conversation he had with Chief Superintendent
10 Healy on the night of the 16th, where he sort of 16:06
11 quoting -- he seems to be quoting counsel saying:
12
13 "Counsel wanted to know how all this started, what
14 first happened."
15 A. Oh, yes, he did. 16:06

16 654 Q. Is that something that was raised, as it were, at the
17 first consultation?
18 A. Yes, it was. I remember senior counsel saying, what
19 kicked off all of this?

20 655 Q. What kicked off, yes. And certainly, on the face of 16:06
21 it, that's a perfectly reasonable inquiry to make, you
22 would think, presumably?
23 A. Yes, there seemed to be just a change, like, I suppose,
24 looking at it. Hindsight is -- yeah.

25 656 Q. They were coming fresh to this, as you were? 16:06
26 A. They had no information on it --

27 657 Q. They had no information.
28 A. -- bar the core booklet. I presume they had the core
29 booklet at that stage.

1 658 Q. Yes.

2 A. My file will show exactly when they got it.

3 659 Q. Yes. But certainly they had the material to understand
4 that Sergeant McCabe had made complaints, they had been
5 examined by Byrne/McGinn, they had gone through the 16:07
6 process of Mr. Guerin's report that you had provided to
7 them, isn't that right?

8 A. And I presume that's where the hotel room comes in,
9 because they would have been probably talking about the
10 Byrne/McGinn, because that's when he got the 16:07
11 complaints. And they would have had the Guerin Report,
12 yes.

13 660 Q. Yes.

14 A. So they had knowledge from that.

15 661 Q. And obviously they'd seen the terms of reference as 16:07
16 well?

17 A. Yes. I would have -- that would have been provided in
18 the first letter that I would have sent over to counsel
19 in relation to terms of reference, these, so on and so
20 forth, yes. 16:07

21 662 Q. Yes. And, I mean, did it seem to you to be either an
22 unreasonable or an irrelevant inquiry for them to make,
23 as to, look, what had started all of this?

24 A. No, I think it's very reasonable --

25 663 Q. All right. 16:07

26 A. -- in relation to it.

27 664 Q. Okay. So would it be fair to say that they were
28 perhaps getting a potted history of --

29 A. They were. No, I do remember counsel saying, like,

1 what kicked off all of this. They wanted -- as far as
2 I know, it was Colm Smyth who would have done most of
3 the talking, if not all of the talking, on behalf of
4 counsel at the majority of consultations.

5 665 Q. Yes. 16:08

6 A. That would be common.

7 666 Q. That would be traditional enough --

8 A. Yes.

9 667 Q. -- for a senior to try and preside, as it were?

10 A. It would. Obviously that's where, as far as I can 16:08
11 recollect, because this was nothing -- I had no
12 information of any of this prior to that.

13 668 Q. Pardon?

14 A. I had no information in relation to any of this.

15 669 Q. Yes, yes. So certainly this was new to you, and, as 16:08
16 far as you knew or were concerned, it was new to
17 counsel as well, as to the background?

18 A. Yes. Well, they didn't appear to have any information
19 prior to that.

20 670 Q. Yes. There's reference on the next page, obviously 16:08
21 that first discussion seems to relate to --

22 A. Page 3779?

23 671 Q. Yes, 3779, I'm sorry. This page seems to relate to, in
24 the first instance, preparing the supplemental
25 affidavit relating to discovery, as it were, 16:09
26 disclosure, and there's some discussion then halfway
27 down the page, it would seem, about the statement of
28 facts perhaps that the Commission had issued, would
29 that be correct?

1 A. If I have written it down, it must have been referred
2 to.

3 672 Q. Yes.

4 A. Yes.

5 673 Q. And then there's a reference there: 16:09
6
7 "During the consultation, Michael MacNamee and Garret
8 Baker," it says.

9 A. That should be Garret Byrne.

10 674 Q. That should be Garret Byrne, yes. 16:09

11 A. "... left to speak to counsel for the Commission to see
12 if there was any possibility of the forthcoming hearing
13 dates being adjourned. Counsel for the Commission
14 indicated there's no intention on the part of the
15 Commission to adjourn the forthcoming hearing dates." 16:10
16
17 So they went out, and did they phone Mr. Gillane, as
18 far as you knew?

19 A. I actually don't know who they phoned.

20 675 Q. All right. Okay. But would it be fair to say they 16:10
21 were given short shrift in terms of the matter
22 proceeding without --

23 A. I presume they were. I don't know. I don't know if
24 they talked to counsel or phoned them.

25 676 Q. All right. Okay. In any event, you had organised and 16:10
26 you were confirming consultations with other witnesses
27 on succeeding days, isn't that correct?

28 A. Yes. Well, the hearings were starting this week, were
29 they?

1 677 Q. Hearings were starting that week.
2 A. Yes.

3 678 Q. Yes. Could I ask you to look at Inspector McNamara's
4 notes. He has got a couple of other things that are
5 recorded in his notes. 16:11

6 A. Yes.

7 679 Q. They're in volume 1, if you wouldn't mind taking out
8 volume 1 at page 72. At page 72 there, just seven or
9 eight lines down, there's a reference "HOLA" - that is
10 Head of Legal Affairs, I take it, presumably. 16:11

11
12 "Commissioner O'Connell will represent all members,
13 including retired. If conflict arise at any stage,
14 will have to review."
15 16:11

16 Do you see where that is?
17 A. Yes, I do.

18 680 Q. And was there any discussion at this consultation about
19 the Commissioner, as it were, actively participating in
20 each module's hearings, or did it arise for discussion 16:12
21 at all?
22 A. I believe that would have been who are we acting for.

23 681 Q. Yes.
24 A. I would have always been acting for the Commissioner of
25 An Garda Síochána. 16:12

26 682 Q. Yes.
27 A. Indeed, the first day of the hearings --

28 683 Q. Yes.
29 A. -- you will see from transcripts I'm there. Arising

1 out of there, I was awaiting for instructions on who
2 I'm acting for.

3 684 Q. Yes. But I suppose, I suppose there's a number of
4 follow-on questions. You never actually got any
5 instructions at this point in time -- 16:12

6 A. No.

7 685 Q. -- from the Commissioner --

8 A. No.

9 686 Q. -- as to the running of the Commission in accordance
10 with her wishes or her instructions? 16:12

11 A. No.

12 687 Q. And I think, factually, also, you never got any
13 instructions from the Commissioner in relation to any
14 factual issues --

15 A. No. 16:13

16 688 Q. -- relating to any of the 12 modules?

17 A. No instructions.

18 689 Q. Yeah. I mean, I suppose, on one view, she wasn't in a
19 position to give you instructions in relation to the
20 incidents which were investigated and allegedly poorly 16:13
21 investigated by Sergeant McCabe, isn't that right?

22 A. I don't know what she was in a position to do.

23 690 Q. All right. Okay. By Sergeant McCabe. But certainly,
24 in any event, it's correct to state you never got any
25 factual instructions, as it were, from the Commissioner 16:13
26 in relation to any of the incidents?

27 A. Absolutely none.

28 691 Q. Okay. All right. Now, we'll come to a later
29 consultation that you did have with the Commissioner,

1 but at this stage, did you see any need yourself for a
2 consultation with the Commissioner herself?

3 A. Yes. I believe we were told that the Commissioner does
4 not require a consultation as we're only meeting
5 witnesses the night before, the two days preceding the 16:14
6 hearings, and we're leaving HQ at ten o'clock the night
7 before, quarter past ten, so I never formally sought a
8 meeting with her.

9 692 Q. Yes.

10 A. There was still a feeling that -- wednesday night, that 16:14
11 the hearings would not start the next day.

12 693 Q. Yes. All right. And was there a second approach to
13 have an adjournment at that point in time?

14 A. Well, we knew Maurice McCabe's legal team were not
15 happy with the fees and there were judicial review 16:14
16 proceedings in that regard.

17 694 Q. I see.

18 A. And there was some discussion, they probably won't turn
19 up tomorrow.

20 695 Q. All right. 16:14

21 A. Or that regard.

22 696 Q. All right. This is concerning the fees established
23 under the Commission?

24 A. The fees established under the Commissions of
25 Investigation Act. 16:15

26 697 Q. That a variety of people had responsibility for?

27 A. Well, we were aware that Maurice McCabe's legal team
28 had taken judicial review proceedings.

29 698 Q. All right.

1 A. And there was a feeling that it'll probably halt the
2 matter starting.

3 699 Q. In any event, it didn't, I think, hold it up at that
4 point in time?

5 A. Well, I don't know where those proceedings are, that's 16:15
6 not a matter for me, but there was discussions.

7 700 Q. But it didn't impede the progress of the Commission's
8 hearings, that is the point?

9 A. No, it didn't.

10 701 Q. Okay. Just a little bit further down this page then, 16:15
11 there's a reference to --

12 A. Page 72 still?

13 702 Q. Yes, page 72 still.
14

15 "CSSO seeking to have a member of AGS present during 16:15
16 Module 1."

17

18 And that seems to be attributed perhaps to you, if it's
19 correct or not. Did you have some discussion with
20 either Mr. Ruane, Head of Legal Affairs, or anyone 16:15
21 else, about getting a representative in from the
22 Commissioner?

23 A. No, I don't believe I had any discussion, but I was not
24 briefed, I had no papers and I wanted to ensure there
25 was somebody there. 16:16

26 703 Q. Yes.

27 A. It'd be fairly common to have a representative at a
28 commission. It is on behalf of the Commissioner of An
29 Garda Síochána, so...

1 704 Q. Yes. Well, that is what I am wondering. Just in the
2 way it is recorded there, it might be thought that this
3 was your initiative, as it were, to have a member of An
4 Garda Síochána present during Module 1?
5 A. I believe I actually had spoken to Paul Fleming prior 16:16
6 to this.
7 705 Q. Yes.
8 A. Attending this consultation, and he had told me to push
9 for that.
10 706 Q. Okay, okay. And was there -- 16:16
11 A. To insist on it, more than push for it.
12 707 Q. Yes. Okay. And that was -- I mean, I take it you
13 didn't have to push with either your counsel or the
14 Commissioner's representatives at the consultation for
15 it, you had to push with the Commission to enable -- to 16:16
16 allow that happen?
17 A. The first day of the hearings, Judge O'Higgins --
18 708 Q. Yes.
19 A. -- he likes to be referred to 'Judge', he had refused
20 Chief Superintendent Fergus Healy, who was the liaison 16:17
21 officer attendance --
22 709 Q. Yes.
23 A. -- his attendance in the room. At this stage,
24 obviously I still had no discovery, I had no papers, no
25 briefing from the Commissioner. I knew very little in 16:17
26 relation to all of this --
27 710 Q. Yes.
28 A. -- bar what was in a core booklet and a number of
29 consultations, and there was a recess shortly after it

1 started and I couldn't wait for it to stop. Firstly,
2 the first day we're sitting all over the place, there
3 was no real organisation down there. It was get in,
4 and I don't know where we were sitting.

5 711 Q. Yes. 16:17

6 A. And when there was -- I recall I had consultation rooms
7 booked. I recall going in to Colm Smyth. When the
8 Judge did not allow chief superintendent Healy to be
9 present, there was nothing being said and I was like,
10 hmm. So the first recess there was, I interrupted Colm 16:18
11 Smyth, I believe he was talking to some client, I don't
12 know who he was talking to, and I told him to more or
13 less get in there and make that application.

14 712 Q. Yes.

15 A. If not, I need an adjournment. I could not proceed 16:18
16 unless I had the liaison officer present.

17 713 Q. Yeah. And I think the transcript shows that I think it
18 was perhaps shortly before lunch on day 1, Mr. Smyth
19 renewed the application?

20 A. At my request. 16:18

21 714 Q. And you were keen to have Chief Superintendent Healy
22 there as the liaison officer?

23 A. I understand Chief Superintendent Healy -- yes, I was.
24 Chief superintendent Healy had actually left the
25 Distillery Building and I recall either ringing him 16:18
26 directly or someone ringing him to tell him he's back
27 in again.

28 715 Q. In any event, he was there, is it fair to say, as the
29 eyes and ears of the Commissioner?

1 A. Oh, well, that's what I wanted him there for so...

2 716 Q. Yes. There's no doubt about that?

3 A. Oh, yes.

4 717 Q. Now, at this stage, had there been a discussion or
5 arrangements made as to who would get the transcripts 16:19
6 of the proceedings?

7 A. I believe there was mention about who would get the
8 transcripts. No. David O'Hagan would have had my
9 contact details. I believe -- I don't even know if he
10 had a mobile phone up and running at the time. He gave 16:19
11 me his house phone and maybe his personal phone and
12 maybe even a personal email, I can't -- I know I got
13 some personal email or personal contact details off
14 him. But I believe maybe the first day, I can't
15 recall who was going -- no, I do recall, I remember 16:19
16 asking him if he could ensure that one of my barristers
17 were on the mailing list as well, but I don't believe
18 that happened maybe for the first number of days, or
19 whatever.

20 718 Q. All right. But apart from perhaps the first few days 16:19
21 of teething trouble, we've heard from Mr. Ruane, for
22 instance, that he got, I think, the transcript for the
23 15th and for the 18th and perhaps the next day as well?

24 A. Probably the 14th was the first day.

25 719 Q. The 14th was the first day? 16:20

26 A. Yes. My file will show exactly who got transcripts.

27 720 Q. Yes. But were you sending it, as it were, religiously,
28 directly to Chief Superintendent Healy every day when
29 it became available?

1 A. It was usually the next day I'd get transcripts, and,
2 yes, they were sent on and also Clerical would have
3 been in early every morning printing hard copies off to
4 take them down to the hearings each morning.

5 721 Q. Yes. Were they being sent separately to the 16:20
6 Commissioner, as it were, directly to her email
7 address, or were they just going through Superintendent
8 Healy?

9 A. I believe -- I don't even know if Chief Superintendent
10 Healy was on the mailing list. I would have sent them 16:20
11 on to him. Ken Ruane may have been on the mailing
12 list.

13 722 Q. Yes.

14 A. There was no real organisation by the Commission's side
15 in that regard initially, but Mr. O'Hagan would have 16:21
16 had Ken Ruane's email and he would have had my email,
17 so maybe they just started arriving, I don't -- I don't
18 recall --

19 723 Q. All right.

20 A. -- any details in advance about who was getting what. 16:21

21 724 Q. Okay. In any event, this consultation concluded on the
22 11th, which was the Monday?

23 A. Yes.

24 725 Q. And then you had another one arranged for the next day.
25 And just while we're on this, page 73, Inspector 16:21
26 MacNamara's notes continue there --

27 A. Yes.

28 726 Q. -- at the bottom of page 73 to deal with the 12th of
29 the 5th.

1 A. The 12th.

2 727 Q. It says at the bottom there.

3 A. Is that the Tuesday?

4 728 Q. Yes. This is the next day.

5 A. Yes, carry on. 16:21

6 729 Q. "Commission of Investigation CSSO officer meetings,
7 Colm Smyth SC, Michael MacNamee, J.C., G. Byrne and
8 K.C., A.M. Ryan, C. Clancy."
9

10 Then there's reference then to, I think they seem to be 16:22
11 the modules, 1A, J, K, and then Superintendent Clancy,
12 and then there's reference there:
13

14 "Consultation with Superintendent NC" had recommended
15 something. Does that -- 16:22

16 A. I'd have to look at all my consultation notes.

17 730 Q. Yes.

18 A. I can only go by --

19 731 Q. We'll come to your notes in a moment here, in any
20 event. It says: 16:22
21

22 "PG2 M. McCabe supervising sergeant notes, 26/2/'07,
23 R. MCA."
24

25 Must be Regina McArdle. Under that, the statement: 16:22
26

27 "Why her? And M. McCabe contacted L. Browne."
28

29 And that is Ms. Browne, who was, I think, the driver of

1 the bus --

2 A. Module 1, yes.

3 732 Q. -- in the first module.

4 A. Yes.

5 733 Q. And that was an issue, I think, as to why they had 16:22
6 contacted Ms. Browne and what they had said to her in
7 terms of encouraging her, or not, to go to GSOC, I
8 think, isn't that correct?

9 A. I would have to look at my notes. I would have been
10 very familiar at the time in relation to it. 16:23

11 734 Q. Yes, yes. And on the next page - again, these are
12 Inspector MacNamara's notes; we'll come to your notes
13 now in a minute - it says:
14

15 "Letter of demand from Sergeant McCabe for file of 16:23
16 superintendent to DPP in 2008 report. He is alleging
17 he got no support. Meeting in Mullingar,
18 Sergeant Yvonne Martin present. He said reason for
19 making complaints to Superintendent Clancy was to force
20 his hand to get copy of file. Sergeant Yvonne Martin, 16:23
21 Delvin?"

22

23 Now, do you recall, was that information provided by
24 Superintendent Cunningham or --

25 A. Chairman, I will require a direction in relation to 16:23
26 you --

27 735 Q. Yes.

28 A. -- on this. I have detailed notes, but I understand
29 they are privileged.

1 736 Q. Well, I am not sure whether there's privilege being
2 claimed, because we've received a statement from
3 Superintendent Cunningham this morning in which he
4 exhibits your note.

5 A. Oh.

16:24

6 737 Q. And we will look at that just in a second. But am I
7 correct in saying that he did provide this information?

8 A. If he has waived privilege in that respect?

9 738 Q. Yes.

10 A. It's just, I understand from an affidavit sworn by the
11 Gardaí that he hadn't, so --

16:24

12 739 Q. Yes.

13 A. -- am I in a position to talk about it? So there is
14 detailed notes setting out that.

15 MR. Ó HOISÍN: Chairman, perhaps just at this -- I'm
16 sorry to interrupt Mr. McGuinness just in relation to
17 that, but I just want to make it clear that obviously
18 this witness is doing everything she can to be of
19 assistance to the Tribunal, but she is mindful of the
20 position in relation to privilege and we have a

16:24

21 situation where a large number of witnesses have --

16:24

22 from the Garda Síochána, have waived privilege, but

23 some current members or former members have not waived

24 privilege. And in that regard, I suppose, just the

25 witness will need some assurance or direction in

16:25

26 relation to areas which touch on that, so that she -- I

27 know from consulting with her that she is concerned

28 that she not be the person to breach a privilege of a

29 client.

1 MR. MCGUINNESS: Chairman, may I say that I am acutely
2 conscious of Ms. Ryan's position and I wouldn't do
3 anything to entice her to do anything improper in terms
4 of waiver of privilege, and she's quite rightly and
5 correctly expressing a concern, and I think the only 16:25
6 thing that is to be said, that she has now been handed,
7 I think, a copy of Superintendent Cunningham's
8 statement which was received this morning, and she is,
9 I hope, taking an opportunity to read it.

10 A. Yes. 16:26

11 740 Q. If she would like five minutes to read it and consider
12 the note?

13 A. No, I'm familiar with it.

14 CHAIRMAN: Mr. McGuinness, I'm worried about a couple
15 of things. Firstly, there is a privilege, there's no 16:26
16 doubt about that.

17 MR. MCGUINNESS: Yes.

18 CHAIRMAN: Secondly, a privilege can be waived.

19 MR. MCGUINNESS: Yes.

20 CHAIRMAN: That's just the way things are. I'm worried 16:26
21 about the thought, however, that you can kind of waive
22 privilege selectively. I know from the case law, for
23 instance, in relation to informers, where an informer
24 waives privilege, that the rule is you either waive
25 privilege in relation to everything you've said or you 16:26
26 don't waive privilege at all. Now, I don't know if
27 this is the point to try and sort this particular thing
28 out. It has to be appreciated, maybe the situation of
29 an informer is different because the informer says,

1 okay, you can say that on a particular day I contacted
2 the Gardaí in confidence and told them the following,
3 but that makes everything else that person said,
4 vis-à-vis that, relevant. Now, with legal professional
5 privilege, is it the same? Certainly from what you 16:27
6 told me coming in this morning, there is a new
7 statement, isn't there --
8 MR. MCGUINNESS: There is.
9 CHAIRMAN: -- from the superintendent?
10 MR. MCGUINNESS: Yes. 16:27
11 CHAIRMAN: And he attaches to that a particular --
12 MR. MCGUINNESS: Ms. Ryan's notes.
13 CHAIRMAN: -- thing, which is Ms. Ryan's notes.
14 A. One page.
15 MR. MCGUINNESS: One page. 16:27
16 CHAIRMAN: Ms. Ryan's notes of what he said, isn't that
17 right?
18 MR. MCGUINNESS: Yes.
19 CHAIRMAN: Yes. Well, look, I think the right thing to
20 do, Mr. Ó hOisín, please contradict me if you feel that 16:27
21 I'm missing something, but I think probably the right
22 thing to do is to proceed with this, and if there is
23 any issue as to whether the waiver of privilege on this
24 means a waiver of privilege on everything else or
25 whether the superintendent is properly informed as to 16:27
26 where he stands, well let's do that when it happens,
27 but for the moment I don't think there is any danger.
28 And I also believe, Mr. Ó hOisín, if I may say so, that
29 Mr. McGuinness is acutely aware of this issue arising.

1 Now, there is a waiver of privilege on everything by
2 the Garda Commissioner, so that is the person we're
3 investigating. But if things went awry in consequence
4 of what somebody else said who is also being
5 represented, hence the reference by Mr. Marrinan to the 16:28
6 conflict of interest issue, well then we're just going
7 to have to see whether there's evidence of that or not
8 evidence of that, without, at the same time,
9 trespassing on her privilege. Mr. McDowell, did you
10 want to say something? 16:28

11 MR. MCDOWELL: Just very briefly, and I wanted to stay
12 out of it, but it seems to me there are three
13 propositions: Number one, whether privilege has been
14 waived in relation to the note, and obviously clearly
15 on the statement that is done. But my second 16:28
16 submission would be that it cannot be that you can
17 waive privilege in relation to the note but not in
18 relation to the antecedent discussion which gave rise
19 to the note. And in relation to the third proposition,
20 whether it is permission to waive privilege in respect 16:28
21 of one meeting only on an issue, that's something I
22 want to reserve my position on. But it seems to me
23 that, at the very least, it's questionable whether one
24 can do that.

25 CHAIRMAN: Well, I have my doubts about the third thing 16:29
26 as well. But for the moment, Mr. Mr. Ó hOisín, are you
27 content in the context in which it has been introduced,
28 which is that there is a statement made, it's exhibited
29 in the statement, it's sent to the Tribunal, I mean,

1 with full knowledge of what you are doing; a witness
2 who has privilege can do that, isn't that right?
3 MR. Ó HOISÍN: Well, Chairman, firstly, of course, I
4 have full confidence that Mr. McGuinness will be
5 sensitive to this. I didn't intend any -- 16:29
6 CHAIRMAN: Yes, but I know you have to protect your
7 client's interests, and we all understand that.
8 MR. Ó HOISÍN: Absolutely. The one concern I have,
9 Chairman, is just that we haven't been furnished with a
10 copy of that statement and we haven't received the core 16:29
11 book, and I understand the reasons the Tribunal has for
12 that. Not all of the people in attendance here have a
13 copy of the core book. But insofar as this touches on
14 this question of privilege, we haven't seen that waiver
15 and certainly we would like to get a copy of matters 16:30
16 such as that.
17 CHAIRMAN: No, I think, Mr. Ó hoisín, I think there may
18 be a misunderstanding here in relation -- you'll
19 appreciate that. For instance, if you go to
20 Superintendent Taylor, there's a waiver signed by him 16:30
21 in relation to what he was saying to journalists --
22 MR. Ó HOISÍN: Yes.
23 CHAIRMAN: -- if he was saying anything. When it comes
24 to the Garda Commissioner, there's a general waiver of
25 any legal-professional privilege. But this, I think, 16:30
26 arises in a different circumstance, which is that, this
27 morning, opening a letter, here's a statement from him
28 and attached to it is a note of what he was saying to
29 his solicitor, who is Anmarie Ryan, on a particular

1 occasion. And I don't think there's any problem in
2 relation to going into that, given that he had to be
3 knowing what he was doing.

4 MR. h OISIN: Yes.

5 CHAIRMAN: Now, whether that has any knock-on effect or 16:30
6 whether I may be obliged to simply ignore it down the
7 way on the basis that you can't waive privilege in
8 relation to, if you like, the cherry that suits you as
9 opposed to the whole tree that may show a completely
10 different picture, well then we will deal with that 16:31
11 when it comes up. But for the moment I think we're all
12 right.

13 MR. Ó HOISÍN: I understand, Chairman, but could we get
14 a copy of that?

15 CHAIRMAN: Yes, definitely. What is the situation 16:31
16 there, Mr. McGuinness? We all have to do our best to
17 cope with this, so what --

18 MR. MCGUINNESS: Chairman, there's no difficulty with
19 Mr. Ó hoisín having a copy of the letter. And what I
20 was going to suggest was, that if Ms. Ryan of course 16:31
21 wished it and if Mr. Ó hoisín wished it, for an
22 opportunity to briefly consult about the matter, five
23 minutes, if desired.

24 CHAIRMAN: Well, do you want to consult about it? I
25 mean, don't lose any opportunity to send me out of the 16:31
26 room.

27 MR. Ó HOISÍN: Chairman, I want to be practical about
28 it, and I appreciate you're trying to proceed. If we
29 could be furnished with it --

1 CHAIRMAN: And I think -- you are entitled to see it.
2 I think the best thing is, you have a chat about it.
3 If you need more time than five minutes, please come
4 and tell me.

5 MR. Ó HOISÍN: No, five minutes should be fine. 16:32

6 CHAIRMAN: Well, let's do that.

7

8 AFTER A BRIEF ADJOURNMENT THE HEARING RESUMED

9 AS FOLLOWS:

10

16:44

11 MR. MCGUINNESS: Thank, you Chairman.

12 741 Q. Ms. Ryan, I think you have had an opportunity to
13 consult with Mr. Ó hoisín and your other advisers in
14 this regard?

15 A. I have. 16:44

16 742 Q. And I think you have had an opportunity to consider
17 Superintendent Cunningham's statement in that regard?

18 A. I have. Well, one page from it.

19 743 Q. And just to put it on the record, in the third
20 paragraph of that he said: 16:44

21

22 "To assist Mr. Charleton, Disclosure Tribunal, I am
23 rescinding my solicitor-client privilege in relation to
24 that meeting on the 12th May 2015 and I attach copy of
25 the relevant note taken by Ms. Annmarie Ryan of the
26 Chief State Solicitor's Office at that meeting." 16:44

27 A. Yes.

28 744 Q. In that context, Ms. Ryan, do you have any difficulty
29 in yourself referring to the note?

1 A. I have no difficulty in referring to any matter on my
2 file.

3 745 Q. All right. Thank you. And in his description and in
4 the previous paragraph in this statement,
5 Superintendent Cunningham says:

16:45

6
7 "On the 12th May 2015 I met with the Commissioner's
8 legal team at Garda Headquarters in advance of the
9 first sitting of the O'Higgins Commission. At that
10 meeting, I outlined my relationship and dealings with
11 Sergeant McCabe. This included details of my meeting
12 with Sergeant McCabe on 25th August 2008 in Mullingar
13 when investigating the complaints he made against
14 Mr. D. The notes clearly show that I outlined the
15 complaint was made to Superintendent Clancy."

16:45

16:45

16
17 And that is the end of the quotation from the
18 statement. Do you agree that that is what the notes
19 show?

20 A. My notes would have been written there and then at the
21 consultation.

16:45

22 746 Q. Yes.

23 A. So, yes, whatever is written down there is the way I
24 would have interpreted it on that day.

25 747 Q. Perhaps, would you read your note into the record, if
26 you wouldn't mind?

16:46

27 A. "Up to 2008 above and over 26 years' service, Noel
28 never had one single complaint against him by anyone.
29 Since then, there has been numerous complaints from

1 public about him. Question over whether McCabe behind
2 D's allegations that Noel didn't carry out proper
3 investigations. No adverse findings to date, but some
4 still ongoing."

16:46

5
6 And then there's a line --

7 748 Q. Yes.

8 A. -- "Noel met with McCabe in Mullingar with Yvonne
9 Martin in 2008 about complaints to Mike Clancy. McCabe
10 wanted his DPP file. Noel made report of this meeting
11 in the next day."

16:46

12
13 And in brackets, something.

14 749 Q. "(He has copy of this)."

15 A. "(He has copy of this)."

16:47

16
17 Arrow down:

18
19 "Sent this report to Monaghan."

20
21 Arrow down from McCabe:

16:47

22
23 "This was his reason for making complaint to Mike
24 Clancy."

25 750 Q. Yes.

16:47

26 A. Another arrow down:

27
28 "To get and send to counsel" is over at the side.

29

1 I presume that's the report.
2
3 "Gardaí to send me the report by Noel as counsel want
4 this."
5 751 Q. Okay. So I think you've twice recorded there that what 16:47
6 Superintendent Cunningham was saying about this
7 so-called Mullingar meeting was that --
8 A. Yes.
9 752 Q. -- it was about his statement to Superintendent Clancy,
10 not, as it were, against him? 16:47
11 A. Yes.
12 753 Q. Yes. Okay. And then you've recorded at the bottom "as
13 counsel want the report", and that's a report that
14 chief superintendent -- or Superintendent Cunningham
15 had made contemporaneously at the time after the 16:47
16 meeting?
17 A. I did not receive material until later, but whatever
18 that report was.
19 754 Q. Yes. Well, we have seen a report which relates to that
20 meeting which was date-stamped in September 2008? 16:48
21 A. My file will show exactly what it was.
22 755 Q. Yes. Just going back then to where I was at, which was
23 page 73 to 74 of Book 1, if you wouldn't mind. Have
24 you got that in front of you?
25 A. Book 1? Volume 1, yes. 16:48
26 756 Q. Volume 1, sorry.
27 A. Volume 1. Sorry, what page?
28 757 Q. 74.
29 A. 74. Sorry, I had it open there. Yes.

1 758 Q. These are, as we previously identified them, Inspector
2 MacNamara's notes of the same meeting, and at the top
3 of the page it says:

4
5 "Letter of demand from Sergeant McCabe for file of 16:48
6 superintendent to DPP in 2008 report. Allegedly got no
7 support. Meeting in Mullingar. Sergeant Yvonne
8 present."

9
10 He said: 16:49

11
12 "Reason making complaints to Superintendent Clancy was
13 to force his hand to get a copy of the file."

14
15 And that is consistent with your note? 16:49

16 A. It would appear to be.

17 759 Q. It would appear to be, all right. Thank you. Now,
18 your notes then of the meeting of the 12th May, they're
19 at page 3780, if you wouldn't mind going back to volume
20 7. 16:49

21 A. Yes, I have that.

22 760 Q. This identifies who was present there. You seem to be
23 recording instructions from retired Assistant
24 Commissioner Clancy there, is that correct?

25 A. That's correct. 16:50

26 761 Q. And there's a sort of to-do list, and your notes then
27 of this meeting are supplemented by the note we've seen
28 today relating to Superintendent Cunningham?

29 A. What -- I'd have to see the file to see what dates

1 people came.

2 762 Q. Yes.

3 A. But one person would come in and walk out, the next
4 client would come in and walk out.

5 763 Q. Yes. 16:50

6 A. So they were consecutive.

7 764 Q. All right. But certainly this is the typed version of
8 your notes of the 12th May, other than relating to
9 Superintendent Cunningham?

10 A. Yes. 16:50

11 765 Q. And we've seen --

12 A. There would have been a separate note for each file.

13 766 Q. A separate for each, all right. At this point in time
14 then on the 12th May, this is the first reference to
15 this Mullingar meeting, and you've noted obviously that 16:51
16 counsel would like to see the report of that, that
17 Superintendent Cunningham had sent in; is that my
18 correct interpretation of your note?

19 A. Yes, I would expect so.

20 767 Q. Yes. 16:51

21 A. If I am requested to get something, I duly note it,
22 yes.

23 768 Q. And was this all part of the background, in your view,
24 as to what counsel was seeking to find out, what had
25 started Sergeant McCabe in relation to making 16:51
26 complaints or whether there were issues between himself
27 and management or not?

28 A. At this stage, I was aware of the internal
29 investigation report, that was a lengthy report, that

1 had not been accepted by Sergeant McCabe, the Hillgrove
2 Hotel incident with Assistant Commissioner Byrne and
3 Chief Superintendent McGinn, the allegations arising
4 out of that. And at this stage where we are with the
5 same allegations, they had not been accepted, and then 16:52
6 there had been the Guerin Report in between all this.
7 So, yeah, all tying in together, counsel had asked what
8 kicked off this.

9 769 Q. Yes.

10 A. And this is how these issues arose. 16:52

11 770 Q. In fairness to counsel, did you see it as anything
12 other than a normal attempt to understand the
13 background of who had made the complaints and anything
14 that might be possibly relevant?

15 A. Em, I'd say from a senior counsel it'd be fairly normal 16:52
16 to have somebody who, overnight, appeared to be a
17 different person and --

18 771 Q. All right. And was that something that had been
19 touched upon, that Sergeant McCabe had sort of changed,
20 as it were, in his attitude to senior Gardaí? 16:53

21 A. Oh, totally so.

22 772 Q. And was this what was being relayed at the
23 consultation, in effect, that this had affected him in
24 that way?

25 A. Yes, and we were hearing -- I'm just conscious of the 16:53
26 claim of privilege.

27 773 Q. Yes, yes.

28 A. But, yes, there was a clear change and the effects that
29 a certain incident had -- arising thereafter, a

1 complete sea change in Sergeant McCabe.

2 774 Q. Okay. I mean, even at this stage then, this is, in
3 fact, the eve of the --

4 MR. MCDOWELL: Chairman, could I interrupt for a
5 second? 16:53

6 CHAIRMAN: Yes, Mr. McDowell, yes.

7 MR. MCDOWELL: As I read Superintendent Cunningham's
8 letter to -- or statement to the Tribunal, he's waiving
9 privilege in respect of the entire meeting he had with
10 this witness. 16:54

11 MR. MCGUINNESS: On the 12th May.

12 MR. MCDOWELL: Not just this note.

13 CHAIRMAN: Yes.

14 MR. MCDOWELL: And, therefore, I mean if we're going to
15 get evidence of this change in attitude -- 16:54

16 CHAIRMAN: Yes.

17 MR. MCDOWELL: -- that evidence should be given in its
18 entirety and shouldn't be inhibited.

19 CHAIRMAN: I'm worried about this, Mr. McDowell.
20 Judicial review, forget about that. I'm trying to do 16:54
21 my best to do the right thing. We have a waiver
22 clearly in relation to just one thing. Now, when I say
23 clearly, I mean clearly.

24 MR. MCDOWELL: Yes.

25 CHAIRMAN: One can extrapolate from that that there's 16:54
26 something else. It's become increasingly clear that
27 maybe the right thing to do is to call Superintendent
28 Cunningham. Now what I don't want to happen, and this
29 is the situation, just as in relation to any other kind

1 of privilege, I don't want someone being -- and I'm not
2 saying you'd do it, but I'm saying the Tribunal might
3 be seen by him as doing it, browbeating him into
4 waiving privilege totally. If you waive privilege it
5 has to be on the basis that it's completely voluntary, 16:55
6 you know what you are doing, etcetera.

7 MR. MCDOWELL: Yes.

8 CHAIRMAN: Because the relationship is there for the
9 benefit of society as well as for the person. So, I
10 don't think I want to go any further than we have gone. 16:55

11 I think it would be wrong and I think Superintendent
12 Cunningham needs to think about things and get advice.

13 But probably the right thing to do given we have this
14 letter is to call him in relation to this. Because it
15 could be, I don't know, that if there was anything 16:55
16 wrong, and I don't know, with the approach adopted on

17 the 15th May or on the 18th May, or later on the 4th
18 November in relation to the O'Higgins Commission, that
19 it didn't come from the Commissioner at all. Because
20 I'm required to look into the Commissioner's attitude, 16:55
21 not anybody else's attitude. But if it was somebody

22 else's attitude that was informing counsel, who they
23 were appearing for, well, that's something I would take
24 into account, but I'm not going to do it in such a way
25 that I'm saying to them, look, waive your privilege or 16:56
26 else. I'm just not going to do that. And I think you
27 appreciate the reasons why.

28 MR. MCDOWELL: I fully understand what you are saying
29 to me, Chairman, and I fully understand that you are

1 anxious not to take advantage of any informality of
2 language on behalf of Superintendent Cunningham. But
3 it does appear that what he actually said to this
4 Commission was that he was rescinding his
5 solicitor-client privilege in relation to that meeting 16:56
6 and he attached a copy. This is paragraph 3. It isn't
7 that he -- I mean, I fully accept that you, Chairman,
8 may be concerned that he doesn't really mean the first
9 sentence and only means the second sentence --

10 CHAIRMAN: I know. 16:56

11 MR. McDOWELL: -- the second phrase. But can I make
12 this point though, Chairman: It is important, if
13 Mr. McGuinness is examining this witness, and I fully
14 accept this witness's dilemma in this matter, but that
15 if the question is as to the understanding, if the 16:57
16 issue is the understanding or misunderstanding by
17 counsel of what was said to them, or indeed the
18 solicitor instructing counsel as to what was being
19 said, in my respectful submission what is being said
20 here about and what has been stated just now about the 16:57
21 sea change in attitude on the part of Sergeant McCabe,
22 that was clearly being spoken of by Superintendent
23 Rooney, is critical to that matter. Because as the
24 Tribunal will be aware, it almost impossible to see
25 how, if it was, if the word "to" rather than "against" 16:58
26 was the true position of Superintendent Cunningham,
27 that this matter could ever have been relevant at all
28 to be put to any witness. It's almost impossible to
29 see, because as Mr. Justice O'Higgins found, I can't

1 see the relevance at all to this and I'm ruling it
2 irrelevant.

3 CHAIRMAN: Yes.

4 MR. MCDOWELL: But if it is the case -- can I make this
5 point, Judge? 16:58

6 CHAIRMAN: Yes.

7 MR. MCDOWELL: If it is the case that counsel was being
8 told that my client's attitude had dramatically changed
9 arising from this incident, and that his attitude to An
10 Garda Síochána had been utterly coloured by this 16:58

11 incident, and that his allegations were motivated by
12 this incident, then that is of some significance. And
13 the second point I want to make, Judge, which is a
14 slightly more technical point is this: That this
15 letter, the Tribunal will recall that what was asked by 16:58
16 counsel for Sergeant McCabe, myself, and what was
17 required by the Judge was a statement of the evidence
18 that would be relied on by the Commissioner to show
19 motive. And the letter of the 18th May starts off by
20 saying that all of the facts from paragraphs 1 to 19 16:59
21 are the facts which they propose to put to Sergeant
22 McCabe in respect of these issues. And when I say
23 "they", that the Commissioner proposed to put to him.

24 CHAIRMAN: Yes.

25 MR. MCDOWELL: So from that point of view I do raise 16:59
26 the issue as to whether the Commissioner can -- sorry,
27 I raise the issue as to whether it is legitimate for
28 anybody -- (a) for the Commissioner to effectively
29 undertake to the Tribunal that this is the evidence and

1 these are the facts that she requires to be put to
2 Sergeant McCabe and at the same time for
3 Superintendent Cunningham to say I object to this
4 Tribunal knowing why the Commissioner, why the
5 Commissioner was putting those facts, I object, I 17:00
6 object, because I myself imparted this information or
7 didn't impart this information, whatever his evidence
8 will be. And I do draw -- I'm asking the Tribunal, and
9 I hope it's not a sort of an over-legalistic point, to
10 consider whether the Commissioner's waiver of privilege 17:00
11 is consistent with a waiver of privilege as to why she
12 instructed her counsel to do what she did, and as to
13 why her counsel composed the letter of the 18th May, is
14 whether that's all consistent with a person who
15 supplied information to her and to her solicitor for 17:01
16 the purpose of sending that letter to Mr. Justice
17 O'Higgins and having that letter given to Sergeant
18 McCabe to say, well, we can't now look at precisely how
19 that letter came into being. I'm just making that
20 point; that there is a distinction to be drawn between 17:01
21 whose privilege we're dealing with here.

22 CHAIRMAN: Mr. McDowell, I see all the points you're
23 making and I suppose without producing numbered
24 paragraphs firstly, I want to get to the bottom of this
25 and see where this whole thing came from. I'm noting, 17:01
26 for instance, that at the first meeting of the 11th May
27 2015 the Commissioner wasn't present, was giving no
28 instruction as to facts and no instructions as to
29 approach. So this could have just come from somebody

1 else who was also being represented. I don't know. I
2 would like to know that. But as with many court cases,
3 particularly in the criminal sphere, and this is point
4 number two, where for instance a victim goes out of
5 court where perfectly sound evidence has been ruled out 17:02
6 because of an illegality, you might say that is very
7 unsatisfactory from their point of view. Things may be
8 unsatisfactory but I'm bound by the law. And for the
9 moment I think the right thing to do is to note what
10 you have said and to proceed cautiously insofar as we 17:02
11 can.

12 MR. MCDOWELL: Yes.

13 CHAIRMAN: And then let's see when Superintendent
14 Cunningham does come in, if you want him called - and I
15 note you sent a letter in that regard, but we're 17:02
16 looking at that now given the development in matters -
17 whether questions that he is asked doesn't put him in
18 an embarrassing position, whereby he'll effectively be
19 browbeaten by the Tribunal into waiving a right which
20 he has. That's the last thing I want to happen. 17:03

21 Unfortunately the system of justice isn't perfect, but
22 I think there's probably quite a lot there in any event
23 from which you can draw the threads together and say,
24 look, maybe this happened and then let's listen to the
25 evidence and see whether that is so. So I think 17:03
26 Mr. McGuinness is proceeding correctly and with caution
27 at the moment and I wouldn't want him to go any further
28 than that.

29 MR. MCGUINNESS: Yes, thank you, Chairman. I should

1 say that I am acutely conscious that Superintendent
2 Cunningham isn't here.

3 CHAIRMAN: Yes.

4 MR. MCGUINNESS: And whilst he obviously has access to
5 the transcripts and has access to legal advice, I think 17:03
6 it is wholly inappropriate for Mr. McDowell to seek to
7 get the Tribunal to put any construction on
8 Superintendent Cunningham's statement, other than that
9 it is a clear, deliberate conscious waiver in relation
10 to one meeting only and could not be construed in any 17:03
11 way as extending to other meetings or other
12 consultations or other things.

13 CHAIRMAN: Yes.

14 MR. MCGUINNESS: I'm not going there.

15 CHAIRMAN: Well, I think that is right. And if it 17:04
16 transpires, Mr. McGuinness, at the end of the day that
17 you can't waive privilege in relation to an issue just
18 for one meeting, as in the one cherry on the tree as
19 opposed to the whole tree, well then, I may have to
20 come back and just say I will ignore all that stuff. 17:04
21 But I think you are proceeding in the right way. And
22 we will proceed cautiously. Things will unfold. After
23 all, this Tribunal started on 17th February 2017, so it
24 will be a year soon, but we will get through it at some
25 stage. 17:04

26 MR. McDOWELL: Chairman, I don't want to be tedious.

27 CHAIRMAN: You're not being tedious, Mr. McDowell.

28 MR. McDOWELL: I hope I'm not being. But
29 Mr. McGuinness has said that it relates to one meeting

1 only, and all I was asking for was that this witness
2 feel free to speak about that meeting, that meeting at
3 this stage.

4 CHAIRMAN: No, no, I think that is exactly what you did
5 say actually. But I think we've gone as far as we can. 17:04
6 And I think also it's a question of wait and see. We
7 will rise, if that is all right -- is that Ms. Kelly
8 down there? Yes -- at 5:30. Can we make a bit of
9 progress up to that point?

10 MR. MCGUINNESS: Yes, Chairman, we will do the best we 17:05
11 can obviously.

12 775 Q. Ms. Ryan, at the conclusion of that meeting on the 12th
13 May, would it still be accurate to say that you had no
14 actual instructions on behalf of the Commissioner as to
15 how either Sergeant McCabe, any of his complaints, any 17:05
16 of his issues should be dealt with by her counsel at
17 the Commission?

18 A. I had absolutely no contact with the Commissioner, it
19 was all through Chief Superintendent Healy who was
20 standing in, in her place. So what was coming through 17:05
21 him -- what exact dealings he had with the
22 Commissioner, I understand he had a lot of contacts
23 with the Commissioner.

24 776 Q. Yes. But in terms of him relaying any instructions on
25 the 12th May, did he relay any instructions from the 17:05
26 Commissioner on that date, when you had been meeting
27 former Assistant Commissioner Clancy --

28 A. No.

29 777 Q. -- and then Superintendent Cunningham?

1 A. I would have them recorded.

2 778 Q. Yes. Could we turn then to the 13th May? If we could
3 look at page 3782. Perhaps 3781 first. I don't know,
4 have you got that?

5 A. Yes, I do. 17:06

6 779 Q. I think the first consultation there was with Chief
7 Superintendent Heller, and that appears to have
8 considered, and only considered, according to the note,
9 all of the factual issues relating to the Kingscourt
10 bus incident, is that correct? 17:06

11 A. Yes, that would appear to be correct.

12 780 Q. Then on the next page there's note of consultation with
13 retired Superintendent Lernihan on the same date, on
14 the 13/5, is that correct?

15 A. Yes, that's correct. 17:07

16 781 Q. Again, that appears to be exclusively related to the
17 Kingscourt bus incident and doesn't stray outside it in
18 any fashion, is that right?

19 A. It would appear to be so. The sick leave is recorded
20 there so that would not have been in the core booklet. 17:07

21 782 Q. Yes. Now, at paragraph 9 of your statement, you say:
22
23 "Following consultations with all witnesses, counsel
24 advised that Sergeant McCabe should be challenged on
25 his motivation in making numerous complaints of serious 17:07
26 allegations of corruption against several senior
27 officers."
28

29 CHAIRMAN: I'm sorry, I'm lost, which page are you on?

1 MR. MCGUINNESS: This is Ms. Ryan's statement, page
2 3271 of the book.

3 CHAIRMAN: I'm sorry --

4 MR. MCGUINNESS: Paragraph 9.

5 A. Do I need it?

17:08

6 CHAIRMAN: -- I'm 3782.

7 MR. MCGUINNESS: If you would like to look at it, it's
8 at 3271. It is volume 6.

9 CHAIRMAN: Okay.

10 MR. MCGUINNESS: I will commence reading the second
11 sentence:

17:08

12

13 "At the request of counsel Chief Superintendent Fergus
14 Healy was to discuss this issue with the Commissioner.
15 On the morning of the 15th of May, Chief Superintendent
16 Fergus Healy informed counsel he had spoken to the
17 Commissioner and the Commissioner's instructions were
18 to proceed in accordance with counsel's advices. The
19 Commissioner did not meet with the legal team."

17:08

20

17:09

21 Now, when you described there in the first sentence
22 "counsel's advice", "following consultation with all
23 witnesses, counsel advised", was that on the 14th May,
24 or was that after 13th May?

25 A. On the 13th May, I recall it was late night leaving HQ
26 and they were still very much under the impression that
27 these hearings will never start tomorrow. But there
28 was mention that we'll have to wait and see where the
29 evidence is, but motivation, motivation -- the question

17:09

1 of questioning his motivation was mentioned. The
2 next -- yeah.

3 783 Q. Was that on the 14th?
4 A. No, I believe there was -- my recollection is, leaving
5 that evening there was mention of motivation being 17:10
6 questioned.

7 CHAIRMAN: I'm sorry for being confused,
8 Mr. McGuinness, but sometimes the day of the week and
9 sometimes the place where it is happening will help fix
10 things in my mind. But as I understand it the hearings 17:10
11 of the O'Higgins Commission are taking place in the
12 Distillery Building, is that right?

13 MR. MCGUINNESS: Yes.

14 CHAIRMAN: They still call it the Distillery Building?
15 Not a great name for a legal building, but in any 17:10
16 event -- And then, why are we popping up and down to
17 Headquarters?

18 MR. MCGUINNESS: The consultations were held there.

19 CHAIRMAN: Not in the Distillery Building?

20 MR. MCGUINNESS: Prior to the events we are talking 17:10
21 about.

22 CHAIRMAN: Was that, every morning there was a
23 consultation in Garda Headquarters or were they going
24 up there late at night? I'm sorry, I'm just not
25 getting dynamic of it. 17:10

26 784 Q. MR. MCGUINNESS: I think the first consultation with
27 counsel happened in the Four Courts?

28 A. Yes, it did.

29 785 Q. I think the other consultations with witnesses and the

1 succession of witnesses that took place between the
2 11th and 14th took place in Garda Headquarters?

3 A. Yes, they did.

4 786 Q. Isn't that right? And on the 14th then, the hearings
5 commenced in Distillery? 17:11

6 A. Yes, they did.

7 787 Q. Now the mention of motivation that you've referred to,
8 and you refer to counsel's advice then in this
9 paragraph, was that discussed on the 13th, in other
10 words, before the hearings commenced? 17:11

11 A. I recall a vague -- I won't say vague. I recall a
12 matter to see where we're going with the evidence, but
13 the motivation may possibly have to be tested, but
14 we'll see where we're going. We were under the
15 impression at that stage this will never start 17:11
16 tomorrow.

17 788 Q. Okay. All right. So it would seem clear to be fixed
18 in your mind that it was actually the 13th, because you
19 didn't really expect it to kick off in the morning of
20 the 14th? 17:12

21 A. No, not at all.

22 CHAIRMAN: Which is the Thursday.

23 A. Which is the Thursday, yes.

24 789 Q. MR. MCGUINNESS: And was this sort of -- was this is a
25 discussion, as it were, after the consultation had 17:12
26 finished or was it as it was wrapping up on the 13th?

27 A. It was as it was wrapping up.

28 790 Q. Okay. I mean, at that stage counsel hadn't provided
29 any advice in writing nor had they been requested to

1 provide any advice in writing, had they?

2 A. No.

3 791 Q. Okay. And had they discussed either with you or with
4 any of the witnesses whether it was necessary to get
5 directions from the Commissioner as to how to approach 17:12
6 Sergeant McCabe?

7 A. I believe on the Wednesday it was we'll wait and see
8 what's happening on the matter. That didn't arise
9 until the Thursday.

10 792 Q. Yeah. Okay. We've seen your notes of the 13th May, 17:12
11 relating to Chief Superintendent Heller and
12 Superintendent Lernihan, they don't refer to the issue
13 of motivation or counsel's advice. Does it follow that
14 there isn't actually a note of what counsel were saying
15 at that point in time? 17:13

16 A. No. I've a tendency more or less to write a lot of
17 what the client is saying.

18 793 Q. Yes?

19 A. I do recall, I may possibly have even been standing, I
20 had a taxi on stand-by outside and they were all 17:13
21 wrapping up when there was mention 'sure, we'll see
22 what happens tomorrow'.

23 794 Q. Okay. Now, was the discussion at that stage, late and
24 all as it was, and no criticism of anyone, everyone was
25 working very hard on this, and long hours, isn't that 17:13
26 correct?

27 A. That's correct.

28 795 Q. Yeah. But certainly at this point in time, the
29 consultation was wrapping up, was the discussion one

1 that involved Chief Superintendent Healy or was it just
2 a discussion between counsel and yourself or the other
3 counsel?

4 A. I would expect -- Chief Superintendent Healy would have
5 been there, because I know when I was walking out I 17:14
6 walked with senior, the clients possibly had left,
7 like --

8 796 Q. The various superintendents had left?

9 A. Yes, I presume they had. It was last minutes.

10 797 Q. You put this in a very definitive sentence at the start 17:14
11 of paragraph 9, that counsel advised that Sergeant
12 McCabe should be challenged on his motivation?

13 A. And that was the next day.

14 798 Q. Pardon?

15 A. That was the next day. 17:14

16 799 Q. Yes?

17 A. The 14th.

18 800 Q. Well, you see, that's perhaps my mistake, and I thought
19 our discussion had been -- had established that this
20 advice was something that was said by counsel on the 17:14
21 evening of the 13th, am I wrong about that?

22 A. There was a question mark --

23 801 Q. A question mark?

24 A. -- in relation to see where the evidence takes it,
25 arising out of consultations and what we had -- what -- 17:15
26 that was counsel's view.

27 802 Q. Yes. It would appear from your second sentence that
28 counsel on the evening of the 13th requested Chief
29 Superintendent Healy to discuss this issue with the

1 Commissioner?

2 A. No, I believe that might have been the evening of the
3 14th. It was after the first day's hearings.

4 803 Q. Okay?

5 A. He was to go and talk to the Commissioner in relation 17:15
6 to it. That would have been on the first day of
7 hearings.

8 804 Q. Okay. So --

9 A. I knew for definite he was going to talk -- well, I
10 don't know what he did, but... 17:15

11 805 Q. Okay. So it must be my mistake, all of paragraph 9,
12 the first two sentences, none of them relate to the
13 13th --

14 A. No --

15 806 Q. -- they relate to the 14th? 17:15

16 A. -- because it was just an open end, we'll see where
17 it's going, but it was firmly mentioned on the 14th.

18 807 Q. Okay. All right. And this is, in the first instance
19 then it's oral advice given by counsel on the 14th?

20 A. Yes, it was oral advice. 17:16

21 808 Q. It doesn't appear to be recorded anywhere, am I right
22 about that?

23 A. I did not record it. I remember Colm Smyth wanting the
24 advice. I actually expected a consultation with the
25 Commissioner in relation to it. 17:16

26 809 Q. Yes. And I think it does appear from reading the text
27 and between the lines, that you had been anxious from
28 the events of the 15th onwards to have counsel have a
29 consultation with the Commissioner, and it just didn't

1 happen?

2 A. It didn't happen, no.

3 810 Q. And you had arranged both for counsel to be available
4 over that weekend and you were, I think, in contact
5 with Chief Superintendent Healy even on Saturday, 16th 17:17
6 to see was it going to happen?

7 A. Well, I had a fair idea it wasn't going to happen from
8 late Friday evening.

9 811 Q. Yes. And then it couldn't be arranged for a number of
10 reasons, all on the Commissioner's part, and it didn't 17:17
11 happen on the Monday morning, on the 18th either?

12 A. I'd sought on the Friday an immediate consultation and
13 that evening I suppose to facilitate counsel --

14 812 Q. And obviously if it could have been done within working
15 hours on the Friday it would have been facilitated 17:17
16 counsel, but they were prepared to make themselves
17 available over the weekend as well, isn't that right?

18 A. Saturday or Sunday.

19 813 Q. Saturday or Sunday?

20 A. Adequate notice. 17:17

21 814 Q. And Monday morning as well?

22 A. The three of them. Monday morning I didn't actually go
23 back to them in relation to that matter.

24 815 Q. But can the Tribunal take it that they were as anxious
25 to have a consultation with the Commissioner as you 17:17
26 were?

27 A. Oh, very much so.

28 816 Q. Right. Okay. So --

29 CHAIRMAN: But I mean this must be the only situation

1 where you're the solicitor for someone but you're not
2 meeting the person.

3 A. Very much so.

4 CHAIRMAN: And counsel are the counsel for somebody but
5 they're not meeting the person. 17:18

6 A. Yes. It was. It was a concern, Chairman.

7 CHAIRMAN: Is that the way things normally work?

8 A. No. Well, in litigation cases you'd rarely have to
9 meet the Commissioner, they would be done through legal
10 actions, so say Ken Ruane would be there. 17:18

11 CHAIRMAN: Well sure, but if the Commissioner is taking
12 responsibility for this - well, I don't know whether
13 she was or not - but you certainly thought as a
14 professional person involved that they should be meet
15 face-to-face and thrash it out? 17:18

16 A. I wanted a consultation.

17 CHAIRMAN: If I am putting words in your mouth stop me
18 but, is that right?

19 A. I would have expected a consultation.

20 CHAIRMAN: Okay. 17:18

21 817 Q. MR. MCGUINNESS: Could I ask you to look at Chief
22 Superintendent Healy's notes, they're at page 3817?

23 A. What volume?

24 818 Q. Which is in volume 7.

25 A. The number again, 38 -- 17:19

26 819 Q. 3817. This is a typed version of the chief
27 superintendent's handwritten notes, which are at 3816,
28 but it appears to relate to the 14th May, down to the
29 typewritten version. If we go down to the typed

1 written version on page 3817?

2 A. Yes.

3 820 Q. I'm just waiting for the -- at the top there, there's a
4 reference I think to some of the other modules that
5 were coming later, the Gerry McGrath incident, the 17:20
6 incident at Cafolla's, the Cootehill assault and the
7 June module, and then reference to hearings in July,
8 there's an issue about checking the date of assessment
9 for Garda McCarthy who was the probationer, check
10 documents for legibility. And then this seems to 17:20
11 record in a very brief shorthand way what happened.
12
13 "Opening statement from the Judge."
14
15 And I think that appears from the transcript. "Out", 17:20
16 that's Chief Superintendent Healy being put out I think
17 essentially, is it, on the first --
18 A. He was put out.

19 821 Q. Yes. "Ms. Browne gave evidence." He's obviously back
20 in following Mr. Smyth's second application that day. 17:21
21 And Ferghal McCarthy, Regina McArdle give evidence.
22 And then underneath that, if we can scroll down, to --
23 no, no, if we go back up to the first page please,
24 3817.

25 A. Yes. 17:21

26 822 Q. And then there's a note there:
27
28 "Permission/instructions to use Cunningham in ve."
29

1 And it seems to relate perhaps to Superintendent
2 Cunningham's investigation. And there are notes
3 underneath:

4
5 "Motivation. Clancy refused. Rooney refused. Then 17:21
6 Maurice changed. McCarthy."

7
8 Does that assist you in your recollection as to any
9 discussions that had taken place about motivation or on
10 what basis motivation was to be challenged or 17:22
11 otherwise?

12 A. Again Judge, or Chairman, privilege is an issue here.

13 823 Q. All right.

14 A. I will probably need direction in that regard. Yes,
15 motivation was to be challenged -- or sorry, counsel 17:22
16 advised that motivation should be challenged and the
17 credibility of evidence.

18 824 Q. The "Clancy and Rooney refused", one interpretation of
19 that is that that relates to their refusal --

20 A. Yeah. 17:22

21 825 Q. -- to allow Sergeant McCabe, as it were, access to the
22 full copy of the DPP's directions. Maybe there are
23 different interpretations. But above that
24 "permissions/instructions", does that relate to what
25 Chief Superintendent Healy was to do in relation to the 17:22
26 Commissioner, seeking permission and instructions from
27 the Commissioner?

28 A. I do know counsel had requested him to seek the
29 permission/instructions from the Commissioner. And

1 when I talk about motivation, it was in relation to the
2 serious allegations of corruption and malpractice that
3 he had made.

4 826 Q. Yes?

5 A. And, like I said, I have consultation notes. 17:23

6 827 Q. Yes.

7 A. But it was always in relation to the allegations, the
8 serious allegations of corruption, malpractice, that
9 the Assistant Commissioner Derek Byrne and Chief
10 Superintendent Terry McGinn had found none to exist 17:23
11 upon the outcome of their lengthy investigation.

12 828 Q. Yes. But the phrase here "permission/instructions", am
13 I right in interpreting that as, that has to relate to
14 what counsel wanted by way of instructions from the
15 Commissioner, or am I misinterpreting that? 17:23

16 A. They're Chief Superintendent Healy's notes. I do
17 recall counsel wanted firm instructions from the
18 Commissioner in relation to this matter.

19 829 Q. Yes?

20 A. And Chief Superintendent Healy was to go and speak to 17:24
21 her or to get her -- get the Commissioner to come back
22 in that regard.

23 830 Q. Yes. Now it says, obviously just to put it in context,
24 it says:
25
26 "Permission/instructions to use Cunningham in ve."
27
28 And that's the way it's written. What did you
29 understand that to mean or is that accurate, firstly?

1 A. Well, I'm aware of what the investigation was.

2 831 Q. Yes?

3 A. It was never the investigation, it was his interaction
4 with management thereafter.

5 832 Q. Thereafter, I see. 17:24

6 A. And the allegations of serious -- numerous allegations
7 of corruption and malpractice.

8 833 Q. Okay.

9 A. It was in that context. It was never the allegation
10 itself. 17:24

11 834 Q. Okay. And the word "motivation" is used there without
12 qualification as to what it relates to or what it
13 embraced or didn't embrace, but can you say from
14 recollection what were counsel seeking to be instructed
15 about or not instructed about insofar as the question 17:25
16 of motivation was concerned?

17 A. It was what motivated Sergeant McCabe to make these
18 allegations and to --

19 835 Q. Was it to make --

20 A. Not so much to make the allegations, it was a complete 17:25
21 change in relation to Maurice McCabe. He was --

22 836 Q. Did it extend to -- and correct me if I am wrong, did
23 it extend to Sergeant McCabe's motivation relating to
24 all of the complaints he had made concerning matters?

25 A. No. 17:25

26 837 Q. Was it as broad as that?

27 A. No, not at all. The Byrne/McGinn investigation had
28 accepted a lot -- or there was numerous, numerous
29 incidents investigated by them and their findings were

1 whatever they were. There was a certain amount of
2 investigations that fell below what was required; there
3 was late follow-ups, shabby work, not getting proper,
4 say, CCTV or this, that and the other. That was always
5 accepted, that there was problems primarily with young 17:26
6 probationary or more junior members, and there was a
7 lack of supervision, and that was the findings of their
8 report. But it was in relation to what made him make
9 serious, serious complaints --

10 838 Q. Okay. 17:26

11 A. -- that appears to have been -- it was up to
12 Mr. Justice O'Higgins to investigate these and report
13 on them.

14 839 Q. It's just that obviously this is a shorthand, as it
15 were, jottings from Chief Superintendent Healy and I 17:27
16 don't want to interpret them one or another. But was
17 it anywhere laid down for you on behalf the
18 Commissioner as to, look, these allegations fall into
19 this category of serious ones and these don't, and
20 investigate the motivation for these and don't worry 17:27
21 about the motivation for others? I mean, it seems to
22 have caught up all of his complaints or allegations, is
23 that not correct?

24 A. No, Judge, or Chairman, it was always in relation to
25 the serious allegations, the more serious allegations, 17:27
26 it was always accepted that there were problems as
27 accepted by Byrne/McGinn or as was identified. It was,
28 we're here in 2015 now dealing with the same
29 allegations that were in 2008 --

1 840 Q. Yes?

2 A. -- that had been investigated in relation to a lengthy
3 investigation carried out by Byrne and McGinn, and
4 we're still dealing with these allegations.

5 841 Q. Yes. 17:28

6 A. And it was --

7 842 Q. You sat through the first day --

8 A. Yes.

9 843 Q. -- on 14th May, and the Kingscourt module had started
10 and Sergeant McCabe had perhaps little to do with it, 17:28
11 in terms of the actual investigation --

12 A. Yeah.

13 844 Q. -- apart from the suggestion that at a later stage,
14 having appraised him of what had occurred, himself and
15 another guard had a view about whether the victim had 17:28
16 been well served and whether Ms. Browne should be
17 informed about her right to go to GSOC and/or whether
18 they had encouraged her to do it. But, was that seen,
19 as it were, to your knowledge, as exposing motivation
20 in some improper way or was there express discussion on 17:29
21 that on behalf of the Commissioner?

22 A. On behalf of the Commissioner, as I said I had no
23 dealings with the Commissioner at this stage, so I
24 don't know what her view was.

25 CHAIRMAN: What Mr. McGuinness is asking you is this, 17:29
26 it's a fairly classic case and you would have come
27 across it. So there you have Mr. A and you have Mr. B
28 and they both claim to have witnessed the same incident
29 and one of them says the following happened, the man

1 produced a knife, and the other says, oh, that never
2 happened at all and what in fact happened was a person
3 was attacked and then the knife was produced, if you
4 know what I mean. So, it's self defence versus
5 assault. And then, credit, or whatever, might come
6 into it by saying, well, the reason you're saying it
7 was self defence is the person who is up on the charge
8 is your first cousin. Do you get the point?

17:29

9 A. I do, Judge.

10 CHAIRMAN: What I think Mr. McGuinness is exploring
11 with you is: Given that Sergeant McCabe had nothing
12 whatever to do with Kingscourt and the bus his
13 motivation could have absolutely nothing to do with
14 that. Do you understand?

17:29

15 A. I understand, Chairman.

17:30

16 CHAIRMAN: Yes, I get you on that.

17 A. Yes.

18 CHAIRMAN: And, look, we should break now, but it's a
19 longer issue as to whether if he says somebody was
20 corrupt or not, it's a question as to -- or they were
21 utterly incompetent --

17:30

22 A. There's consultation notes, that could be relevant.

23 CHAIRMAN: -- is that or is that not a question simply
24 of fact, and if he is not actually a witness to it, he
25 can shed no light on it apart from saying that this is
26 what I think happened, how does his motivation come
27 into it? I don't know whether any of these
28 distinctions were being drawn. That is what
29 Mr. McGuinness was asking you: Look, on Kingscourt he

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had nothing to do with it so how could you possibly challenge his motivation?

A. It was more how he went to the alleged victim as opposed to being the sergeant in charge and not going to the young Garda firstly and finding out what went on or -- it was a change in a behaviour compared to what previously was, but, Judge, as I said I'm tied in that regard. 17:30

MR. MCGUINNESS: Ms. Ryan, I'm afraid we're going to rise now and we're going to have to ask you to come back at wednesday morning at 10:00am, Chairman. 17:31

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 17TH
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