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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON TUESDAY, 11TH JULY 2017 - DAY 6

6

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1 THE HEARING RESUMED ON TUESDAY, 11TH DAY OF JULY, 2017

2 AS FOLLOWS:

3
4 MR. MARRINAN: Sir, we are continuing with Mr. Lowry,
5 please. 10:01

6
7 MR. GERARD LOWRY CONTINUED TO BE EXAMINED BY MR.

8 MARRINAN AS FOLLOWS:

9 1 Q. MR. MARRINAN: Mr. Lowry, if we could just bring you
10 back to the state of play on the 8th of May of 2015. 10:02
11 And that concerns the e-mail that was sent by Séamus
12 Deeney to Kay McLoughlin and was copied to you and
13 where there is an indication of a five-point plan, is
14 that right?

15 A. That's correct. 10:02

16 2 Q. I think maybe yesterday you had acknowledged that at
17 that point in time it might have been preferable,
18 considering certainly *you* were aware of the background
19 of the discrepancy and how it had arisen that you
20 and/or Mr. Deeney would have sat down with Kay 10:02
21 McLoughlin and highlighted the problems and the history
22 of the case?

23 A. That's correct.

24 3 Q. But in any event, that didn't happen, and as far as you
25 were concerned at that point in time, Kay McLoughlin 10:03
26 had been advised to carry out firstly the assessment
27 and review of the case as itemised in bullet-point 1,
28 is that right?

29 A. That's correct.

1 4 Q. So, as far as you were concerned, you were happy to
2 leave that in Kay McLoughlin's hands. She then had
3 become effectively the social worker who had been
4 assigned to the case, isn't that right?

5 A. That is not correct. Kay was the social work team 10:03
6 leader, she wasn't the assigned social worker and
7 Séamus would have been her direct supervisor as
8 principal social worker.

9 5 Q. And well, then who was assigned to this case in 2015?

10 A. Part of the difficulty throughout the process is there 10:04
11 wasn't an assigned social worker. Kay would have taken
12 on the case in her social work team leading role in
13 order to try and address the issues, which was not
14 uncommon for social work team leaders, in addition to
15 their normal roles and responsibilities they tried to 10:04
16 process unallocated cases to the greatest extent
17 possible.

18 6 Q. So, in other words, she had stepped down from her role
19 as social work team leader?

20 A. No. She was continuing in her role as social work team 10:04
21 leader and she did this case then in addition, as she
22 would have with other cases. Social work team leaders
23 would also try to address the large number of
24 unallocated cases.

25 7 Q. And that is what she was now trying to do? 10:04

26 A. That's correct.

27 8 Q. In other words, this case had been allocated to her at
28 this juncture?

29 A. She certainly undertook those responsibilities but I

1 think there is a distinction between an allocated
2 social worker who would have this case within their
3 case load and a social work team leader taking it on as
4 an additional responsibility.

5 9 Q. Well, regardless, she was in the role of allocated 10:05
6 social worker at this juncture dealing with this
7 particular case?

8 A. I accept she undertook those tasks, yes.

9 10 Q. But as far as you were concerned, this case was now 10:05
10 going to be dealt with?

11 A. Yes, that's correct.

12 11 Q. And it was going to be dealt with by Kay McLoughlin?

13 A. That's correct.

14 12 Q. This case had come in, in 2013 and was unallocated. It 10:05
15 had been reviewed in April of 2014 and we know the
16 errors that were made at that juncture, and it remained
17 unallocated and now at this juncture with Kay
18 McLoughlin, who has taken the file again from the
19 filing cabinet, and discussed the matter with yourself
20 and Mr. Deeney, she is now dealing with the file? 10:06

21 A. That's correct.

22 13 Q. Is that right? So this is going to be brought,
23 hopefully, to some sort of conclusion at this stage,
24 isn't that right?

25 A. That's correct. 10:06

26 14 Q. So, as matters then stood, you were happy that Kay
27 McLoughlin, who was a social work team leader and
28 somebody of great experience, would deal with the file
29 to conclusion, isn't that right?

1 A. That's correct.

2 15 Q. And in the normal course of events, there would be
3 absolutely no reason for her to revert to you, isn't
4 that so?

5 A. That's correct. Well, Séamus Deeney was her direct 10:06
6 manager.

7 16 Q. Yes, who was Séamus Deeney?

8 A. Yes.

9 17 Q. And it wasn't foreseen that there would be any further
10 problems in relation to the case, isn't that so? 10:06

11 A. I did not foresee any further problems.

12 18 Q. And there was an understanding that you certainly had
13 and that perhaps Mr. Deeney had as well, he can tell us
14 about that, that the discrepancies that had arisen in
15 the file and the errors that had arisen in the file, 10:07
16 would all be identified and the matter would be dealt
17 with appropriately, isn't that right?

18 A. That's correct.

19 19 Q. So, when is the next that you heard of anything that
20 occurred? 10:07

21 A. I think it's when Kay contacted me about the error, is
22 the significant event that comes to mind.

23 20 Q. Sorry?

24 A. When Kay contacted me about the error, the erroneous
25 letter, that's the significant event that comes to mind 10:07
26 as the next point of contact.

27 21 Q. Was this the letter that had come in from Mr. McCabe's
28 solicitors?

29 A. That's correct.

1 22 Q. So this is the first that you had heard of the problems
2 that had reemerged in the case?

3 A. That's correct. Maybe just for clarity, there are two
4 letters I think in the January 2016, and it was -- it's
5 the second letter that Kay brought to my attention. 10:08

6 23 Q. I opened a letter or showed you a letter yesterday --

7 A. Yes.

8 24 Q. -- it was merely an acknowledgement, an indication that
9 Mr. McCabe wouldn't be attending at the appointment,
10 isn't that right? 10:08

11 A. That's correct.

12 25 Q. And you hadn't seen that one and the one I think you
13 were at pains to point out yesterday, the one that you
14 saw was the one that we are now going to look at page
15 1093. It is dated 28th January of 2015. Now, do you 10:08
16 recall whether this was copied to you in an e-mail or
17 was it brought to you on a one-to-one basis by Kay
18 McLoughlin?

19 A. I recall Kay discussing it with me and saying that
20 there had been the error. I can't recall if I got it 10:09
21 by e-mail or she handed it to me.

22 26 Q. And this discussion that you had with her, it was
23 one-to-one, was it --

24 A. Yeah.

25 27 Q. -- or was it over the phone? 10:09

26 A. No, I think it was one-to-one.

27 28 Q. And was she excited or agitated by the contents of the
28 letter?

29 A. She was very anxious, very concerned that she had made

1 such a significant error, and apologetic.

2 **CHAIRMAN:** I mean, sorry, I beg your pardon,
3 Mr. Murrinan. You are saying she made a significant
4 error?

5 A. Yes. 10:09

6 **CHAIRMAN:** Are you sticking by that?

7 A. Yes.

8 29 Q. **MR. MARRINAN:** So if you could just look at page 1093,
9 it's quite a lengthy letter but I'd better open it.
10 Have you got it there on the screen? 10:10

11
12 *"Dear Ms. McLoughlin*
13 *Please note that we act on behalf of Mr. Maurice*
14 *McCabe. Your letter dated 29th December 2015 is to*
15 *hand and we have our client's instructions concerning* 10:10
16 *same.*

17
18 *At the outset, we might ask you to state on what*
19 *authority or remit you are considering this complaint*
20 *and proposing to engage in a process which may* 10:10
21 *ultimately result in some determination as to whether*
22 *or not our client may (pose a risk) to children. You*
23 *might, therefore, provide us with the statutory*
24 *authority or other legal basis on which you are dealing*
25 *with this matter.* 10:10

26
27 *We await an urgent reply to this letter.*

28
29 *For your own information, and entirely without*

1 *prejudice to the foregoing request, our client has*
2 *instructed us to address this wholly false and*
3 *malicious allegation to which you refer.*

4
5 *The allegation is wholly untrue. The incident alleged* 10:11
6 *to have occurred in 1998 and a complaint which was made*
7 *in December 2006 were subject to a full investigation*
8 *by An Garda Síochána. The file, as you are aware, was*
9 *sent to the Director of Public Prosecutions. What you*
10 *may not know is that our client, when originally* 10:11
11 *informed of the complaint, insisted that Ms. D be*
12 *interviewed again in the presence of an independent*
13 *social worker and that her allegation be carefully*
14 *recorded. Both her accounts were sent to the DPP in*
15 *the file. The DPP not merely directed that no* 10:11
16 *prosecution take place, but you should know that the*
17 *DPP clearly stated that no criminal offence had been*
18 *described or disclosed in the complaint. Our client is*
19 *accordingly astonished to read the allegation now being*
20 *made. This allegation of digital penetration was never* 10:12
21 *made before and is in fact a new and entirely false*
22 *allegation.*

23
24 *It can be easily demonstrated that this claim of*
25 *digital penetration was never made to the Gardaí or to* 10:12
26 *the independent social worker and our client has never*
27 *heard any such suggestion until now. The DPP could*
28 *never have found that the complaint disclosed or*
29 *described no criminal offence if the allegation of*

1 *digital penetration had been made to the Gardaí or*
2 *social worker."*

3
4 Then under the heading "*Background*":

5
6 "*Our client had been sergeant in charge of Bailieboro*
7 *Garda Station at the time of the making of the*
8 *complaint. In 2006 he became aware of serious*
9 *misbehaviours on the part of Ms. D's father, who was*
10 *also a sergeant in the station. Our client caused the*
11 *institution of serious disciplinary procedure against*
12 *the complainant's father in January 2006. The result*
13 *being that her father lost his position and was*
14 *reverted to other duties. It was only in the aftermath*
15 *of Sergeant McCabe initiating the disciplinary*
16 *procedure and other matters that Ms. D, in the company*
17 *of her parents, made the original complaint, but in*
18 *totally different terms against our client.*

19
20 *In respect of the original complaint, which Sergeant*
21 *McCabe knew to be wholly false, when this complaint was*
22 *made our client insisted on being interviewed. Our*
23 *client also insisted that the complainant be*
24 *interviewed by the Gardaí and a social worker without*
25 *the presence of her parents. Our client, when*
26 *interviewed, insisted on knowing the exact allegation*
27 *being made. He was informed the allegation being made*
28 *by Ms. D was that sometime when she was aged six,*
29 *during a game of hide and seek with our client's*

1 *children in our client's house, in the course of that*
2 *game she alleged that he lent over her in a humping*
3 *fashion. This is and was utterly denied by our client.*

4
5 *As we stated above, the original allegation was* 10:14
6 *considered and decided on by the Director of Public*
7 *Prosecutions, who not only found that no criminal*
8 *offence whatsoever had been described or disclosed, but*
9 *also queried how the complainant's parents could have*
10 *reached the conclusion that a sexual assault had* 10:14
11 *occurred even as described.*

12
13 *We would also wish to inform you that our client's*
14 *family and employer, the Commissioner of An Garda*
15 *Síochána, are now and have always been fully aware of* 10:14
16 *the allegation made by Ms. D.*

17
18 *If the purpose of the inquiry which you have made in*
19 *your letter was, as your letter suggests, to enable*
20 *consideration to be given as to whether his family and* 10:15
21 *employer should be informed, that purpose is long since*
22 *spent. We await hearing from you by return and pending*
23 *receipt of a satisfactory reply to our request*
24 *concerning your authority or remit, we will be in a*
25 *position to take our client's instructions if* 10:15
26 *necessary."*

27
28 *So there is a clear reference there to the original*
29 *complaint that had been made by Ms. D, and there is a*

1 clear indication that the allegation of digital
2 penetration had never, in fact, been made by Ms. D, and
3 that this was an erroneous allegation, isn't that
4 right?

5 A. That's correct. 10:16

6 30 Q. And in fact, you were familiar with what had happened
7 in May of 2014 and that this erroneous allegation had
8 been notified to, in the first instance, to Tusla by
9 Rian and then by Tusla to the Gardaí, isn't that right?

10 A. That's correct. 10:16

11 31 Q. And you were also aware that that, in fact - that error
12 - had been rectified to some extent insofar as Rian had
13 sent in a new written referral with the correct
14 allegation in it, isn't that right?

15 A. That's correct. 10:16

16 32 Q. And that the notification to An Garda Síochána had been
17 amended by Tusla and had been sent, having been
18 approved by Eileen Argue and by Séamus Deeney, isn't
19 that right?

20 A. That's correct. 10:17

21 33 Q. So, it was apparent to you immediately at this juncture
22 that Kay McLoughlin had made a terrible error in
23 notifying Garda McCabe of this erroneous allegation
24 that in fact had never been made by Ms. D, isn't that
25 right? 10:17

26 A. That's correct.

27 34 Q. So, what did you say to her?

28 A. I suppose the first thing I said is we need to
29 apologise. I asked her then to check out some further

1 information with a view to drafting a letter of apology
2 to be sent.

3 35 Q. Well, just before, as far as you were concerned, quite
4 legitimately, you would have assumed that the files
5 that then existed in Tusla in relation to Maurice 10:18
6 McCabe reflected the corrected information as of May
7 2014?

8 A. That's correct.

9 36 Q. So if you made that assumption -- well, first of all if
10 I could come, you knew that from August of 2013 until 10:18
11 May of 2014, that an incorrect allegation remained on
12 the file in Tusla in relation to Maurice McCabe, isn't
13 that right?

14 A. Just clarify the dates that you --

15 37 Q. From August, when the matter came in to Tusla from 10:18
16 Rian --

17 A. Yes.

18 38 Q. -- there was -- you weren't aware of it at the time,
19 but you are aware of it now, isn't that right?

20 A. That's right. But I knew the case had been 10:19
21 re-referred, but I didn't know the detail of it.

22 39 Q. So at the time you knew that the referral had come in
23 from Rian to Tusla in August of 2013?

24 A. At some stage between August 2013 and May 2014 I was
25 certainly informed. 10:19

26 40 Q. Yes. And in May of 2014 you were aware of the fact
27 that that had given rise to a situation where, in
28 error, the Gardaí were notified of the incorrect
29 allegation?

1 A. That's correct.

2 41 Q. And you were also aware of the fact that this had
3 caused a bit of a storm at the time, that Laura Brophy
4 had been in contact with Tusla quite urgently trying to
5 contact Eileen Argue, and that had been the subject of 10:20
6 amending a Garda notification, isn't that right?

7 A. I was aware that the matter had been addressed, yes.

8 42 Q. And also, the file with the incorrect -- or the report
9 with the incorrect allegation sent in by Laura Brophy
10 had been returned to Rian quite unusually, had been 10:20
11 taken from Tusla and returned to Rian, isn't that
12 right?

13 A. That's correct.

14 43 Q. So as far as you were concerned, there should have been
15 nothing within Tusla that reflected a false allegation 10:20
16 that we are talking about here against Sergeant McCabe,
17 isn't that right?

18 A. That's correct.

19 44 Q. So when did you think that Kay McLoughlin at that
20 juncture had got a hold of this false accusation? 10:21

21 A. Kay informed me that there was still information on the
22 file that led to her misinterpreting the file and
23 sending the inaccurate information in the letter to
24 Mr. McCabe.

25 45 Q. Well, were you aware of that at the time, in that 10:21
26 conversation that you had with her?

27 A. Yes, I think so, yeah. That Kay would have informed me
28 of that at the time.

29 46 Q. And how did you believe that the error had arisen as a

1 result of what Kay told you at that time?

2 A. Well, Kay informed me that there was still inaccurate
3 information on the file and that she had misinterpreted
4 the file and it was based on that, that she sent the
5 inaccurate letter. 10:21

6 47 Q. And then did you give her any instructions in relation
7 to --

8 A. I did ask her to take some further clarification steps
9 and to draft a letter of apology for my approval before
10 it would be sent. 10:22

11 48 Q. And what further inquiries did you ask her to make?

12 A. The one that comes to mind, I had asked her to contact
13 Emer O'Neill who had dealt with the original '06/'07
14 file.

15 49 Q. And what was the purpose in asking her to do that? 10:22

16 A. I think to confirm what was the original allegation or
17 area of concern.

18 50 Q. But sure, you knew what the original allegation was.

19 A. Yes, yes.

20 51 Q. You knew -- 10:22

21 A. And maybe at that point, maybe that was unnecessary,
22 maybe it would have been more appropriate, I suppose,
23 if that step had been taken prior to the letter being
24 sent to Mr. McCabe.

25 52 Q. So your response at that time is, you say is to ask her 10:23
26 to ask Emer O'Neill for the file, is that right?

27 A. Yeah. I think there is an email where I asked her to
28 do various things. I don't know what number it's at.

29 53 Q. Page 1091, please. This is after the conversation that

1 you had had with her, is that right? It's 8th of
2 February of 2016.

3 A. Yes. Yeah, I asked her, and I suppose I am essentially
4 asking her to check the information in terms of the
5 Garda information and whatever information Emer O'Neill 10:23
6 had.

7 54 Q. *"Dear Kay*
8 *As discussed, please review Emer O'Neill's and the*
9 *Garda file, update the attached and revert to me."*

10 10:24

11 Is that right? You sent that to her?

12 A. Yes.

13 55 Q. Why was there any need to review Emer O'Neill's and the
14 Garda file?

15 A. I suppose my expectations before the Barr letter is 10:24
16 sent, there is clarification of the concerns, the
17 allegations had been made about an individual, and
18 Kay's letter, with the inaccurate information, showed
19 that there was inaccurate information, so I was sending
20 her back to say look, go back there and check the 10:24
21 information, right. That is what I was saying in terms
22 of Emer O'Neill's original '06/'07 and the Garda file;
23 go back and check that. That is what I was asking Kay
24 to do.

25 56 Q. You see, the problem about that is that this isn't in a 10:25
26 sense inaccurate or inconsistent information that in
27 some way has emanated from Ms. D. You have the
28 consistency of the information throughout given by
29 Ms. D, isn't that right?

1 A. But, can you just clarify the question, if that is
2 okay?

3 57 Q. There is no inconsistency in terms of the information
4 that has been supplied --

5 A. Okay. 10:25

6 58 Q. -- to either Rian or to Tusla by Ms. D. She has been
7 consistent throughout, isn't that right?

8 A. Yes, but Kay had obviously made a mistake in her
9 letter. So I was asking her, as her supervisor at that
10 point, to say go and check that information with the 10:25
11 key sources of the information.

12 59 Q. But the fault for this didn't reside with Ms. D --

13 A. I am -- yeah, okay.

14 60 Q. -- or an account that she gave to the Gardaí in a
15 written statement, sure it didn't? 10:26

16 A. I am finding it hard to follow.

17 61 Q. The fault, the reason for the error, had nothing to do
18 with Ms. D; she had simply made a statement to the
19 Gardaí which was on the file --

20 A. Yes. 10:26

21 62 Q. Making an allegation --

22 A. Okay.

23 63 Q. -- against Sergeant McCabe.

24 A. Yes.

25 64 Q. She had been consistent in that -- 10:26

26 A. Yes.

27 65 Q. -- and the nature of that allegation. In fact, she was
28 the person who approached Tusla --

29 A. Yes.

1 66 Q. -- or it was Rian, in May of 2014, isn't that right?
2 A. That's correct.

3 67 Q. To alert them to the error?
4 A. That's correct.

5 68 Q. So this was Rian's error and it was Tusla's error? 10:27
6 A. Yes.

7 69 Q. So any consistency or inconsistency in relation to the
8 reporting of this error lies firmly within Tusla and
9 Rian, isn't that right?
10 A. That's correct. 10:27

11 70 Q. So there is no reason at that juncture to start
12 reviewing a Garda file or reviewing Emer O'Neill's
13 notes in relation to this or her file, sure there's
14 not?
15 A. The purpose is: There was uncertainty still at that 10:27
16 point, unfortunately still, in Ms. McLoughlin's
17 perspective about the case. Therefore, I was saying to
18 her as her supervisor, go check that information as
19 part of our preparation for the apology. That is what
20 I was doing. So, you are right, there is a consistency 10:27
21 in terms of Ms. D's allegation, the difficulty at this
22 point in time is the uncertainty, the wrong information
23 in Ms. McLoughlin's perspective.

24 71 Q. So, in any event, if we could have page 1100 up on the
25 screen. I think that she emails you a report, 10:28
26 effectively, in relation to her review of the matter,
27 on the 9th February of 2016, isn't that right?
28 A. That's correct.

29 72 Q. *It says: "Hi Gerard*

1 *I have reviewed the statements made to the Garda by*
2 *Ms. D and the file. The allegation regarding digital*
3 *penetration was made erroneously by Rian counsellor,*
4 *Ms. Brophy, in August 2013. The following is*
5 *highlighted."*

10:28

6
7 Can we just stop there? I don't want you to be doing
8 yourself a disservice or injustice, but you were aware
9 of this already and you had indicated it to Kay
10 McLoughlin, that this allegation of digital penetration
11 had been made erroneously by a Rian counsellor and
12 reported to Tusla, you had already told her this, or
13 did you?

10:28

14 A. I think, sir -- and when Séamus Deeney's five-point
15 plan was in place and I saw that that was happening, I
16 was happy with that. I hadn't then discussed the
17 matter with Kay during that until after she sent the
18 erroneous letter. So in terms of -- I didn't say to
19 Kay at some stage, you know, even in terms of as part
20 of the office talk, look, you remember that about the
21 Rian erroneous allegation and Maurice McCabe, I
22 don't --

10:29

10:29

23 73 Q. No, no, I am not suggesting that you did, and you have
24 made it very clear that from May of 2015 until January
25 of 2016 that you had assumed that Kay was going to deal
26 with the file. That is not what I am talking about.
27 You have, in January of 2016, when Kay McLoughlin came
28 to you with the letter from Seán Costello, at that time
29 you were aware of the fact as to how this error had

10:29

1 occurred, isn't that right?

2 A. Yes.

3 74 Q. Did you say it at that point in time?

4 A. I think I asked Kay to go and do the checks as opposed
5 to say it to her, you know. I see it as her role as 10:30
6 the assigned worker to do this clarification and she
7 comes back to me with the information. So, I don't
8 actually remember saying to her 'you remember that Rian
9 error' at that point in time. Right.

10 75 Q. I mean, it may have prompted a reaction in you when you 10:30
11 first heard of this, when you were with Kay McLoughlin
12 'oh, no, not again'?

13 A. It didn't, ,it didn't. And my explanation for that,
14 sir: In the busyness of the office there are many,
15 many cases, there are many, many difficult situations 10:31
16 that we deal with, and this was another one of them.

17 76 Q. Yeah, but it was another one in circumstances where you
18 knew Sergeant McCabe, you dealt with him over the
19 years - we established that yesterday, isn't that
20 right? 10:31

21 A. That's correct.

22 77 Q. You knew at this time that he was the subject-matter of
23 intense scrutiny by the media and media were very
24 interested in his whistle-blowing of activities in An
25 Garda Síochána, isn't that right? 10:31

26 A. That's correct.

27 78 Q. So this perhaps wasn't just the run-of-the-mill case,
28 another faceless file, isn't that right?

29 A. I was aware that it -- Maurice McCabe was in the media,

1 it was a high profile case in that way, but I very much
2 kept the media publicity and the difficulties within
3 the Garda Síochána separate from ourselves.

4 79 Q. But you could clearly put a face to the name on the
5 file, isn't that right?

10:32

6 A. Yes.

7 80 Q. Which perhaps may have prompted to you deal with this
8 matter quite urgently?

9 A. Unfortunately, it didn't.

10 81 Q. I mean, on a review of the file at this juncture, and
11 all that you knew in the history of it, it was almost
12 three years since the file had come into Tusla, isn't
13 that right?

10:32

14 A. That's correct.

15 82 Q. And from the moment that the file had come into Tusla,
16 we know that in May of 2014 that there had been an
17 error made and, if I could put it this way, activity in
18 Tusla surrounding the file perhaps was less than
19 satisfactory at that juncture, isn't that right?

10:32

20 A. That's correct.

10:33

21 83 Q. But in any event, we will go through the bullet-points
22 here at page 1100. Bullet-point 1:

23

24 *"The referral was made initially by telephone and did*
25 *not include the digital penetration allegation. This*
26 *information was put on an intake record and was*
27 *consistent with the information in Ms. D's Garda*
28 *statement in 2006.*

10:33

29

1 2. We then, it would appear, received the same
2 referral, a standard referral form, and it appears to
3 contain the information re digital penetration, and it
4 also stated that Ms. D's father was threatened if she
5 disclosed the alleged abuse.

10:34

6
7 3. We Garda notified this information from the
8 standard referral form. I cannot find a date on this,
9 but suspect it was forwarded to the Gardaí in August
10 2013."

10:34

11
12 If I could just stop there. I think that you are happy
13 that that didn't occur, that Tusla didn't formally
14 notify the Gardaí in August 2013 of that?

15 A. That is my understanding, yes.

10:34

16 84 Q. "4. There is a second copy of the garda notification
17 which has the original information from the 2014
18 notification on file, and it is dated 2nd of May 2014.
19 Eileen Argue has also sent a new notification on that
20 date with the historic information and this one does
21 not include the errors. She does not inform the Gardaí
22 of an errors on this. The date is also incorrect, as
23 we were not contacted by Ms. Brophy till the 14th of
24 May of 2016.

10:35

25
26 6. There is a note on file written by Laura Connolly
27 seeking direction from Eileen Argue on the 30th April
28 2014, and in that Eileen directs Laura to complete
29 intake record on all four of Mr. McCabe's children.

10:35

1 *This was done and included the information re digital*
2 *penetration.*

3
4 7. *On 14th of May, 2014 we received a letter from*
5 *Ms. Brophy stating that there was an administrative* 10:35
6 *error on the standard referral form and she forwarded*
7 *the correct standard referral form dated 14th of May,*
8 *2014 to this service.*

9
10 8. *On 20th May 2014 a letter from director of Rian ask* 10:36
11 *we return the erroneous document and advised to include*
12 *copies of any Garda protocols documents. HSE data*
13 *controller was notified according to this letter.*

14
15 9. *It appears that the standard referral form sent in* 10:36
16 *2013 was returned. However, Garda notification*
17 *remained on file. The file was never amended to*
18 *reflect the correct standard referral form from*
19 *Ms. Brophy and therefore there is no allegation re*
20 *digital penetration.* 10:36

21
22 *Perhaps we can discuss how to proceed.*

23 *Regards*

24 *Kay McLoughlin."*

25
26 *okay?* 10:36

27 A. *Yes.*

28 85 Q. *So, on considering all those points and reviewing the*
29 *file of that at that time, and considering that it had*

1 sat in Rian -- or in Tusla for nearly three years, and
2 that the matter required some urgent treatment, did you
3 perhaps consider that you should sit down with Kay
4 McLoughlin and decide where you should go from there?
5 A. Well, we did. We agreed that we would issue an 10:37
6 apology.
7 86 Q. I will come to that in a minute, but in terms of the
8 actual dealing with the file. I mean, did Kay
9 McLoughlin advise you that she had written to Ms. D in
10 2015 seeking an appointment and that it had been 10:37
11 cancelled and then there had been no further follow-up?
12 A. That's correct. That was part of Séamus Deeney's
13 five-point plan, yes.
14 87 Q. Yes. So, that had been done, there was no follow-up to
15 that. The allegation such as it was had previously 10:38
16 been investigated by the Gardaí, isn't that right?
17 A. That's correct.
18 88 Q. The Director of Public Prosecutions had directed no
19 prosecution, isn't that right?
20 A. That's correct. 10:38
21 89 Q. There had been an attempt by Keara McGlone in August of
22 2013 to contact Superintendent Cunningham to discuss
23 the history of the case, isn't that right?
24 A. That's correct.
25 90 Q. That letter was on file for Kay McLoughlin to see, is 10:38
26 that right?
27 A. That's correct.
28 91 Q. That proposed course of action was never pursued; it
29 wasn't responded to by Superintendent Cunningham, on

1 the face of the file, it wasn't pursued by Keara
2 McGlone, isn't that right?

3 A. That's correct.

4 92 Q. And that may have been apparent from an examination of
5 the file but also it may have prompted somebody to 10:39
6 contact Keara McGlone to see whether or not she had in
7 fact had some sort of informal meeting with
8 Superintendent Cunningham?

9 A. That's correct.

10 93 Q. No query was raised with Ms. McGlone at that time, 10:39
11 isn't that right?

12 A. That's correct.

13 94 Q. As to why she hadn't pursued the matter with the
14 superintendent, or if she had pursued it and not
15 recorded it on the file, what was the result of her 10:39
16 inquiries?

17 A. That's correct.

18 95 Q. At that time, it's apparent that there were three
19 files: There was the Maurice McCabe file, which had
20 information in it; there was Ms. D's file from 2005 in 10:39
21 relation to her dealings with the social work
22 department; and also, Ms. D's CSA file - isn't that
23 right?

24 A. That's correct.

25 96 Q. So all the reports, all the statements, relevant to her 10:40
26 allegation were easily accessible, isn't that so?

27 A. That's correct.

28 97 Q. And you were also aware of the fact that Ms. D's file
29 had been closed in 2007, isn't that right?

1 A. That's correct.

2 98 Q. And that Maurice McCabe, it is noted, hadn't been
3 informed of the referral to the HSE, isn't that right?

4 A. That's correct.

5 99 Q. But nevertheless, he was aware of the nature of the 10:40
6 allegation being made against him by Ms. D, because he
7 had been interviewed by the Gardaí, isn't that right?

8 A. That's correct.

9 100 Q. So at that stage it would appear, would it not, from a
10 review of the file that you were dealing with a very 10:41
11 old case at that juncture?

12 A. That's correct.

13 101 Q. I mean, it didn't have antiquity in the normal sense,
14 that it concerned an allegation going back, as we know,
15 to 1998 or 1999; I don't mean it in that context, I 10:41
16 mean it had some antiquity insofar as the HSE were
17 concerned?

18 A. That's correct.

19 102 Q. We are now at a stage where the case is first referred
20 to them almost ten years previously and had resided 10:41
21 within the HSE in one file or another for a period of
22 ten years?

23 A. That's correct.

24 103 Q. And at no stage was there anybody, a social worker, a
25 duty team leader or anybody else, seriously concerned 10:41
26 about the welfare of Maurice McCabe's children, isn't
27 that right?

28 A. The case wasn't assigned in terms of -- for a priority
29 service, no.

1 104 Q. There doesn't appear to have been anybody concerned
2 that Maurice McCabe was a risk to his own children or
3 indeed any other children?
4 A. I think the way I would put it, sir, is that there were
5 outstanding issues that required discussion with 10:42
6 Mr. McCabe in regard to the '06/'07 allegation that Kay
7 was trying to, I suppose, implement and you know, got
8 the letter wrong, but she was trying to write the Barr
9 letter with a view to discussion of the original
10 '06/'07 allegation, and the accurate allegation then 10:42
11 that Rian had re-referred. That was the outstanding
12 issue that Kay -- Ms. McLoughlin was sending the Barr
13 letter about.
14 105 Q. Well, we know that in 2007 that the file was closed.
15 A. Ms. D's file was closed. 10:43
16 106 Q. Yes. Well, there was never a file opened on Maurice
17 McCabe.
18 A. That's correct, but there were outstanding issues,
19 again it was referred to by Rhona Murphy about, well,
20 what are we going to do, are we go to meet 10:43
21 Mr. McCabe --
22 107 Q. Ah, look, really, Mr. Lowry, to what extent -- and
23 let's live in the real world here. We are talking
24 about 2007 when, at a case conference, Ms. D's file is
25 reviewed and it's decided to close the file? 10:43
26 A. That's correct.
27 108 Q. We know that the HSE had been notified of the
28 allegation by the Gardaí because, in fact, you were the
29 person who responded and acknowledged the notification?

1 A. That's correct.

2 109 Q. So the HSE is aware of an allegation made against
3 Sergeant Maurice McCabe?

4 A. That's correct.

5 110 Q. And the first duty that the HSE would have had at that 10:44
6 juncture was to open a file on Sergeant McCabe and to
7 notify him of the allegations being made against him,
8 isn't that right?

9 A. Can I check, are you talking about the '06/'07?

10 111 Q. Yes. 10:44

11 A. At that phase my understanding is the opening of files
12 about adults when allegations have been made was
13 inconsistent. It wasn't being done in all situations.
14 By 2013 it was being done in all situations. And that
15 was why in '06/'07 a file was not opened about the 10:44
16 adult that the child had named at that point.

17 112 Q. Well, on a review of the file, and it's an extensive
18 file, on a review of the file would it not lead
19 somebody exercising a professional judgement, that the
20 threat posed by Sergeant McCabe to his own children was 10:45
21 non-existent?

22 A. I wouldn't -- I wouldn't -- I would not be suggesting,
23 sir, that there was any threat to Mr. McCabe's
24 children. I am suggesting that there was an allegation
25 made by a twelve-year-old about when she was six, that 10:45
26 she said to two professionals, Emer O'Neill and Orla
27 Curran, that then was repeated, she said it again to
28 Rian, an adult survivors of sexual abuse counselling
29 service. That issue, what that child said required

1 processing and thinking with Mr. McCabe. And that was
2 the outstanding Barr judgement action that was within
3 Tusla for action for those period of years, and that
4 was the work that needed to be done. That is why it
5 was on the unallocated list because it wasn't a 10:46
6 priority, it wasn't seen -- there were not children
7 that had ongoing and serious risk, that is not how we
8 perceived the case.

9 113 Q. If there was such urgency in terms of implementing the
10 Barr judgement and notifying Sergeant McCabe, if that 10:46
11 is being called in aid of as an excuse in the
12 circumstances, why was wasn't there -- why wasn't
13 Sergeant McCabe notified in August of 2013?

14 A. Because the case went for allocation, it went --

15 114 Q. No, no, this is an automatic -- in the same way as it's 10:46
16 automatic in terms of notifying the Gardaí, and
17 notification, you have already accepted, should have
18 been made to the Gardaí at that juncture, isn't that
19 right?

20 A. Well, maybe so. Yes, I understand. Okay. 10:46

21 115 Q. Well then, why isn't Sergeant McCabe, in accordance
22 with the Barr judgement, notified that Tusla have an
23 allegation of child sexual abuse on their files?

24 A. Okay, okay. I think my answer to that is because it
25 requires an assigned worker to deal with that 10:47
26 situation, and that there is often a lot of conflict in
27 that contact between the person about whom there is an
28 allegation made and the assigned worker. So it
29 doesn't -- it's not just something that is done

1 automatically, a referral comes in and a letter goes
2 out to a parent. That requires some thinking and
3 planning, it's an assessment process and a thinking
4 process with the parent, it's not just a bureaucratic
5 process. 10:47

6 116 Q. Okay. So if we could just move on then in terms of how
7 you did actually respond to this, because you clearly
8 demanded immediate action, first of all, in terms of a
9 review of the case, and second of all, it involved an
10 apology to Sergeant McCabe, isn't that right? 10:47

11 A. That's correct.

12 117 Q. And I suppose the apology in the circumstances had to
13 be meaningful, isn't that right?

14 A. That's correct.

15 118 Q. And it ought to have been delivered immediately, isn't 10:48
16 that right?

17 A. I'd agree.

18 119 Q. And you are aware of the fact that it wasn't?

19 A. That's correct.

20 120 Q. If we could just perhaps look at that, then. If you go 10:48
21 to page 1101. This is towards the end of February,
22 26th February 2016 from Kay McLoughlin.

23

24 *"Hi Gerry*
25 *I am sending this to you again as it has gotten --"* 10:48
26

27 It looks as though it should be --

28 A. Forgotten.

29 121 Q. *"-- forgotten about. We need to discuss a response."*

1 Is that right?

2 A. That's correct.

3 122 Q. What she was sending you again was the letter that had
4 been sent in by Séamus Costello & Company, solicitors,
5 isn't that right? 10:49

6 A. That's correct.

7 123 Q. And then if we could go to page 1102. This is a
8 supervision record of staff, dated 8th of April 2016,
9 and it concerns your supervision of Kay McLoughlin,
10 isn't that right? 10:49

11 A. That's correct.

12 124 Q. And there are a number of matters itemised there and if
13 one goes over to page 1103, you see under:
14
15 *"Case discussion: Sergeant McCabe's case has been 10:49*
16 *communicated to me by Kay. I have not looked at it. I*
17 *need to do so."*

18
19 Is that right?

20 A. That's correct. 10:49

21 125 Q. And again, I don't think anything was done in relation
22 to the apology to Sergeant McCabe. And then if you go
23 to page 1104, the 13th of May of 2016. Again it's your
24 supervising record of Kay McLoughlin and we will see at
25 the end of that page the Sergeant McCabe letter, isn't 10:50
26 that right?

27 A. That's correct.

28 126 Q. So, I mean, I suppose the question is: You have noted
29 why you didn't do things but why didn't you just simply

1 do it?

2 A. I was inefficient at getting it done. I don't want to
3 give excuses. Kay, Ms. McLoughlin, was repeatedly
4 reminding me that this needed to be done and I was
5 inefficient in getting that job done. 10:51

6 127 Q. Well, there was also the issue of Kay McLoughlin
7 reviewing the file, wasn't there? I mean, this case
8 had to be progressed on. You have delayed in
9 apologising to Sergeant McCabe, but I suppose the best
10 information that Sergeant McCabe could have got was: 10:51
11 The file has also been reviewed and these allegations
12 are unfounded, so we won't be taking the matter any
13 further, isn't that right?

14 A. That's correct.

15 128 Q. So that is what Kay McLoughlin should have been doing 10:51
16 during this period of time, isn't that right?

17 A. Well, at that point the regional SART team was in the
18 process of being set up with a view to the regional
19 SART team taking all cases of this nature with a view
20 to a standardised response. 10:51

21 129 Q. Just, the SART team were coming in, in August of 2016,
22 isn't that right?

23 A. That's correct.

24 130 Q. The SART team was not in; this was Kay McLoughlin's
25 responsibility? 10:52

26 A. Okay, yes.

27 131 Q. It was her file to deal with --

28 A. Yes.

29 132 Q. -- to bring to a conclusion?

1 A. That's correct.

2 133 Q. And there was no reason why, having received the letter
3 from Mr. Costello, having reviewed the file, both she
4 and you, having discussed the matter, that this case
5 could have been brought to a conclusion in January or 10:52
6 February or March or April, isn't that right?

7 A. That's correct.

8 134 Q. And it should have been high priority at that time,
9 isn't that right?

10 A. I accept that. 10:52

11 135 Q. For a number of reasons, but principally because it had
12 been with Tusla since 2013 and you had identified that
13 it had been mishandled, isn't that right?

14 A. That's correct.

15 136 Q. So the question is: why, when you were supervising Kay 10:53
16 McLoughlin in April and May, is there no reference
17 there to the Maurice McCabe file outside a reminder of
18 you to write a letter?

19 A. Well, I think the letter with the apology included the
20 position as regards the case, in terms of, I think you 10:53
21 are suggesting that the case should be closed, but it
22 includes the concerns that Ms. McLoughlin continued and
23 wanted to discuss.

24 137 Q. At this stage, you have guidelines, isn't that right?

25 A. That's correct. 10:53

26 138 Q. And according to the guidelines that you have, which
27 you very kindly provided to the Tribunal, according to
28 the guidelines that you have, the first step is an
29 assessment of the complainant, isn't that right?

1 A. That's correct.

2 139 Q. And that involves a meeting, one-to-one, with the
3 complainant?

4 A. That's correct.

5 140 Q. And we know that Kay McLoughlin wrote to the 10:54
6 complainant in 2015 --

7 A. Yes.

8 141 Q. -- I think it was in June of 2015, to arrange an
9 appointment and Ms. D didn't attend?

10 A. That's correct. 10:54

11 142 Q. And indicated that she wasn't available, I think,
12 because of exams, if my memory serves me right, but
13 there was no follow-up by Ms. D or by Ms. McLoughlin,
14 isn't that right?

15 A. That's correct. 10:54

16 143 Q. So now, you are aware of this letter that has been sent
17 to Maurice McCabe with the incorrect allegation, but
18 the original file is still there on Maurice McCabe with
19 Ms. D's original allegation --

20 A. That's correct. 10:55

21 144 Q. -- that needs to be brought to a conclusion?

22 A. That's correct.

23 145 Q. Isn't that so?

24 A. That's correct.

25 146 Q. So one would have thought that the first step that 10:55
26 should have been taken in February of 2016 is that
27 Ms. D would be written to by Kay McLoughlin to arrange
28 for her to come in for an assessment?

29 A. Okay. But that had been done the previous year by Kay

1 McLoughlin.

2 147 Q. But she hadn't met with Ms. D.

3 A. No.

4 148 Q. And where a complainant doesn't come in, that is the
5 end of the matter, according to your own rules, isn't 10:55
6 it?

7 A. I think that certainly is an area that has changed over
8 time. I also think it's an area of professional
9 discretion. I think if there is an outstanding issue
10 where a child has made allegations but doesn't come in 10:56
11 to talk about them in detail or for to have them
12 confirmed there may be circumstances where there is an
13 unfounded allegation that still requires discussion
14 with relevant protective people.

15 149 Q. Will you just tell us what you had envisaged in 10:56
16 February of 2016 that would happen to the Maurice
17 McCabe file?

18 A. I think I envisaged that we certainly had to apology
19 first and foremost.

20 150 Q. No, just leave aside the error. 10:56

21 A. Okay.

22 151 Q. Leave aside any apology.

23 A. Okay.

24 152 Q. What was anticipated would be done with the case which
25 had now been allocated? 10:56

26 A. Well, Kay was still dealing with the case as a social
27 work team leader as opposed to having an allocated
28 social worker in terms of that distinction. But what I
29 expected to happen was: Kay was clarifying the areas

1 of accurate concern that she wanted to communicate to
2 Mr. McCabe. That was what was happening in terms of
3 the case. And in that way we were implementing --

4 153 Q. The first step, the first step, which indeed you and 10:57
5 Mr. Deeney had identified, the first step is that you
6 meet with the complainant.

7 A. That's correct.

8 154 Q. She had never met with the complainant.

9 A. That's correct.

10 155 Q. She hadn't met with the complainant from June 2015 up 10:57
11 until February of 2016 --

12 A. That's correct.

13 156 Q. -- isn't that right?

14 A. That's correct.

15 157 Q. Now, so that step remained before any action, further 10:57
16 action would be taken?

17 A. I think that is an area for professional judgement.

18 158 Q. Well, if it's area for professional judgement, surely, 10:57
19 if you applied professional judgement to what was known
20 about the history and circumstances of Ms. D's
21 allegation and, in particular, its antiquity, that the
22 file would have been closed and Mr. McCabe would have
23 been written to and advised that the matter would not
24 be pursued -- proceeded with?

25 A. Again, I would suggest that is an area of professional 10:58
26 judgement, in light of the sequence of events in the
27 case where a child made allegations, repeated those
28 allegations to Emer O'Neill and Orla Curran, and then
29 those allegations had been made again to Rian in 2013,

1 there remained a judgement about what is the
2 proportionate intervention to ensure the possible, and
3 only the possible, abuse of other children in the
4 future. And that's the area of professional judgement
5 that social workers do on an ongoing basis. 10:58

6 159 Q. Is that what SART did?

7 A. No. SART made a different professional judgement.
8 They wrote to Ms. D and Ms. D did not meet them and
9 then they closed the case, is my understanding.

10 160 Q. Can you explain to the Chairman how it is that, in 10:59
11 January, February, March, April, May and June and
12 indeed July of 2016, that you and Kay McLoughlin are
13 applying one standard to the case and then subsequently
14 SART apply an entirely different standard?

15 A. Okay. well, sir, I would refer to professional 10:59
16 judgement. Certainly what we know about child sexual
17 abuse, in terms of the secrecy, and in terms of the
18 devastating effect it has on people, in terms of
19 talking openly with protective people in situations
20 where there is unfounded allegations is an important 10:59
21 part of the child protection process. And if we close
22 off dealing with unfounded allegations and we are only
23 able to talk about founded situations or situations
24 where there is convictions, then it will lead to more
25 children being abused. And it's based on that 11:00
26 judgement that we, social workers in Tusla, should be
27 able to discuss openly situations even where there is
28 an unfounded allegation.

29 161 Q. Are you happy with how the file was dealt with from

1 January 2016 until June of 2016?

2 A. No. I was inefficient at getting back to Kay to deal
3 with the status of the case and the apology letter.

4 162 Q. Did you ever actually sit down and discuss it with Kay
5 McLoughlin as to how the file would be dealt with? 11:00

6 A. Well, at the supervision records, that would have been
7 part of the discussion.

8 163 Q. But it's not part of the discussion. You have noted
9 the discussion; the discussion is to reply to a letter
10 to Seán Costello, it doesn't involve an assessment of 11:00
11 the McCabe file.

12 A. Okay. The only thing I'd say is, I think the letter
13 with the apology includes the status of the case from
14 Kay's perspective at that point in time, and that
15 reflects the discussion that certainly Kay felt from 11:01
16 her professional judgement is; there was an outstanding
17 concern that required communication, discussion and
18 listening to Mr. McCabe's perspective, that that is the
19 status of the case in June 2016.

20 164 Q. Okay. In any event, Kay McLoughlin -- was it you who 11:01
21 drafted the letter of response or was it Kay
22 McLoughlin?

23 A. My memory is Kay drafted the letter and sent it to me
24 for my input before it was finalised.

25 165 Q. And it's at page 1106 of the material. And it's 11:01
26 addressed to Seán Costello, solicitor.

27

28 *"Dear Mr. Costello*

29 *Thank you for your letter dated 28th of January of*

1 2016. As outlined in my initial letter, my remit in
2 relation to this matter is carried out under the
3 Childcare Act 1991, and in particular section 3 of that
4 act. The Child and Family Agency is a statutory body
5 charged with the responsibility for the protection and 11:02
6 welfare of minors pursuant to the Childcare Act 1991.
7 In fulfilling this obligation, when the Child and
8 Family Agency receives allegations of a child
9 protection nature we are obliged to assess the
10 allegations and to come to a conclusion whether the 11:02
11 protection of a minor is at issue.

12
13 I acknowledge your client Maurice McCabe's response to
14 the allegations, which is that he deems them to be
15 wholly untrue. I also note from your letter that his 11:02
16 employer and family are aware of these allegations.

17
18 I acknowledge that the Garda investigated allegations
19 made by Ms. D in 2006. This service was aware of the
20 investigation at that time. Information provided to 11:03
21 this service, then known as the HSE, concurs with your
22 client's account, in that the allegation arose in the
23 context of a game of hide and seek. Ms. D alleged
24 Mr. McCabe leaned over her when she was bent over a
25 chair and held her by the waist and, in her own words, 11:03
26 was "humping her".

27
28 I apologise that a mistake was made in my previous
29 correspondence. I can confirm to you that no

1 *allegation of digital penetration has been made in*
2 *relation to your client. I am not sure of any other*
3 *allegation made by the complainant, Ms. D, regarding a*
4 *third party.*

11:03

5
6 *If further information regarding this matter comes to*
7 *our attention I will bring it to your attention."*

8
9 Are you happy with that apology in hindsight?

10 A. I think in hindsight I probably would have made the
11 apology more prominent.

11:04

12 166 Q. Sorry?

13 A. I think in hindsight I probably would have made the
14 apology section more prominent in the letter.

15 167 Q. I think that that was the letter that you approved, is
16 that right?

11:04

17 A. That's correct.

18 168 Q. And do you think it was appropriate to repeat the
19 allegation that was made by Ms. D in the first instance
20 way back in 2006 --

11:04

21 A. Yes.

22 169 Q. -- as part of that letter?

23 A. Yes.

24 170 Q. You are happy that that is there?

25 A. I think that was the outstanding accurate information
26 that we wanted to discuss, yes.

11:04

27 171 Q. So then, there is a response at page 11 --

28 **CHAIRMAN:** Sorry, Mr. Marrinan, there is a date for
29 that no doubt but it's not on it.

1 **MR. MARRINAN:** There is a date of the 20th June of
2 2016.

3 **CHAIRMAN:** Yes.

4 **MR. MARRINAN:** Is that right?

5 **CHAIRMAN:** Is it right? 11:05

6 A. It was June, I know it was June, I don't know if it's
7 the 20th.

8 172 **Q. MR. MARRINAN:** well, there is a date on it, 20th of
9 June. We will come to, Mr. Costello's response refers
10 to a letter of the 22nd of June, but one way or the 11:05
11 other, it's either the 20th or the 22nd of June, isn't
12 that right?

13 **CHAIRMAN:** And you were aware that Sergeant McCabe
14 actually denied there was ever a game of hide and seek?

15 A. Yes. 11:05

16 **CHAIRMAN:** And that, because one of his children had a
17 special need that it was highly unlikely there would
18 ever be a game of hide and seek in his house?

19 A. Yes. I think --

20 **CHAIRMAN:** Sorry, you were coming to the -- 11:05
21 Mr. Marrinan.

22 **MR. MARRINAN:** Sorry, sir, the letter at page 1108
23 from -- I'd better read this as well into the
24 proceedings.

25 11:06

26 *"Dear Ms. McLoughlin*
27 *I refer to your letter of the 22nd of June 2016. We*
28 *are shocked and taken aback by the contents of your*
29 *letter and its implications.*

1
2 *we have taken senior counsel's advice and are satisfied*
3 *that your purported reliance on the provisions of*
4 *section 3 of the Children's Act 1991 and your statutory*
5 *function to provide for the welfare of children does* 11:06
6 *not in any sense warrant the carrying out by Tusla of*
7 *an inquiry into a false allegation that our client*
8 *sexually abused a child 18 years ago.*

9
10 *The suggestion that you intend to investigate and reach* 11:06
11 *a determination in relation to our client as a risk to*
12 *children is legally unfounded. In particular, your*
13 *letter admission that you have been aware of the false*
14 *allegations for ten years and have done nothing at all*
15 *in relation to them is both unexplained and* 11:07
16 *inexplicable. If there had been any basis for*
17 *believing that there was any ground for inquiry as to*
18 *whether our client posed a risk to children, we would*
19 *expect that you would have acted at that time.*

20 11:07
21 *Sergeant McCabe and his wife have parented and reared*
22 *five children now aged between eight and 22. Exactly*
23 *how you could possibly justify such behaviour escapes*
24 *comprehension.*

25 11:07
26 *Your letter of the 29th December 2015 alleged that*
27 *Ms. D had claimed the abuse allegedly involved digital*
28 *penetration when the alleged victim was six years old.*
29 *That was an allegation of a rape offence.*

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We wrote to you by way of reply on 22nd of January 2016, setting out the relevant background to the false allegation and pointed out that the allegation of digital penetration was a further new malicious invention. Your letter of the 22nd June claims that the allegation of digital penetration was a mistake in your previous correspondence. You go on to say that no allegation of digital penetration had been made in relation to your client. With respect, that simply will not suffice. Either you imagined or invented the allegation of a rape offence or it was made on the basis of false information given to you. It could not have appeared in your letter by some clerical error.

11:08

11:08

11:08

It is also astonishing that it took you five months to advert to what you now call a mistake. Even now you make no explanation for the making of that false allegation. Your apology without explanation is both wrong and bewildering. Your letter now claims that you are "obliged to assess the allegations and come to a conclusion whether the protection of a minor is at issue". Firstly, you refer to allegations plural, are there any other allegations or is that another mistake? Secondly, you offer no legal basis for claiming that you are obliged to assess any allegations of which you claim to have been aware for ten years, and in respect of which you have done nothing. Thirdly, we note your reference to "the protection of a minor" to whom, that

11:09

11:09

1 *is to say which minor, are you referring? You proceed*
2 *to state "If further information regarding this matter*
3 *comes to our attention I will bring it to your*
4 *attention", could you please explain what you meant by*
5 *this?*

11:10

6
7 *You have not furnished us with any "information" at all*
8 *and in this respect we now formally request that you*
9 *furnish us with all "alleged information" in your*
10 *possession concerning our client. In particular, we*
11 *now formally request that you explain in what*
12 *circumstances you reopened this matter and that you*
13 *furnish us with a copy of any and all allegations or*
14 *statements, including notes of interviews or otherwise,*
15 *medical reports upon which you have acted in reopening*
16 *this matter.*

11:10

11:10

17
18 *We regard your letter of the 29th December 2015 and*
19 *your letter of the 22nd June 2016 as evidence of a*
20 *gregarious misfeasance in public office. We are*
21 *dealing with what, in our instructions, is a false and*
22 *malicious allegation of sexual abuse which you have*
23 *revived and exaggerated to a claim of a rape offence.*

11:10

24
25 *For your information, the allegations have already come*
26 *to the knowledge of Mr. Seán Guerin, senior counsel,*
27 *and the Commission of Investigation as chaired by*
28 *Mr. Justice Kevin O'Higgins prior to their making a*
29 *report and has been indirectly referred to in the*

11:11

1 *public domain.*

2

3 *We are bringing this correspondence to the attention of*
4 *the Chief Executive of Tusla in the expectation that*
5 *decent standards of public administration will be* 11:11
6 *adhered to.*

7

8 *Finally, we require your confirmation that Tusla are no*
9 *longer pursuing an allegation into this entirely false*
10 *claim against our client. We expect an urgent and* 11:11
11 *immediate reply."*

12

13 Did you in fact give them an urgent and immediate reply
14 in substance to that letter?

15 A. I don't think we did, no. 11:12

16 173 Q. Why not?

17 A. I think at that point we felt a bit overwhelmed by it
18 and I know the SART team were starting to get involved
19 in August of that year and the whole case was
20 transferred to SART at that point in time. 11:12

21 174 Q. Could you just explain to the Chairman what SART is?

22 A. SART is the regional specialist team to deal with all
23 retrospective allegations of child abuse.

24 175 Q. When was it set up?

25 A. I think it was August of that year, August 2016. 11:12

26 176 Q. Who is it reporting to?

27 A. Lisa O'Loughlen is the service manager and they report
28 to Linda Creamer, the service director.

29 177 Q. And who does Linda Creamer report to?

1 A. Jim Gibson, the chief operations officer.

2 178 Q. We have heard of Linda Creamer before in terms of the
3 charts that you provided and she was up on the same
4 level as yourself?

5 A. No, she is my -- I report to Linda Creamer. 11:13

6 179 Q. You report to Linda Creamer?

7 A. Yes.

8 180 Q. Did you discuss it with Linda Creamer? Did you go to
9 her and --

10 A. No. 11:13

11 181 Q. -- discuss this matter with her?

12 A. No.

13 182 Q. And how did SART go about doing their business in
14 taking files?

15 A. I mean, Kay would have been in contact with them at 11:13
16 that point in terms of they were getting established
17 and they were asking which files from the localities
18 they would be accepting as part of a regional
19 specialised response.

20 183 Q. But these, they were set up specifically to deal with 11:13
21 cases that had been referred to Tusla and were
22 unallocated at that time, isn't that right?

23 A. Yes.

24 184 Q. But this case was being dealt with by Kay McLoughlin?

25 A. That's correct, but I think this is a case that we 11:14
26 particularly wanted them to become involved in, given
27 the complexity and difficulties.

28 185 Q. Well, is there any element here, Mr. Lowry, because on
29 one view of this it could be a matter of just shoveling

1 over your problem to another unit, is that what
2 happened here? Let's be frank about it.

3 A. No. Sir, I was certainly glad and pleased that the
4 regional specialist team had been set up at that point
5 in order that the case could get that level of 11:14
6 attention.

7 186 Q. But it didn't get any level of attention. They wrote a
8 letter to Ms. D, I think they may have written two
9 letters to Ms. D. She didn't turn up and they wrote to
10 Sergeant McCabe, to cut a long story short in relation 11:14
11 to it, and said the case is closed.

12 A. My understanding is the SART team would have received
13 some specialist training in terms of how we, Tusla,
14 should be dealing with these kind of situations and
15 that they were establishing a standardised response to 11:15
16 all these kind of situations.

17 187 Q. But they had no dealings with this case previously,
18 isn't that right?

19 A. That's correct.

20 188 Q. It was being dealt with by Kay McLoughlin under your 11:15
21 supervision, isn't that right?

22 A. That's correct.

23 189 Q. There is no reason to believe other than the fact at
24 that stage that the case was being dealt with properly
25 and expeditiously, isn't that right? 11:15

26 A. Well, no, I wouldn't agree with that. I think
27 certainly in light of the legal letter in front of us,
28 that it was important, it was useful that the matter
29 would be sent to a regional specialist team.

1 190 Q. well, is there any element -- and let's call a spade a
2 spade. Is there any element here of having received
3 Mr. Costello's letter and realising that this was a
4 very hot potato, that it was appropriate to place it on
5 a silver spoon and to hand it over to SART? 11:16

6 A. I wouldn't use that terminology, but certainly I did
7 say from my point of view I was very pleased that there
8 was a regional specialist team now dealing with these
9 kind of situations for a systematic professionalised
10 response. 11:16

11 191 Q. Are you happy that that is your situation, your
12 position?

13 A. Can you just -- in terms of, specifically in terms of
14 what?

15 192 Q. You are happy that it is just perhaps a coincidence 11:16
16 again that SART are set up in August, that no action
17 has been taken on the McCabe file, again, even though
18 it appears -- even though you quarrel with my reference
19 to the word "allocated", but it appears to have been
20 dealt with by Kay McLoughlin, that you are happy that 11:16
21 it's just a coincidence again that SART are set up in
22 August of 2016 and it's a coincidence that there is a
23 decision made to assign this case to them?

24 A. No. I think the issue about how we -- how we in Tusla
25 respond to adults about whom an allegation has been 11:17
26 made has been an outstanding issue that requires
27 development, that requires improved service over the
28 years. The establishment of the SART team and the
29 assignment of staff to that and the training of staff

1 for that was in response to an awareness that the
2 quality of service wasn't good enough. So it wasn't a
3 coincidence; it was part of good service management.
4 193 Q. whose decision was it precisely that SART would deal
5 with this file that was at that time being dealt with 11:17
6 by Kay McLoughlin under your --
7 A. No, certainly I think in light of the letter from the
8 solicitor, I think I would have asked Kay, look,
9 coordinate with SART to see if they will accept the
10 case at that point and they agreed to and that is why 11:18
11 it went there.
12 194 Q. So you requested that -- you requested Kay to contact
13 SART to take over the case from Kay, is that right?
14 A. I think so, I think so.
15 195 Q. Right. If you go to page 111, please. 11:18
16 **CHAIRMAN:** 1111?
17 **MR. MARRINAN:** 1111.
18 196 Q. There is, if you look at the bottom there, there is an
19 email from you to Kay McLoughlin:
20 11:18
21 *"Dear Kay*
22 *Has this case been passed to the retrospective team?*
23 *Thanks and regards."*
24
25 And then above that, there is Kay McLoughlin's 11:19
26 response:
27
28 *"Yes, Gerry. I am advised by Michael that it has."*
29

1 who is that?

2 A. Michael Cunningham, was social work team leader.

3 197 Q. Michael Cunningham?

4 A. Yes.

5 198 Q. *"He has also advised that the retrospective team refer 11:19*
6 *all solicitor letters to legal representatives to*
7 *respond."*

8

9 I think that this handing over to SART is, in fact,
10 hours after the letter from Costellos had come in, 11:19
11 isn't that right?

12 A. I think so, yes.

13 199 Q. *"Give us a call when you get a chance. The letter is*
14 *very emotional. However, it does bring up the fact*
15 *that this was not responded to back when it was first 11:20*
16 *made known to us and I cannot explain why. We had no*
17 *role in relation to the Commission of Investigation and*
18 *I was not aware that this allegation was in the public*
19 *domain. The letter states that we behave underhandedly*
20 *in the comment egregious misfeasance. When this case 11:20*
21 *came on to my desk when I took over I did not feel we*
22 *could ignore these concerns, and I felt obliged to*
23 *fulfil my duties in relation to the allegation*
24 *regardless of the whistleblower issues in the public*
25 *domain regarding Mr. McCabe, which had nothing to do 11:20*
26 *with this service.*
27 *Regards."*

28

29 And then she signed off on that, is that right?

1 A. Correct.

2 200 Q. And it appears that Kay McLoughlin had also been aware
3 of Mr. McCabe's notoriety, if I could put it that way,
4 in the media --

5 A. That's correct. 11:21

6 201 Q. -- previously, is that right?

7 A. That's correct.

8 202 Q. Had the two of you discussed that?

9 A. Not in any significant way. We were both aware of it.

10 203 Q. And you will appreciate that in the context of the 11:21
11 Tribunal, Mr. Lowry, that I have to ask you this,
12 because it's one of the matters that we are mandated to
13 look into. There is a suggestion that the Gardaí, and
14 in particular senior management, may have had some sort
15 of input into how this file and the allegation became 11:21
16 more serious and how Tusla dealt with Sergeant McCabe.
17 And in circumstances where maybe it could be perceived
18 that because of the allegation that Sergeant McCabe was
19 vulnerable to this and that it might cause him acute
20 embarrassment, to put it mildly, should this enter the 11:22
21 public domain, what do you say to the suggestion that
22 the Gardaí were influencing you or any members of Tusla
23 in either creating or the use of these files?

24 A. Sir, absolutely not. We didn't have contact with An
25 Garda Síochána at any of the points in which we made 11:22
26 mistakes. The errors on this are entirely to do with
27 our local management. We weren't talking or thinking
28 with members of An Garda Síochána sufficiently about
29 this. So, I don't see any evidence, anything to

1 suggest that there was any collusion, liaison,
2 coordination, with An Garda Síochána about this.

3 204 Q. And if we could just turn over then, because the file
4 is then handed over to the SART team, page 113 -- 1113,
5 I beg your pardon. This is headed: "A serious 11:23
6 *incident and risk escalation.*" what does that -- risk
7 escalation?

8 A. I think it's a formal way to notify Tusla management of
9 a serious incident and something that the organisation
10 should be concerned about. 11:23

11 205 Q. And what is actually the incident here that the
12 organisation should be concerned about?

13 A. Well, if you scroll down, I can't see it.

14 206 Q. Sorry. So what is the serious incident that prompts
15 the risk escalation? 11:24

16 A. It's I think the -- this wasn't my document, this is a
17 Lisa O'Loughlen's document. So it's more for her to
18 speak to. But in terms of the second paragraph I think
19 the risk escalation is "*unfortunately inaccurate*
20 *details of the disclosure were given in the letter and* 11:24
21 *that Mr. McCabe is highly dissatisfied that it's been*
22 *reinvestigated, the wrong information was sent*".

23 207 Q. The reference to the serious incident, is this a
24 reference to the errors that had been made by Tusla?

25 A. This is a reference to the errors that were made in 11:24
26 Cavan-Monaghan. When the regional SART team reviewed
27 the file they notified formally Tusla management of
28 those errors.

29 208 Q. And risk escalation doesn't refer to any potential risk

1 to or escalating it in relation to the risk that
2 Sergeant McCabe may pose to children?

3 A. No, no. Sorry, this is an organisational risk.

4 209 Q. Right.

5 A. This is -- 11:25

6 210 Q. I just want to be clear on that.

7 A. No, it's an organisational communication tool.

8 211 Q. If we just go down there, we will see that the regional
9 director is Linda Creamer. Before SART actually took
10 this over and Lisa O'Loughlen, and under the direction 11:25
11 of Linda Creamer, did you sit down perhaps and talk
12 about what had happened, to them?

13 A. No.

14 212 Q. Well, did you pick up the phone and explain to Linda
15 Creamer the history of the McCabe file? 11:25

16 A. No.

17 213 Q. Did you send her a written report in relation to what
18 had happened?

19 A. No.

20 214 Q. Did you suggest or prompt Kay McLoughlin to contact 11:26
21 Lisa O'Loughlen, who would now be dealing with the case
22 and taking over from her?

23 A. Well, Kay was involved in the transfer process. She
24 ensured, she had discussions I think with Lisa
25 O'Loughlen about accepting the file, etcetera. 11:26

26 215 Q. Did she did discussions with her?

27 A. That is my understanding, that is what that email up
28 above was about. Michael Cunningham reported to Kay at
29 that point and she was --

1 216 Q. Well, I am not just talking about handing over the
2 file, but bearing in mind everything that had happened
3 to the file in Tulsa and the errors that had occurred,
4 the mistakes that had been made, if there was any
5 prospect of ironing them out it might have been helpful 11:26
6 if you sat down with Linda Creamer and discussed the
7 history and all the nuances in the case.

8 A. That's correct. I should have done a risk notification
9 about the history of the case, certainly.

10 217 Q. Because if we look at this document: 11:27

11

12 *"Nature of incident giving rise to escalation: Report*
13 *made to the Social Work Department in 2006 regarding an*
14 *allegation of child sexual abuse made by Ms. D against*
15 *detective sergeant --"* 11:27

16

17 That is not his rank and I don't know where anybody got
18 that from.

19

20 *"-- Maurice McCabe. That he was allegedly sexually 11:27*
21 *inappropriate towards her, Ms. D. Was aged six/seven*
22 *at the time of the alleged abuse. Detective Sergeant*
23 *McCabe was investigated and the DPP gave no*
24 *prosecution. Social Work Department finding was*
25 *inconclusive at that time on file, but no report as to 11:28*
26 *how social work came to that conclusion."*

27

28 That of course is an error, isn't it?

29 A. Which error?

1 218 Q. There is no question that this file was ever marked
2 inconclusive?

3 A. Well, I interpret that, that Lisa O'Loughlen is
4 referring to Rhona Murphy's note of inconclusive in
5 '07. But there was no note at that time about how 11:28
6 inconclusive, that conclusion was reached. I interpret
7 that is what Lisa is referring to.

8 219 Q. *"In 2014 Ms. D was attending --"*
9

10 Again there is an error there; it's 2013. 11:28
11

12 *"-- was attending therapy and made the disclosure to*
13 *her therapist, who referred the matter to the Social*
14 *Work Department in Cavan. Social Work Department*
15 *received a copy of Ms. D's Garda statement taken on 5th 11:29*
16 *December 2006 and used this to write to Detective*
17 *Sergeant McCabe in December 2015."*
18

19 That is completely wrong?

20 A. Sir, this is not my document. I agree, that appears to 11:29
21 be wrong.

22 220 Q. But where did this come from?

23 A. This is not my document. This is -- and this document
24 wasn't sent to me at the time it was written. So, I
25 agree with you it's -- it seems to be inaccurate. 11:29

26 **CHAIRMAN:** well, the other thing is, I appreciate that
27 Rhona Murphy had written inconclusive, it's one of the
28 boxes that is ticked.

29 A. Yes.

1 **CHAIRMAN:** But as to say that there was a finding,
2 nobody investigated, so until you investigate you can't
3 make a finding. I mean, Mr. Marrinan was correct to
4 say that was incorrect.

5 A. Yeah, I think I have just said that is where Lisa 11:29
6 O'Loughlen got that information, Rhona Murphy wrote
7 inconclusive and she didn't put an explanation beside
8 it as to why she used the word inconclusive. She just
9 used the word inconclusive.

10 **CHAIRMAN:** But there was no evidence on the file that 11:30
11 anyone had ever investigated it.

12 A. No, I agree.

13 **CHAIRMAN:** So, no one who read the file could write
14 down this was investigated. Sorry, Mr. Marrinan was
15 pointing out to you -- 11:30

16 221 Q. **MR. MARRINAN:** I was just pointing out to you here that
17 first of all the year is wrong, it's another error,
18 but:

19
20 "*-- was attending therapy and made the disclosure to 11:30*
21 her therapist who referred the matter to the Social
22 Work Department in Cavan. Social Work Department
23 received a copy of Ms. D's Garda statement taken on the
24 5th December 2006 and used this to write to Detective
25 Sergeant McCabe in December 2015. However, 11:30
26 unfortunately, inaccurate details of the disclosure
27 were given in the letter."

28
29 I mean, that is -- the linking of Ms. D's statement

1 that was made on 5th December to the Social work
2 Department writing in December 2015 to Sergeant McCabe,
3 is a complete misrepresentation of what had occurred on
4 the file, isn't that right?

5 A. Sir, this is not my document, I don't know if you want 11:31
6 me to comment.

7 222 Q. Well, the reason I am asking you to comment: is it a
8 total misrepresentation to seek to blame -- in this
9 document, to seek to blame Ms. D's statement in
10 December 2015 as giving rise to an inaccurate detail? 11:31

11 A. It is incorrect, yes, that's correct.

12 223 Q. Yes. And in fact, Ms. D's statement of 5th December
13 2006 was never looked at by Kay McLoughlin when she was
14 compiling the letter to Sergeant McCabe, isn't that
15 right? 11:32

16 A. I think that's correct. I think that's correct, yes.

17 224 Q. And you knew that because you subsequently advised her
18 to get a copy of that statement, isn't that right?

19 A. That's correct.

20 225 Q. So here we have a representation in a report in a case 11:32
21 that has seen error after error, as I have said, and
22 one looking at this may think that perhaps there was an
23 attempt to distort what had actually occurred with the
24 McCabe file.

25 **CHAIRMAN:** In other words, to put the question bluntly, 11:32
26 were you all covering yourselves in paper?

27 A. No, I don't think so. I think the file wasn't kept to
28 the required standard and that led to confusions, and
29 that Lisa O'Loughlen statement there, in terms of her

1 interpretation, is inaccurate because of how the file
2 was read or how the file was maintained.

3 226 Q. **MR. MARRINAN:** You see, looking at the history of this,
4 Lisa O'Loughlen is preparing this report and she has
5 gone into the history of it. There is nothing in the 11:33
6 written history or the recorded history, either in
7 emails or in letters or reports, that could give rise
8 to the statement set out in paragraph 2 of the nature
9 of incident giving rise to escalation, do you
10 understand? 11:33

11 A. I am afraid, sir, would you mind just saying that --
12 227 Q. Sorry?

13 A. would you mind just repeating that?

14 228 Q. There is nothing in the papers that have been sent to
15 us, there is no report, there is no email from either 11:34
16 yourself or Kay McLoughlin to Linda Creamer or Lisa
17 O'Loughlen, that could give rise to that assertion in
18 paragraph 2 of Lisa O'Loughlen's report?

19 A. I don't think so, no.

20 229 Q. So the information that she has there must have been 11:34
21 gleaned from discussions either with you or with Kay
22 McLoughlin, is that right?

23 A. well, I hadn't discussed it with her.

24 230 Q. well, then it must have been Kay McLoughlin who
25 informed her of the background and circumstances? 11:34

26 A. That may be so. My other suggestion to the Tribunal
27 would be it's perhaps a misinterpretation of the file
28 in some way.

29 231 Q. Misinterpretation of?

1 A. A misreading of the file in some way. I don't know,
2 it's not my document.

3 232 Q. Anyway, we will go on:

4

5 *"Assessment of relevant prospective factors. 11:35*
6 *Detective Sergeant McCabe has never been met with by*
7 *our department. He has five children aged eight to 22*
8 *with his wife and notes on file that his wife should*
9 *have been met in 2006."*

10

11 I may be wrong but I don't think that that is correct;
12 I think that the note on file is that Sergeant McCabe
13 should have been met with? 11:35

14 A. That's correct.

15 233 Q. So here we have more incorrect information, giving rise 11:35
16 to a situation that there was another flaw in the file
17 that is prompting the serious incident and risk
18 escalation. Because reading this so far, the serious
19 incident and risk escalation is prompted by an error in
20 a Garda statement taken on 5th December 2006 which was 11:36
21 used to write a letter to Sergeant McCabe in December
22 2015 which we know to be incorrect, and also then, a
23 reference to the fact that his wife ought to have been
24 met with in 2006, which we also know to be an error,
25 isn't that right? 11:36

26 A. That's correct.

27 234 Q. I mean, is it of any surprise to you that here we are
28 on the 2nd of August of 2016, '16, and we are still
29 dealing with errors and misstatements in the file?

1 Does it surprise you?

2 A. Yeah, it's certainly disappointing.

3 235 Q. And then you go on -- it goes on to say:

4

5 *"Should have been met with in 2006, but no evidence 11:37*

6 *this occurred and there is no justification to*

7 *informing Mrs. McCabe of concern at this stage, given*

8 *ten years has passed and no foundation of allegations*

9 *to date."*

10 11:37

11 Is that not the view that perhaps was taken off the

12 file; that there was no foundation for the allegations?

13 A. That was the SART perspective, yes.

14 236 Q. Then it goes on:

15 11:37

16 *"Actions taken or planned to address immediate safety*

17 *issues.*

18 *Stabilise client, mitigation injuries, prevent further*

19 *harm and timeframes for same.*

20 *SART sought legal advice on this matter given the case 11:38*

21 *was investigated ten years ago approximately but the*

22 *information is scant and now Ms. D has come forward*

23 *again given Detective Sergeant McCabe received a lot of*

24 *media attention in recent years as Garda*

25 *whistleblower."* 11:38

26

27 Ms. D had come forward in 2013, isn't that right?

28 A. That's correct.

29 237 Q. Her only participation in 2014 was to correct the error

1 in Tusla?

2 A. That's correct.

3 238 Q. She hadn't actively engaged with Tusla at any point in
4 time other than to correct the error?

5 A. That's correct. 11:38

6 239 Q. She hadn't actively engaged with Tusla in 2015 or 2016,
7 isn't that right?

8 A. That's correct.

9 240 Q. *"Seán Costello & Company, Solicitors are quite
10 aggressive in the defence of their client and the 11:39
11 incorrect details of the letter sent. Detective
12 Sergeant McCabe's legal team has referred this
13 correspondence to the Chief Executive of Tusla in the
14 expectation that decent standards of public
15 administration will be adhered to. Tusla legal have 11:39
16 advised SART to seek to meet Ms. D to assess whether
17 her disclosure is credible to proceed the matter to
18 investigation and then Tusla legal will respond to
19 Detective Sergeant McCabe's legal team."*

20 11:39

21 Is that what happened? Is it the issue that the legal
22 team intervened here and said hand the matter over to
23 SART so that there can be a review as to whether or not
24 these allegations were credible and that is the way we
25 will deal with this? Is it not -- is it your 11:39
26 responsibility for handing over the file or is it the
27 legal team's?

28 A. Handing over the files from who to who, sorry?

29 241 Q. From Kay McLoughlin to SART.

1 A. No, Kay McLoughlin with her team leader, Michael
2 Cunningham, arranged for the files to be handed to
3 SART. At that point SART then consulted with legal,
4 etcetera, to decide what was the appropriate response.

5 242 Q. The document then goes on to refer to the fact that, at 11:40
6 page 1115, I am not going to go through all this
7 because there will be another witness dealing with it,
8 to point out that there was no formal closure in the
9 file in 2007. I think that that concluded your
10 dealings with the matter, is that right? 11:41

11 A. That's correct.

12 243 Q. I'm sure, Mr. Lowry, that you have seen now your
13 department's dealings with this file and indeed going
14 back until 2006, the HSE/Tusla dealing with it, and you
15 have readily accepted your own responsibility in 11:41
16 relation to matters. Are you disappointed as to how
17 this case was dealt with?

18 A. Yes.

19 244 Q. And I think, in particular, you provided information to
20 the Tribunal in relation to concerns that you had in 11:42
21 relation to the volume of work that your department
22 were responsible for, is that right?

23 A. That's correct.

24 245 Q. And the unallocated cases, and you helpfully provided a
25 document to the Tribunal that I think you are the 11:42
26 author of, are you, at page 1122: *"Child and Family
27 Agency Cavan-Monaghan, Children in Care, Admission
28 Trends and Referral Trends."*

29 A. That's correct.

1 246 Q. And I think that sets out there, if we go to page 1128,
2 a table for referrals to social work service 2004 to
3 2013, and then you point out Cavan -- these are general
4 referrals, they are not all retrospective abuse
5 referrals? 11:43

6 A. These are the full range of the most serious cases to,
7 family support cases but they are the full range of
8 cases.

9 247 Q. Yes. And we can see, for instance, in 2006, in Cavan
10 the number of referrals, there was 440, and in Monaghan 11:43
11 there was 263. And then if we go forward to 2013, we
12 can see that that number has increased dramatically to
13 1,261 in Cavan and to 908 in Monaghan, isn't that
14 right?

15 A. That's correct. 11:43

16 248 Q. And I think that that document had been prepared by you
17 in 2014?

18 A. That's correct.

19 249 Q. And then at page 1130, there is an analysis of need for
20 child protection and welfare services in Cavan and 11:44
21 Monaghan and it's dated 6th February 2014 and it's
22 signed off by you Gerry Lowry, as the area manager, is
23 that correct?

24 A. That's correct.

25 250 Q. And in that you have highlighted a number of referrals 11:44
26 and many of the problems that the service has, isn't
27 that right?

28 A. That's correct.

29 251 Q. And I think that effectively you were setting out a

1 case there to the HSE for an increase in your staffing
2 levels, is that right?

3 A. Yes. Tusla had established itself at the beginning of
4 2014, so we wanted to develop the services.

5 252 Q. And certainly, perhaps low staffing levels may account 11:44
6 for the Measuring the Pressure system and the fact that
7 files can sit there for lengthy period of times -- for
8 a lengthy period of time, in this instance from August
9 of 2013 until May of 2014, and then subsequently from
10 May of 2014 until Kay McLoughlin took up the file. But 11:45
11 in terms of the actual manner in which the files were
12 dealt with, would you seek to rely on the shortage of
13 staff as an excuse?

14 A. No, absolutely not. I think the errors were my errors,
15 my management errors, etcetera. They were all within 11:45
16 our power and control within the locality. But the
17 broader context within Cavan-Monaghan is relevant. I
18 think how the social work service deal with cases is
19 hugely difficult. It's a very, very rushed
20 environment. There is a lot of high risk situations 11:46
21 that people are dealing with multiple, multiple high
22 risk situations at any one time. And in that way, in
23 terms of we -- the pace of work is probably too rushed
24 and in that context errors are made at all levels.

25 253 Q. Just finally in relation to your interview with the 11:46
26 investigators, I think that you didn't discuss any
27 aspects of the McCabe file with anybody outside the
28 Tusla or HSE services, is that right?

29 A. No, I did not, no.

1 254 Q. I think that whilst you have a brother-in-law who is a
2 retired garda, you didn't discuss any matters with him,
3 is that your evidence?

4 A. No, I did not.

5 255 Q. And are you completely happy -- I don't need to 11:46
6 identify him or go through it, you are completely happy
7 to state that you didn't in any way discuss or give him
8 any information in respect of the McCabe file?

9 A. That's correct.

10 **MR. MARRINAN:** Thank you very much. Would you answer 11:47
11 any questions.

12

13 **MR. LOWRY:** Sorry, sir, I wonder would it be possible
14 to take a toilet break?

15 **CHAIRMAN:** Yes, of course. You just carry on. I will 11:47
16 take the opportunity to just make a phone call.

17

18 **THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED**

19 **AS FOLLOWS:**

20

11:53

21 **MR. GERARD LOWRY WAS CROSS-EXAMINED BY MR. MCGARRY AS**

22 **FOLLOWS:**

23 256 Q. **MR. MCGARRY:** Mr. Lowry, Paul McGarry is my name and I
24 am one of the barristers representing Sergeant McCabe.
25 You said yesterday in your evidence that you spoke with 11:53
26 Louise Carolan between August 2013 and April 2014
27 about, what you describe, the rereferral. Can you be
28 more specific about when that was?

29 A. I can't. I just know by May of 2014 when the email

1 came from Eileen Argue I knew what MMCC referred to, I
2 knew the case had been re-referred at that point and
3 Louise Carolan is the logical person to have told me
4 because she was the principal for the service area from
5 that -- during that period of time. 11:54

6 257 Q. And you know that Louise Carolan has told us nothing
7 about this in her statement to the Tribunal?

8 A. Yeah. And can I say, this wouldn't have been a case
9 management discussion anyway. This would have been
10 part of an update supervision, a reference to it in 11:54
11 passing. It wasn't part of how 'Are we going to deal
12 with this case?' and my point is in terms of 'well, we
13 are dealing with that case in the normal way, right,
14 despite the publicity'. So it was a very brief comment
15 as opposed to any in-depth discussion. 11:54

16 258 Q. She says in her statement that she had no direct
17 involvement in relation to this matter.

18 A. And I don't think she had. She wasn't involved in the
19 case-management issue, as far as I know.

20 259 Q. But yet you said yesterday in your evidence, I think on 11:54
21 two separate occasions that this you realised was a
22 significant event?

23 A. Which?

24 260 Q. That you had been told that this had happened and that
25 it happened. 11:55

26 A. Just if you don't mind just clarifying --

27 261 Q. You said in your evidence yesterday that the
28 re-referral that you were told about by Louise Carolan
29 was a significant event.

1 A. Okay.

2 262 Q. What did you mean by that?

3 A. I mean, when we use the term "significant event" there
4 is a significant event notification process, so it
5 wasn't in that kind of context. It was significant in 11:55
6 terms of there had been a referral in '06/'07 and it
7 had been re-referred then by Rian. In that way, it was
8 a significant event, right, and I suppose the
9 background publicity, I think Louise was just updating
10 me on that. That is as far as it went. 11:55

11 263 Q. If you look at page 1076, please. I am sorry to go
12 back over this, Mr. Lowry, but this is the email to you
13 from Eileen Argue on 14th May 2014.

14 A. Yes.

15 264 Q. And I just want to look at it in detail because it's 11:56
16 addressed specifically to you, and she says in the
17 first line: *"Please see information below."* And that
18 is a reference to the email to her from Pamela Armitage
19 that is at the bottom of the page, isn't it?

20 A. Yes. 11:56

21 265 Q. Did you read that email from Pamela Armitage --

22 A. Okay --

23 266 Q. -- to Eileen Argue?

24 A. *"Dear Eileen*
25 *Laura Brophy, Rian, just called to say she made an* 11:56
26 *error in her report re Ms. D. The line that "this*
27 *abuse involved digital penetration, both vaginal and*
28 *anal" is an error and should not be in the referral.*
29 *It is in fact a line from another referral on another*

1 *adult that has been pasted in, in error. Laura has*
2 *apologised and is sending us an amended report asap."*

3 267 Q. Did you read that at the time?

4 A. I think I did, I think I did.

5 268 Q. It's just that yesterday you said in your evidence that 11:57
6 you weren't -- you were aware of the error but you
7 weren't really aware of the nature of it or the fact
8 that the information was sufficiently different.

9 A. Yes, yeah. I accept I am being inconsistent there. I
10 think the main thing I absorbed at that point in time 11:57
11 is that there was inaccurate information on our file
12 from Rian and my response was we need to get rid of
13 that, that that should be taken off it.

14 269 Q. Simply the fact that there was inaccurate information.

15 A. And I acknowledge that I should have done a review or 11:57
16 made sure that any files created by us were taken off
17 the file also and I did not do that sufficiently. I
18 didn't do it at all.

19 270 Q. I am suggesting to you, Mr. Lowry, that when you read
20 the email at the bottom of the page, it doesn't just 11:57
21 tell you that there has been inaccurate information,
22 does it?

23 A. No, it gives the detail.

24 271 Q. It says what the inaccurate information is, isn't that
25 right? 11:58

26 A. That's correct.

27 272 Q. And the effect of that is to elevate the allegation
28 into something extremely serious?

29 A. That's correct.

1 273 Q. And it also tells you how it happened, isn't that
2 right?

3 A. Cut and pasted, yes.

4 274 Q. Yes. So it doesn't just tell you that there is
5 inaccurate information, it tells you what it is and it 11:58
6 tells you how it has come about?

7 A. Okay, yes.

8 275 Q. So that is the context in which you received the email
9 from Eileen Argue, and at the top of the email she
10 says: *"This information is in relation to MMCC."* 11:58
11 A. That's correct.

12 276 Q. And I am suggesting to you that the reason she is
13 telling you that is because you knew what MMCC is,
14 isn't that right?

15 A. That's correct. 11:58

16 277 Q. And that is consistent with your evidence that Louise
17 Carolan has already told you about the re-referral in
18 relation to Maurice McCabe?

19 A. That's correct.

20 278 Q. And I am suggesting that is also perhaps why Louise 11:59
21 Carolan is copied on that email, on the top right-hand
22 corner of the page you will see that.

23 A. I do, and I think part of the reason certainly she is
24 copied is: I wasn't Eileen's direct manager, Louise
25 was Eileen's direct manager. From my perspective, it 11:59
26 should have been sent to Louise in the first instance.
27 But that is just line management process. That is why
28 Louise and Séamus would have been informed of it.

29 279 Q. We will come back to that just in a moment.

1 A. Yea.

2 280 Q. But again, if you look at the text of the email from
3 Eileen Argue, again in the second paragraph, she makes
4 it abundantly clear what is -- or repeats what is in
5 the bottom email, which is: 11:59
6
7 *"Laura Brophy contacted the department, she said there
8 was information provided which did not relate to Ms. D
9 and was in relation to another person against another
10 man."* 11:59
11
12 And not Maurice McCabe. So again, a second email
13 telling you not just that there is inaccurate
14 information but in essence telling you what it is and
15 how it happened. 12:00
16 A. That's correct.

17 281 Q. And there isn't a record of you doing anything about
18 that until, if you take out page 2933 -- remember the
19 email we have just looked at is from 14th of May,
20 2014 -- 12:00
21 A. Yes.

22 282 Q. -- and there is no record of you having done anything
23 about it until the 19th August 2014, do you see that?

24 A. I do.

25 283 Q. At the bottom of the page again you will see the same 12:00
26 email from Eileen Argue?

27 A. Yes.

28 284 Q. From 14th of May, and your response is:
29

1 *"Dear Séamus*
2 *This should not have been sent to me."*

3 A. Yes.

4 285 Q. And you say that is because it really wasn't something
5 that you could be concerned about, it was a matter for 12:00
6 Mr. Deeney, is that right?

7 A. I was making the point in terms of the social work team
8 leader should be reporting to their principal in the
9 first instance before it's brought to my attention. I
10 was trying to make that point after 19th of August, it 12:01
11 was after the situation had been dealt with, the
12 information had been returned, the Garda notifications
13 had been clarified and I appreciate it's not well
14 written, but I was trying to raise the issue that staff
15 need to report through their line management process. 12:01

16 286 Q. This is in the context of you being aware that this was
17 a very significant event, isn't that right?

18 A. That's correct.

19 287 Q. You knew who Maurice McCabe was?

20 A. That's correct. 12:01

21 288 Q. If you had read the emails you would have known that
22 the original allegation had now been elevated into
23 something much more serious?

24 A. That's correct.

25 289 Q. Can you see how one could take an unfavourable view of 12:01
26 your response in August where you say this should not
27 have been sent to me?

28 A. I fully accept that. It's not a well written email.

29 290 Q. And can I suggest to you that your answer a moment ago

1 suggests that your concern is only with the process of
2 who reports to who and who should be talking to who and
3 not with the substance of the complaint?

4 A. I accept that that is what that email suggests, but my
5 evidence is that did I speak to Eileen Argue and I did 12:02
6 influence the situation in terms of returning the
7 information and getting the inaccurate information off
8 the -- off our files.

9 291 Q. And when we look at the later emails we will see that
10 you were heavily involved in dealing with the matter in 12:02
11 2015 and 2016, isn't that right?

12 A. I had some involvement, yes.

13 292 Q. Yes. You didn't at that point say well, hold on a
14 minute now, don't be sending this to me, it's really a
15 matter for Séamus and if he is not able to deal with it 12:02
16 then you come to me?

17 A. Yeah. No, in terms of the 2015 email, Séamus's reply
18 to Kay at that point was quite -- you know, there was a
19 five-point plan. My reply to her was very, very brief.
20 But again, I saw Séamus was providing that supervisory 12:03
21 service.

22 293 Q. We will come back to that in a moment. You said
23 yesterday at the outset of your evidence that you
24 didn't know Maurice McCabe and that you had never met
25 him -- 12:03

26 A. Yes.

27 294 Q. -- is that right? And I think you now accept that that
28 is evidence is not correct, isn't that right?

29 A. Well, Judge -- or sorry, sir, I have been thinking

1 about what child protection conferences -- I fully
2 accept the record, if the record of the meetings -- I
3 chaired child protection conferences for about ten
4 years, probably doing a hundred a year. I genuinely
5 can't actually remember Maurice McCabe being at one of 12:03
6 the meetings, but I fully accept if he was there,
7 that's fine, right, but --

8 295 Q. Mr. Marrinan asked you and referred you yesterday to a
9 number of conferences --

10 A. Yes. 12:03

11 296 Q. -- at which a wide number of files appear to have been
12 discussed?

13 A. But I am taking it, they were child protection
14 conferences that I chaired for approximately ten years.

15 297 Q. Yes. Just by way of example, if you could get out page 12:03
16 2863, please. I will just take one, one that we
17 received late in the day. Is that an example of a
18 child protection conference?

19 A. It is, yes.

20 298 Q. That is the minute I think of a child protection 12:04
21 conference that took place in April 2008?

22 A. That is the normal format, yes.

23 299 Q. There seemed to be a number of files or at least that
24 is a reference to one file, at least, I think, is it?

25 A. No, it's about one family. The child protection 12:04
26 conference was about one family.

27 300 Q. And you will see there that Maurice McCabe is in
28 attendance.

29 A. Yes.

1 301 Q. There aren't that many people there, Mr. Lowry.
2 A. I fully accept if I met Mr. McCabe at various times, I
3 have no problem with that.

4 302 Q. And just for the record, you will note that the minute
5 taker was Pamela Armitage? 12:04
6 A. That's correct.

7 303 Q. And over the page, you will see that Maurice McCabe is
8 put on a team to take the matter further, isn't that
9 right? The CORE group of professionals will consist of
10 you, Eileen Argue, Mary Tiernan and Sergeant McCabe. 12:05
11 It's in the middle, do you see under the heading "CORE
12 Group"?

13 A. I do, yes.

14 304 Q. *"The CORE group of professionals will consist of --"*
15 what is the CORE group supposed to do? 12:05
16 A. The CORE group is the professionals who work directly
17 with the child who would let's say be having weekly or
18 daily contact with the child and family, who would come
19 together periodically to coordinate information. I
20 wouldn't normally be doing that, so I don't know the 12:05
21 name of this particular case. But as chairperson of
22 the conference certainly I wouldn't normally have been
23 part of the CORE group.

24 305 Q. Well, is the minute wrong then when it says that you
25 are a member of the CORE group? 12:05
26 A. It may be.

27 306 Q. I see. It's extraordinary, I suggest to you, because
28 you're identified in the minute --
29 A. I accept that.

1 307 Q. -- as one of the CORE group?
2 A. Yes.

3 308 Q. It says: "*Eileen Argue is responsible for convening*
4 *regular CORE group meetings.*" Would the CORE group
5 have been meeting regularly? 12:05
6 A. It depended on the situation in the case. Eileen Argue
7 was the assigned social worker and she would have
8 brought together the relevant people, let's say, if
9 that -- that is a Bailieboro case, in Bailieboro to say
10 well, what's going on with the family, are things 12:06
11 getting better, are things getting worse.

12 309 Q. You see, I am suggesting to you that you must have
13 known very well who Maurice McCabe was throughout all
14 of this time and not just because you signed the
15 acknowledgement or receipt way back in 2007 when it 12:06
16 came in from the Gardaí?

17 A. I was fully aware of the publicity, I watched the news,
18 I read the newspapers, I knew what was going on at that
19 level. In terms of thinking of him as somebody I
20 talked to or know in any way, I don't think of him in 12:06
21 that category at all, whatever child protection
22 conferences he was at over the years.

23 310 Q. Can I ask you to look at page 1072? This is the email
24 from Kay McLoughlin, the attached Barr letter. You
25 have seen this again yesterday. And it's again 12:07
26 addressed to you, you don't seem to take issue in your
27 response with the fact that it shouldn't be sent to
28 you, it should go to Séamus first?

29 A. That's correct.

1 311 Q. Is that because you were taking a more hands-on role at
2 this stage and you were less concerned with the process
3 than you were with resolving the problems?
4 A. I didn't raise the issue about the line management
5 process and respond to that. I probably should have. 12:07
6 312 Q. I see. I see. The e-mail from Kay McLoughlin says:
7
8 *"I have been reviewing the files on the MTP. One*
9 *relates to Maurice McCabe and I would like to discuss*
10 *this case with you both before taking any action as it* 12:07
11 *appears the concern was referred in 2007 and Mr. McCabe*
12 *was never met."*
13
14 So, just so I am clear, you say you did discuss the
15 case with both Mr. Deeney and Ms. McLoughlin after you 12:08
16 received this email?
17 A. Well, I certainly saw Séamus's email with his
18 five-point plan and I referenced about liaising with
19 the guards before everything was done. So I remember
20 certainly the email communication. It didn't lead to a 12:08
21 detailed discussion.
22 313 Q. It says: *"It has come back in again due to media*
23 *coverage of Mr. McCabe."* Is that right?
24 A. I don't think that is accurate.
25 314 Q. But you will acknowledge that there was a lot of media 12:08
26 coverage about Mr. McCabe in 2014?
27 A. Yes.
28 315 Q. And the Commission of Investigation under Mr. Justice
29 O'Higgins had been established a couple of months

1 earlier in 2015, and there was some coverage of the
2 fact that it was due to start public hearings around
3 this time?

4 A. Okay.

5 316 Q. Ms. McLoughlin is saying to you:

12:09

6
7 *"The outstanding action is that he be written to. We*
8 *would have to advise him that he would need to tell his*
9 *wife about this information so she can be protective.*
10 *It is likely she is aware of the allegations as a file* 12:09
11 *was sent to the DPP. However, no prosecution was*
12 *directed. Mr. McCabe has female children and the*
13 *victim was a seven-year-old child when the alleged*
14 *incident occurred."*

12:09

15
16 And then she says:

17

18 *"My issues are --"*

19

20 She identified two issues, plural.

12:09

21

22 *"1. We are proposing to tell this woman that we have*
23 *concerns after not doing it for possibly up to eight*
24 *years."*

25

12:09

26 What do you think she meant by that?

27 A. She was concerned about the delay and the credibility
28 and the effectiveness of the intervention and the
29 proportionality of the intervention. And one of our

1 standards is that we have a timely intervention and
2 obviously after that length of time we were not doing a
3 timely intervention.

4 317 Q. So she was concerned about the organisation looking
5 professional? 12:10

6 A. No, I would suggest she was concerned about the
7 timeliness and the effectiveness and the
8 proportionality of the intervention.

9 318 Q. And I am suggesting to you that it suggests at the very
10 least that she was concerned that the -- that Tusla 12:10
11 would look silly if they'd waited eight years and done
12 nothing?

13 A. Okay, I think our standards are that we are timely,
14 effective and proportionate, and I read that as Kay
15 expressing concerns about those issues. 12:10

16 319 Q. At the top of the page there is your response. It
17 comes on the same day, is that right?

18 A. It does.

19 320 Q. And you say: "*Thanks for the update on bringing this*
20 *matter to my attention.*" When you refer to the 12:10
21 "*update*" there, that suggests that you had been talking
22 to her or dealing with this sometime prior to that?

23 A. Well, it doesn't suggest it to me. It suggests the
24 e-mail that I am referring to as the update.

25 321 Q. You say, "*I have a memory that this matter was reported* 12:11
26 *to the Gardaí at some stage.*"

27 Can I just be clear as to what you meant by that?

28 A. I think I was replying based on my immediate memory of
29 the situation so I think it reflects uncertainty in my

1 memory about the case history and I was saying we need
2 to coordinate with the guards.

3 322 Q. Well, that, I suggest to you, could only be a reference
4 to the notification that had already issued by Tusla to
5 An Garda Síochána? 12:11

6 A. I refer to it that it's the incident where we did the
7 inaccurate notification.

8 323 Q. Yes.

9 A. That period in May, the previous year.

10 324 Q. So when you say, "*I have a memory that this matter was* 12:11
11 *reported*", you actually were talking about the fact
12 that you knew that it had been reported inaccurately,
13 is that right?

14 A. Yeah, I think by saying "*I have a memory*" suggests to
15 me my memory wasn't as good as it could or should have 12:12
16 been. I am saying I replied instinctively, quickly,
17 saying, look, make sure you coordinate with the guards
18 before you do anything. And Séamus then, I would have
19 understood, as the principal social worker, would have
20 been providing more detailed supervision, which he did. 12:12

21 325 Q. So when you say, "*We would need to coordinate with the*
22 *Gardaí*", you are actually saying somebody else should
23 do that, is that right?

24 A. No, I am meaning the social work service in
25 Cavan-Monaghan. 12:12

26 326 Q. Okay. So, it's in -- all of your service needs to take
27 responsibility for that?

28 A. Well, we, the local service, need to coordinate with
29 the guards before taking steps.

1 327 Q. Did you read the attached Barr letter?
2 A. I don't think I did.

3 328 Q. Do you think you -- with the benefit of hindsight, you
4 should have read it?
5 A. Absolutely. 12:12

6 329 Q. If you had read it, what difference would it have made
7 to you?
8 A. Well, it may have prompted my memory in terms of the
9 inaccuracy of the situation. But I think I saw the
10 immediate e-mail. I know there was further detail in 12:13
11 the attachment. In the rush of work, I didn't go into
12 it in that level of analysis. I think the analysis I
13 gave was in those three lines up above.

14 330 Q. The next document is 1074, and this is the so-called
15 five-point-plan. That is an e-mail copied to you from 12:13
16 Mr. Deeney to Ms. McLoughlin, telling her that the case
17 had been discussed yesterday, isn't that right?
18 A. That's correct.

19 331 Q. Was that a discussion that Mr. Deeney had with you?
20 A. No, that is Kay and Séamus. I interpret that as 12:13
21 discussing the matter in supervision.

22 332 Q. So you weren't party to those discussions, is that
23 right?
24 A. No.

25 333 Q. I see. Okay. It's just curious, I suggest to you, 12:14
26 that he is telling Kay that "*we discussed the case*
27 *yesterday*", as opposed to confirming the content of our
28 discussions yesterday if she was a party to them.
29 A. Okay, well I interpret that as, it's a written note

1 confirming the discussion --

2 334 Q. I see.

3 A. -- for the record, is how I interpret that.

4 335 Q. But in any event, you agree that this was the
5 appropriate thing that should be done, steps to be 12:14
6 taken?

7 A. Yes, and I was copied into that and I saw that that
8 detail supervision had been done.

9 336 Q. Okay. Well, let's just take a look at it again, and I
10 am sorry for going back over this, Mr. Lowry, but the 12:14
11 first step is that you would contact the alleged
12 victim, so was that done?

13 A. That -- Kay took steps to do that, but that wasn't
14 concluded. Kay didn't contact the alleged victim.

15 337 Q. So, in other words, it wasn't done? 12:15

16 A. That's correct.

17 338 Q. Because in your evidence yesterday I think you sought
18 to say that, in fact, it was partially done or it had
19 been done.

20 A. Well, to clarify, Kay wrote asking to meet the alleged 12:15
21 victim.

22 339 Q. Yes.

23 A. And in that way -- but the meeting didn't take place.

24 340 Q. Mm-hmm. *"Because there is some discrepancy in the*
25 *allegations forwarded to us"*. Do you know what that is 12:15
26 a reference to?

27 A. Well, I would reference that to Séamus's memory of the
28 case history and he wanted Kay to review the file with
29 a view to clarifying those discrepancies or to meet the

1 alleged victim.

2 341 Q. well, just let's be clear now. At paragraph 1, it's
3 contacting the victim because of the discrepancy.

4 A. Yes.

5 342 Q. It's not reviewing the file at that stage, isn't that 12:15
6 right?

7 A. I accept that is how it's written, yes.

8 343 Q. And the -- and it's clear, I think, from the remainder
9 of part 1, that it's the contacting of the victim that
10 permits you to check the reliability and accuracy of 12:16
11 the allegations, isn't that right?

12 A. That's correct.

13 344 Q. And determine whether there is a foundation to the
14 allegations?

15 A. That's correct. 12:16

16 345 Q. So, in order for you to determine whether there is a
17 foundation to the allegations, you must contact the
18 victim because of the discrepancy, isn't that right?

19 A. That's correct.

20 346 Q. And I am suggesting to you that it follows that if you 12:16
21 haven't contacted the victim, you can't determine
22 whether there is a foundation to the allegations?

23 A. That's correct.

24 347 Q. But yet you said in your evidence this morning, and I
25 think you repeated it a few times, that if the 12:16
26 allegation is unfounded, it still requires to be
27 discussed. Those are the words you used.

28 A. That's correct. I think there is situations where
29 there is unfounded allegations that still require

1 discussion and communication with parents in order to
2 maximise the protection of children from child abuse.

3 348 Q. Who determines whether the allegation is founded or
4 unfounded, Mr. Lowry?

5 A. My understanding, the new Section 3 policy sets out 12:17
6 policies and procedures for how to reach a conclusion
7 of founded, and certainly part of that is that the
8 victim is met and the professionals lead to the
9 conclusion that the allegation is founded, that there
10 is sufficient detail, for example, that the allegation 12:17
11 has been said consistently, and, based on those kind of
12 criteria, a conclusion is reached.

13 349 Q. So can I take it then it's your service that makes the
14 decision as to whether the allegation is founded or
15 unfounded? 12:17

16 A. Taking into account the views of all relevant people,
17 yes.

18 350 Q. Okay. And you said earlier on that even though it's
19 unfounded, it still requires to be discussed.

20 A. Yes. 12:17

21 351 Q. That suggests that you have decided that the allegation
22 is unfounded?

23 A. In this particular situation?

24 352 Q. You see, I am having difficulty grasping the notion
25 that you conclude that the allegation is unfounded. 12:17

26 A. Yes.

27 353 Q. Which means without foundation, isn't that right?

28 A. That's correct.

29 354 Q. And then you are still in a position to say, well, even

1 though it has no foundation, it's without foundation or
2 is unfounded, it still requires to be discussed with
3 the relevant protected people?

4 A. Okay. I would try and explain that as follows, if it's
5 okay: if a child makes an allegation but doesn't come 12:18
6 in to the social workers to go through that assessment
7 process but the child has said that the -- made the
8 allegation consistently, for example to the guards or,
9 for example, to a therapist, then that allegation is
10 unfounded because the alleged victim hasn't come in for 12:18
11 detailed discussion, but there still may be appropriate
12 steps to take to protect children from future harm,
13 particularly in relation to child sexual abuse, given
14 we know how secrecy is an important part of it.

15 **CHAIRMAN:** I understand what you are saying. what you 12:18
16 are saying is sometimes children run scared and that
17 can include not meeting social workers?

18 A. Yes. And if we exclude all those cases from child
19 protection steps, then we will fail in our duty to
20 protect children from child sexual abuse. 12:19

21 355 Q. **MR. MCGARRY:** But you persisted with the suggestion
22 that this unfounded allegation in this case might still
23 require further discussion, even though that was not
24 the case, isn't that right?

25 A. Do you mind just -- could you say that question again 12:19
26 in terms of --

27 356 Q. You persisted, right up to 2016, and we will come back
28 and look at these documents again, you persisted with
29 the -- with the position that the unfounded allegation

1 in this particular case --

2 A. Yes.

3 357 Q. -- and I suggest to you that this particular case is
4 very different to the case that was outlined by the
5 Chairman a moment ago, isn't that right? It wasn't a 12:19
6 case where a child had made repeated and had -- or had
7 run scared from making an allegation, isn't that right?

8 A. It is a situation where the child said the allegation,
9 I think, to her parents originally, the child then
10 repeated the allegation to Emer O'Neill and to Orla 12:20
11 Curran, who were our local specialist team at that
12 point in time, and the child then, several years later
13 as a young adult, repeated the allegation again to an
14 adults survivors of abuse service, and, based on that
15 sequence, there is the question about proportionality 12:20
16 and professional judgement, about what steps should be
17 taken, in that unfounded scenario. So that is the
18 sequence, certainly, that comes to my mind in terms of
19 them in this particular case.

20 358 Q. But this child was an adult and had -- several attempts 12:20
21 were made subsequently to contact her in 2015 --

22 A. Yes.

23 359 Q. -- and 2016?

24 A. Yes.

25 360 Q. And in spite of all of that, you persist with the 12:20
26 notion that there is an unfounded allegation that
27 requires to be discussed with somebody?

28 A. That's correct.

29 361 Q. Do you stand over that position?

1 A. Yes.

2 362 Q. Still?

3 A. Yes.

4 363 Q. In light of what SART subsequently concluded?

5 A. I think I put it down as different professional 12:21
6 approach. I think there is different professional
7 views about what is a proportionate response in those
8 circumstances.

9 364 Q. But this only came back in to you because -- it's
10 described as because of media coverage, isn't that 12:21
11 right?

12 A. Well, Kay McLoughlin said that at -- in one of her
13 e-mails. But, in my view, the media coverage didn't
14 influence our response.

15 365 Q. Just go back to the -- to 1074. So, step 1, you will 12:21
16 accept, has not been done, isn't that right?

17 A. That's correct.

18 366 Q. Yes. And step 2 then is "*Determine whether we need to*
19 *interview anybody else who may be of relevance, e.g.*
20 *the counsellor*". That wasn't done, sure it wasn't? 12:21

21 A. That's correct.

22 367 Q. And then step 3 - and step 3, I suggest to you, is
23 crucial - step 3 says: "*On review of the above*". So
24 what is "*the above*"?

25 A. To meet the alleged victim and to speak to relevant 12:22
26 people - for example, the counsellor.

27 368 Q. So, neither of 1 and 2 are done, and yet you move
28 straight to number 3, is that right?

29 A. That's correct.

1 369 Q. Do you think that is an appropriate way to proceed?
2 A. I think certainly in terms of this case, there should
3 have been that work done in terms of, for example,
4 Séamus was referencing speak to the counsellor, that
5 clarification of the information on the file, the 12:22
6 accuracy of the information should have been done.

7 370 Q. The draft Barr letter is prepared at the beginning of
8 May 2015, isn't that right?
9 A. That's correct.

10 371 Q. And it doesn't, in fact, get sent -- even though these 12:23
11 things have not been done, it doesn't in fact get sent
12 until the end of December, nearly eight months later?
13 A. That's correct.

14 372 Q. Can you offer any explanation as to why that might be?
15 A. I can't. 12:23

16 373 Q. It's just bad file management, is that right?
17 A. No, well my understanding, Kay McLoughlin was taking
18 actions in regard to the file in terms of explaining
19 that time frame.

20 **CHAIRMAN:** well, as I understand it, what should have 12:23
21 happened was, first of all, we have a chat with Ms. D;
22 second of all, we have a chat with the counsellor;
23 then, thirdly, we will review the Barr letter with a
24 view to seeing is it right or wrong?
25 A. Yes. 12:24

26 **CHAIRMAN:** And then I suppose, after that, number 4, do
27 you need to talk to, for instance, the wife.
28 A. Yes.

29 **CHAIRMAN:** And when you have done that, is there a

1 protective plan than needs to be put in place.

2 A. Yes.

3 **CHAIRMAN:** You could explain the delay by saying we
4 were doing 1 and 2, but nobody ever did 1 and 2, so
5 it's odd as to how it took eight months. I mean, it 12:24
6 just literally comes out of the blue at the most
7 unexpected time.

8 A. I agree, sir.

9 **CHAIRMAN:** Yes. Okay.

10 374 Q. **MR. MCGARRY:** Can you offer any explanation for the 12:24
11 length of time that passes between the original
12 notification I think in August 2013 and the fact that
13 nothing happens until end of April/beginning of May
14 2014?

15 A. The explanation, I think, is related to the numbers of 12:24
16 unallocated cases and cases going into lists for people
17 to have the time to look at what needs to be done, and
18 then certainly it was me as a manager saying let's do
19 those as quickly as possible, there certainly was that
20 rushed atmosphere, and I think that contributed 12:25
21 certainly to errors as well.

22 375 Q. This is where the file goes into the filing cabinet,
23 the MTP referred to.

24 A. Well, the unallocated MTP list, that cases that were
25 categorised there for an assignment in due course and 12:25
26 then managers tried to fill that gap in the absence of
27 a social worker -- given the time-lapse, managers were
28 trying to shorten the time frame within the resources
29 we have.

1 376 Q. But Ms. Connolly said that there was no order into
2 which the files were put in the filing cabinet?

3 A. Yeah, yeah, and I think that is certainly one of the
4 challenges of the work in terms of the social work
5 service. We are always dealing with cases that come to 12:25
6 our attention on an ongoing basis. The numbers of
7 referrals that come in the door are significant every
8 week, we are always doing that judgement about who is
9 at most immediate and serious risk now, who needs the
10 services now, so I think that constant 12:25
11 prioritisation -- and prioritisation is one of the key
12 things that social work team leaders do, and that is a
13 hugely difficult part of the task. So while it sounds
14 bad to say that there is no system, the system is that
15 judgement about who is at most immediate risk and what 12:26
16 spare capacity do we have to deal with those cases that
17 are categorised as medium.

18 377 Q. But that filing system, as Ms. Connolly said, wasn't
19 ordered alphabetically or by date or by risk, or
20 anything like that; just the file went in and nobody 12:26
21 knew where it was, is that right?

22 A. No, I don't think that is an accurate characterisation.

23 378 Q. How would you find a file then in light of
24 Ms. Connolly's evidence?

25 A. No, there was a database kept where cases were 12:26
26 categorised as high, medium and low, and that informed
27 the decision-making, for example, about the response to
28 cases. So if a case was categorised as high, obviously
29 we tried to get to that case quicker, and there was --

1 certainly at this stage our numbers of unallocated high
2 are very, very low, compared to what they were in
3 2013/2014.

4 379 Q. And if somebody came in with a request to deal with
5 something on a particular file, you'd consult the 12:27
6 database. How would you file the manual file?

7 A. No, there was -- the files were certainly retrievable.
8 Every file has a number and is retrievable, and the
9 admin staff are excellent about retrieving files.

10 380 Q. Just go forward to page 1110. This is the response, 12:27
11 this is the letter -- sorry, the e-mail from Kay
12 McLoughlin to you on 9th of February of 2016, this is
13 after the Barr letter has been sent, and after a letter
14 has come in from Maurice McCabe's solicitors, isn't
15 that right? 12:28

16 A. I can't see it at the moment.

17 381 Q. It's 1100. Do you have that?

18 A. Yes.

19 382 Q. This is the 9th February. Is this the first
20 interaction that you have had with Kay McLoughlin 12:28
21 following the Barr letter being sent and the response
22 from Maurice McCabe's solicitors?

23 A. No, Kay told me verbally about the error, and part of
24 what I asked her to do was to do that checking about
25 what happened and what the situation was. 12:28

26 383 Q. So she then explains to you following your, I think,
27 request to sort it out or find out what happened, what
28 actually happened, isn't that right?

29 A. That's correct.

1 384 Q. Okay. And again, I am not going to go through it in
2 complete detail, but even her report to you as to what
3 occurred isn't correct, isn't that right?

4 A. In --

5 385 Q. There are a number of occasions when -- where it's 12:29
6 inaccurate, isn't that right? I will give you an
7 example. There is a reference to the Garda
8 notification and the fact that Eileen Argue sent a new
9 notification with the historic information and this one
10 does not include the errors. That is not correct, sure 12:29
11 it's not?

12 A. The second notification also included an error, that's
13 correct.

14 386 Q. It does. It includes the error about the threat to the
15 victim's father, isn't that right? 12:29

16 A. That's correct.

17 **MR. MCGARRY:** Chairman, I don't know if you want me to
18 stop there?

19 **CHAIRMAN:** Thank you. An hour.

20 12:29

21 **THE HEARING THEN ADJOURNED FOR LUNCH**

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1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

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387 Q. **MR. MCGARRY:** Mr. Lowry, can I ask you to look at page 1085. This is an email from Kay McLoughlin to you following the letter received from Mr. McCabe's solicitors, isn't that right?

13:30

A. Yes.

388 Q. And it contains a draft of a letter, which I think is at page 1086 and 1087 over the page --

A. Okay.

13:30

389 Q. -- that she is proposing to send in response to Mr. Costello's detailed letter at the end of January, isn't that right?

A. That's correct.

390 Q. And that letter sets out some things, some information that I think it's fair to say on the draft, and I think it's accepted, you'll note that the date on the draft is 10th November 2015. That can't be right, isn't that right?

13:30

A. Okay. Yes. That's correct, that's correct.

13:31

391 Q. 1086. This, in fact, is the letter in substance, with I think one or two minor modifications, which is eventually sent out in June of that year, isn't it?

A. That's correct.

392 Q. But yet, if you go then to page 1091, you will see at the bottom of the page the same email we've just looked at, it's not as well copied in this particular version, and then your response four days later to her draft says:

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"As discussed, please review Emer O'Neill's and the Garda file."

A. Yes.

393 Q. *"Update the attached and revert to me."*

13:31

A. Yes.

394 Q. What did you mean by that?

A. I think I just wanted Kay to do further inquiries before we finalised the letter to be sent, and I was suggesting conversation or contact with Emer O'Neill and the relevant Garda file. I wanted, I suppose, in the light of the error, that we did all necessary checks before we sent another letter.

13:32

395 Q. But the checks that you had asked for didn't come in until 26th February, isn't that right? Sorry, the 9th February, is that right?

13:32

A. Which was Kay's bullet-pointed reply, yes.

396 Q. Yeah. And which of the bullet-points in her reply to you did she eventually put into the draft letter?

A. I don't -- I don't think she did put any.

13:32

397 Q. She didn't?

A. No.

398 Q. No.

A. I think, sir, I accept the draft letter, it could have been sent out much earlier.

13:32

399 Q. We will come back to that in a moment. Then on the 26th February, she is again sending you an email, again attaching her bullet-points and saying to you, this is page 1101:

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"I am sending this to you again as it has gotten forgotten about. We need to discuss a response."

- 4 A. That's correct.
- 5 400 Q. Did you have a discussion with her about a response at 13:33
6 that stage?
- 7 A. I did, and I think the supervision records note that.
8 Kay consistently reminded me that I needed to address
9 this.
- 10 401 Q. But I'm suggesting to you that, in light of the letter 13:33
11 from Maurice McCabe's solicitors, which is now a month
12 has passed, in effect, since that letter has come in,
13 Ms. McLoughlin is saying to you it's been forgotten
14 about, we need to discuss a response. Did that not
15 convey some sense of urgency on the part of 13:33
16 Ms. McLoughlin to deal with the detailed letter from
17 Mr. Costello?
- 18 A. It did, yes.
- 19 402 Q. But you didn't do anything about that, at least not in
20 the short-term, isn't that right? 13:34
- 21 A. That's correct.
- 22 403 Q. The supervision meeting is at 1102, and I think that is
23 a staff supervision form?
- 24 A. Well, it's a one-to-one supervision session.
- 25 404 Q. And is that part of a regular ongoing appraisal that 13:34
26 staff members would be subject to?
- 27 A. Yes.
- 28 405 Q. I see. How often would these appraisals take place?
- 29 A. Four to six weeks. 'Supervision' is the word used for

1 it as opposed to 'appraisal'.
2 406 Q. Every four to six weeks?
3 A. Approximately.
4 407 Q. In respect of every employee?
5 A. Those people who are direct reports. Like, Kay was my 13:34
6 direct report at that point in time.
7 408 Q. And would Kay then have responsibility for doing this
8 for all the people under her?
9 A. That's correct.
10 409 Q. I see. It strikes me, I suggest to you, that there's 13:34
11 an awful lot of time and effort spent on processes and
12 form-filling when the substance of the issue seems to
13 get left behind.
14 A. I accept that.
15 410 Q. And I think that is borne out also by the very lengthy 13:34
16 and detailed forms that we see, I think that
17 Ms. McGlone referred to the other day, you will recall,
18 the forms with the very different coloured sheets, pink
19 and yellow and blue and so on. Were these forms or the
20 advice to have these forms drawn up with the assistance 13:35
21 or advice of external management consultants and people
22 like that?
23 A. I don't know about that. Certainly, the supervision
24 records are part of a policy document within Tusla.
25 411 Q. The MTP, is that something that you got advice 13:35
26 externally about before you put in?
27 A. Again, that would be a national standard. I don't know
28 if it was external. It was certainly part of a
29 national implementation process within Tusla.

1 412 Q. Just look at page 1102, this is the supervision meeting
2 that you record. Is that your record note of what
3 occurred?
4 A. Yes. My memory is I typed the note during the meeting.
5 413 Q. Mm-hmm. And the discussion at paragraph 1 is "To 13:35
6 *listen to staff about their experience with a view to*
7 *identifying how we can improve staff welfare.*"
8
9 That's the primary concern in talking to the staff
10 member, is it? 13:36
11 A. I wouldn't describe it as the primary concern. It was
12 one of the issues discussed.
13 414 Q. Okay. And then over the page there's a discussion
14 about the McCabe case, isn't that right?
15 A. Yes. 13:36
16 415 Q. That's the only case -- is that the only case about
17 which there is a discussion?
18 A. I'm not sure. If you look up there. It may be.
19 416 Q. I am just not clear from the report --
20 A. Okay. 13:36
21 417 Q. Given that there is no other redacted pages --
22 A. Yes.
23 418 Q. -- it suggests that that is the only case about which
24 there was a discussion?
25 A. That's correct. 13:36
26 419 Q. So the purpose of the supervision meeting was, I
27 suggest to you, to discuss the McCabe case.
28 A. No, the headings on the left-hand side are part of the
29 policy, so they are prompts to remind us about service

1 and case-related matters.

2 420 Q. Okay. Under the "*Case Discussion*" or beside the "*Case*
3 *Discussion*", it says:
4
5 "*Sergeant McCabe's case has been communicated to me by* 13:37
6 *Kay.*"
7

8 That's not, strictly speaking, correct, though, is it?
9 A. Well, I think I'm referencing there the emails where
10 she sent me the draft letter. 13:37

11 421 Q. Okay. So you're not intending to give the impression
12 that you weren't aware of it from any other source?
13 A. No, no, that's about the letter that needed to go.

14 422 Q. And then you say:
15 "*I have not looked at it. I need to do so.*" 13:37
16 That suggests that you haven't looked at the case and
17 you need to do so.

18 A. No, it suggests to me, I hadn't looked at the draft
19 letter that Kay had emailed to me at that point in
20 time. 13:37

21 423 Q. Mm-hmm.
22 A. And I was reminding myself and acknowledging to Kay
23 that I needed to do so.

24 424 Q. And the draft that she's talking about there, is that
25 the draft of the letter of response to Mr. Costello or 13:38
26 is that a reference to other issues relating to the
27 McCabe case?
28 A. No. That's a draft letter to Mr. Costello.

29 425 Q. Yeah. You see if you then look down under the word

1 "Support", it says:
2 *"we need to develop a NO BLAME culture."*

3 A. That's correct.

4 426 Q. And the words "NO BLAME" are in block capitals.

5 A. That's correct. 13:38

6 427 Q. What's the context or what's the purpose of putting
7 that in immediately after the reference to this case --

8 A. Well, I don't think it is a reference in terms of
9 immediately after, but it was certainly part of the
10 discussion in terms of errors being normal within our 13:38
11 work, particularly -- well, maybe errors being normal
12 within all organisations, but particularly in a highly
13 stressed and rushed organisation, mistakes take place,
14 and in order to identify those early, we were
15 developing a no blame culture in order that people 13:38
16 would put their hands up and say, look, I made a
17 mistake, we need to address it, as opposed to a culture
18 where people are blamed when something goes wrong and
19 then things go underground. So that was the reference.

20 428 Q. I'm suggesting to you that that can't be right in light 13:39
21 of what the discussion is about at the meeting.

22 A. Well, I think there's a lot of issues on the meeting.
23 Now, it may very well have been prompted by the mistake
24 in regard to Sergeant McCabe's case, but it was
25 certainly part of a broader discussion within the 13:39
26 service about developing a no blame culture and we were
27 trying to find ways to encourage that, because it is
28 difficult for people to put their hands up and say,
29 look, I made a mistake, and if people get fearful of

1 that, right. We wanted to develop that as part of our
2 Tusla culture.

3 429 Q. I think we can see that there is a problem about that,
4 no doubt about that, Mr. Lowry. But if you look at the
5 content of the box, are you suggesting then that in 13:39
6 every staff supervision discussion the content of the
7 support box is the same: *"we need to develop a" --*
8 *capitals -- "NO BLAME culture if we do our work in good*
9 *faith and address"?*

10 A. No, it's not the same every time. 13:40

11 430 Q. No. So why then is it featuring in the specific staff
12 supervision discussion with Ms. McLoughlin?

13 A. Because it is part of what we discussed on that day.

14 431 Q. And what you discussed on that day related to Sergeant
15 McCabe, isn't that right? 13:40

16 A. In addition to a lot of service development issues.

17 432 Q. I'm suggesting to you that the reference to the *"NO*
18 *BLAME culture"* is a reference to Tusla officials not
19 wanting to take the blame for anything that may have
20 gone wrong in relation to Sergeant McCabe? 13:40

21 A. No, I don't accept that at all.

22 433 Q. I am suggesting to you that that is the tenor of your
23 evidence with regard to all of the errors that
24 Mr. Marrinan identified to you earlier on?

25 A. No, sir, I don't accept that. I have been, from the 13:40
26 start, saying I have been responsible for that. I am
27 the service manager, professionally and
28 organisationally accountable for what happened within
29 my service and for the individual errors I made during

1 the course of the case.

2 434 Q. I think you referred to yourself as inefficient, on a
3 number of occasions yesterday, and you explained the
4 vast majority of the errors by reference to what you
5 described as "bad file management". 13:41

6 As you are the person responsible, Mr. Lowry, I suggest
7 to you that the buck has to stop with you with regard
8 to all of these errors.

9 A. I accept that.

10 435 Q. But that's not what emerges when you look at the files 13:41
11 and you look at the various emails, isn't that right?

12 A. I don't know what you mean.

13 436 Q. Well, I'm suggesting that when you go through all of
14 the errors and mistakes that have occurred, it looks as
15 though you're attempting to say, well, somebody else 13:41
16 made a mistake, whether it's Ms. McLoughlin with regard
17 to the error she made, whether it is Ms. Brophy with
18 regard to what she did initially, whether it is the
19 Garda notification prepared by Ms. Connolly, whether it
20 is Mr. Deeney not dealing with the people to whom he 13:42
21 was directly -- who are directly answerable to him as
22 their line manager?

23 A. Well, I don't accept that analysis. I am accountable
24 for the service both for what I know and what I don't
25 know, and my job is to ensure that there is efficient 13:42
26 processes at all stages of the process. So, in that
27 way, I am the accountable officer. Inevitably, there's
28 lots of things happening within the service on a
29 day-by-day basis that I don't necessarily know about.

1 In fact, that is part of the whole idea of a no blame
2 culture: people being upfront and open about the good
3 and the bad things that happen within the service. But
4 I'm the accountable officer responsible for everything
5 that happened in Cavan-Monaghan during this time 13:42
6 period.

7 437 Q. Over the page there's another supervision record from
8 May 2016. Do you see that?

9 A. I do.

10 438 Q. And again, is that something that you prepared also? 13:42

11 A. I think so, yes. I think I typed it during the
12 meeting.

13 439 Q. You will see there's a list of things on Kay's agenda
14 under "*Management and Case Discussion*".

15 A. Yes. 13:43

16 440 Q. And they all seem to be ticked, I think, isn't that
17 right?

18 A. They seem to be, yes.

19 441 Q. With one exception, is that right?

20 A. I can't see down the bottom, sorry. 13:43

21 442 Q. Can you perhaps scroll it down?

22 A. Yes.

23 443 Q. They're all ticked. There's quite a number of them, in
24 fact. One, two, three, four... there's about twelve or
25 thirteen, all ticked, but the one at the bottom isn't 13:43
26 ticked, isn't that right?

27 A. I don't know if there is any significance at the lack
28 of a tick. I certainly know, I think it's another
29 reminder from Kay to me that we need to deal with the

1 outstanding issues in regard to Sergeant McCabe.

2 444 Q. Or is that you attempting to tell Ms. McLoughlin to get
3 the letter out?

4 A. No, it was my responsibility to finalise it.

5 445 Q. Because Ms. McLoughlin had provided you with a draft 13:43
6 letter in February, isn't that right?

7 A. That's correct.

8 446 Q. And here we are on 13th May and there's still no sign
9 of the letter being sent out?

10 A. That's correct. 13:44

11 447 Q. The letter only gets sent out -- 1106 -- on the 20th
12 June, which is now five months after Mr. Costello has
13 written his letter, isn't that right?

14 A. That's correct.

15 448 Q. And can you explain why it is that that letter hasn't 13:44
16 been sent out within those five months?

17 A. I can only explain in terms of my own efficiency. I
18 wasn't efficient, focused enough to get that job done
19 within a timely way.

20 449 Q. Can I ask you to look at that letter in a bit more 13:44
21 detail. I know Mr. Marrinan opened this to you
22 earlier. I have to suggest to you that it is a highly
23 disingenuous letter. I think you accepted earlier that
24 perhaps the apology should have been more prominent.
25 That was your answer earlier. 13:45

26 A. That's correct.

27 450 Q. And I suggest to you that if you look at the letter,
28 it's replete with self-justification before you even
29 get to the word "*apologise*".

1 A. Well, I wouldn't use the word -- terminology
2 "self-justification". But I agree, I think the letter
3 would have been better written with the apology at the
4 top.

5 451 Q. You have received a very serious letter from a 13:45
6 solicitor --

7 A. Yes.

8 452 Q. -- acting for somebody who's been accused wrongly and
9 falsely of raping a child. Is there anything more
10 serious -- or can you imagine anything more serious 13:45
11 than having it said about you that you raped a child?
12 I am suggesting to you that it is difficult to conceive
13 of anything worse that can be said of somebody, than
14 that they raped a seven-year-old child.

15 A. I agree dealing with these situations is hugely 13:46
16 emotional and difficult and particularly for the adults
17 who receive these kind of letters. I understand the
18 impact it can have on adults.

19 453 Q. Emotional and difficult for whom?

20 A. Well, for the person who receives it. 13:46

21 454 Q. Yes. And yet here we are, several months later, years
22 later, by any analysis of it, but five months after you
23 receive that letter complaining about this and leaving
24 you in no doubt whatsoever about how seriously
25 Mr. McCabe was taking this, you sign off on a response 13:46
26 from Ms. McLoughlin?

27 A. That's correct.

28 455 Q. And the response says, in the first paragraph, it says:
29

1 *"what we have to do is identified in the Childcare Act.*
2 *We are a statutory body responsible for protecting*
3 *minors. We receive allegations from time to time. We*
4 *are obliged to assess the allegations and come to a*
5 *conclusion whenever the protection of a minor is at* 13:47
6 *issue."*

7
8 So if you were Mr. McCabe and you are reading that
9 letter, the first paragraph, I suggest to you, conveys
10 the impression, that, well, we did nothing wrong here, 13:47
11 we received an allegation and we were going to
12 investigate it. Isn't that what that first paragraph
13 would suggest to you?

14 A. I think it certainly was part of the issues --

15 456 Q. Yes. 13:47

16 A. -- that Mr. McCabe's solicitor raised with us, was our
17 statutory basis for action, so that was put in at the
18 beginning.

19 457 Q. Yes, if that was legitimate, I suggest to you, but it
20 clearly wasn't, and you knew that at the time. 13:47

21 A. Sorry?

22 458 Q. That the allegation was not legitimate, that it was
23 false.

24 A. The serious allegation was not legitimate and it was
25 false. 13:47

26 459 Q. In the Barr letter?

27 A. That's correct.

28 460 Q. And then you say:

29

1 *"I acknowledge your client's response which is that he*
2 *deems them to be wholly untrue. I note that your*
3 *letter and -- and his employer and family are aware of*
4 *these allegations."*

13:48

5
6 Yet again, a part of the letter which conveys the
7 impression that, well, you've told us that these are
8 untrue and that's left hanging there for the moment.

9 A. I interpret that as an effort to acknowledge that
10 Mr. McCabe has denied them as wholly untrue.

13:48

11 461 Q. Sure.

12 A. To acknowledge that that has been heard.

13 462 Q. Then the letter says:

14
15 *"I acknowledged the Garda investigated allegations in*
16 *2006. The service was aware of the allegation at the*
17 *time. The information provided to this service concurs*
18 *with your client's account, in that the allegation*
19 *arose in the context of a game of hide and seek."*

13:48

20
21 And an explanation as to what that was. So again, we
22 concur with your client's suggestion that it's untrue.

23 A. That's correct.

24 463 Q. As a matter of fact, isn't that right?

25 A. That's correct.

13:48

26 464 Q. And then we find, at the very end, an apology of sorts,
27 to the effect that: a mistake was made in my previous
28 correspondence.

29 A. That's correct.

1 465 Q. well, that's the full extent of the apology that's
2 provided in that letter; and I apologise that a mistake
3 was made in my previous letter?
4 A. That's correct.

5 466 Q. At a time when you and Ms. McLoughlin knew about 13:49
6 everything that had happened before in relation to this
7 allegation?
8 A. That's correct.

9 467 Q. That it had been erroneously placed on the file, that
10 files had been opened in respect of Maurice McCabe's 13:49
11 children, himself, that a Garda notification had been
12 sent twice in error, once containing this false
13 allegation and a second time containing an additional
14 allegation or keeping a second allegation?
15 A. That's correct. 13:49

16 468 Q. And then, *"I can confirm that no allegations of digital*
17 *penetration have been made in relation to your client."*
18 And again, even then an attempt to sort of clarify or
19 qualify that by reference to something else.
20 *"I am not aware of any other allegation made by the 13:50*
21 *complainant regarding a third party. If further*
22 *information regarding the matter comes to our*
23 *attention, I will bring it to your attention."*
24

25 Again, an attempt to qualify that by saying, look, I 13:50
26 know I made a mistake in the previous letter. That is
27 kind of really the height of it, isn't it?
28 A. well, the letter has gone off my screen, but I
29 interpret that as there was a reference in the

1 solicitor's letter --

2 469 Q. There was.

3 A. -- about a third party, so I think it was to clarify

4 that we are not aware of any other information.

5 470 Q. But you were also asked a number of other things in 13:50

6 that letter from Mr. Costello: how did it happen, can

7 you explain it, and so on?

8 A. That's correct.

9 471 Q. But you chose simply to deal with one minor issue in

10 the context of the apology or for the purposes of 13:50

11 qualifying the apology, isn't that right?

12 A. I accept that, yes.

13 472 Q. So do you now accept that that apology is wholly

14 insufficient?

15 A. I think the apology certainly could have been much more 13:51

16 elaborate and I think in terms of maybe we didn't fully

17 appreciate the impact the whole situation was having on

18 Mr. McCabe.

19 473 Q. You see, I'm suggesting to you that that's consistent

20 with the suggestion that you are covering up what was 13:51

21 going on all along by only identifying the need to

22 apologise by reference to one previous letter, and that

23 that is at a time when you knew that all those other

24 things had happened in relation to this false

25 allegation? 13:51

26 A. Yeah, and I appreciate, sir, we were not using this as

27 an opportunity to apologise for the whole sequence of

28 events that are certainly highlighted now. We were

29 apologising for the inaccurate communication.

1 474 Q. Barr letter?
2 A. That's correct.
3 475 Q. And that alone?
4 A. At that point, yes.
5 476 Q. Is it the case that you thought that that might be 13:51
6 enough, because you hadn't at that point been asked for
7 the data protection documents?
8 A. I think at that stage we were unsure what the follow-on
9 implications would be in terms of communication back
10 from Mr. McCabe's solicitors. 13:52
11 477 Q. You weren't sure what might happen to you and to Tesla
12 in the event of other information being revealed to
13 Sergeant McCabe?
14 A. Well, the data request didn't come in until the
15 December, so there was a significant gap in that time 13:52
16 period. But we were unsure, absolutely we were unsure
17 what knock-on effects there would be.
18 478 Q. But I am suggesting to you that it wouldn't have been
19 necessary to make a data request if you had been
20 fulsome in response to the letter from Mr. Costello? 13:52
21 A. I accept that.
22 479 Q. And I suggest to you that the inescapable conclusion
23 must be that you attempted to conceal the other things
24 that had occurred on the file at that stage in the hope
25 that they would all go away? 13:53
26 A. Sir, I don't think it was an attempt to conceal. I
27 think it was a focusing on the particular error that
28 had been made and to apologise for that.
29 480 Q. I suggest to you that is consistent with the quote "NO

1 *BLAME policy*" that is referred to in the supervision
2 discussion with Ms. McLoughlin?

3 A. I don't accept that.

4 481 Q. At page 1107, Ms. McLoughlin forwarded to you on the
5 20th July another letter which has come in from
6 Mr. Costello in response to the letter of the 22nd
7 June. I am not going to open that letter because
8 Mr. Marrinan has opened it in full. And you will see
9 there on page 1107 Ms. McLoughlin sends it to you and
10 she says:

13:53

11 *"Please see below which requires an urgent response."*
12 Yes.

13:54

13 482 Q. That's the first time we see the word "*urgent*" anywhere
14 in any of the emails passing between the Tusla
15 officials, isn't that right?

13:54

16 A. That's correct.

17 483 Q. And then at page 1111 you'll see what your response to
18 that is. The same day, you say, it's bottom of the
19 page:

20 *"Dear Kay, has this case been passed to the*
21 *retrospective team? Thanks and regards."*

13:54

22
23
24 So Mr. Costello writes a very lengthy letter back to
25 Ms. McLoughlin, pointing out that the apology is
26 inadequate or mealy-mouthed, that it doesn't deal in
27 substance with any of the issues, and going into
28 further detail, seeking further information and
29 explanations, isn't that right?

13:54

1 A. That's right.

2 484 Q. And Ms. McLoughlin says to you when it comes in, she
3 says: Gerry, this is urgent. What are we going to do
4 now? And you say: Hand this on to the retrospective
5 team. 13:55

6 A. That's correct.

7 485 Q. I have to suggest to you that that is an example of
8 kicking the can down the road or getting somebody else
9 to take responsibility for it?

10 A. I think my response is, the retrospective team were 13:55
11 being set up as a specialist team with expertise in
12 this area and, given the complexity in this case, we
13 wanted them to apply their expertise on it, as opposed
14 to it being a kick down the road.

15 486 Q. But you had everything in front of you at the time, you 13:55
16 knew everything that had been happened, Ms. McLoughlin
17 had given you the bullet-point response --

18 A. Yes.

19 487 Q. -- setting out and identifying what had gone wrong?

20 A. Yes. 13:56

21 488 Q. Why on earth would you need somebody else to take a
22 look at it at this stage?

23 A. Because they were bringing in a regional expertise and
24 specialism to the process. That is why they were being
25 set up. 13:56

26 489 Q. But they were bringing a regional expertise to the
27 process of what?

28 A. Of dealing with all allegations against adults,
29 retrospective allegations.

1 490 Q. And when we look at what the SART allegation was
2 dealing with, we will come back to it in just a moment,
3 briefly, I suggest to you that they were dealing with
4 the concern about the McCabe's solicitor's letters
5 complaining about all of this, nothing to do with the 13:56
6 child abuse allegation at all?

7 A. No, but they had also offered to meet Ms. D as part of
8 that review process.

9 491 Q. Sure, sure. And you knew at the time when you said to
10 Ms. McLoughlin, send this off to retrospective team, 13:56
11 you knew everything that it was possible to know at
12 that particular point about the file, including the
13 fact that Ms. D had refused, on two separate occasions
14 over two years, to meet and stand over the allegations,
15 isn't that right? 13:57

16 A. That's correct.

17 492 Q. Yeah. And, in fact, if you look at what Ms. McLoughlin
18 says to you at the top of that page, she says:

19
20 *"Yes, Gerry, it has been sent to the retrospective team 13:57*
21 *and he's also advised that all solicitors' letters go*
22 *to the legal representatives."*

23
24 And that's fine. But then she says:

25 13:57
26 *"Give us a call when you get a chance. The letter is*
27 *emotional. However, it does bring up the fact that*
28 *this was not responded to when it was first made known*
29 *to us, and I cannot explain why."*

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So Ms. McLoughlin is saying to you, yeah, okay, we will send it to the retrospective team, but why don't we respond to this, or we know the answer to these things and we haven't responded to it; isn't that what she is saying?

13:57

A. I'm not sure.

493 Q. All right.

A. Can I just take a moment?

494 Q. It's at the top of page 1111. You see where she says:

13:58

"Give us a call when you get a chance. The letter is emotional. However, it does bring up the fact that this was not responded to back when it was first made known to us and I cannot explain why."

13:58

A. Okay. But my understanding of that is, Kay is saying this solicitor's letter refers to the fact that the case was not responded in '06/'07 when it was first made known to us, and Kay at that point does not know why it was not responded to in '06/'07.

13:58

495 Q. And what would the retrospective team have been able to do to find the answer to that that you didn't already know?

A. I think the retrospective team were setting a regional standard for how we respond to these situations, which they continue to do --

13:58

496 Q. Mr. Lowry, that is a different question to what I asked you.

A. Okay.

1 497 Q. How could the retrospective team provide an answer to
2 that?
3 A. About what?
4 498 Q. About why this happened, that you didn't already know.
5 What additional thing could a retrospective team 13:58
6 discover that you and Ms. McLoughlin did not already --
7 A. No, I don't think they were necessarily discovering
8 something different.
9 499 Q. Precisely. So why, when Ms. McLoughlin says to you,
10 that's fine, send it to the retrospective team, but 13:59
11 Mr. Costello's letter raises an issue as to why it
12 wasn't responded to when it was first made known to us
13 and I can't explain why?
14 A. Yes.
15 500 Q. Were you happy at that stage that it was all going off 13:59
16 to the retrospective team and you wouldn't have to
17 worry about it any more?
18 A. I was happy that there were regional specialists who
19 were going to deal with it, yes.
20 501 Q. You said that repeatedly earlier on, and I am 13:59
21 suggesting to you that you weren't just happy about
22 that, you were happy that you wouldn't have to deal
23 with this problem any more?
24 A. I was happy that there were regional specialists going
25 to be dealing with it, yes. 13:59
26 502 Q. At page 1113 you will see there is the report of the
27 "*Serious Incident and Risk Escalation*". It seems to be
28 a SART report because of the personnel involved - Lisa
29 O'Loughlin and Linda Creamer --

1 A. That's correct.

2 503 Q. -- would that be right?

3 A. That's correct.

4 504 Q. It doesn't say anything about SART on it, I notice, and
5 it is also undated. But that would appear, from your 14:00
6 evidence at least, to be the case, isn't that right?

7 A. That's correct.

8 505 Q. You said earlier that there were -- that the risk
9 escalation was not a risk escalation that was limited
10 to child protection issues, is that right? 14:00

11 A. No, it is an organisational risk escalation.

12 506 Q. Yes.

13 A. It is not about child protection issues per se.

14 507 Q. So SART has a responsibility to deal with risk
15 escalation that poses a risk to the organisation aside 14:00
16 from child protection?

17 A. No, we all do. We all would complete risk escalation
18 forms if an incident of concern to the organisation
19 comes to the attention. So therefore, we are expected
20 to complete that kind of form to inform the 14:00
21 organisation about incidents.

22 508 Q. And the incident that's referred to at the top of the
23 form "*Serious Incident*", what's that? Do you see where
24 it says "*Serious Incident other than HIQA*"?

25 A. Yes. Then it goes down to "*Nature of Incident*". That 14:01
26 is where we would be expected to summarise the nature
27 of the incident.

28 509 Q. So is it your evidence that the nature of the incident
29 that gave rise to the potential risk escalation, or

1 that gave rise to the risk escalation, I suppose, was
2 the response of Maurice McCabe and his solicitors to
3 the Barr letter?

4 A. Sir, it needs to go down to that section on nature of
5 the incident. 14:01

6 510 Q. Yes. There is a reference to facts about the history.

7 A. Okay. Now, again, can I say this is not my document, I
8 didn't create this document, so you are asking me my
9 interpretation of it, okay? So when I was asked about
10 this earlier, I highlighted the sentence "*Inaccurate* 14:01
11 *details of the disclosure were given in the letter*",
12 that that's the incident, in my understanding.

13 511 Q. Yes.

14 A. But I'm interpreting it as you are.

15 512 Q. So your evidence is, as far as you interpret -- I 14:02
16 appreciate it is not your letter, and you have told us
17 this many, many -- it's not your document, you told us
18 this many times, and Ms. O'Loughlen can deal with it
19 when she comes to give evidence. But do I understand
20 your evidence to be that it is your understanding that 14:02
21 the incident giving rise to risk escalation is the fact
22 stated in the middle of the second paragraph -- full
23 paragraph: "*Unfortunately, inaccurate details of*
24 *disclosure were given in the Barr letter*"?

25 A. That is my interpretation of it, yes. 14:02

26 513 Q. That is the risk escalation?

27 A. That's my interpretation.

28 514 Q. And I suggest to you that that is a reference to a risk
29 to the organisation arising from something that the

1 organisation has done to somebody else, isn't that
2 right? It's not a child protection risk?

3 A. No, it is not a child protection issue. This is an
4 organisation-at-risk notification.

5 515 Q. But SART is the Sexual Abuse Regional Team, isn't it? 14:03

6 A. That's correct.

7 516 Q. What has the Sexual Abuse Regional Team got to do with
8 something that is procedurally wrong in a letter, if
9 that is all it is?

10 A. No, sir, all sections of the organisation are required 14:03
11 to complete this kind of risk escalation when an issue
12 of concern comes to their attention. It's not
13 exclusive to SART, it's not exclusive to any area. We
14 are all obliged to complete a risk notification when a
15 serious incident comes to attention that senior 14:03
16 management should know about. So it was based on that,
17 I am interpreting, that Lisa O'Loughlen completed it.

18 517 Q. And then over the page --

19 **CHAIRMAN:** Sorry, maybe if you just help me. Is that
20 something to do with the State Claims Agency, 14:03
21 Mr. O'Brien?

22 A. I think those kind of instances, there is a decision
23 made then if it needs to be notified to the State
24 Claims Agency, there is consideration of it, what to do
25 with it then by senior management. 14:03

26 **CHAIRMAN:** Yes.

27 518 Q. **MR. MCGARRY:** Can I suggest to you that the incident
28 could never be said to be confined to simply the Barr
29 letter.

1 A. Sir, I feel I am being brought into an interpretation
2 of Lisa O'Loughlen's letter. I don't know, right. I
3 think I'm coming in from my perspective, in terms of my
4 concerns in the case, but --

5 **CHAIRMAN:** well, what you seem to be saying is, look, 14:04
6 there's another process involved here which is State
7 Claims - Mr. O'Brien; Mr. O'Brien is the head of State
8 Claims, or was, certainly, and that's something you
9 have to be aware of as well, is that the idea?

10 A. Yes. 14:04

11 **CHAIRMAN:** I mean, there is a reference to misfeasance
12 in public office, which is a tort, and I don't know if
13 you know that it is a tort.

14 A. Right.

15 **CHAIRMAN:** But it is a tort, and that is the same as 14:04
16 rolling over somebody's foot in a car.

17 A. Right.

18 519 Q. **MR. MCGARRY:** Maybe I'm being unfair to you, Mr. Lowry,
19 because I appreciate it is not your document, but you
20 did decide that this should be referred to SART, isn't 14:05
21 that right?

22 A. That's correct.

23 520 Q. And I'm just querying your motivation in sending it off
24 to SART in circumstances where all that SART seems to
25 be told about is the Barr letter mistake. 14:05

26 A. I understand.

27 521 Q. When you knew and Ms. McLoughlin knew that there were a
28 whole litany of mistakes that were as serious, if not
29 more serious, than the Barr letter?

1 A. Yes, okay, I understand.

2 522 Q. Do you accept that there were a litany of mistakes --

3 A. Yes.

4 523 Q. -- that are serious or more serious than the Barr
5 letter? 14:05

6 A. Well, there was certainly a litany of mistakes about
7 the course of the case, yes.

8 524 Q. Garda notification being one?

9 A. I fully accept there was a litany of mistakes
10 throughout the course of the case, but -- 14:05

11 525 Q. Yeah. But at this time, of course, Sergeant McCabe
12 doesn't know necessarily about the Garda notification,
13 sure he doesn't?

14 A. That's correct.

15 526 Q. Yeah. And his solicitor is writing to try and find out 14:05
16 what really went on here on the files?

17 A. That's correct.

18 527 Q. And nobody is choosing to tell him; rather, you're
19 choosing to get somebody else to look at it on the
20 basis that it's really only limited to the Barr letter, 14:06
21 isn't that right?

22 A. I'm not sure -- if you could, sorry, move the screen
23 back up to the "*Nature of the Incident*". In terms of,
24 I think your suggestion, that we are only referring to
25 the Barr letter, I think the nature of the incident 14:06
26 does indicate that there was knowledge going back to
27 the '06 phase on the case, but again, I think it was
28 Kay and Michael Cunningham is referenced as the people
29 who did that transfer. Again, I wasn't party to those

1 discussions with the SART team and the local social
2 work service about what exactly was passed on, but I
3 don't believe the suggestion that we were withholding
4 information from SART in order to influence them in
5 some way. In the normal course of things, files are 14:06
6 seen, there is full disclosure.

7 528 Q. Where does it say in the body of that form or report
8 that there was a Garda notification at all?

9 A. It doesn't go into that detail. But I think, I'm just
10 referencing, it starts off "*Report made to social work 14:07*
11 *service in '06*". There some knowledge about the
12 history of the case, certainly.

13 529 Q. And then just over the page, there's a reference to
14 SART obtaining legal advice and the reference to the 14:07
15 correspondence being sent to the chief executive on the
16 basis that decent standards of public administration
17 should be adhered to, and the advice of the legal
18 team -- or, sorry:

19
20 "*Tusla Legal have advised SART to seek to meet Ms. D to 14:07*
21 *assess whether her disclosure is credible to proceed*
22 *the matter to investigation.*"

23
24 what did you understand that to mean?

25 A. I understand that to mean that they are implementing 14:07
26 the section 3 policy with a view to undertaking an
27 assessment.

28 530 Q. Okay. We have already been over this with Mr. Marrinan
29 and I'm not going to get into it in any great detail,

1 but I have to suggest to you that that is an
2 extraordinary suggestion after all of these years, in
3 light of the reference to "unfounded" at the top of the
4 page, that the legal team would say, look, maybe the
5 best -- and I suggest to you that the only conclusion 14:08
6 that can be drawn is that they are attempting to push
7 the matter off, kick it back, find some way of not
8 dealing with it at the time. I am suggesting to you
9 that, in light of the fact that Ms. D, and you knew
10 this, Ms. McLoughlin knew it, I don't know whether SART 14:08
11 knew it, and we will find that out in due course, that
12 Ms. D had previously refused to come up and stand over
13 the allegations that were made, that any attempt now to
14 restart or re-investigate the much earlier allegation
15 couldn't make any sense at this stage? 14:09

16 A. Okay. Sir, can I maybe just suggest, I think it's a
17 suggestion that those steps had to be done again in
18 order to close the case properly. I mean, I suggest
19 the regional specialist team still felt they had to
20 seek to meet Ms. D, do some assessment before 14:09
21 proceeding, that those steps, even though it was
22 very -- the case was so old, based on legal advice, it
23 seems to be in some sense that we still have to do
24 that.

25 **CHAIRMAN:** So does SART refer to sexual abuse 14:09
26 retrospective team or regional team?

27 A. I think it is retrospective.

28 531 Q. **MR. MCGARRY:** You see, I have to suggest to you,
29 Mr. Lowry, that your evidence is consistent with the

1 other witnesses from Tusla who have given evidence,
2 which is to attempt to explain and justify things
3 rather than to come clean and accept that there were
4 catastrophic errors made as you went along.

5 A. Well, sir, I don't accept that. I have been open from 14:10
6 the start that we have made errors here and I think the
7 professionals locally have taken responsibility for our
8 series of errors, which I fully accept have had
9 terrible consequences for Mr. McCabe and his family,
10 which is wrong. 14:10

11 532 Q. You knew that in August 2016 the victim had stated,
12 Ms. D had stated she wanted nothing more to do with
13 this, isn't that right?

14 A. That's correct.

15 533 Q. Yeah. What on earth did you think SART or anybody 14:10
16 could do after August 2016 when she said, I want
17 nothing more to do with this?

18 A. Sir, I appreciate -- the SART team took that legal
19 advice independent of me. I wasn't doing oversight of
20 the SART team decision to seek to meet Ms. D. You 14:10
21 know, they didn't consult with me about that at that
22 point in time, for example.

23 534 Q. I'm suggesting to you that your evidence and the
24 evidence of some of your colleagues is in contrast to
25 the evidence of Ms. Brophy, who, when she noticed that 14:11
26 there was an error made, immediately sought to have it
27 rectified; in fact, did it on two occasions - on the
28 14th and on the 16th May 2014, because she was very
29 concerned about the effect that this might have.

1 A. Yes.

2 **CHAIRMAN:** It may be a little unfair, Mr. McGarry, to
3 say that Ms. D said she didn't want anything more to do
4 with it.

5 **MR. MCGARRY:** Yes. 14:11

6 **CHAIRMAN:** But that is certainly so. But then there
7 was an interview apparently in *The Irish Times* in 2017,
8 which is a full year later.

9 **MR. MCGARRY:** Yes.

10 **CHAIRMAN:** And again, I'm not criticising anybody for 14:11
11 that, but people, I know, in a particular context, do
12 go a bit hot and cold about things.

13 **MR. MCGARRY:** Yes, Chairman.

14 **CHAIRMAN:** Yes.

15 **MR. MCGARRY:** Yes. We can come back to that, I think, 14:11
16 with the relevant witnesses.

17 535 Q. Again, Mr. Lowry, I'm suggesting to you that the
18 evidence that you provided to the Tribunal, certainly
19 the detail of the evidence that you eventually provided
20 to the Tribunal, is in stark contrast to the original 14:12
21 statement that you gave, which is very short and vague.

22 A. Sir, can I make a point? I appreciate that point was
23 made yesterday. We were asked to give a brief page
24 statement to start the process. It wasn't expected to
25 be the full comprehensive -- I think everybody -- I 14:12
26 didn't see them -- put their statements on a page. It
27 was supposed to be, what do we remember, what did we
28 see. It wasn't expected to be a comprehensive report.
29 It was the first stage of the process. So I don't

1 accept that I was holding information back at that
2 point in time. There has been a whole disclosure
3 process since.

4 536 Q. And I suggest to you that even in your evidence to the
5 Tribunal today and yesterday, you've attempted to find 14:12
6 a way of explaining things where catastrophic mistakes
7 were made, by reference to things like processes and
8 the file and the way in which the MTP was managed and
9 the fact that you didn't have resources. And I suggest
10 to you that, in light of the seriousness of all that's 14:13
11 happened, it would be more appropriate for you to
12 simply take responsibility for what's happened and
13 admit that the mistakes occurred and admit on the part
14 of the various people who made the mistakes at the
15 various times? 14:13

16 A. And, sir, I feel I have been taking responsibility for
17 my mistakes personally and for the mistakes within the
18 service that we are professionally accountable for and
19 organisationally accountable for. But I am also asked
20 during the process for explanations and then I give my 14:13
21 management understanding of the explanations of why
22 these things happen. That is part, I think, of the
23 understanding -- or in responding to the questions, I
24 do not mean those as excuses. All the mistakes were
25 within our power and control, right, so they're not 14:13
26 meant as excuses. I am asked why do I think that
27 happened. I give the best explanation I can. They're
28 not excuses.

29 537 Q. Do you consider that Tusla has a duty to ensure that

1 false information about people is not published?

2 A. Yes.

3 538 Q. And you'd have a duty to ensure that Maurice McCabe is
4 not made the subject of a false allegation of rape?

5 A. Absolutely, yes.

14:14

6 539 Q. I suggest to you that you failed to ensure that that
7 duty was complied with in this case.

8 A. I think certainly Ms. McLoughlin's letter, writing with
9 the false information, was a catastrophic error for
10 Mr. McCabe and his family.

14:14

11 **MR. MCGARRY:** Thanks, Mr. Lowry.

12

13 **END OF CROSS-EXAMINATION BY MR. MCGARRY**

14

15 **MR. MARRINAN:** There doesn't appear to be any
16 questions.

14:15

17 **CHAIRMAN:** Sorry, there is. Mr. O'Higgins.

18

19 **MR. LOWRY WAS CROSS-EXAMINED BY MR. O'HIGGINS:**

20

14:15

21 540 Q. **MR. O'HIGGINS:** Mr. Lowry, my name is Míchéal O'Higgins
22 and I'm part of the team for An Garda Síochána. Can I
23 start with a system question in relation to file
24 management procedures, just to step back from the
25 specifics for a moment and just deal with, if you don't
26 mind, a system query I have. I think, in fairness to
27 you, you have provided -- there was available in the
28 papers what I think is a 46-page statement that you
29 provided to Tribunal investigators, isn't that right?

14:15

1 A. That's correct.

2 541 Q. And I suppose that was on foot -- that was following an
3 interview with investigators, that's the truth of that?

4 A. That's correct.

5 542 Q. Now, am I correct in my understanding that there was no 14:15
6 longer retained on the Tusla file a copy of the written
7 referral from Laura Brophy?

8 A. That's correct.

9 543 Q. So in terms of a system inquiry, if it is the case that
10 a HSE employee is alerted to the fact that, we'll call 14:16
11 it a report, that a report contains incorrect or
12 inaccurate information, would you agree with me it
13 would be -- it would be good practice to keep the
14 incorrect report on file but take whatever steps are
15 necessary to ensure that the file contained sufficient 14:16
16 warning to alert the reader to the mistake and to
17 ensure that the mistake is not acted upon later on?

18 A. That's correct.

19 544 Q. Would you agree that would be a prudent --

20 A. No, that is good data management. That is what should 14:16
21 have been done in May 2014.

22 545 Q. Right. And that'd be good practice because, first of
23 all, first and foremost, it addresses the risk that
24 somebody who's reading the file later would take
25 further steps on foot of the incorrect information? 14:17

26 A. That's correct.

27 546 Q. And secondly, it's a good idea, isn't it, because it
28 enables the person reading the file to know when the
29 incorrect report came in?

1 A. That's correct.

2 547 Q. And therefore, if the incorrect report is retained on
3 file but with sufficient warning flare as to it being
4 incorrect, put on the file alongside it, that would
5 obviate the need for a record as to when the incorrect 14:17
6 report is destroyed or given back?

7 A. That's correct.

8 548 Q. And that, broadly speaking, would you agree with me,
9 that would be a better system than shredding or
10 actually giving back -- removing from the file the 14:17
11 incorrect report?

12 A. That's correct. That is what should have been done in
13 May 2014.

14 549 Q. You mentioned, in dispatches, Garda liaison meetings.
15 I think, am I correct in understanding these are held 14:18
16 between Tusla social workers and the Garda Síochána
17 liaison officers?

18 A. That's correct.

19 550 Q. And do you have detail of when those periodic meetings
20 happened? 14:18

21 A. The service has -- Denise Duignan has that information,
22 is the secretary in Cavan. She looked after the Garda
23 liaison folders, for example.

24 551 Q. All right. Perhaps we can address that with her when
25 we have that information. Now, could I ask you, 14:18
26 please, to look at document 1024. This, now, is --
27 sorry, it's a continuation of your own lengthy
28 interview report with the Tribunal investigators, isn't
29 that right?

1 A. That's correct.

2 552 Q. And the reason I've brought to your attention page 1024
3 is that it covers your understanding of matters as to
4 appropriate procedures in 2013. I think you've already
5 stated this in evidence but just to go over it very 14:19
6 briefly again: Am I correct in my understanding, by
7 2013 there was an understanding amongst you and your
8 colleagues that you should be implementing the report
9 of Mr. Justice -- the judgment of Mr. Justice Barr?

10 A. That's correct. 14:20

11 553 Q. In the case of some years previously?

12 A. That's correct.

13 554 Q. And therefore, by 2013, the realisation was and the
14 practice was, the desired practice was that Tusla were
15 obliged to inform, in this case Maurice McCabe, an 14:20
16 alleged perpetrator, about an allegation, isn't that
17 so?

18 A. That's correct.

19 555 Q. And to carry out an assessment of whether there was a
20 risk or a future risk to children? 14:20

21 A. That's correct.

22 556 Q. Now, I know in this case that the Barr letter, as it's
23 termed, I think, in different people's statements, it
24 actually issued in December 2015, isn't that right?

25 A. That's correct. 14:20

26 557 Q. I appreciate you've given evidence that it was -- you
27 were provided with the draft earlier by a colleague?

28 A. That's correct.

29 558 Q. But it actually issued prior to Christmas 2015, isn't

1 bluntly ask you: Presumably you'd regret any reference
2 in the Barr letter that carried the incorrect
3 information relating to, relating to the rape
4 allegation?

5 A. Absolutely, yes. 14:22

6 562 Q. And you have made that clear, in fairness.

7 A. Yes.

8 563 Q. But I take it, the decision to actually send out a Barr
9 letter, provided it was confined to the 2006
10 allegation, is something that you would continue to 14:22
11 stand over?

12 A. That's correct.

13 564 Q. So, as far as Tusla is concerned, that remained a
14 correct thing to do, to send out a Barr letter,
15 provided it reflected the 2006 allegation and no more? 14:22

16 A. That's correct.

17 **CHAIRMAN:** I think again you're right about that,
18 Mr. O'Higgins, but if I am remembering the evidence
19 correctly, and I would be like to be corrected if I am
20 wrong, I think the procedure has somewhat changed and a 14:23
21 much more bland kind of letter is sent out nowadays.

22 **MR. O'HIGGINS:** Yes.

23 **CHAIRMAN:** In other words, not giving details, but
24 suggesting would you like to meet on a matter of
25 interest? Am I wrong in thinking that? 14:23

26 A. I think that certainly is an option. But there's also
27 criticism of that approach from some areas as well.

28 **CHAIRMAN:** It's not done in every case?

29 A. No.

1 **CHAIRMAN:** Right.

2 A. I think it becomes professional discretion.

3 **CHAIRMAN:** I picked that up wrong, okay.

4 565 Q. **MR. O'HIGGINS:** All right. Can I ask you then to deal
5 with the Tusla notification itself then, which I think 14:23
6 is to be found at page 1799. Just for your assistance,
7 Mr. Lowry, this is the amended notification, amended
8 from the previous one that had been notified in May
9 2014. Do you have that there on the screen?

10 A. Yes, I do. 14:24

11 **CHAIRMAN:** Maybe just give a date for the purpose of
12 the transcript, Mr. O'Higgins.

13 **MR. O'HIGGINS:** Certainly, Judge.

14 **CHAIRMAN:** 1799?

15 **MR. O'HIGGINS:** It's 1799. It carries -- do you see at 14:24
16 the top right-hand corner, Mr. Lowry, it carries the
17 date the 10th of June?

18 A. Yes.

19 566 Q. But, in fact, there's also a date on page 2 of the
20 document which is at page 1800, where there's a 14:24
21 signature box "*Designated social worker dealing with*
22 *this matter is Carmel McAulay, social work team leader,*
23 *and also Seamus Deeney, designated officer.*"

24 A. That's correct.

25 567 Q. And I think there's a date beside Mr. Deeney's 14:24
26 signature of, I think is it 7th June 2014?

27 A. 20th, I see.

28 568 Q. The 20th, that would make more sense. The 20th. So
29 the position, therefore, is that we see from this

1 document, which appears to carry a date-stamp, looking
2 at the date-stamp at the top of the page 1799, the
3 "date of receipt" stamp is 24th June, and this is
4 addressed to the superintendent in charge at Bailieboro
5 Garda Station, isn't that right? 14:25

6 A. That's correct.

7 569 Q. You'd agree with me, I take it, that, from this
8 document, the Gardaí, who are the recipient of it in
9 Bailieboro, were entitled to assume that the only
10 allegation being notified in this now, post the 14:25
11 amendment -- post the repairing of the error --

12 A. Yes.

13 570 Q. -- the only allegation being notified is the 2006
14 allegation?

15 A. That's correct. 14:26

16 571 Q. And there's nothing else to be notified, isn't that
17 right?

18 A. That's correct.

19 572 Q. And the recipient is -- presumably you'd accept the
20 Gardaí are entitled to accept what is said there at 14:26
21 face value?

22 A. Yes.

23 573 Q. And if it was the agreed understanding that after the
24 matter had been clarified in correspondence, that the
25 subject of the notification was one and the same as the 14:26
26 subject of the concluded Garda investigation back in
27 2007, the Gardaí were entitled to assume, weren't they,
28 that was the end of the matter?

29 A. Yes.

1 **MR. O'HIGGINS:** That is so and that is acknowledged.
2 **CHAIRMAN:** Yes.
3 **MR. O'HIGGINS:** But just in terms of, insofar as --
4 **CHAIRMAN:** The substance of it.
5 **MR. O'HIGGINS:** Yes. 14:28
6 **CHAIRMAN:** Yes.
7 **MR. O'HIGGINS:** And, of course, I suppose, Chairman,
8 this doesn't arise for this witness, but I'd say
9 insofar as the primary matter this Tribunal is
10 inquiring into is whether An Garda Síochána wrongfully 14:28
11 deployed this rape allegation to sully Maurice McCabe,
12 I think it is relevant and it is proof that assists in
13 debunking that conspiracy theory that the Garda
14 Síochána do not appear to have used that additional
15 line there, or certainly there's no evidence of it. 14:28
16 **CHAIRMAN:** Yes, but where is the correspondence between
17 the Gardaí then and Tusla asking is it the same? If
18 it's around, it's around, Mr. O'Higgins. I mean, you
19 can point it out to me on another occasion if you want.
20 **MR. O'HIGGINS:** I'm happy to do it now, Chairman. If 14:28
21 you wouldn't mind turning to page 1789.
22 **CHAIRMAN:** Yeah.
23 **MR. O'HIGGINS:** There is Jim Sheridan, Chief
24 Superintendent, is writing to Fiona Ward of Rian, and
25 he is asking: 14:29
26
27 *"In order to progress your request, can you provide*
28 *clarification of the following points: does the*
29 *referral in question relate to a previous disclosure*

1 *which was investigated by An Garda Síochána in 2006*
2 *that subsequently resulted in the submission of a file*
3 *to the DPP or does it relate to a new/further*
4 *disclosure which requires investigation by An Garda*
5 *Síochána?"*

14:29

6 **CHAIRMAN:** Mm-hmm.

7 **MR. O'HIGGINS:** Then there's also a request for
8 clarification on how the administrative error referred
9 to occurred and came to light.

10 **CHAIRMAN:** I understand that bit. We have seen this
11 before. Thanks.

14:29

12 **MR. O'HIGGINS:** Just if it's of assistance to the
13 Chairman --

14 **CHAIRMAN:** No, it does help, go ahead.

15 **MR. O'HIGGINS:** Could I ask you to look at page 1817,
16 which is Fiona Ward's response. I needn't read it out
17 there, but it is a letter dated 18th June 2014
18 addressed to Chief Superintendent Jim Sheridan, who was
19 the sender of the letter I've just mentioned. And then
20 on page 1818, there's further material, hopefully of
21 assistance to your inquiry, Chairman. And it's a
22 letter from Fiona Ward to Chief Superintendent Sheridan
23 referring in the body of it, and this is dated 1st July
24 2014, saying:

14:29

14:30

25
26 *"Further to our recent telephone contact with Detective*
27 *Sergeant Pat O'Connell of your office seeking further*
28 *clarification regarding the administrative error*
29 *relating to a report of retrospective abuse made with*

14:30

1 *the above, I wish to clarify the administrative error*
2 *occurred as a result of typographical mistake made by*
3 *the counsellor/therapist who compiled the report."*
4

5 Then it goes on to give further detail on that. 14:31

6 **CHAIRMAN:** And so, your point in relation to that is,
7 is that given that there was this correspondence, how
8 did Tusla, nonetheless, the ship having been stopped
9 effectively, continue on to ram into the port wall?

10 I'm sorry -- 14:31

11 **MR. O'HIGGINS:** I suppose, Chairman, locating it within
12 the allegation the Tribunal is tasked to inquire into,
13 my point is that once An Garda Síochána, having made
14 efforts to clarify the matter was indeed one and the
15 same as the subject of the concluded investigation, An 14:31
16 Garda Síochána were then in a position to make the
17 decision not to re-open the 2006 investigation or to
18 initiate a new investigation into what was a rape
19 allegation.

20 **CHAIRMAN:** Yes, a rape offence. But is this directed, 14:31
21 Mr. O'Higgins, towards saying that as Tusla had
22 clarified matters to the Gardaí, I appreciate
23 Mr. Dignam told me two days ago, look, the Gardaí, at a
24 particular point, said, right, we know it's the same,
25 that's it, we're not doing anything more, what are you 14:32
26 saying - look, if Tusla had told us it's the same, well
27 then why did Tusla go ahead and write the Barr letter?
28 Is that your point or is it a different point or is it
29 you're just clarifying something?

1 **MR. O'HIGGINS:** My point is this, Chairman: it was put
2 yesterday, acknowledged delicately, but it was put, and
3 I took the trouble last night to look up the transcript
4 on it, I think it was questions from Mr. Marrinan, and
5 again locating it in the context of the Tribunal's core 14:32
6 inquiry, but it was put to this witness by Mr. Marrinan
7 that there is a suggestion there in the ether that the
8 errors played into senior management's hands insofar as
9 this allegation, a new allegation of rape against
10 Sergeant McCabe, could be used, to put it mildly, 14:33
11 discommode him, unsettle him, and then at some future
12 juncture break his resolve.

13 **CHAIRMAN:** No, I think that is a fair question,
14 Mr. O'Higgins, because I think that is something that
15 needs to be looked into, but the clarification you've 14:33
16 offered, obviously, is helpful and I have noted that
17 Sergeant McCabe's representatives haven't pursued that
18 on the state of the evidence as it now exists, but we
19 will see where we go on that.

20 **MR. O'HIGGINS:** Indeed. But just insofar as the 14:33
21 concern raised was one of the allegation being that the
22 guards somehow perhaps allowed this to fester, that was
23 my purpose in bringing the witness through it and I
24 hope clarifying the matter for you, Chairman, in
25 relation to correspondence. 14:33

26 **CHAIRMAN:** Thank you. And I did ask a question, I
27 think, a couple of days ago as to whether the fact of
28 this incorrect material had been brought to
29 Sergeant McCabe's attention and, if not, why not, but

1 in due course we can go into that. whether it is
2 significant or not we will find out. Thank you.

3 **MR. O'HIGGINS:** Thank you.

4 **MR. MARRINAN:** Nobody else --

5 **CHAIRMAN:** Sorry, Mr. McDermott, did you want to ask 14:34
6 anything?

7 **MR. MCDERMOTT:** No.

8

9 **MR. LOWRY WAS RE-EXAMINED BY MR. MARRINAN:**

10 14:34

11 575 Q. **MR. MARRINAN:** There's just a matter that has arisen.
12 Just in relation to the appropriateness of the Barr
13 letter which Mr. O'Higgins just asked you about and
14 standing over the sending of a Barr letter in the
15 circumstances in which it was sent in 2015, leaving 14:34
16 aside the actual allegation contained in the Barr
17 letter, we'd really need some clarification in relation
18 to this. The Tribunal has been given a copy of a Tusla
19 document entitled "*Policy and Procedures for Responding*
20 *to Allegations of Child Abuse and Neglect*". 14:34

21 A. That's correct.

22 576 Q. And it is dated September 2014.

23 A. That's correct.

24 577 Q. You're familiar with that document?

25 A. I am, yes. 14:35

26 578 Q. There's a reference to it on all your emails, in fact,
27 that you send back and forth?

28 A. No, that is a different document.

29 579 Q. If we could just go to page 2792 in the first instance.

1 At paragraph 2.2:

2
3 *"The Child and Family Agency must ensure that all*
4 *persons who have allegations made against them are*
5 *treated fairly with due consideration given to their* 14:35
6 *right to know who has made the allegations, the nature*
7 *of the allegations and the right to reply to them."*

8 A. That's correct.

9 580 Q. *"No final conclusion in respect of the allegations*
10 *should be made until such time as the alleged abuser* 14:35
11 *has had the opportunity to reply and participate in the*
12 *social work assessment process."*

13 A. That's correct.

14 581 Q. Is that right? If we could then just move on, at page
15 2795, paragraph 5, if we could just highlight that: 14:36
16 *"Interagency Cooperation. Practice must always be*
17 *child-centred which applies equally to the child and*
18 *Family Agency and An Garda Síochána. The safety and*
19 *wellbeing of the child always takes priority."*

20
21 And then it refers to the two agencies. Page 2796,
22 please, paragraph 6:

23
24 *"6.1 social workers must take every care in checking*
25 *the reliability and accuracy of allegations in their* 14:36
26 *assessments."*

27
28 Then we go on, it gives guidance then in relation to
29 other matters, and just if we come to paragraph 8 here,

1 because it's perhaps not important, not unimportant in
2 the context of this case:

3
4 *"Forensic Assessment:*

5
6 *Forensic assessments have little value when used to*
7 *predict future risk from non-convicted adults who deny*
8 *having offended. Therefore, the Child and Family*
9 *Agency does not undertake or commission such forensic*
10 *assessments."*

14:37

14:37

11
12 This was an assessment, is my understanding of it, that
13 was, in fact, offered to Sergeant McCabe back in 2007,
14 is that right?

15 A. It was referenced during that phase. Certainly it was
16 referenced on the file. It wasn't actually offered to
17 Sergeant McCabe.

14:37

18 582 Q. Well, no, it was a reference --

19 A. That's right.

20 583 Q. -- that he would be offered this risk assessment. But
21 it appears by 2014 that that had fallen into -- it was
22 no longer being used, isn't that right?

14:37

23 A. There was a clinical psychologist who worked in
24 Cavan-Monaghan in '06/'07 who offered that service, but
25 she had certainly moved by 2013.

14:38

26 584 Q. So if we just move on to page 2800 at the bottom there,
27 13, it says:

28
29 *"13.1. When a retrospective report is received, the*

1 *social worker will:*

2

3 *(A) acknowledge the report to the complainant;*

4 *(b) notify An Garda Síochána; and*

5 *(c) make contact with the complainant."*

14:38

6 A. That's correct.

7 585 Q. They're the preliminary steps, isn't that right?

8 A. That's correct.

9 586 Q. And then:

10

14:38

11 *"13.2 In contacting the complainant, the social worker*
12 *should:*

13

14 *(a) explain that they, the complainant, will need to be*
15 *interviewed so a full account of their story can be*
16 *taken;*

14:38

17 *(b) inform them that at this first stage of the*
18 *assessment which will have a particular status being*
19 *used as the reference point for the further assessment*
20 *to be undertaken with the alleged abuser to determine*
21 *if any children are currently at risk or whether there*
22 *is a future risk to children yet to be identified;*

14:39

23 *(c) be clear with the complainant that the social*
24 *worker's task is to assess the allegations and should*
25 *explain that no further action can be taken until such*
26 *time as a professional determination on the reliability*
27 *of the allegations has been made."*

14:39

28

29 And we know that none of that was done in this case,

1 isn't that right?

2 A. That's correct.

3 587 Q. And these appear to be preconditions then, later on.
4 If I can just move then to page 2802, paragraph 15, it
5 deals with where the complainant is a child, which
6 doesn't apply. Then it goes on to deal with anonymous
7 reports. And then at page 2804, paragraph 17, it's
8 headed "*First stage of the assessment, meeting the*
9 *complainant*", and if you look at 17.2:

14:39

10

14:40

11 *"where the alleged person has been working with a*
12 *therapist-counsellor, meeting with a*
13 *therapist-counsellor should form part of the first*
14 *stage of assessment. The social worker should explain*
15 *to the complainant the reason why other identified*
16 *people had to be spoken to and shall seek the*
17 *complainant's support in facilitating these*
18 *interviews."*

14:40

19

20 We know in this case that would be Laura Brophy, and
21 that wasn't done, isn't that right?

14:40

22 A. That's correct.

23 588 Q. Then:

24

25 *"17.4 Once the first stage of the assessment is*
26 *complete, the social worker should discuss that*
27 *assessment with their team leader or a colleague who is*
28 *experienced in working with child abuse. If a member*
29 *of An Garda Síochána is involved in the case, he or she*

14:40

1 *should similarly be consulted."*

2
3 We know there was an effort to consult with
4 Superintendent Cunningham by Keara McGlone in August
5 2014, but it wasn't accomplished, isn't that right? 14:41

6 A. That's correct.

7 589 Q. "*17.6 Details of the decision made and the process of*
8 *decision-making, including the reasons for decisions,*
9 *must be recorded on file by the social worker."*

10
11 Now, if we go on to -- page 2805 I have just read from.
12 Paragraph 18 deals with informing third parties prior
13 to what is described as the second stage of assessment.
14 Then the following page, 2806, "*Procedure in respect of*
15 *third party post immediate protective action*", and then 14:42
16 we move at 2807, which is the second stage of
17 assessment, "*Engaging with the alleged abuser*". It
18 might be pertinent to just read out 21 there:

19
20 "*The constitutional rights of the alleged abuser take* 14:42
21 *precedence over contact with the third party unless it*
22 *is deemed there is an immediate serious risk to a child*
23 *that requires action prior to informing them of the*
24 *allegations against them."*

25
26 Now, it's clear that before you get to the second
27 stage, that you have to have gone through the previous
28 stages, isn't that right?

29 A. That's correct.

1 590 Q. So contacting Sergeant McCabe in this particular
2 incident, advising him of the allegation made against
3 him, could only have arisen in circumstances where the
4 stages that we have outlined in the first stage have
5 been completed, isn't that right? 14:43

6 A. In terms of this policy, yes.

7 591 Q. Sorry?

8 A. In terms of interpreting this policy, yes.

9 592 Q. Well, is there any other policy that we don't know of
10 that could apply? 14:43

11 A. Sir, I submitted two documents: there was the letter
12 from me to staff and from me to my managers about the
13 implementation of this policy in autumn 2014, because
14 there were particular challenges. This was a very
15 contentious area within the service, and as part of the 14:43
16 motivation, I think, for setting up the regional SART
17 team so that there would be consistent application of
18 this policy.

19 **CHAIRMAN:** Yes. It seems to be - and please correct me
20 if I am wrong, Mr. Murrinan - it seems to be consistent 14:43
21 with the five-point plan.

22 **MR. MARRINAN:** Exactly, sir.

23 **CHAIRMAN:** Broadly speaking.

24 **MR. MARRINAN:** I was just going to come to that.

25 593 Q. As the Chairman has correctly pointed out, it appears 14:43
26 to be consistent with the plan of action that you and
27 Mr. Deeney had agreed upon in instructing Kay
28 McLoughlin?

29 A. That's correct.

1 594 Q. So do you want to revisit your answer to Mr. O'Higgins;
2 namely, that you stand over the sending of the Barr
3 letter regardless of the contents and the allegation
4 contained in it in December 2015?

5 A. No, I prefer not to change my view on that. I think 14:44
6 there is still an outstanding issue about how to deal
7 with unfounded allegations or situations of concern in
8 order to protect children from possible child
9 abuse/neglect.

10 595 Q. Thank you. If I could just then refer you to one other 14:44
11 matter. If you could be shown page 1100. This is the
12 email that was sent by Kay McLoughlin to you on the
13 9/2/2016, and it was subsequent to a conversation that
14 she had one-to-one with you in relation to the error
15 that had emerged in the case, isn't that right? 14:45

16 A. That's correct.

17 596 Q. And you see there with the bullet-points, I read them
18 out previously, I'm not going to go over them again,
19 but she has highlighted all the errors that occurred
20 going back to 2013 and 2014 and the wrong Garda 14:45
21 notification and how that arose, isn't that right?

22 **CHAIRMAN:** Again, for the transcript Mr. Marrinan, the
23 date of that particular one, 1110 is?

24 **MR. MARRINAN:** Is 9th February 2016, sir.

25 **CHAIRMAN:** Thanks. 14:45

26 597 Q. **MR. MARRINAN:** And it's giving a full appraisal of what
27 had gone wrong in relation to the sending of the Barr
28 letter and the information contained in it, isn't that
29 right.

1 A. That's correct.

2 598 Q. Well, that is effectively a report that was sent to
3 you?

4 A. That's correct.

5 599 Q. Was that put on the file? 14:46

6 A. I understand it was, yes.

7 600 Q. So when Lisa O'Loughlen came to review the case, because
8 if you look at page 1113, that stands in -- the
9 bullet-points listed by Ms. McLoughlin stand in stark
10 contrast to the two points that were made by Lisa 14:46
11 O'Loughlen when examining the history of the case. I
12 mean, there, you can't reconcile the two of them, The
13 only explanation for that and how that arose --

14 A. I don't, because you're asking me about Lisa
15 O'Loughlen's report, so I can't give an explanation 14:46
16 about how she formulated her words into that report.

17 601 Q. But there was nothing to prevent SART from examining
18 the file and seeing the report that she, Kay McLoughlin
19 had sent to you in the form of an email, is that right?

20 A. Absolutely not. 14:47

21 602 Q. Clearly setting out the history of the case. Thank you
22 very much.

23
24
25
26
27
28
29

END OF RE-EXAMINATION BY MR. MCGUINNESS

CHAIRMAN: Yes.

MR. LOWRY WAS THEN QUESTIONED BY THE CHAIRMAN:

1 603 Q. **CHAIRMAN:** I have just a couple of questions,
2 Mr. Lowry. I suppose the first broad question is this:
3 I mean, it would seem, and I don't know the answer to
4 this definitively yet, that the Gardaí were able to
5 actually halt this thing in its tracks -- 14:47

6 A. Yeah.

7 604 Q. **CHAIRMAN:** -- even though they got the wrong
8 notification. Now, if they can halt it, why can't you?
9 A. And, sir, I think we could have. I think in terms of a
10 professional or a manager could have said, okay, let's 14:47
11 stop this in its tracks, because there was that sense
12 of obligation to continue in order to take various
13 steps before we could close it because of the concern
14 about the possibility that children might be at risk of
15 sexual abuse. So I think there was a momentum, but 14:48
16 certainly at any stage it could have been reviewed and
17 a decision made, let's halt this.

18 605 Q. **CHAIRMAN:** But the Gardaí were able, apparently, and I
19 don't know definitively that that is the case, to do
20 that, and I still don't understand, despite all the 14:48
21 to-ing and fro-ing and the lucky-dip filing system and
22 all the rest of it, why you couldn't, and I don't know
23 if you can put your finger on any particular reason.
24 Knowing the detail of it is fine, but I'm failing to
25 see the wood for the trees, frankly? 14:48

26 A. I think if you are asking could a manager have taken
27 the case out and made a decision to close this, I think
28 that would have required, you know, a detailed file
29 review by the appropriate manager. And I certainly

1 didn't. At various stages I could have asked for that,
2 and I didn't do that.

3 606 Q. **CHAIRMAN:** Yes. Well, the second question I had was:
4 I mean, what was the reason that you don't actually
5 read the files? I mean, it's not as if you're faced 14:49
6 with that?

7 A. Okay.

8 607 Q. **CHAIRMAN:** I mean, you are faced with something that's
9 about that? [Indicating]

10 A. Sir, the explanation I would give to that, about that, 14:49
11 is the pace of the work. The numbers of cases that
12 come in require a rapid response, in terms of team
13 leaders as an example and being very overloaded. They
14 have a small number of staff, they have many, many
15 unallocated cases. Decisions are made on a continuous 14:49
16 basis about the prioritisation and reallocation. And
17 in that context, individual clinical reviews of cases,
18 audits of cases doesn't get the attention it requires
19 and that it should have.

20 608 Q. **CHAIRMAN:** Again, I want to skip ahead just a wee bit 14:49
21 to page 1819, if you wouldn't mind putting that on the
22 screen, please. And I don't intend to go through this
23 letter in full, but this seems to be a letter from
24 superintendent James Sheridan to the Assistant
25 Commissioner of the Northern Region, who would be, I 14:50
26 suppose, a regional commander. And if you look through
27 it, it's dated 3rd July 2014. Basically, he's able to
28 tell his commanding officer what happened. If you look
29 in the first page he says, look, here is what the

1 original allegation was, here's how we actually looked
2 into it, is the next page, why did we not put it on
3 PULSE, and that's said there as well, and then an error
4 comes, how did it happen, and if you see the end of
5 1821, they said it was a cut-and-paste error, so they 14:50
6 were able to say that and say that's it. I still can't
7 understand why nobody could do that in Tulsa.

8 A. Sir, I think we didn't assign a worker to do that at
9 any stage. It wasn't assigned to a social worker. It
10 was being dealt with by managers as an add-on to the 14:51
11 work. The unallocated lists with lots of children at
12 high risk dominated our thinking and our anxiety, and
13 these kind of cases where they were retrospective
14 adults against adults didn't get the attention that
15 they required. 14:51

16 609 Q. **CHAIRMAN:** The last thing I wanted to ask you about was
17 a matter that was gone through very thoroughly by
18 Mr. Marrinan, but there is just a slightly different
19 perspective that I have on it. If we wouldn't mind
20 again going back to 1106 which has already been put on 14:51
21 the screen a number of times. This is the apology
22 letter and you're asked about it. Now, you appreciate
23 I don't accept any criticism of the Tribunal legal team
24 for asking the question out there in the ether, is the
25 suggestion, by reference to coincidence, if nothing 14:52
26 else, that this was engineered, somehow, by those who,
27 let us just say, disliked Maurice McCabe?

28 A. Yeah.

29 610 Q. **CHAIRMAN:** And for the number of months while I have

1 been sitting reading stuff, I was wondering how did
2 this happen. And I am wondering if this really was a
3 cut-and-paste error where there was a template used and
4 somebody took a chunk of something else and
5 inappropriately stuck it into something it had no 14:52
6 relevance to. What would be the problem with actually
7 putting that in that letter, saying on such-and-such a
8 day, one of our very nice --

9 A. Yeah.

10 611 Q. **CHAIRMAN:** -- very good, well-trained social workers, 14:52
11 was meeting with a woman, and we will call her Z --

12 A. Yeah.

13 612 Q. **CHAIRMAN:** -- she made an allegation of the following
14 kind, which is a rape offence, and then, within a week
15 or so, three clients or four clients later she met with 14:53
16 Ms. D --

17 A. Yeah.

18 613 Q. **CHAIRMAN:** -- and because people use templates it was
19 taken out and put in there?

20 A. Yeah. 14:53

21 614 Q. **CHAIRMAN:** I mean, if you had actually said that, maybe
22 we wouldn't all be sitting here?

23 A. I accept that. I accept I think the apology was
24 holding back from any detail.

25 615 Q. **CHAIRMAN:** But why? I mean, you say there should be a 14:53
26 no blame culture, that is management speak for
27 something I don't quite understand.

28 A. Okay.

29 616 Q. **CHAIRMAN:** What is it management speak for?

1 A. I think it's management speak for, we want people to be
2 open and transparent about the mistakes they make,
3 because mistakes are normal.

4 617 Q. **CHAIRMAN:** So it's --

5 A. So we learn as an organisation. 14:53

6 618 Q. **CHAIRMAN:** well, it is black box thinking. when the
7 aircraft goes down, you get out the black box and you
8 find out why.

9 A. Yes.

10 619 Q. **CHAIRMAN:** But part of the black box thinking is that 14:53
11 you have a full explanation as to the pilot made an
12 error --

13 A. Yes.

14 620 Q. **CHAIRMAN:** -- or the engine fell off the left wing?

15 A. Yes. 14:54

16 621 Q. **CHAIRMAN:** And the reason for that was metal fatigue,
17 or whatever, and check at the last --

18 A. We could have done more transparency and openness with
19 Mr. McCabe at that point.

20 **CHAIRMAN:** All right. Thank you very much. 14:54

21

22 **END OF QUESTIONING BY THE CHAIRMAN**

23

24 **THE WITNESS THEN WITHDREW.**

25

26 **MR. MCGUINNESS:** Thank you. Sir, the next witness is
27 Ms. Kay McLoughlin. 14:54

28

29

1 MS. KAY MCLOUGHLIN, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MR. MCGUINNESS:
3

- 4 622 Q. MR. MCGUINNESS: Ms. McLoughlin, thank you. would you 14:55
5 direct your evidence towards the Chairman and if you
6 need to take a break at any time, please just signal
7 that.
- 8 A. Thank you.
- 9 623 Q. I think you qualified as a social worker in 1997, is 14:55
10 that correct?
- 11 A. That's correct.
- 12 624 Q. And I think from the year 2000 you were working in
13 Cavan in the Social Work Department as the fostering
14 social worker until January 2011?
- 15 A. That's correct, for the most part. 14:55
- 16 625 Q. Okay. I think you were also carrying out duty social
17 worker functions at the time?
- 18 A. Yes, I was part of the rota that was already outlined
19 by my predecessors here.
- 20 626 Q. I think at that stage you were doing duty social worker 14:55
21 for one day in eight or nine day rota, is that correct?
- 22 A. Yes. It depended on how many social workers were
23 available for the rota.
- 24 627 Q. Yes. Then it changed, I think, at one stage to being
25 duty social worker for a week? 14:56
- 26 A. Yes.
- 27 628 Q. Once every 11 weeks or so?
- 28 A. Or so.
- 29 629 Q. Depending on the numbers?

1 A. Depending, again, on how many social workers were
2 available.

3 630 Q. I think you were in the team leader role from July 2006
4 to May 2007?

5 A. Yes, I was in an acting position to replace maternity 14:56
6 leave.

7 631 Q. And I think at that point in time you were reporting to
8 Mary O'Reilly?

9 A. That's correct.

10 632 Q. On the fostering side, is that right? 14:56

11 A. That's correct.

12 633 Q. And then on the social work side you were reporting to
13 Carmel McAulay at that time?

14 A. That's correct.

15 634 Q. And then in 2011 you were acting office team leader in 14:56
16 two different posts?

17 A. That's correct.

18 635 Q. I think in the first half of the year you were team
19 leader in the children in care fostering area?

20 A. That's correct. 14:56

21 636 Q. And then in the second half of the year you were
22 responsible for child protection unallocated cases that
23 were on a waiting list?

24 A. That's correct.

25 637 Q. And you had, I think, two social workers assigned to 14:57
26 you to deal with those unallocated cases?

27 A. That's correct.

28 638 Q. I think in 2012 you moved into child protection as a
29 social worker?

1 A. Yes.

2 639 Q. And you were on the duty intake area initially?

3 A. Yes.

4 640 Q. But at some stage in 2012 you moved into the further
5 assessment area of child protection? 14:57

6 A. That's correct.

7 641 Q. And would that be applicable then once an initial
8 assessment had been done and the case had been
9 allocated?

10 A. The initial assessment would recommend further 14:57
11 assessment or the case would be on the child protection
12 notification system or it may have been a child who had
13 recently come into care. So those were the type of
14 cases that moved on to that team where I worked.

15 642 Q. I think Ms. Rhona Murphy was your team leader or line 14:57
16 manager until 2014?

17 A. That's correct.

18 643 Q. And I think you carried on your role as further
19 assessment in child protection until February 2014?

20 A. That's correct. 14:58

21 644 Q. And then you took up acting position as team leader for
22 further assessment on the child protection team?

23 A. That's correct.

24 645 Q. And was that to replace Keara McGlone, essentially?

25 A. No, that was to replace Rhona Murphy, who went on 14:58
26 maternity, my line manager.

27 646 Q. Yes. I think you were made permanent in 2014, and at
28 that point in time Louise Carolan was your line
29 manager?

1 A. That's correct.

2 647 Q. I think you were covering both counties, Cavan and
3 Monaghan, at that point in time?

4 A. Yes.

5 648 Q. And I think due to pressure on the service in August 14:58
6 and September, yourself and the other team leader were
7 each covering a county --

8 A. Yes.

9 649 Q. -- in the areas of duty intake, assessment and child
10 protection? 14:58

11 A. Yes, we -- because of the pressures and because of the
12 amount of work time spent travelling between counties
13 and given the pressure and shortage of staff at the
14 time, Gerry Lowry agreed that we would manage a county,
15 manage the two teams in one county as opposed to manage 14:59
16 one team across two counties.

17 650 Q. And when you're talking about pressure on the service
18 there, are you talking the increased demand for the
19 services of the Social Work Department?

20 A. Yes, that's correct. 14:59

21 651 Q. And Mr. Lowry has referred to the report which he I
22 think had written at that point in time, in 2014, which
23 set out the increase in demand for each county?

24 A. Yes.

25 652 Q. And in the Cavan area it appears to have almost tripled 14:59
26 in demand from 2006 onwards?

27 A. That's correct.

28 653 Q. I think in October of 2014 you took responsibility for
29 duty intake service area for Cavan and Monaghan as the

1 social work team leader?

2 A. That's correct.

3 654 Q. And you stayed and carried out that function until
4 January 2016 when you were appointed as a principal
5 social worker for Cavan-Monaghan child protection? 15:00

6 A. Yes. However, I wasn't replaced as team leader for
7 that area until April, so I continued to cover that
8 role as well.

9 655 Q. Okay. So from January 2016 you were both principal
10 social worker and you were still -- 15:00

11 A. I was still endeavouring to cover the team leader role
12 as well.

13 656 Q. Team leader role as well, okay. I think Mr. Lowry
14 became your line manager then?

15 A. That's correct. 15:00

16 657 Q. And I think the --

17 A. Seamus Deeney.

18 658 Q. -- social worker team leader role, that was filled in
19 April 2016?

20 A. Yes. 15:00

21 659 Q. And who took up that position?

22 A. Michael Cunningham.

23 660 Q. Michael Cunningham. Now, that seems like a fair bit of
24 moving around. Is that a fairly common pattern in the
25 social work services certainly in Cavan-Monaghan? 15:01

26 A. Yes, at times, at times. There is a lot of instability
27 in terms of movement.

28 661 Q. In terms of movement?

29 A. In terms of movement of staff.

1 662 Q. Yes. Now, as part of that experience that we have gone
2 through there, you had previously responsibility for
3 intake?
4 A. Yes.

5 663 Q. And could you just explain to the Chairman your 15:01
6 experience of intake of referrals?
7 A. Okay. Well, there's a duty social worker assigned to
8 carry out the function of taking in new referrals into
9 the department, so that would come through maybe a
10 letter, maybe an email, a phone call or a visit to the 15:01
11 department by somebody, or it could come from other
12 professionals, be it Gardaí through notifications or
13 hospitals, counsellors, Public Health Nurses, et
14 cetera. So the duty social worker takes that
15 information and writes it up on an intake record. If 15:02
16 it's in writing, they may contact the referrer to
17 clarify details and they check the system to see if it
18 is known to the service already and they sign off on
19 the intake record and they would leave it for the team
20 leader to sign off within 24 hours. 15:02

21 664 Q. Yes. And we know obviously that Ms. Tinnelly took the
22 call from Ms. Brophy in relation to Ms. D in this case
23 in August 2013. Did you have any hand, act or part in
24 dealing with the file at that point?
25 A. No. 15:02

26 665 Q. Would you have been at that referrals meeting the
27 previous -- the following Monday, 12th August?
28 A. I can't answer that. It's unlikely I may have been on
29 leave, but I was aware the referral had come in at some

1 point during that period afterwards.

2 666 Q. We will come to that.

3 A. But I had no role in it.

4 667 Q. Yes. We will come to that in due course,
5 Ms. McLoughlin. Can I ask you this: The way in which 15:03
6 it came in in this case, there was nothing unusual
7 about that, from your knowledge?

8 A. No.

9 668 Q. And in terms of the amount of information put on the
10 intake form in this case, there's nothing unusual about 15:03
11 that in itself?

12 A. No.

13 669 Q. And Ms. McGlone has given her evidence about that and
14 she gave evidence that she endorsed the form with an
15 instruction duty to notify. Now, what would you 15:03
16 understand that to mean and when ought that to have
17 occurred?

18 A. I would understand that to mean that it was to be
19 notified to the Gardaí. That intake record also has a
20 tick box -- 15:04

21 670 Q. Yes.

22 A. -- which allows her notification to the Gardaí. So she
23 says duty to notify the Gardaí. So as part of the
24 process of the referrals after the team leader signs it
25 off, it then goes to a referrals meeting, where 15:04
26 decisions are made about pathways or allocation, et
27 cetera. After that referrals meeting, the files go
28 back to the administrator to record on the system, to
29 put it up on our systems, including the Measuring the

1 Pressure system and the file index system and the
2 referrals -- the new referrals system. After that, the
3 administrator would hand the file back to the duty
4 social worker to complete that Garda notification.
5 That would be standard practice. 15:04

6 671 Q. Yes. Now, in your experience is that normally done or
7 ought to be done when it's accepted by the referrals
8 committee meeting and a file is created?

9 A. Yes. That is normal in Cavan-Monaghan, yes.

10 672 Q. You obviously looked into this, and we will come to 15:05
11 your account that you gave and provided to Mr. Lowry,
12 but you examine the form that was signed off on by
13 Ms. McGlone and created by Briega Tinnelly. Would you
14 have expected that to have resulted in a duty
15 notification to the Gardaí at that point in time? 15:05

16 A. Em...

17 673 Q. Or very shortly thereafter?

18 A. Well, I'm not sure. My understanding, I was aware that
19 there was a case open in relation to this in 2006/2007.
20 I had no role in it but I was aware of it. So I would 15:05
21 question whether the Gardaí had already dealt with it.

22 674 Q. Yes.

23 A. Before maybe ticking that box.

24 675 Q. But leaving aside your knowledge of the 2006/2007
25 era -- 15:05

26 A. Okay.

27 676 Q. -- you would have expected an intake record, approved
28 by the team leader to result in a notification to the
29 Gardaí fairly soon thereafter?

1 A. Sorry, you're asking me that -- should a Garda
2 notification have been sent?

3 677 Q. At that time.

4 A. Well, that would be the norm. That was the instruction
5 that Ms. McGlone had given. 15:06

6 678 Q. Yes. You see, because when you were asked -- when you
7 looked at the file after Mr. Costello's letter?

8 A. Mm-hmm.

9 679 Q. You seem to have made a presumption that there was a
10 notification to the guards at that time? 15:06

11 A. Yes.

12 680 Q. Now, you obviously must have looked at the form --

13 A. Yes.

14 681 Q. -- at that point in time?

15 A. Yes. I believe I made that comment based on that 15:06

16 instruction.

17 682 Q. Yes. Well, did you draw that conclusion based upon the
18 fact that the notification box was ticked?

19 A. On both, on both.

20 683 Q. On both? 15:06

21 A. Yes.

22 684 Q. On both, okay. But presumably also at that time you
23 would have seen the letter that Ms. McGlone had written
24 to Inspector Cunningham?

25 A. Yes. 15:07

26 685 Q. And did you see that did not enclose any notification?

27 A. Yes.

28 686 Q. Okay. And did you see that that did not enclose any
29 copy of a report from Rian?

1 A. Yes.

2 687 Q. Okay. So my question, therefore, is: Looking at that
3 intake file, on what basis did you conclude that the
4 Gardaí had been notified in August 2013?

5 A. Based on the instruction that it be done by Keara 15:07
6 McGlone to the duty worker.

7 688 Q. So that was an assumption on your part?

8 A. An assumption, yes.

9 689 Q. And have you any evidence or information that, in fact,
10 it was notified to the Gardaí? 15:07

11 A. No. I have no evidence that it was, and I don't
12 believe it was.

13 690 Q. Thank you.

14 **CHAIRMAN:** Mr. McGuinness, are we looking at it from
15 the point of view of the Monday meeting, is it, which 15:08
16 is Monday 12th August 2013?

17 **MR. MCGUINNESS:** Yes, yes, in the period immediately
18 after that.

19 **CHAIRMAN:** In the weeks after that?

20 **MR. MCGUINNESS:** Yes. 15:08

21 **CHAIRMAN:** Thanks.

22 691 Q. **MR. MCGUINNESS:** Now, you've referred to the intake
23 process and the Measuring the Pressure system. Can you
24 recall at what stage you became aware that this had
25 been re-referred or had come in again. 15:08

26 A. I can't recall but I believe I was aware that it had
27 come in again, but I can't recall where or who or when.
28 It's possibly some time in late 2013, after August.

29 692 Q. Have you any memory, even the vaguest of memories as to

1 how or by what means you learned of that?

2 A. No, I can't remember. It's possible I overheard a
3 conversation in the office. It's also -- my office was
4 next door to the duty office.

5 693 Q. Yes. 15:08

6 A. So it's possible I may have overheard conversations
7 about it. The walls are quite thin between the
8 offices, so it is possible to overhear conversations.

9 694 Q. I'm not suggesting that there is anything in the nature
10 of gossiping going on, but you're all social workers in 15:09
11 there, would it not have been a point of intense
12 interest that a report had come in about a policeman?

13 A. Em, I don't think so.

14 695 Q. Okay.

15 A. I didn't hear any discussion that I can remember. 15:09

16 696 Q. Okay. I mean, you learned in some way of the referral,
17 perhaps in late 2013. Did you consult the file at that
18 point in time?

19 A. No. I had no role or authority to consult that file.

20 697 Q. Okay. And where would the file have been put at that 15:09
21 point in time?

22 A. Well, if Keara put it on a waiting list, then that
23 would be recorded on the Measuring the Pressure and the
24 file would go back into the filing cabinet and it would
25 be filed in a chronological form in the filing cabinet. 15:10
26 So our files are numbered in a systematic way.

27 698 Q. Yes.

28 A. And the filing cabinet follows that.

29 699 Q. Yes. That's what I was going to ask you about. The

1 file in relation to Sergeant McCabe, it's 02.082013 --

2 A. Mm-hmm.

3 700 Q. -- but I think that represents the fact that it's
4 created in August of 2013 and is the second file
5 created that month? 15:10

6 A. That's right. Second new file, yes.

7 701 Q. Now I was going to ask you about the issue of whether
8 there was a list or a system. You did say that you
9 were responsible for child protection unallocated cases
10 that were on a waiting list -- 15:10

11 A. In 2011.

12 702 Q. -- in 2011?

13 A. Yeah.

14 703 Q. That's where I want to start.

15 A. Okay. 15:11

16 704 Q. Was there a waiting list, as you've described it in
17 your statement?

18 A. Yes.

19 705 Q. There was?

20 A. Yeah. Yes. 15:11

21 706 Q. Okay. Where was that waiting list kept?

22 A. I think the list was used from the file index to
23 highlight unallocated cases, cases that weren't
24 allocated to a social worker to follow up. So, that
25 list was created using the drop down box on an excel 15:11
26 spreadsheet to identify cases that weren't allocated.
27 So that was how that list was created.

28 707 Q. Okay. But was this list printed out and left in the
29 duty office or beside the unallocated file cabinet?

1 A. No. No. I was given that list of cases.

2 708 Q. You were given that list?

3 A. Yes.

4 709 Q. You're talking about 2011 --

5 A. Yes. 15:11

6 710 Q. -- at this point in time?

7 A. And we didn't have a Measuring the Pressure at that

8 time.

9 711 Q. That's what I want to continue on this line.

10 A. Okay. 15:12

11 712 Q. Did the operation of that waiting list continue?

12 A. No. Not after my role ceased --

13 713 Q. Okay.

14 A. -- to my understanding.

15 714 Q. Okay. But at the time that we're talking about, in 15:12

16 2013 and 2014 and onwards, was there in fact a waiting

17 list for unallocated cases?

18 A. Yes. That was ongoing.

19 715 Q. Pardon?

20 A. It has always been an issue of cases that are 15:12

21 unallocated. There's always been a waiting list for as

22 long as I can possibly remember.

23 716 Q. Yes. And just so we are not at cross purposes, I'm not

24 simply talking about a bundle or a filing cabinet with

25 a lot of files in it that are actually awaiting 15:12

26 allocation, I am talking about an actual physical list

27 or an electronic record of a list of cases, listing

28 them in some order in which they either have been

29 received or might be awaiting allocation?

1 A. The list was compiled from the file index of all files.
2 So that would, it was compiled from that list. So drop
3 down boxes were used for unallocated. Closed cases
4 were taken out of it, and the list was created from
5 that. 15:13

6 717 Q. Okay. So is it the case that the spreadsheet -- that
7 you are talking about the excel spreadsheet, is that
8 correct?

9 A. Yes.

10 718 Q. And that cases that would be taken off it would be 15:13
11 obviously allocated and one could see from the
12 unallocated cases how many were left on the list?

13 A. Yes. Just from the -- yes.

14 719 Q. Is that right?

15 A. The file index doesn't remove cases from the file. 15:13

16 720 Q. No.

17 A. It records that they are closed. So you know, you
18 would use the excel spreadsheet to identify the open
19 unallocated cases.

20 721 Q. There is a column in which it is indicated whether they 15:13
21 are allocated or not, is that correct?

22 A. That's correct.

23 722 Q. And they remain therefore on the list, do they, whether
24 they are allocated or unallocated, but you can see
25 which -- 15:14

26 A. You will change the status and you will put the name of
27 the social worker in.

28 723 Q. Okay. Okay. Now I think we are concerned then with
29 the issue of the Measuring the Pressure system. Can

1 you just clarify one matter: when the file was created
2 in relation to Sergeant McCabe is his name recorded on
3 the Measuring the Pressure system?
4 A. Yes.
5 724 Q. And that's different from the excel spreadsheet? 15:14
6 A. Yes. Yes. Because it came in, in 2013 and the
7 Measuring the Pressure was brought in earlier that year
8 I understand.
9 725 Q. Okay. Just finally on this topic, the files are stored
10 in chronological order, are they, in the order in which 15:14
11 they were created in the cabinet, is that correct?
12 A. Yes.
13 **CHAIRMAN:** Are you sure?
14 A. The files are stored, yes, in the order. It starts
15 with the oldest files moving through our filing system 15:15
16 right up to the most recent 2017, for instance, and
17 they would be at the end of the filing cabinet. So
18 closed, opened -- closed would not be in that filing
19 cabinet.
20 726 Q. **MR. MCGUINNESS:** Yes. 15:15
21 A. Just open files.
22 727 Q. So certainly if Mr. Marrinan went up there to rummage
23 in the office for instance, he could go to the cabinet
24 or could have gone to the cabinet at that point in time
25 and he would be able to see in sequence the order of 15:15
26 cases and files in which they were created in the
27 cabinet?
28 A. Yes.
29 728 Q. And were they kept in an orderly way in fact?

1 A. Well, they'd be files -- where files are being worked
2 on by social workers, those files would be with the
3 social worker while they are working on them.

4 729 Q. Yes?

5 A. Where files were in on duty for tasks, such as 15:16
6 highlighted earlier, for completion of a task, such as
7 sending a garda notification, they may be moved back in
8 to the duty office for follow up by the duty social
9 worker. So until such time as that task was completed
10 the file would remain with the duty social worker and 15:16
11 only be returned to the filing cabinet when it was
12 completed.

13 730 Q. Yes.

14 A. There may be files with the team leader who was
15 reviewing files. 15:16

16 731 Q. Yes.

17 A. But the system seeks to record, the file index system
18 seeks to record who has the files. So, is it on file?
19 That means it's in the filing system in the
20 administrator's office. Or it will say who the file 15:16
21 was last given out to.

22 732 Q. Yes. Now the excel spreadsheet, does that indicate
23 what social worker a file has been allocated to?

24 A. Yes.

25 733 Q. In this case does the record show, to your knowledge, 15:16
26 whether it was allocated to anyone?

27 A. No. No. It doesn't. It was never allocated to
28 anyone.

29 734 Q. We will come to the circumstances in which you dealt

1 with it, but is it the case therefore that you don't
2 regard it as having been allocated to you or nor did
3 you allocate it to yourself?

4 A. No. It was an unallocated case along with many others,
5 that I was concerned about from the point of view that 15:17
6 some cases got left on a waiting list for a long time
7 and not be followed up on, and I felt I needed to --
8 and I'm obliged to, to review those files and see if
9 there's any action that can be taken or review whether
10 they should be prioritised differently. 15:17

11 735 Q. Before we get to that stage, I think you were aware
12 that there was a paper file relating to Ms. D from
13 2006?

14 A. Yes.

15 736 Q. Are you aware of any other file in relation to 15:18
16 Sergeant McCabe, other than the one created in August
17 2013?

18 A. No. I'm not aware of any other file.

19 737 Q. Can you confirm to the Tribunal whether there was an
20 electronic version of either of those files? 15:18

21 A. No. We didn't have electronic filing systems at that
22 time. They're being implemented currently.

23 738 Q. Now, in relation to the events of 2005, 2006 and 2007
24 what knowledge did you have of Ms. D's case?

25 A. I was aware that the case was open and allocated to 15:18
26 Rhona Murphy.

27 739 Q. Pardon?

28 A. I was aware that the case was open and allocated to
29 Rhona Murphy. I was aware that there was an allegation

1 in relation to the daughter of one guard who made
2 allegations in relation to another guard.

3 740 Q. And did you know the identity of the person concerned?
4 A. Yes.

5 741 Q. Okay. How is it, can you tell the Tribunal, that you 15:19
6 would have been aware of all of that if you had no
7 involvement or dealing with the file?
8 A. It just worked -- you know, we were a small team, we
9 were often aware of each other's work --

10 742 Q. Okay. 15:19
11 A. -- through maybe advice or just a discussion or
12 overhearing conversations, things like that.

13 743 Q. Well obviously you knew all of the people working in
14 the office reasonably well I take it?
15 A. Yes. 15:19

16 744 Q. And for instance Rhona Murphy?
17 A. Yes.

18 745 Q. Did you know that the file had been closed in relation
19 to -- Ms. D's file had been closed in 2006?
20 A. 2007. 15:19

21 746 Q. 2007.
22 A. I didn't know when it closed. I had no idea when it
23 closed.

24 747 Q. Yes. But did you know that it had been closed and that
25 the closure had been signed off on by Ms. Murphy and by 15:19
26 Ms. Mary Tiernan?
27 A. Well, I don't remember giving any thought to that. But
28 I didn't know that it had been signed off by Mary
29 Tiernan and Rhona Murphy. I might have made that

1 assumption after a period of time.

2 748 Q. All right. So you may not have known the particular
3 details. But may the Tribunal take it that you did
4 know at that stage that the case and the file relating
5 to Ms. D had closed? 15:20

6 A. Yes.

7 749 Q. And did you know whether there was any concern about
8 whether there was any outstanding issue recorded or
9 otherwise about Sergeant McCabe?

10 A. I can't remember. I don't -- I didn't know. 15:20

11 750 Q. Okay. Now, in your initial statement to the Tribunal
12 you told the Tribunal that when you took up your
13 position in late 2014 there was a considerable number
14 of cases awaiting allocation?

15 A. Yes. 15:21

16 751 Q. And you say you undertook along with principal social
17 worker Seamus Deeney and Gail Penders, the manager,
18 Castleblayney, to review these files and to identify
19 what could be taken -- actions that could be taken to
20 ensure that cases got an appropriate response? 15:21

21 A. Yes.

22 752 Q. Had Gail Penders any dealings with the Cavan files?

23 A. Yes.

24 753 Q. Just, you've referred to her there as the manager at
25 Tusla's Castleblayney office? 15:21

26 A. Yes.

27 754 Q. Did she have functions also in relation to Cavan as
28 well?

29 A. Yeah. She had functions in terms of family support,

1 her role was managing the family support service, but
2 she assisted the social workers with tasks.

3 755 Q. Yes. You describe it as, this review, it's not quite
4 clear to me when you commenced the review. Was it
5 shortly after you took up your position in October 15:22
6 2014?

7 A. I think that before Christmas or some time before the
8 end of the year we had, you know, come to the
9 conclusion that we needed to do something about the
10 waiting list and endeavour to address it. I can't say 15:22
11 for certain when we started to look at the files and we
12 may have alternatively looked at the files in one
13 county and then went to the other county another day,
14 you know another week, or maybe another month, to look
15 at the files in that county. 15:22

16 756 Q. Okay. But was this a process then which according to
17 your recollection commenced in or around Christmas --

18 A. Possibly.

19 757 Q. -- 2014?

20 A. Possibly, or early 2015. 15:22

21 758 Q. Okay. I see. In terms of Sergeant McCabe's file, can
22 you recollect when you first included that as part of
23 the review?

24 A. From my recollection I would have highlighted files
25 that were unallocated and classified as high priority 15:23
26 initially. So they were primarily children, you know,
27 who had -- where there was allegations of a child
28 protection nature. So I would have highlighted those
29 cases first in terms of their classification and I

1 would have reviewed those cases in the first instance.

2 759 Q. And can I just be clear about this: At this point in
3 time were you responsible for allocating cases?

4 A. Yes.

5 760 Q. And did you share that responsibility with anyone else? 15:23

6 A. No. Not -- no.

7 761 Q. And in discharging that responsibility did you have to
8 consult with anyone else before you made any decision
9 to allocate a case?

10 A. No. Obviously the role of supervision identifies the 15:23
11 capacity of social workers to take on cases. So I
12 would supervise staff on a four- to six-week basis and,
13 you know, identify what capacity they had to take on
14 new cases. So I was always aware of their capacity to
15 take on cases. 15:24

16 762 Q. Yes. And at that point in time how many social workers
17 were available to you, if you can recollect, to deal
18 with unallocated cases?

19 A. I do know that at the end of 2014 the recruitment
20 embargo seemed to relax and we got some more staff. I 15:24
21 can't remember if I had three to four staff in each
22 county at that time. And it changed depending on
23 people coming and going and delays in replacement. So,
24 roughly three to four staff in each county.

25 763 Q. As a matter of interest, did you keep any records or 15:24
26 documentation relating to social workers that you
27 allocated cases to, either on a daily, weekly or
28 monthly basis?

29 A. I would have supervision records, I would have copies

1 of the supervision records, so if I allocated a case it
2 would be recorded in the supervision record and I would
3 have copies of each member of staff, of their
4 supervision records.

5 764 Q. But apart from the supervision records, I mean they're 15:25
6 obviously intended to, as it were, look at performance
7 and improve performance and consistency and delivery of
8 service --

9 A. And guidance and advice and --

10 765 Q. Yeah, but in terms of any actual record of when a case 15:25
11 is allocated and how many are allocated per week, if
12 you are keeping statistics on that type of throughput
13 or decision-making, was there any record relating to
14 that?

15 A. No. No. There was no -- other than the Measuring the 15:25
16 Pressure, that would highlight when a case was
17 allocated, the name of the social worker. So it would
18 identify that the case was allocated and it would
19 identify the date it was allocated.

20 766 Q. Okay. 15:26

21 A. So I used that to track the allocation of cases.

22 767 Q. Okay. Can I ask you to look at a document at, it's
23 1534, it's your email of the 7th May 2015?

24 A. Okay.

25 768 Q. And I hope you're able to see that on the screen, 15:26
26 Ms. McLoughlin?

27 A. Yes. Yes, I can see it.

28 769 Q. Firstly, before we go into the text of it, have you
29 ever sent a similar email to Mr. Lowry and Mr. Deeney

1 in relation to a case that you had, as it were,
2 reviewed from the unallocated pool of cases?

3 A. I'm not sure. I don't think so. Perhaps I have, but I
4 can't -- I can't be sure.

5 770 Q. Okay. Well, would it be fair to regard this then as an 15:27
6 unusual communication in those circumstances?

7 A. I think because of the high profile of Mr. McCabe I did
8 want to bring it to Gerry's attention.

9 771 Q. Yeah. What difference would that make, if you could
10 just help me in that regard? 15:27

11 A. I just felt that the area manager needed to be aware
12 that I was following up on that case --

13 772 Q. Okay.

14 A. -- and that it was a high profile case.

15 773 Q. Okay. But what I don't understand is this: would the 15:27
16 first job not be to in fact, having reviewed the files,
17 to decide to allocate it to a social worker? You seem
18 to have jumped straight into writing a Barr letter.

19 A. Okay. Well, I didn't have the resources to allocate
20 the case to. We had social workers dealing with high 15:27
21 end child protection cases and it was difficult to
22 allocate lower priority cases at that time.

23 774 Q. Can I ask you this: Had this case got a priority in
24 any form or fashion or where was it ranked in terms of
25 priority? 15:28

26 A. My recollection is that it was ranked as a medium
27 priority.

28 775 Q. Okay.

29 A. It's possible it was low, but it was either medium or

1 low.

2 776 Q. Okay.

3 A. I can't remember.

4 777 Q. Where would that be recorded or is it recorded?

5 A. It's recorded on the Measuring the Pressure database. 15:28

6 778 Q. And just going back to the initial intake, if nothing

7 was done after the official intake except Ms. McGlone's

8 letter, and if the guards hadn't been notified in

9 August, is the priority accorded to a newly created

10 file, is that decided at the intake meeting? 15:29

11 A. Yes.

12 779 Q. Okay. Because it doesn't appear on the file itself --

13 A. No.

14 780 Q. -- in any form or fashion?

15 A. It doesn't, but it would have been, it would have been 15:29

16 imple -- certainly it was an expectation that I, as a

17 team leader, would record on the intake record what

18 property a case would be given in 2014, when I took

19 over.

20 781 Q. Yes. 15:29

21 A. So I would be expected -- and if I had forgotten to do

22 that, the administrator would remind me that I hadn't

23 put a priority on a particular case.

24 **CHAIRMAN:** Mr. McGuinness, I think we were going to

25 stop in the ordinary course at 3:30 if that is 15:29

26 possible. Just in relation then to tomorrow, I was

27 proposing -- I am sitting in McDonagh v. Sunday

28 Newspapers at three o'clock, so I was proposing to sit

29 at 9:30 and maybe take a shorter break for lunch, if

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that is possible and convenient. And then similarly, unfortunately there's another thing happening the next day so we will sit again at 9:30 the following day. So that is tomorrow.

MR. MCGUINNESS: Thank you.

15:30

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 12TH JULY 2017 AT 9:30AM

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