

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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SOLE MEMBER: MR. JUSTICE PETER CHARLETON, JUDGE OF THE
SUPREME COURT

HELD IN DUBLIN CASTLE
ON THURSDAY, 12TH APRIL 2018 - DAY 64

64

Gwen Malone Stenography
Services certify the
following to be a
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action.

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SERVICES

APPEARANCES

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

REGISTRAR: MR. PETER KAVANAGH

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

FOR SGT. McCABE: MR. MICHAEL McDOWELL SC
MR. PAUL MCGARRY SC
MR. BREFFNI GORDON BL
INSTRUCTED BY: SEAN COSTELLO & COMPANY
HALIDAY HOUSE
32 ARRAN QUAY
DUBLIN 7

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

INSTRUCTED BY: MS. ALISON MORRISSEY
MS. EMMA GRIFFIN
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR MR. BRIAN PURCELL: MR. PATRICK MCCANN SC
MR. GERARD MEEHAN BL
INSTRUCTED BY: MR. CHARLES WALLACE
CHIEF STATE SOLICITOR'S
OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR SUPT. TAYLOR: MR. MICHAEL O'HIGGINS
MS. TARA BURNS SC
MR. JOHN FERRY BL
INSTRUCTED BY: M.E. HANAHOE SOLICITORS
SUNLIGHT CHAMBERS
21 PARLIAMENT STREET
DUBLIN 2

FOR MRS. MICHELLE TAYLOR:
INSTRUCTED BY:

MR. FELIX MCENROY SC
O'MARA GERAGHTY MCCOURT
51 NORTHUMBERLAND ROAD
DUBLIN 4

FOR MR. JOHN WILSON:
INSTRUCTED BY:

MR. MARK HARTY SC
PETER CONNOLLY
COURT SOLICITORS
6 CAPEL STREET
FIRST FLOOR
DUBLIN 1

FOR JOHN MCGUINNESS:
INSTRUCTED BY:

MR. DARREN LEHANE BL
LAWLOR PARTNERS SOLICITORS
ARRAN SQUARE
ARRAN QUAY
DUBLIN 7

FOR ALISON O'REILLY:
INSTRUCTED BY:

MR. FÍONÁN Ó MUIRCHEARTAIGH BL
AUGUSTUS CULLEN LAW SOLICITORS
18 BOW STREET
SMITHFIELD
DUBLIN 7

FOR MR. NOEL BRETT:

MR. SEÁN BARTON
MCCANN FITZGERALD
RIVERSIDE ONE
37-42 SIR JOHN ROGERSON'S QUAY
GRAND CANAL DOCK
DUBLIN 2

FOR MR. GERALD KEAN:
INSTRUCTED BY:

MR. DAVID BOUGHTON BL
KEAN SOLICITORS
NO. 2 UPPER PEMBROKE STREET
DUBLIN 2

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 12TH
2 APRIL 2018:

3
4 MR. MCGUINNESS: The first witness this morning,
5 Chairman, is Mr. Gerald Kean, please. 10:02

6 MR. BARTON: Chairman, before Mr. Kean, I wonder could
7 I possibly make an application for representation?

8 CHAIRMAN: Yes, it is actually better if you sit down
9 because the microphone will get you.

10 MR. BARTON: I am terribly sorry, Judge. Seán Barton, 10:02
11 McCann FitzGerald, I am with Mr. Noel Brett who is on
12 the witness list and I believe I should formally apply
13 for representation.

14 CHAIRMAN: Yes, thank you very much. That is
15 absolutely fine. 10:03

16
17 MR. GERALD KEAN, HAVING BEEN SWORN, WAS DIRECTLY
18 EXAMINED BY MR. MCGUINNESS:

19 1 Q. MR. MCGUINNESS: For the convenience of parties,
20 Chairman, Mr. Kean made a statement to the Tribunal 10:03
21 investigators and that is to be found at volume 7, page
22 1725 of the Tribunal's papers. And Mr. Kean, I don't
23 know if you want to see that statement now or at some
24 stage but it's available to you on your left-hand side
25 or on screen, if required. 10:03

26 A. Thank you very much.

27 2 Q. Mr. Kean, I think you are a solicitor by profession
28 practising in the City of Dublin?

29 A. That is correct, Mr. Chairman.

1 3 Q. And I think on the 26th January you participated in a
2 radio programme on RTÉ radio one hosted by Marian
3 Finucane on that Sunday morning?
4 A. That is correct.
5 4 Q. Okay. We have the transcript there and I will open 10:04
6 that in a minute. But when had you been invited on
7 that programme?
8 A. I can't remember but it's normally four or five days
9 beforehand.
10 5 Q. Yes. And I think you'd appeared on that programme 10:04
11 perhaps on a number of occasions before?
12 A. Many times, yeah.
13 CHAIRMAN: Did I hear a year or was that --
14 6 Q. MR. MCGUINNESS: 2014.
15 A. On the programme, Mr. Chairman? 10:04
16 CHAIRMAN: Yes.
17 A. Was it 26th January 2014, I think. 26th January 2014.
18 7 Q. MR. MCGUINNESS: Yes. And are you told the topics in
19 advance of going on the programme?
20 A. No. Normally you are told the topics on the morning 10:05
21 when the papers are reviewed, but on the odd occasion
22 you might get a call the day beforehand or two days
23 beforehand saying oh, by the way, this is going to be
24 important to review a particular topic that was in the
25 news at the time. 10:05
26 8 Q. Yes.
27 A. But normally you would be told only on the morning.
28 9 Q. And the Sunday papers feature largely as sort of a
29 loose agenda in some ways for discussion?

1 A. Absolutely.

2 10 Q. And the events of the preceding week?

3 A. Absolutely.

4 11 Q. And had you followed the events of the preceding week?

5 A. I can't remember. I mean, I do keep reasonably up to 10:05
6 date in reading the papers.

7 12 Q. Yes.

8 A. Because --

9 13 Q. We will see obviously in a minute that quite a bit of
10 the discussion related to the proceedings of the Public 10:05
11 Accounts Committee before which the Commissioner at the
12 time, Commissioner Callinan, had appeared that week,
13 presumably you recall that?

14 A. Yes, I do, yeah.

15 14 Q. And it was a week distinguished with some controversy 10:06
16 arising from a row, in a sense, that was going on
17 between An Garda Síochána and the Public Accounts
18 Committee as to whether whistleblowers would be called
19 to give evidence, do you recall that?

20 A. I do recall that. 10:06

21 15 Q. Okay. And I am sure you didn't watch the
22 Commissioner's evidence or read the five hours of it
23 or -- but you probably saw that he caused controversy
24 in the course of his evidence when referring to the
25 actions of the whistleblowers as disgusting, he found 10:06
26 them personally disgusting?

27 A. Yes. I was aware of the controversy and I was aware
28 that it was being covered in the papers.

29 16 Q. Now, as I understand it from your statement, you had

1 met Commissioner Callinan previously, isn't that
2 correct?

3 A. Yeah, my recollection is I only ever met the
4 Commissioner once, if I met him a second time I simply
5 don't remember, and that was a charity function that I 10:07
6 was hosting in Cork in UCC in The Quad, and I was MCing
7 the event and the Commissioner was there, if I
8 recollect, with his wife and I remember meeting him
9 afterwards and being introduced to him and we had a
10 very nice conversation and my recollection is we would 10:07
11 have exchanged cards and said we must catch up again,
12 you know, it was a nice conversation, a social setting.

13 17 Q. Yes, yes. And had you invited him to that charity
14 event?

15 A. No, I hadn't. In fact, I didn't know he was attending 10:07
16 until I was given the list of dignitaries sitting in
17 the front row. There's about 2,000 or 3,000 people at
18 this event every year and it's for local charities and
19 I am normally given the list at my request as to who I
20 should acknowledge and he was on that list, but I 10:07
21 didn't invite anybody, no.

22 18 Q. Yes, yes. Well, did you have him -- you had him on
23 your phone in terms of his phone number, and did you
24 intend that he might be invited to other events?

25 A. Yeah, yeah, when we exchanged numbers, I took his 10:08
26 number and in fact I subsequently remember hosting a
27 dinner part in Drayton Manor and actually inviting him
28 and his wife to attend, but they were unable to attend
29 due to late notice. So I had his number from that

1 time.

2 19 Q. Okay. Did you have any other contact with him at all?

3 A. Other than -- I do recollect contacting him about the

4 dinner party, but that didn't go any further.

5 20 Q. Okay. 10:08

6 A. At that time. And then, there was a suggestion we

7 would meet for lunch but I was heading out of the

8 country then and by the time I came back we didn't

9 arrange anything.

10 21 Q. All right. And your attendance then at RTÉ on the 10:08

11 morning of Sunday the 26th, you'd spoken to the

12 Commissioner before that, as I understand it?

13 A. Yes, yeah. I had spoken to the Commissioner -- the

14 records, phone records, I think about four times on the

15 Saturday. 10:09

16 22 Q. Okay.

17 A. And I think the records will show that I spoke to him

18 before the programme as well.

19 23 Q. Okay. We will come to that in due course. But we have

20 a transcript of the programme, and there should be I 10:09

21 hope a loose copy of it there in front of you, is that

22 right?

23 A. Yes, I have a loose copy of the programme, yes.

24 24 Q. We have distributed, Chairman, a more complete version

25 of it showing the whole introduction by Ms. Finucane, 10:09

26 indicating the topics; I am not sure, Mr. Kean, whether

27 you have that one or is it just the one in the folder

28 you are relying on?

29 A. I just have the one in the folder.

1 25 Q. Perhaps we will give you the more complete version
2 there.
3 (Same handed)
4 A. Thank you.

5 26 Q. And I am going to try and skip over parts of it 10:10
6 obviously that aren't particularly relevant, but the
7 first page there which is page number 3, as it were, at
8 the bottom, that is Ms. Finucane introducing the
9 programme, do you see that?

10 A. Yes, I do. 10:10

11 27 Q. And she reads out a number of headlines on that page,
12 and on down to the next page, page 4, and then in the
13 middle of page 5 she introduces the guests and you were
14 introduced there after Mr. Rabbitte, who was the
15 Minister for Communications, Energy and Natural 10:10
16 resources, and the other guests were Mr. Martin
17 Donnellan, former Assistant Commissioner, Nóirín
18 Hegarty, former editor of The Sunday Tribune and
19 Managing Destination Editor with Lonely Planet, and she
20 says "we will be joined shortly by Phillip blond, 10:11
21 political philosopher". And she says at the bottom of
22 page 5:
23
24 "If I could start off, I think I will start off with,
25 there's a lot of coverage in the papers today about 10:11
26 charities, there's a lot of coverage in the papers
27 today about the Gardaí and interrelated among all of
28 that, as it were, fite fuaite is the PAC with not
29 everybody singing from the one hymn-sheet, it has to be

1 said, at the moment. So I want to go to you first on
2 this, Pat Rabbitte. You were a member of the PAC and
3 many of us will remember the hearings, it was chaired
4 by Jim Mitchell, into the DIRT Inquiry, and people were
5 very pleased, it has to be said; do you think it has 10:11
6 changed or changed for the worse or the better?"

7
8 And then Mr. Rabbitte makes a contribution on page 6
9 there, and there is some debate between Ms. Finucane
10 and Mr. Rabbitte about the way the proceedings are 10:11
11 going. It goes on to page 7. And then she turns to
12 you on page, the top, the sort of middle page 8, I
13 don't know if you see that?

14 A. I do, yes.

15 28 Q. And she says: 10:12

16
17 "Gerald? Gerald Kean."

18
19 And you are quoted as saying then:

20 10:12
21 "I totally, yeah, I suppose my views on this are very
22 clear: I totally accept what the Minister says and I
23 think you know people will know that I'm a great
24 admirer of John McGuinness, and I think the Public
25 Accounts Committee do a great job, however I have 10:12
26 concerns. And certainly it is fine for the committee
27 to pursue its main functions of checking where public
28 purse monies are going, but when it comes to a
29 situation involving the Commissioner of An Garda

1 Síochána and there is a question of criminality
2 involved, then I am very, very clear in my opinion, and
3 I think it's reflected by Mary Carr in The Mail today,
4 that matters of criminality should be left within An
5 Garda Síochána to deal with. And if, as some political 10:12
6 commentators and media persona have said this week,
7 they don't have confidence in An Garda Síochána, then
8 we have a really serious programme, because I do have
9 confidence in the Garda Síochána and I do think that
10 matters of criminality, where there's allegations of 10:13
11 criminality have to be dealt with within the force.
12

13 Ms. Finucane: But the force investigating the force?
14

15 Mr. Kean: Well, that is what the force is there for. 10:13
16 I mean, let me put it this way, and I mean I am not
17 sure and I don't understand why this hasn't been
18 highlighted in the media and stuff, but if we take for
19 example the one that I have an interest in, these
20 penalty points --" 10:13

21 CHAIRMAN: Mr. McGuinness, I think at this point we are
22 probably at a page where it should perhaps go on the
23 monitor, are we?

24 MR. MCGUINNESS: Yes, at page 1705.

25 CHAIRMAN: Yes. 10:13

26 MR. MCGUINNESS: And you continue on there at the
27 bottom of page 1705:

28

29 "-- and the role of... and the Commissioner of An Garda

1 Síochána there, and there's two points, and I know
2 Nóirín and Martin were talking beforehand about, first
3 of all this criticism of him saying before the Public
4 Accounts Committee that "it's my force", and this -- I
5 mean, with all due respects, the head of the armed 10:13
6 forces calls "his men". I mean, nobody is suggesting
7 the Commissioner is at home with the Deputy
8 Commissioners and Assistant Commissioners sitting
9 around the fire, planning a coup d'état. I mean, "my
10 force" denotes pride. It does. And I did my usual 10:14
11 yesterday, I contacted guards all over the country, I
12 spoke with 13, 14 members of the force. Now they're
13 mostly guards, one inspector and one sergeant, and they
14 are basically are saying there's nothing with that. It
15 is his force. He is the leader. And he is not 10:14
16 suggesting for one moment it's not a very important
17 organisation that is there for the benefit and at the
18 behest of the State. Of course he's not. It's just a
19 turn of phrase. And then I know there is this question
20 about referring to "disgusting", you know, I mean when 10:14
21 you put that in context, what he is saying is that he's
22 always stated, and I have been present at one -- I only
23 met the man personally once, so he's not somebody I
24 know that well. But, I know at one function he
25 advocated in no uncertain terms the importance of 10:14
26 whistleblowers and the importance of protecting them."
27
28 Now, could I just pause there and go back to your
29 position in relation to these matters? You had

1 followed the events at least from a distance the
2 previous week, isn't that right?

3 A. That's correct.

4 29 Q. And had you formed your own view about what the PAC
5 were doing? 10:15

6 A. I'm not sure I had. I'm not sure I had formed my own
7 view about what the PAC were doing. I had certain
8 views but --

9 30 Q. Yeah. Well, had you formed a view yourself that it was
10 inappropriate for the whistleblowers to have done what 10:15
11 you thought they'd done, sort of taking data relating
12 to people, circulating it and --

13 A. Yes, I mean --

14 31 Q. -- then appearing before --

15 A. In the public domain, it had been -- it was clear to me 10:15
16 that what was being said was that Sergeant McCabe
17 hadn't cooperated, so I was taking the view, I thought
18 that was wrong. That would have been a view that I
19 held at that time, I said that is -- you know, I don't
20 think that is right. I think if there is a complaint 10:16
21 then there should be cooperation. I felt, you know, I
22 felt concerned, there is no doubt, that if anybody was
23 suggesting the Garda force shouldn't investigate acts
24 or potential acts of criminality in relation to other
25 cases, I thought that was wrong. I thought it was 10:16
26 wrong and I made it clear that anybody should persecute
27 a whistleblower or that they should be treated badly.
28 I mean, that is wrong. I have acted for
29 whistleblowers, so I would be, you know, a great

1 admirer of them. So I think I definitely formed the
2 view that if somebody had a complaint and they weren't
3 cooperating, that I felt that to be wrong.

4 32 Q. Yes. But in terms of what they had done, what was your
5 understanding of what they had done, the 10:16
6 whistleblowers?

7 A. Oh, sorry, my understanding of what they had done at
8 that stage was that they had refused to cooperate and I
9 think it was some four months earlier that the Minister
10 had said that in the Dáil. 10:17

11 33 Q. Yes.

12 A. Mr. Shatter. And so, I accepted that as being correct
13 to a great extent. That, you know, why would they
14 mislead the Government and the country? That they
15 weren't cooperating. So I had form that opinion. 10:17

16 34 Q. You are referring obviously to the investigation done
17 by Assistant Commissioner O'Mahony?

18 A. Yes, I didn't -- I didn't read that report, but what I
19 did read what the then Minister Shatter said in the
20 Dáil. 10:17

21 35 Q. Yes.

22 A. And I would always say if there wasn't cooperation, as
23 I believed there wasn't at that time, based on that
24 information, that I thought that was wrong.

25 36 Q. Yes. But it was an inquiry into the erasure or the way 10:17
26 penalty points were dealt with?

27 A. Yes.

28 37 Q. You obviously understood that?

29 A. Yes, I did.

1 38 Q. Yes. And did you know how that had come into the
2 public domain?

3 A. Well, again, I'm not sure I specifically knew it had
4 come in, but I was aware it was there, yeah. And my
5 feeling on that was, again, and I think I said this on 10:18
6 the programme, that is a matter that the guards should
7 investigate and should follow through. And I think I
8 remember saying at one stage that, was it the O'Mahony
9 Tribunal that there was three or four guards
10 disciplined following that, so I felt that was the way, 10:18
11 you know, that the guards should investigate that.

12 39 Q. Yes.

13 A. I didn't -- I didn't mean to suggest, nor would I
14 suggest, that PAC shouldn't look at it. Of course not.
15 But if there was an element of criminality then I felt 10:18
16 that was within the domain of An Garda Síochána.

17 40 Q. Yes. But did that embrace, as it were, the sort of
18 leaking of information about the Pulse records and the
19 provision of them to public figures?

20 A. Did that, sorry? 10:18

21 41 Q. Did that include in your mind the leaking, as it were?

22 A. Yes, yes, because I was -- yes, and again I was led to
23 believe what was happening was instead of not only were
24 they not cooperating or Sergeant McCabe wasn't, that
25 there was a leakage of information to certain members 10:18
26 of the Dáil, and again I felt at that time I didn't
27 think that was the appropriate way to do this. You
28 know, they should follow the procedures through An
29 Garda Síochána first, if they weren't happy with the

1 outcome then of course they had other remedies to
2 pursue thereafter.

3 42 Q. Yes. So you thought that was probably an inappropriate
4 way to be, as it were, dealing with the problem?

5 A. Well, I didn't have -- I mean, I suppose it's fair to 10:19
6 say that I felt it unusual, bearing in mind that I am
7 led to believe at the same time, as the Minister had
8 said some three or four months earlier, that they
9 weren't cooperating with the guards.

10 43 Q. Okay. Well, had you seen headlines relating to sort of 10:19
11 stories in the paper like, you know, 'Judge has his
12 points wiped' or 'Sports star...'?

13 A. Oh, I was aware that there was allegations about this
14 and I had commented that that was wrong. I even
15 cleared up that I have never had a penalty point 10:19
16 squashed or even anybody suggested to me, neither I
17 suggested to anybody, but I did genuinely feel that
18 that is wrong anyway, because it's unfair.

19 44 Q. Yes. And I think in fairness to you I think you did
20 clarify for the investigators that you had no personal 10:19
21 interest in this?

22 A. No.

23 45 Q. You had no penalty points issue in relation to
24 guards --

25 A. No, no. 10:20

26 46 Q. -- that were wiped or erased. But you seem to have
27 launched into, as it were, an early defence at this
28 stage in the programme of the Commissioner?

29 A. Yes.

1 47 Q. His stance?
2 A. Yes.
3 48 Q. And you say "I spoke to 13, 14 members of the force",
4 did you do that?
5 A. Yeah, yeah. You see, don't forget, on that morning I 10:20
6 left wicklow, I went to the local station, I was doing
7 something with my car, I think, I don't know was it tax
8 or some query in relation to that, and there would be
9 people I'd know and we sat down. At that stage I was
10 interested to know their views in relation to it's his 10:20
11 force. My recollection is it wasn't anything to do
12 with Sergeant McCabe, it was more like, you know, did
13 they find this --
14 49 Q. The Commissioner's position?
15 A. Sorry, the Commissioner's position, yes. Did they find 10:20
16 it strange that he was saying it's his force. And none
17 of the lads that were there at that time thought it was
18 strange. They thought, you know -- I think it's fair
19 to say, I can't remember the exact response but they
20 didn't think that was strange, no. 10:21
21 50 Q. Yes. But you see, at the top of page 1706 you are
22 referring to what you did, and at the top it says:
23 "I did my usual yesterday --"
24 A. Yes.
25 51 Q. "-- I contacted guards all over the -- " Is that the 10:21
26 county? It says "county" there?
27 A. County, yeah.
28 52 Q. "I spoke to 13, 14 members of the force."
29 A. Yeah.

1 53 Q. You spoke to the head of the force, and why didn't you
2 say that to the people of Ireland on the radio when you
3 were --
4 A. Because to be fair to the Commissioner he asked me not
5 to mention that we had spoken. 10:21
6 54 Q. Okay.
7 A. Or that the information came from him. That is a
8 slightly different issue, that is the issue of Sergeant
9 McCabe.
10 55 Q. All right. 10:21
11 A. Yeah. I would gladly have said that because I would
12 have felt it would have been nice to be able to say, by
13 the way, I spoke to the Commissioner and he told me
14 one, two, three and four, but he asked me not to
15 disclose where the information was coming from, and I 10:21
16 didn't.
17 56 Q. All right. Anyway, just to continue on then your next
18 contribution in the programme, towards the bottom of
19 page 1706.
20 A. I am sorry -- oh, yes. 10:22
21 57 Q. And you have referred in the previous paragraph to the
22 fact that:
23
24 "The Commissioner at one function, he advocated in no
25 uncertain terms the importance of whistleblowers, the 10:22
26 importance of protecting them but --"
27
28 And Ms. Finucane says:
29

1 "But yet there was fierce undermining -- sorry, Nóirín,
2 you wanted to come in on that."

3
4 But you continue there, apparently, it says:

5 10:22
6 "Well, yeah, the undermining is the fact that when
7 whistleblowers first of all do not cooperate in any
8 way, shape or form with the investigation, the
9 investigative committee under Inspector John O'Mahony,
10 who is a very respectful man, they didn't cooperate 10:22
11 with that at all. They go in, they breached the Data
12 Protection Act. That is clear. I mean, I think that
13 he is clear and from the information that I have it
14 looks as if they breached the Act, which is a criminal
15 offence. And then what they do is they spoon feed this 10:23
16 information to certain independents in Dáil Éireann
17 instead of the proper practice and procedure. I don't
18 believe for one minute that the Minister -- or sorry,
19 that the Commissioner and the deputy commissioners and
20 assistant commissioners are going to condone for one 10:23
21 moment any illegality that takes place within An Garda
22 Síochána."

23
24 Now, can I just pause there and ask you this: Were
25 these your views that you were propounding here? 10:23

26 A. They were my views I was propounding, but they were
27 very much based on the information I had received in a
28 number of calls the previous day with the Commissioner.

29 58 Q. Yes. But did you, watching the week's proceedings did

1 you -- you appear to have taken the view yourself that
2 the Commissioner was right to be doing what he was
3 doing and saying what he was saying. In other words,
4 you agreed with his stance before the PAC, would that
5 be fair to say? 10:24

6 A. No, not necessarily. And to be honest, I didn't follow
7 the whole giving of evidence, as I think you referred
8 to earlier. No, it wouldn't be fair to say that I
9 agreed in blanket. No. My opinion at the time, which
10 would have been very strongly held, is that if, as it 10:24
11 seemed, based on the Minister's reporting to the Dáil,
12 Minister Shatter in October of 2015, if the
13 whistleblowers were refusing to cooperate with the
14 internal Garda investigation, I felt that to be wrong,
15 and if the Minister -- and as the Commissioner was 10:24
16 critical of that, then I would certainly have stood by
17 his views in that regard. But I wouldn't -- I wouldn't
18 agree with words -- I think there was a word disgusting
19 used, no, I wouldn't agree with any of that, no. I
20 just felt, and I would always feel, that if there is an 10:25
21 investigation set up then there should be cooperation
22 with that investigation. And as I said, there are
23 remedies thereafter if they are not satisfied with the
24 findings of that investigation.

25 59 Q. Yes. Well, I mean, I'm just trying to understand so 10:25
26 that I don't make a mistake about this, were you
27 representing your own views here or were you speaking
28 on behalf of the Commissioner?

29 A. No, I was representing my own views, but very much

1 based on the information which was in the public domain
2 since October and following information given to me by
3 the Commissioner.

4 60 Q. well, did he tell you that they didn't cooperate with
5 it or did you take that that from --

10:25

6 A. Oh, no, he told me three or four times. The
7 Commissioner told me that Sergeant McCabe did not
8 cooperate in any way, shape or form, with the internal
9 investigation.

10 61 Q. well, did he tell you what he had done to try and get
11 the cooperation?

10:25

12 A. I don't recollect that. I mean, I do recollect him
13 saying something like, you know, I am trying to sort
14 the problem out but it's very difficult. And he was
15 very adamant on three or four occasions because I asked
16 him, I said, so, is he is not cooperating at all, he
17 said, no, he's not.

10:26

18 62 Q. Did he tell you whether he had issued any instruction
19 to them, whether they had been paraded and told that
20 there was an investigation proceeding and that if
21 anyone had information, that they should provide it
22 to --

10:26

23 A. I don't recollect the exact wording. No, I don't
24 remember that exact wording.

25 63 Q. But that is what I am asking you. Do you recollect
26 whether he told you of any step that he had taken or
27 not?

10:26

28 A. Oh, I do remember him saying something along the lines
29 of this Tribunal -- or sorry, this investigation was

1 set up to look into these complaints and to look into
2 the complaints of Sergeant McCabe and/or others, I
3 can't remember, and that he did not, Sergeant McCabe I
4 should say, did not cooperate with that investigation.

5 64 Q. Okay. We will come back to that in a few minutes. One 10:26
6 of the other things is that you are saying "They go in,
7 they breach the Data Protection Act. That is clear."
8 A. Yeah. And that again was said to me during the course
9 of those calls with Mr. Callinan. He said they were in
10 breach of the Data Protection Act and I said oh, all 10:27
11 right, okay.

12 65 Q. But did you not pick that up as part of the row that
13 was going on the previous week?
14 A. I'm not sure I specifically did, no. I would be wrong
15 to say I specifically did. I didn't -- you know, I 10:27
16 don't specifically remember that.

17 66 Q. Yes.
18 A. But I do remember, you know, my conversations, because
19 they were very pertinent to what was going to happen
20 the following day, and I was very clear about what I 10:27
21 was being told by the then-Commissioner.

22 67 Q. Yes. Well, I mean presumably you had picked up that
23 the Commissioner had given his evidence and there was
24 this sort of stand off, a public stand-off which had
25 emerged as to whether the Committee would be calling 10:27
26 the whistleblowers, presumably you knew that?
27 A. Yes, I believe I did.

28 68 Q. Yes. And that the Committee hadn't taken that decision
29 by the time this programme was being broadcast?

1 A. I don't recollect that. I can't remember if that was
2 the case.

3 69 Q. Well, do you know that or have you got a recollection
4 of the fact that Sergeant McCabe in fact gave evidence
5 the following week in private? 10:28

6 A. No, I don't. No, I don't recollect that. The net
7 issue I was dealing with was very simple. The net
8 issue I was dealing with was: You know, did I have a
9 problem with a whistleblower not cooperating with the
10 Garda inquiry? And that was kind of -- that was really 10:28
11 the net issue I was concerned with. And in my view,
12 based on very clear information I got from the
13 Commissioner, I thought that was wrong.

14 70 Q. Yeah. You took a view that if a guard had a problem,
15 the Commissioner had established an inquiry, they 10:28
16 should cooperate with the inquiry?

17 A. Yes, yes. And I mistakenly, or otherwise, believed
18 that the Commissioner was somebody beyond reproach, I
19 didn't -- at this stage hindsight is a great virtue, I
20 believed I was getting truth from the Commissioner at 10:29
21 that time.

22 71 Q. Yes. But you see you do go on to say this: "They go
23 in, they breach the Data Protection Act. That is
24 clear." What were you intending to convey there?

25 A. Again, during -- this was a follow-on in the 10:29
26 conversation with Martin Callinan, he had already
27 stated that in his opinion, and the words were very
28 similar, that Sergeant McCabe was obstructive, he was
29 difficult, he had breached data protection and I

1 actually didn't go into where he had done it but I
2 believe the Commissioner to be telling me the truth at
3 that time.

4 72 Q. Yes. Well, obviously, the where he had done it is
5 perhaps a detail, if it had been done at all, but did 10:29
6 you understand what was involved in that or what did
7 you understand meant?

8 A. My understanding is that he may -- there was a number
9 of possibilities but one of them was that maybe that
10 Sergeant McCabe had accessed files he shouldn't have 10:30
11 and/or given out information in relation to those files
12 to third parties, things like that. But I didn't have
13 specifics on it. It was based on the information I
14 received in my telephone conversations with the
15 Commissioner. 10:30

16 73 Q. Okay. But you understood the generality of it?

17 A. Yes.

18 74 Q. The accessing of information?

19 A. Yes.

20 75 Q. And then the dissemination of it? 10:30

21 A. Absolutely.

22 76 Q. Whether to public figures or TDs or --

23 A. Yes. And that was a question -- and to be fair,
24 Mr. Chairman, that was a question I didn't ask the
25 Commissioner. 10:30

26 77 Q. All right.

27 A. That was something that he had volunteered; that
28 information was volunteered to me.

29 78 Q. Yes. You say then at the end of the page there:

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"It looks as if they breached the Act, which is a criminal offence. And then what they do is, they spoon feed this information to certain independents in Dáil Éireann."

10:30

And you knew that of your own knowledge, did you?

A. Well, no, no, but it was in the public domain. But it was an issue I raised again with the Commissioner and he agreed that it was all wrong and that that was happening.

10:31

79 Q. Yes. But the identification of spoon feeding independents, you took that from the public domain or did the Commissioner tell you that?

A. Well no, the way that arose from my recollection, when I was talking to the Commissioner and asked him about the first point, being did they cooperate or not, then he volunteered, then he said they are also in breach of Data Protection Act, then the follow-on from that was that I said -- or it certainly came up, yeah, is it a case then that he's spoon feeding independents in the Dáil? And he said, yes, that is what he is doing. So, you know, I could have brought that up as a third point.

10:31

80 Q. Yes. And did you have any recollection of some of the independent TDs getting a dossier in late 2012?

10:31

A. I don't remember, no. I don't think it went into that much detail about who got what or when, no.

81 Q. Or that the matter of naming people was ruled out by

1 the Ceann Comhairle?

2 A. No, I don't recollect discussing any of that.

3 82 Q. Or that a press conference was to be held and the Data
4 Commissioner intervened to try and warn people about
5 not naming people? 10:32

6 A. Yeah, I don't remember any conversation on that.

7 83 Q. And did you have any knowledge of that yourself in a
8 general way?

9 A. I don't think so, I'm not sure.

10 84 Q. Okay. 10:32

11 A. I'm not sure.

12 85 Q. And just going back to the programme there, the middle
13 of page 1707, Ms. Finucane said:
14

15 "Gerald, do you remember Donegal? 10:32

16

17 Mr. Kean: Yes, I do. Yes, I do. I'm not saying --
18 sorry, I didn't say there's no wrongdoing in the Garda
19 Síochána.

20 10:32

21 I said I don't accept that the Minister -- sorry, that
22 the Commissioner, deputy commissioners and assistant
23 commissioners are all sitting around saying let's bury
24 this, let's bury this. I don't accept that."

25 A. Yes. 10:32

26 86 Q. And again, that seems to be a position very firmly in
27 support of the Commissioner?

28 A. Pardon?

29 87 Q. Very firmly in support of the Commissioner?

1 A. Yeah, I think it would be, you know. It's fair to say
2 that I am the son of a sergeant in the guards, God rest
3 him, so, you know, I have made it very well known on
4 many programmes that I am pro the Garda. I am pro
5 Garda. However, however, I have acted against the 10:33
6 Garda Commissioner and the Department for people who
7 suffered wrongs at the behest of the guards. I think
8 the problem is that I get annoyed when I hear somebody
9 saying they are crooked guards and then they talk about
10 the guards in the force, and I found it difficult in 10:33
11 total -- then I find it difficult to understand how
12 someone can say well, the guards shouldn't be
13 investigating criminality. well, if that is the case
14 then my attitude will be we'll disband the force. So,
15 my view in relation to that was, I was very critical of 10:33
16 the Garda activities in Donegal. I have acted, as I
17 have said, for clients against An Garda Síochána. But
18 what I am saying is that the vast majority of the
19 members of the force in my opinion, and certainly in my
20 dealings, are very decent people. So I wouldn't for 10:33
21 one minute condone what went on in Donegal. In fact, I
22 was outspoken. I also didn't believe, whether you call
23 it naive or not, I just didn't accept the Commissioner
24 and the assistant commissioners and deputy
25 commissioners are all sitting around the fire, having a 10:34
26 nice glass of wine and saying let's bury all this, put
27 that on the fire there and let's move on. Now, if that
28 happened then, you know, I am wrong. But that was a
29 view that I --

1 88 Q. Yes. And I think you have very fairly referred to the
2 fact that your late father was in the guards?

3 A. Yes.

4 89 Q. And I think you did volunteer to the investigators you
5 had other -- some other relations in the guards?

10:34

6 A. Yeah, yeah. My uncle, God rest him, was the last
7 station sergeant in --

8 90 Q. I think in the course of the programme other people
9 contribute and you are recorded as coming back in at
10 page 1714 of our book. And Mr. Rabbitte had been had
11 been, as it were, sounding a warning perhaps against a
12 danger of people coming in naming persons who mightn't
13 be there to defend themselves, and the Committee's
14 actions about what they might have to decide about
15 people, and you chime in and you say at the bottom of
16 the page:

10:34

10:35

17
18 "I think the important thing is that, we all agree and
19 I think it's accepted, that the vast majority of An
20 Garda Síochána here deserve our support and confidence.
21 But it annoys me when people are not getting the facts
22 right. And Nóirín is simply and absolutely totally
23 incorrect when she says that the whistleblowers have
24 done everything they can within An Garda Síochána to
25 have this matter investigated. It is just simply
26 wrong. She is believing what she is reading in the
27 papers. The fact of the matter is that Inspector John
28 O'Mahony, who we accept is a wonderful -- I've never
29 met the man, but I've heard great things about him, was

10:35

10:35

1 set up to investigate this.

2

3 Ms. Finucane: Yeah, but I have no doubt the other men
4 are wonderful men too..."

5

10:35

6 Then you are recorded as saying:

7

8 "I have no doubt about that as well. I am not denying
9 that at all, but what I am saying is, they did not
10 cooperate with that investigation. And by the way,
11 just so that we are aware of these -- as a result of
12 John O'Mahony's investigation, three or four members of
13 the force have been sent forward for disciplinary
14 action. Secondly, many new reforms have been put in
15 place based on his -- which were needed. We are not
16 saying -- nobody is suggesting -- of course there were
17 wrongdoings, but in addition to that, which people
18 don't know, is the antifraud mechanism, which is in
19 place, has sent four relatively senior members of An
20 Garda Síochána files to the DPP for criminal
21 prosecution.

10:36

10:36

10:36

22

23 Ms. Finucane: But you sound like that's outrageous.
24 but you know that I want that, because that's the way
25 it's supposed to be.

10:36

26

27 Mr. Kean: It should be that way, yes.

28

...

29 But what I'm saying is, and you're absolutely right,

1 and everyone of them who have done a wrongdoing should
2 go, but what I am saying is that for some reason, it's
3 as if there is a whitewash here. Nobody is aware that
4 they are trying to do something and that's under the
5 guise of the Commissioner and I think it reflects badly 10:37
6 on the rank and file members if there is just one-way
7 criticism of An Garda Síochána. I believe the Garda
8 Síochána are well able to deal with it. And if, by the
9 way, at the end of that they don't get a say, and if
10 they don't -- if the whistleblowers, who have a very 10:37
11 legitimate right to air their grievances, if they don't
12 go through the proper channels to get that, well
13 absolutely fire on ahead. Fire on ahead."

14
15 Then Ms. Hegarty chimes in there. And then you say: 10:37

16
17 "Nobody said it was investigated thoroughly."
18

19 And it goes on there, at the top of page 1717 you say:

20 10:37
21 "In fact, I'm saying the very opposite. You can't have
22 it investigated thoroughly when an inspector is set up
23 to investigate and the two... don't cooperate. They
24 don't cooperate with the inspector.

25 10:37
26 Ms. Hegarty: What is the outcome? And then you've got
27 to ask the question, Gerald, why did they not
28 cooperate? That is the culture within the Gardaí."
29

1 And the debate goes on there. But going back to the
2 middle of page 1715, you are repeating the suggestion
3 of non-cooperation there?
4 A. Yeah.
5 91 Q. And then you are also highlighting the fact that some 10:38
6 members have been sent forth for disciplinary action,
7 and then you are talking about some new reforms which
8 have been put in place based on his report.
9 A. Yeah.
10 92 Q. And is this something that the Commissioner told you? 10:38
11 A. Yes.
12 93 Q. All right. You didn't know that of your own knowledge?
13 A. No.
14 94 Q. You see, the suggestion might be made and entertained 10:38
15 by people, Mr. Kean, that you were acting as a
16 surrogate, a spokesman for the Commissioner in this
17 regard, to bolster his position?
18 A. Well, I didn't see that at the time.
19 95 Q. Okay.
20 A. And I repeat, I didn't see that at the time. I 10:38
21 didn't -- I believe that I had access to somebody who I
22 felt at that time was beyond reproach, I felt that the
23 information he was giving to me -- I believed the
24 information that he was giving to me was correct, it
25 certainly didn't contradict what Minister Shatter had 10:39
26 said some four months earlier, on 1st, 2nd and/or 3rd
27 of October 2013. So I believed he was telling me the
28 truth, and I was, I suppose, being honest in saying
29 this, beyond doubt, that I was delighted to hear it

1 from his mouth because I felt that I was getting it
2 from the right person and I genuinely felt there was no
3 vested interest and he was very quick to point out that
4 following the O'Mahony investigation a number of guards
5 had been sent forward for disciplinary action, which I 10:39
6 think was an attempt by him to show that this was a
7 very, very serious attempt to deal with these issues.
8 So that's all I can say. I did believe him. Now, you
9 know, if it's suggested I was a mouthpiece, I did not
10 feel that at the time because if he had said something 10:40
11 that damaged the guards or himself, and I'm sure he
12 wouldn't, but if he had, I would have no hesitation in
13 repeating that as well.

14 96 Q. Yes.

15 A. But I can understand how somebody might feel that I was 10:40
16 a mouth -- that I was acting as his mouthpiece. Yes, I
17 can understand how they might feel that. But I didn't
18 feel it at the time, no.

19 97 Q. Obviously in the context of what you said on the radio
20 programme you say you spoke to 13 or 14 members? 10:40

21 A. Yeah.

22 98 Q. You said you did your usual, presumably that is
23 sounding people out?

24 A. Yeah, normally when I appear on the Marian Finucane
25 show I would be outspoken against the HSE, I would 10:40
26 talked to nurses beforehand. The records show I spoke,
27 you know, if it's taxi regulator problems I'd talk to
28 taxi drivers. It's always something I have done and I
29 have no problem. My phone records show that I rang a

1 number of guards as well, but that wasn't about
2 Sergeant McCabe, that was more about the comment that
3 it's his force and there was some criticism. You know,
4 I was surprised at suggesting, you know, that someone
5 would read into him saying it's his force, that it was 10:41
6 something other than the Garda Síochána acting for and
7 at the behest of the people in the State. That is what
8 they are there for. They are not there for the
9 Commissioner.

10 99 Q. But you rang the Commissioner. Did you ring the 10:41
11 Commissioner? Did you initiate this contact?

12 A. My recollection is, and I think the phone records
13 confirm this, that on the Friday I telephoned a friend,
14 an acquaintance of mine, who again is very
15 well-respected within An Garda Síochána, and that is 10:41
16 Diarmuid O'Donovan.

17 100 Q. O'Sullivan?

18 A. Sorry, Diarmuid O'Sullivan.

19 101 Q. Yes?

20 A. And I rang Diarmuid, and I would speak to Diarmuid the 10:41
21 odd time, you know, from time to time and get his
22 advice or ask directions, where I might go for -- you
23 know, to get an answer to a question. And I have a
24 recollection on the Friday I rang him and said, listen,
25 I need to clarify this. Because at that time it's 10:41
26 three months in the public domain that Sergeant McCabe
27 hadn't cooperated, but I also wanted to -- like, I am
28 not an investigative journalist, I am just a panelist,
29 so I just wanted to make sure nothing had changed.

1 That yes, I had information from October, but three
2 months have passed and for all I know Sergeant McCabe
3 could have been in the Head Office every day
4 cooperating, so I wanted to find out what was the
5 position at the moment and where we were at. 10:42

6 102 Q. Okay.

7 A. And Diarmuid is always very helpful and I will bow to
8 any evidence he may give, but my recollection is that I
9 might have turned to him for advice and that he may
10 have said, Martin Callinan, oh, I met him not long ago 10:42
11 and he said he is the Commissioner, well if I can get
12 clarification from him I am really happy.

13 103 Q. And Diarmuid O'Sullivan, he had a very long and
14 distinguished career in An Garda Síochána --

15 A. Yeah. 10:42

16 104 Q. -- Special Branch matters dealing with subversives for
17 many years, is that correct?

18 A. Yeah. I know it was very distinguished.

19 105 Q. Then he became, I think, head of the division in Dun
20 Laoghaire, the Dun Laoghaire division and County Louth 10:43
21 as well?

22 A. Yes.

23 106 Q. And he was still a serving member at this time in 2014,
24 isn't that right?

25 A. Yes. 10:43

26 107 Q. I mean, he says that he didn't provide the
27 Commissioner's number to you and that he wouldn't have
28 done so if you had asked him, is that right?

29 A. I would say he is correct, I had the Commissioner's

1 number.

2 108 Q. You had the Commissioner's number?

3 A. And I'm sure it is correct, yeah.

4 109 Q. Were you ringing him first to get his view or were you
5 ringing him to see whether he thought it wise to ring 10:43
6 the Commissioner?

7 A. I think, and again this is just from recollection,
8 because at the time, you know -- at the time I would
9 imagine I rang him to see who would be the best person
10 to clarify the McCabe situation for me, who could I 10:43
11 turn to. Like, for example, you know, over the years
12 when I'd a bad robbery in Drayton Manor I remember
13 ringing Diarmuid saying who do I ring, who is the best
14 person to ring to know what is happening with the
15 investigation. So, it would be a sounding bite. I 10:44
16 don't recollect ringing Diarmuid and saying can you
17 tell me what the story is on Sergeant McCabe, because I
18 am not sure he might have known, but I have a feeling I
19 might have said to him, Diarmuid, can you point me in
20 the right direction or who should I go to. 10:44

21 110 Q. So you weren't turning to him for the sort of inside
22 verified story, as it were?

23 A. No, I don't believe I was. Because, you know, if I
24 knew that he was, you know, in charge of the
25 investigation or something I might have, but I didn't. 10:44
26 You know, he was somebody who I'd -- you know, who I'd
27 great time for and I knew he would give me a right
28 steer. Like, who can I talk to about clarifying the
29 position in relation to McCabe. That would be my

1 recollection.

2 111 Q. Yes. So I mean, was the Commissioner the last or the
3 first person that you thought you could get through to
4 to get this information then?

5 A. Well, I am not sure that I thought of who I was going 10:44
6 to be talking to. I mean, I was delighted when there
7 was a suggestion that the Commissioner would be the man
8 that would clarify matters for me. And you know, I
9 know I was very pleased at that.

10 112 Q. Okay. Perhaps we will just look at some other 10:45
11 documents. I think you were written to by the Tribunal
12 and you wrote in response by letter of the 14th
13 December 2007, and that is to be found at page 1768 of
14 the documents.

15 A. Yes, I have it, yes. 10:45

16 113 Q. And you say:

17

18 "Dear Ms. Mullan

19 I refer to your letter dated 13th December 2017 under
20 the aforementioned reference number. 10:46

21

22 My only involvement with Mr. Maurice McCabe was around
23 the review of the papers on the Marian Finucane show
24 which took place sometime back. I don't have the file
25 in front of me at the time of dictating this letter, 10:46
26 but I can certainly give you the exact date if needed.

27

28 I was asked to review the papers on the Marian Finucane
29 Show, RTÉ Radio One. It is a task I undertake on a

1 regular basis during the year. I was advised that one
2 of the topics that would be discussed related to
3 Maurice McCabe. On a Saturday prior to my appearance
4 on the show I spoke at length to Mr. Martin Callinan,
5 former Commissioner of the Garda Síochána. In fact, we 10:46
6 had lengthy conversations on Saturday. I was advised
7 by Martin Callinan that Maurice McCabe did not
8 cooperate with internal investigations carried out by
9 An Garda Síochána regarding his assertions and claims
10 being made at the time. 10:46

11
12 I clarified this response on a number of occasions as I
13 knew I would be asked to comment on same the following
14 day on the Marian Finucane programme. Martin Callinan
15 assured me that Mr. Maurice McCabe did not cooperate 10:46
16 with the investigations. He also agreed with me when I
17 expressed an opinion that I thought this was wrong, or
18 words to that effect.

19
20 Subsequently I appeared on the Marian Finucane show and 10:47
21 expressed my concerns about Mr. Maurice McCabe not
22 cooperating with the Garda Síochána. This proved to be
23 correct, as is well-documented.

24
25 Maurice McCabe issued proceedings against RTÉ and 10:47
26 myself. The proceedings against me were dropped and I
27 did not contribute in any way, shape or form towards
28 compensation or his costs. I did offer an apology when
29 it became clear at the time that the information that I

1 had received, and I think most people had come to
2 receive the same information, was simply incorrect.

3
4 If I can of any further assistance please don't
5 hesitate to contact me." 10:47

6
7 Etcetera. You were then asked, if we turn to page
8 1770, you were asked by the Tribunal to furnish any
9 relevant documentation and details of the telephone
10 numbers that you were using. I think you replied to 10:47
11 that at page 1771, saying:

12
13 "I don't have any written documentation. However, I
14 did have lengthy conversations with Martin Callinan on
15 the Saturday before I appeared on the Marian Finucane 10:48
16 show."

17
18 You put the phone number in there.

19
20 "Mr. Callinan did confirm on several occasions to me 10:48
21 that Maurice McCabe had not cooperated with the
22 internal Garda investigations into his complaint.
23 Based on these representations I was happy to repeat
24 the facts on the Marian Finucane show the following
25 morning. Subsequently, it transpired these 10:48
26 representations and assertions by Mr. Callinan were
27 incorrect. I was sued by Maurice McCabe but this case
28 has recently been dropped. I have already apologised
29 after the matter was corrected and clarified in the

1 Dáil. The apology was to Mr. McCabe through his
2 solicitor. I paid no compensation or contribution
3 towards his costs and the case did not proceed.
4

5 The only documentation I would have in relation to the 10:48
6 matter concerns a claim brought against me by
7 Mr. McCabe's solicitors, but I don't see how this could
8 be relevant to the Tribunal.
9

10 There were proceedings suing myself and RTÉ for 10:48
11 defamation. As I say, the case has been dropped and I
12 made no contribution in any way, shape or form to
13 Mr. McCabe nor his legal team.
14

15 I hope this clarifies matters." 10:48
16

17 Etcetera. Now, I think you did provide phone records.

18 A. Yes.

19 114 Q. And perhaps we could just look at those first. Page
20 1784. 10:49

21 A. I think the inspectors who were very helpful to me did
22 a little summary of the relevant calls, because I won't
23 recognise, you know, numbers. So I don't know, is that
24 note there? I saw --

25 115 Q. Yes, perhaps we will go straight to that. It's at page 10:49
26 1789.

27 A. Yes, yes.

28 116 Q. And the first date there is 24th January. And that is
29 just three minutes past six and that appears to show

1 possibility.

2 123 Q. Do you remember speaking -- whether you spoke to
3 Superintendent Taylor in these days or not?

4 A. I don't recollect. But if Superintendent Taylor said
5 he did speak to me, then I'm happy to accept that. I 10:51
6 don't recollect it.

7 124 Q. All right. And just to be clear, were you ever briefed
8 negatively by Superintendent Taylor about Sergeant
9 McCabe or any other person?

10 A. Certainly not anybody else, and I don't remember ever 10:51
11 being briefed negatively by Sergeant Taylor.

12 125 Q. Superintendent Taylor?

13 A. Superintendent Taylor, sorry. I don't recollect ever
14 being briefed negatively by him in relation to Sergeant
15 McCabe. 10:52

16 126 Q. Had you any relationship, professional or otherwise,
17 with Superintendent Taylor?

18 A. No, no, I mean -- no, I had communications in the past,
19 you know, on the odd occasion, maybe two or three
20 occasions over the last 20 years with the Press Office, 10:52
21 but very rarely. But I don't recollect having -- no, I
22 mean, I wouldn't recognise him if he was here, it
23 doesn't mean I haven't met him, because I do meet a lot
24 of people, but I don't recognise -- I don't remember
25 meeting him. 10:52

26 127 Q. Okay. Just going back to the phone record then, there
27 is a call on the following day, which is the Saturday,
28 just before midday, where you appear to have spoken to
29 Diarmuid O'Sullivan again?

1 A. Yes.

2 128 Q. And that appears to be much longer duration?

3 A. Yes.

4 129 Q. And can you recollect the content of that in a general
5 way? 10:52

6 A. In a general way, yeah, I mean, I don't remember -- I
7 am reasonably confident that I would have explained to
8 Diarmuid that this programme is coming on, that I am
9 aware it's in the public domain that Sergeant McCabe
10 hasn't cooperated. I would have probably discussed 10:53
11 Minister Shatter's comments, as I say, some months
12 earlier. I would say that I want to get an update, I
13 want to get some clear guidance as to what is the
14 position in relation to this, and you know, that
15 conversation could well have taken place. 10:53

16 130 Q. Yes.

17 A. Sorry, not could well have taken place, I believe did
18 take place.

19 131 Q. I am not sure whether Mr. O'Sullivan can recall the
20 detail of it or the content of it, but that is your 10:53
21 recollection?

22 A. Maybe he can, yeah. I mean, as I say, I have -- I have
23 great time for Diarmuid, so I'd accept what he says.
24 But I believe at this stage I am in pursuit of my
25 objective, which is to talk to somebody in a senior 10:53
26 position to clarify (a) that the Minister's comments
27 are still accurate and (b) there had been no changes,
28 and (c) Sergeant McCabe, you know, is he cooperating or
29 not.

1 132 Q. Yes. But you seem to have been anxious to get the
2 Garda view to be able to repeat the Garda view, I mean
3 is that not, as it were, bottom line here?
4 A. Well, as I say, I am not an investigative journalist, I
5 am a panelist and if I am getting not a view, but if I 10:54
6 am getting what I believe a statement of fact from the
7 Commissioner I am very happy and relaxed, at that time.
8 133 Q. Yes. And irrespective of your profession as a
9 solicitor, do you not think it was perhaps wholly
10 inappropriate to be seeking to ring the Garda 10:54
11 Commissioner directly to get his private views or --
12 and then repeat them without attribution?
13 A. No, no, not whatsoever.
14 134 Q. why?
15 A. First of all, I am not operating in this domain as a 10:54
16 practising solicitor --
17 135 Q. No.
18 A. -- I am operating as a panelist --
19 136 Q. Yes.
20 A. -- commenting on newspaper articles. That is number 10:54
21 one. Number two is, I wasn't looking to for the
22 Commissioner's view, I was looking for the factual
23 position. And number three, I am dealing with the
24 Commissioner of An Garda Síochána, who I believe at
25 that stage is beyond reproach. So, therefore, I am not 10:55
26 looking for a view, I am looking for a statement of
27 fact.
28 137 Q. Yes. And did you expect the Garda Commissioner to
29 differ in his exposition of his views that he had

1 already expressed the previous week in public?

2 A. Well no, no, what I expected him to say maybe -- first
3 of all, I didn't follow him in -- to the extent -- and
4 I think you have agreed with this already, I didn't
5 follow his evidence from start to finish before the 10:55
6 Public Accounts Committee, but I was interested in
7 getting information that that was up to date and was
8 accurate. Had it changed? Had Sergeant McCabe started
9 to cooperate? Had he written in saying he will
10 cooperate? Like, this was -- I was very pleased to be 10:55
11 getting what I saw as statements of fact from the
12 Commissioner at that time.

13 138 Q. Yes. And it appears to show then that he called you on
14 the 25th, about ten to one, at lunchtime, on that day,
15 and you appear to have had a lengthy conversation? 10:56

16 A. Yes.

17 139 Q. And is there any other detail that you can recall?

18 A. Em, I don't think there is anything else I can recall
19 other than what is in my affidavit. I mean, you know,
20 he certainly stated to me that Sergeant McCabe had not 10:56
21 only not cooperated with the investigation but that he
22 was also troublesome, obstructive, difficult. You
23 know, these were the -- he left me in no impression --
24 sorry, in left me in no doubt that Sergeant McCabe was
25 not cooperating and was obstructive. 10:56

26 140 Q. But as I understand your statement, you appear to have
27 suggested to him to get his agreement --

28 A. I have a recollection of saying --

29 141 Q. -- as to whether it'd be fair to describe him as

1 obstructive?

2 A. Yeah, I certainly have a recollection of saying, he
3 seems to be -- it would be a phrase I would use, he
4 seems to be difficult, this fella, or he seems to be
5 obstructive, and that then led into -- because that was 10:57
6 my view, I was saying why isn't he cooperating, why is
7 he ignoring everybody, why is he -- so that is
8 certainly my recollection, that I could well have said
9 that first. Is he difficult, this guy?

10 142 Q. Yeah. And it appears to have been followed up by a 10:57
11 text from Mr. Callinan slightly later that day, just
12 nearly at ten past one. Can you recollect what that
13 text --

14 A. I can't, no.

15 143 Q. -- might be? Have you been able to retrieve any text? 10:57

16 A. No, no. I mean, just as a matter of format, even this
17 morning I delete as many texts as I can because I have
18 one of those phones that keeps coming up, I don't have
19 a laptop, I don't have a computer, I don't have -- I
20 don't do -- so my phone keeps coming up that it's 10:58
21 heavily loaded or something, so I delete what I can
22 when I can. But that text, I don't recollect what that
23 text was at all. But it should be noted that, in fact
24 I think you may have omitted to say that, Martin
25 Callinan didn't ring me just once, he rang me twice. I 10:58
26 think it's not clear from the records. He rang me at
27 12:50 and he rang me again at 13:09.

28 144 Q. That appears to be a text, according to the --

29 A. Oh, is it? Sorry, you are right, a text, yeah. So I

1 don't know -- I don't know -- I mean, in hindsight if I
2 knew where we would be today I would have been
3 delighted to have kept the texts.

4 145 Q. According to the telephone records, which I think you
5 accept, there are further calls between yourself and 10:58
6 Mr. O'Sullivan and then yourself and Martin Callinan in
7 that afternoon.

8 A. Yes.

9 146 Q. With another text then followed from Mr. Callinan there
10 at 16:26. What was happening at that stage? 10:59

11 A. Well, again, I can't recollect specifically other than
12 I would imagine I might have rang Diarmuid back and
13 said, listen, thanks a million, that was great, I was
14 actually speaking to Martin Callinan and he has
15 clarified a number of issues to me. That would be 10:59
16 something I would often do, is to thank him for
17 initiating the introduction. That is an educated
18 guess. The conversations with Martin Callinan right up
19 until before the programme were very consistent, in
20 that Sergeant McCabe had not cooperated, etcetera, 10:59
21 etcetera, as I have said already, and was in breach of
22 the Data Protection Act in this.

23 147 Q. Yes. There appear to be two further calls then from
24 Mr. Callinan, one at 16:50 to you and then a call the
25 next morning? 10:59

26 A. Before I went on the programme?

27 148 Q. Yes.

28 A. Yes.

29 149 Q. Do you recollect that?

1 A. No. Again, there would have been nothing inconsistent
2 in what he was saying. You know, there would have been
3 nothing inconsistent. It might have been a reiteration
4 of facts or it might have been the fact that he
5 mentioned the data protection breaches in the second 11:00
6 call or the later call, I don't recollect. But there
7 was nothing inconsistent. He was very clear in what he
8 was saying to me from the first call to the call right
9 before the programme.

10 150 Q. Well, was he -- I mean, were you seeking further 11:00
11 clarifications? Was he coming back with
12 clarifications?

13 A. He might have been. I don't -- I don't honestly
14 remember.

15 151 Q. Yes. You see, at the top of your letter of the -- to 11:00
16 the Tribunal of the 14th December --

17 A. Sorry, what page is it?

18 152 Q. You do say, you have clarified this response "on a
19 number of occasions"?

20 A. Yes, yes. 11:00

21 153 Q. So can you recollect what you were seeking to clarify
22 and what he did clarify for you?

23 A. Yeah, I mean, I have a boring tendency sometimes to
24 repeat myself, so I do know that I would have said
25 several times, so you are saying to me, like, he didn't 11:01
26 cooperate at all, no.

27 154 Q. Okay.

28 A. I might have said is there any reason for that or do
29 you know why, I don't remember.

1 155 Q. Did you make any notes of any of these?
2 A. No, I didn't, no.
3 156 Q. All right.
4 A. Nor did I think it important.
5 157 Q. Okay. He appears to have sent a text to you on the 11:01
6 morning at 10:30. You were presumably in RTÉ at that
7 stage?
8 A. Yes. The programme starts at 11:00 so I would have
9 been in a room reading the papers.
10 158 Q. Was it a sort of good luck text or was there any 11:01
11 information provided?
12 A. I can't remember. I can't remember. Nothing
13 significant. It was certainly nothing significant.
14 Otherwise I believe I would have remembered it.
15 159 Q. Okay. There is a call then from you on that day at 11:01
16 12:43 and do you recall phoning him after the
17 programme?
18 A. I do. That was a panic call.
19 160 Q. Pardon?
20 A. That was like in a state of panic. 11:02
21 161 Q. The alarm bells had gone off?
22 A. Because I had finished the programme and if I remember,
23 Marian had asked me to stay on for the second part, and
24 the others were let go, and I stayed on and this was a
25 different topic altogether and then as I was leaving 11:02
26 the studio, which would normally be about 12:30-12:35,
27 often it's earlier if I don't stay, but the producer
28 came up to me and said by the way, Gerald, just to tell
29 you, Sergeant McCabe has been on and he says that what

1 I was upset to be fair and I was concerned, that might
2 be a better word, that the information I had been given
3 may have been incorrect.

4 167 Q. Yes. It appears that after that, Mr. O'Sullivan phoned
5 Martin Callinan back immediately? 11:04

6 A. Right.

7 168 Q. I mean, within moments. Obviously you weren't privy to
8 that?

9 A. No, I have no idea what that was.

10 169 Q. But had you asked Diarmuid O'Sullivan to phone Martin 11:04
11 Callinan and convey any unhappiness --

12 A. I doubt it because I had done that already.

13 170 Q. You had done it yourself?

14 A. I had done it myself.

15 171 Q. Straight to the top again? 11:04

16 A. Pardon?

17 172 Q. Straight back to the top again?

18 A. Yeah. Yeah. Bearing in mind that all the information,
19 you know, relevant to this was given to me by the
20 Commissioner. He was my immediate port of call back, 11:04
21 yeah.

22 CHAIRMAN: Sorry, Mr. McGuinness, I just want to
23 intervene. It seems if you add all the phone
24 conversations between Mr. Kean and Commissioner
25 Callinan they amount to 57 minutes and 49 seconds, 11:04
26 which is approximately the amount of time you have now
27 been giving evidence. It's a very long time.

28 A. Yes.

29 CHAIRMAN: I just wanted to clarify that.

1 A. Yes.

2 173 Q. MR. MCGUINNESS: And just to be clear, at page 1774,
3 you received a letter from Maurice McCabe then?

4 A. Yes. That's correct.

5 174 Q. And can I just ask you about some bits of it in a 11:05
6 moment, but before you left RTÉ on the morning of the
7 26th you obviously phoned Mr. Callinan from RTÉ while
8 you were there?

9 A. Yes.

10 175 Q. And did you tell the producers in RTÉ that, look, there 11:05
11 is no problem here because I got all of this
12 information from the Commissioner?

13 A. I don't recollect that, but it wouldn't surprise me if
14 I had said something like that.

15 176 Q. I mean, put it this way: You had been told that 11:06
16 Sergeant McCabe had phoned in?

17 A. Yes, my recollection is I said, you know, I certainly
18 at that stage would have, my recollection is, said to
19 the producer I got this from the Commissioner, so...

20 177 Q. You would be likely to defend yourself? 11:06

21 A. Yeah, yeah.

22 178 Q. Presumably?

23 A. Yes, but I was still concerned because, you know,
24 you're concerned when you come off air and you get
25 somebody ringing like Sergeant McCabe to say that 11:06
26 everything I have said in relation to his cooperation
27 was wrong, you know, you are obviously concerned and I
28 was concerned.

29 179 Q. Okay. Anyway, the letter reads as follows:

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"I refer to the programme which was aired on RTÉ on Sunday, 26th January 2014. The programme was hosted by Marian Finucane. You were one of the people on the show. I am the garda sergeant at the centre of the penalty points investigation by the Public Accounts Committee.

11:06

I contacted RTÉ station moments after I heard defamatory statements you made about me which were aired by RTÉ. I was at work and was devastated when I heard what you said. Your horrendous statements accused me of having committed criminal and disciplinary offences. RTÉ's producer of the programme, Ann, said that they did not know you were going to say what you said. I advised Ann I would be taking the matter further.

11:07

11:07

Hereunder is what you stated and affirmed publicly..."

11:07

And that is a quotation we have gone through from the transcript.

In the middle of the next page:

11:07

"You publicly stated over the airwaves I have committed criminal offences. In other words, I was a criminal. You stated and adamantly affirmed three times that I have not cooperated with the O'Mahony inquiry. you

1 also stated twice I breached the Data Protection Act.
2 You also stated you had information on this. You
3 stated I spoon fed TDs and did not go through proper
4 practice and procedures.

5
6 All your statements are false and have done me great
7 harm. Each of your accusations on me will be denied.

8
9 I am a member of An Garda Síochána of sergeant rank. I
10 have never committed any criminal offence and I have 28 11:07
11 years unblemished service. I am not a criminal. I did
12 not and never breached the Data Protection Act. I did
13 not fail or refuse to cooperate with the O'Mahony
14 investigation. I did not spoon feed evidence to any
15 TD. I deny all your accusations and will show proof of 11:08
16 this at a later date. My character and reputation are
17 very important to me and you have destroyed them both,
18 see references below.

19
20 Your accusations publicly aired by RTÉ have done me 11:08
21 serious harm and damage. What the programme did was
22 essentially destroyed by reputation. I enforce the
23 law. I have never broken it. I am so upset and
24 annoyed and furious at the false allegations aired by
25 RTÉ against me. The defamatory/slanderous statements 11:08
26 were made at a time when the Government Public Accounts
27 Committee were deliberating on evidence I had given to
28 them.

1 I am the person who had reported the penalty points
2 matter and my family and close friends contacted me
3 when they heard the statements made by you and they
4 were also disgusted. Furthermore, RTÉ has put this
5 airing out on the RTÉ Player causing me further 11:08
6 humiliation... accusations that I am a criminal.
7 ...giving you an opportunity try and make amends for
8 some of the damage done to me as a result of your
9 public statements on the RTÉ programme, I think it is
10 the least you can do and even if that is done I don't 11:09
11 believe it can undo all the harm caused by those
12 defamatory, slanderous statements and remarks.

13
14 I have also written to RTÉ regarding their airing of
15 the statements in question. 11:09

16
17 I await hearing from you as a matter of urgency."
18

19 And then that is signed Maurice McCabe and he puts a
20 number of different headings down there. Now, I am not 11:09
21 asking you to comment on any of the factual assertions
22 or any of the matters that he alleges in relation to
23 his own position, but you got the letter and presumably
24 you were upset to get the letter?

25 A. Yeah, I was. Because, you know, I certainly bore no 11:09
26 animosity towards Sergeant McCabe, so I was upset that
27 he was upset.

28 180 Q. Yeah?

29 A. And that he was annoyed and I felt understandably

1 annoyed if what he was saying was correct.

2 181 Q. Just going back to what you were doing and what you
3 thought you were doing on the Sunday?

4 A. Yeah.

5 182 Q. The debate in the PAC and in public and the debate on 11:10
6 the programme related to, inter alia, people coming
7 before the PAC and giving evidence and the position of
8 the Commissioner in relation to that, and the PAC
9 hadn't in fact decided whether to hear Sergeant
10 McCabe's evidence in private or in public. Did you not 11:10
11 see that you were very publicly commenting on Sergeant
12 McCabe in a very adverse way?

13 A. Well, I didn't see it for one moment that I was
14 commenting in an adverse way. I felt I was commenting
15 on his position based on information given to me by the 11:10
16 Commissioner, which turned out to be adversely
17 affecting, maybe, his position. But I wasn't as
18 interested, even though it was part of the, you know,
19 the general topics, I wasn't as interested in the PAC
20 as I was in the principle that if an investigation is 11:11
21 set up within An Garda Síochána, then there should be
22 cooperation from the complainant parties, and if there
23 wasn't, as I was told there wasn't, I had a problem
24 with that.

25 183 Q. Yes. But were you not conscious of whether you were, 11:11
26 in fact, influencing or maybe attempting to influence
27 the public debate over whether the PAC should hear
28 him --

29 A. No, it didn't --

1 184 Q. -- or hear him in private or --
2 A. Yeah, I would be misleading the Tribunal if I said that
3 I thought I was influencing -- I was out to influence
4 the Public Accounts Committee's views towards this.
5 No. I was out to make the point, as I have said 11:11
6 before, that if there was non-cooperation, as I thought
7 there was, then I thought this was wrong, and I thought
8 it was wrong to be leaking information to independent
9 TDs without cooperating with the internal
10 investigation. Now, the consequences of that may flow, 11:11
11 but it wasn't -- there was no ulterior motive. That
12 point, I was very much conscious of making.
13 185 Q. Well, you got this letter, and you got it on the 6th
14 February, is that right? Or perhaps it's date-stamped
15 on the 4th? 11:12
16 A. I am not sure.
17 186 Q. The top of page 1774, it's date-stamped the 4th --
18 A. The 4th, yeah, the 4th.
19 187 Q. You wrote to the Commissioner then and sent him a copy
20 of the letter. Perhaps we would look at page 1773. 11:12
21 A. Yes.
22 188 Q. And you say:
23
24 "Dear Martin,
25
26 I enclose copy letter which I have received from 11:12
27 Maurice McCabe. I am also enclosing draft response. I
28 have not sent these letters to the other person. I
29 would be grateful if you could look at the letter that

1 I have received and my proposed draft response. I need
2 to be factually accurate and any assistance would be
3 appreciated."

4 A. Yes.

5 189 Q. And just to get matters in terms of sequence - I don't 11:13
6 want to misunderstand the chronology - you were written
7 to by the Tribunal in December --

8 A. Yes.

9 190 Q. -- isn't that right? And then you replied in the
10 letter we have seen. And you didn't disclose this 11:13
11 correspondence in your reply; why was that?

12 A. Well, I think, I think -- what page is my reply? I am
13 not sure where my reply is. Can you just go to my
14 reply for a second.

15 191 Q. Yes. We are at 1768. 11:13

16 A. Well, I didn't have the file in front of me, anyway,
17 for a start. I was asked to review the papers. I am
18 just refreshing my memory. Em, I think it's in the
19 letter that I didn't have a file in front of me anyway,
20 but I do say: 11:14
21

22 "If I can be of any assistance, please do not hesitate
23 to contact me."

24 192 Q. Yes.

25 A. And I don't think, you know, with due -- having already 11:14
26 got a letter from the Tribunal thanking me for my
27 speedy and cooperative assistance.

28 193 Q. Yes. No, we are always grateful for a speedy return.

29 A. I responded and gave everything as quickly as I could.

1 But I didn't have the file at that time.

2 194 Q. Yes.

3 A. So -- but there's no -- I mean, at that stage, no
4 disrespect to the Tribunal because it's very important,
5 I suppose I was really concerned about where this was 11:14
6 going vis-á-vis myself personally.

7 195 Q. Yes. No, I can understand that. But in your second
8 letter to the Tribunal, which is at page 1771 -- you
9 see, the file had been very live, isn't that right,
10 because you had filed a defence in the proceedings in 11:15
11 November 2017?

12 A. Oh, yes, the file is very live at that stage. That is
13 the file where Mr. McCabe set about suing me and RTÉ,
14 yes.

15 196 Q. Yes. But you did file a defence -- 11:15

16 A. Yes.

17 197 Q. -- in that, in November 2017.

18 A. Yeah.

19 198 Q. Okay. And presumably those proceedings were settled
20 before Christmas, is that right? 11:15

21 A. I can't remember the exact date. I think they were,
22 yeah, yeah.

23 199 Q. Yes. So the file was -- it must have been prominent in
24 the office when you were writing these letters back to
25 the Tribunal? 11:15

26 A. Yeah, yeah, it certainly was prominent vis-á-vis my --
27 the problems I was having in defending a High Court
28 action.

29 200 Q. Yes, yes. And I don't want to be unfair to you,

1 Mr. Kean, because you did plead in your defence
2 explicitly that you had contacted the Commissioner in
3 advance of the programme, isn't that right?
4 A. Yeah, I don't have -- I haven't seen sight of the
5 defence for a while, but I accept what you are saying 11:15
6 is correct if it's there.
7 201 Q. Yes. And I have just lost the page where that is, and
8 I will come back to it because it is of relevance.
9 The -- this second letter, though, that we are looking
10 at, you do refer to the proceedings again and -- 11:16
11 A. Yes, what page is that? Sorry.
12 202 Q. 1771.
13 A. Yes.
14 203 Q. And you do say:
15
16 "The only documentation I would have in relation to the
17 matter concerns a claim brought against me by
18 Mr. McCabe's solicitors, but I don't see how this would
19 be relevant to the Tribunal."
20 A. Yeah. 11:16
21 204 Q. But you had sought the Commissioner's assistance in
22 preparing your defence to the proceedings as well,
23 isn't that correct?
24 A. Em, I sought the Commissioner's assistance, as you will
25 see from the correspondence, the moment I got Sergeant 11:17
26 McCabe's letter, because now it's serious. So Sergeant
27 McCabe has sent the letter to me and I feel at this
28 stage the most immediate and appropriate action for me
29 to take is to send that to the Commissioner, since he

1 gave me the information initially which led to the
2 complaint, and to ask him for assistance and help in
3 relation to a response.

4 205 Q. Yes.

5 A. By the way, just for the Tribunal, there is a typo in 11:17
6 the letter that maybe I should just point out to the
7 Tribunal. I notice a typo there in -- it says "to the
8 other person". It should read "to any other person".

9 206 Q. Yes.

10 A. I don't know -- sorry, I don't have the letter. 11:17

11 207 Q. Yes. But again --

12 A. Yes, it's on page 1773.

13 208 Q. Yes. I do want to be fair to you. Your defence filed
14 in the matter is at page 1805, and perhaps we will just
15 look at that. 11:18

16 A. Right. 1805?

17 209 Q. Yes. And I think is that the 17th November?

18 A. 17th November 2017.

19 210 Q. Yes.

20 A. Yes. 11:18

21 211 Q. And at paragraph 16(v) at page 1807 --

22 A. Yes.

23 212 Q. -- you do say in your defence publicly, as it were, in
24 that sense:
25 11:18
26 "The Second-Named Defendant had made inquiries prior to
27 appearing on the show and had been informed by the
28 then-Commissioner of An Garda Síochána that the
29 whistleblowers did not cooperate with the

1 investigation."

2 A. Yes.

3 213 Q. But the point I'm just asking about is, in your first
4 letter back to the Tribunal on the 14th and then in
5 your second letter that we have looked at at page 1771, 11:19
6 on the 20th --

7 A. Of December.

8 214 Q. -- of December --

9 A. Yeah.

10 215 Q. -- you don't say that you had, in fact, or you don't 11:19
11 disclose the correspondence with the Commissioner or
12 the sequence of events in which you engaged the
13 Commissioner in assisting you in drafting your response
14 to Mr. McCabe, Sergeant McCabe?

15 A. Yeah, well I'm not sure -- 11:19

16 216 Q. why is that?

17 A. well, I am not sure that -- I think it's fair to say
18 that when -- that when you say assisting me in drafting
19 the defence --

20 217 Q. Yes. 11:19

21 A. -- the only record that I have in relation to the
22 Commissioner's assistance to me is long, long before.
23 It's several years before my defence.

24 218 Q. Yes.

25 A. I mean, it's like -- I think you seem to be implying 11:19
26 that I was speaking to the Commissioner maybe a month
27 or two before the defence. No. The last communication
28 I had with the Commissioner was going back to --

29 219 Q. In 2014?

1 A. That is three years before, yeah.

2 220 Q. Yes. Well, that is what we were looking at a few
3 minutes ago. Your letter of the 6th February to the
4 Commissioner --

5 CHAIRMAN: Well, maybe I could clarify, Mr. Kean, if I 11:20
6 might, please. The Tribunal letter says: "The
7 Tribunal would be obliged if you would furnish us with
8 any relevant documentation you have in connection with
9 the events set out in your letter."

10 You reply: "I don't have any written documentation." 11:20
11 That is what you are being asked about. Now there is
12 written documentation.

13 A. In relation to my Pleadings?

14 CHAIRMAN: No, it's not about your Pleadings. It's 11:20
15 about you writing to the Garda Commissioner and him
16 writing back, and you say: I don't have any written
17 documentation.

18 A. Oh, I understand.

19 CHAIRMAN: But there was.

20 A. Right. 11:20

21 CHAIRMAN: That is what you are being asked about.

22 221 Q. MR. MCGUINNESS: So could we go back to the letter then
23 that you wrote to the Commissioner on 1773.

24 A. 1773, yes.

25 222 Q. Yes. And you say: 11:20

26

27 "Dear Martin,

28

29 I enclose copy letter of receipt from Maurice McCabe.

1 I am also enclosing draft response. I have not sent
2 these letters to --"

3

4 I think you meant to say "any other person"?

5 A. Yes.

11:21

6 223 Q. "I would be grateful if you could look at the letter
7 that I received and a proposed draft response. I need
8 to be factually accurate, and any assistance would
9 certainly be appreciated."

10

11:21

11 And then we have looked at Sergeant McCabe's letter to
12 you. And at page 1777 is the draft that you sent to
13 the Commissioner.

14 A. Correct.

15 224 Q. And when I use the word "draft", defence; this is your
16 first response, as it were, to Sergeant McCabe?

11:21

17 A. Yeah, it wasn't -- it was a draft response.

18 225 Q. A draft response?

19 A. Yeah.

20 226 Q. Yes, exactly. And that sets out there what you are
21 proposing for his consideration?

11:21

22 A. Yes.

23 227 Q. And it reads as follows:

24

25 "Dear Mr. McCabe,

11:21

26

27 I refer to your recent correspondence received. At the
28 very outset, I need to clarify a number of matters. I
29 have on many occasions in the past spoken out about the

1 importance of protecting and safeguarding the rights of
2 whistleblowers, for want of a better phrase. I have
3 already stated on a number of occasions admiration for
4 the bravery of people such as yourself and others in
5 trying to expose wrongdoings within not only An Garda 11:22
6 Síochána, but any other body or company. I have been
7 strong in my views that all allegations of wrongdoing
8 need to be investigated in full and the full rigours
9 and processes of the law enforced where necessary. I
10 have also stated that I believe any wrongdoings within 11:22
11 An Garda Síochána should be investigated in the first
12 instance within that force and by the appropriate
13 personnel appointed to so investigate. I have also
14 stated on a number of occasions that if there were any
15 attempt to whitewash or sweep under the carpet serious 11:22
16 concerns of any whistleblower, then the matter needs to
17 be referred to the appropriate authorities and bodies
18 outside An Garda Síochána. I have been advised that
19 Inspector O'Mahony was appointed to investigate in full
20 any complaints, including those of your good self. I 11:22
21 have also been advised that you failed to cooperate
22 with Inspector O'Mahony's investigation. I have been
23 advised that, in fact, you were directed by the
24 Commissioner to cooperate, and again you failed in that
25 regard. I have also been advised that there was a 11:23
26 potential breach of the Data Protection Act by you
27 and/or others and this was an allegation, and
28 obviously, no doubt, will be investigated in due
29 course. I also believe and state that anyone that

1 drip-feeds politicians or newspapers in relation to
2 allegations without following the proper procedures in
3 place was, in my opinion, not helping their own cause.
4 I believe that I have great respect for anybody
5 exposing wrongdoings in any organisation such as 11:23
6 yourself. I also complimented the Commissioner and the
7 force in disciplining some members of An Garda Síochána
8 and referring other files to the DPP where wrongdoings
9 had occurred. I should say for the record that I never
10 had any point squashed, nor was I ever approached by 11:23
11 any member of An Garda Síochána to assist in relation
12 to same. I believe that the work you and others in
13 your situation are doing is vital and important to both
14 uphold the honesty and integrity of our society. The
15 comments I made, for which I apologise if they caused 11:23
16 any offence, were:

17
18 1. It was my opinion that the matter should be dealt
19 with within An Garda Síochána in the first instance.

20 11:24
21 2. I believe that everyone involved should have
22 cooperated with Inspector O'Mahony's investigation.

23
24 3. I was advised that there were potential breaches of
25 the Data Protection Act, that this obviously is 11:24
26 something that will be adjudicated upon in due course.
27 I have no problem clarifying these issues again and
28 certainly do not want to cause any personal offence to
29 you or anybody else, save for my views outlined and

1 referred to above.

2

3 Yours sincerely."

4

5 And that is an unsigned draft.

11:24

6 A. Yes, yes.

7 228 Q. And that is followed in our papers with the reply that
8 actually was sent, isn't that correct, at page 1779.

9 A. Yes. I think -- sorry. Yes, that's correct.

10 229 Q. And it differs in a number of respects?

11:24

11 A. It does, yes.

12 230 Q. I think you understand that?

13 A. Yeah, yeah.

14 231 Q. And you adopted a number of paragraphs into the draft
15 that we have seen?

11:25

16 A. Correct.

17 232 Q. Okay. And the first one is, it's the third line down,
18 beginning "I would like to say", isn't that correct?
19 "I would like to say that I am invited on --"

20 A. Oh, yes, correct.

11:25

21 233 Q. And that was suggested by the Commissioner?

22 A. Yes.

23 234 Q. And then on the next page --

24 A. Well, sorry, could I just be clear there, by the
25 Commissioner or somebody on his behalf. I am not sure,
26 you know, who gave me that draft. I am assuming it's
27 the Commissioner, but I am not sure if he consulted
28 anybody else in advance of giving me...

11:25

29 235 Q. Okay. Well, the first paragraph at the top of page 2.

1 A. Yes.

2 236 Q. That first paragraph says:

3

4 "The subject of the FCPS on the show that day as part
5 of the programme was well aired in the public domain 11:26
6 previously and so I was aware that you and your
7 colleagues were advised to contact Assistant
8 Commissioner O'Mahony and his team if you had any
9 complaints to make without prejudice to the
10 confidential reporting system. That was the point I 11:26
11 was making about cooperation with the investigation."

12 A. Yes.

13 237 Q. And the word "system" there, the word "mechanism" is
14 used in the original suggested addition, but that is,
15 in effect, something that was put in at the behest of 11:26
16 the Commissioner?

17 A. Yes, or somebody on -- yes.

18 238 Q. Or somebody. And then the next paragraph:

19

20 "It was also the case, of course, that the Data 11:26
21 Protection Commissioner's views are well-known in the
22 context of personal and sensitive data being aired in
23 public. I fully agree with his views and I made this
24 point on the radio."

25 11:27

26 I think that was also suggested as to be included.

27 A. Yes.

28 239 Q. And did you know the Data Protection Commissioner's
29 views?

1 A. I am not sure I did because that information was given
2 to me by the Commissioner, so I was standing over that.

3 240 Q. Okay. Well, do you recall whether Commissioner
4 Callinan told you about the Data Commissioner's views?

5 A. He may have done so. I mean, he may have done so. I 11:27
6 mean, we did have lengthy conversations and he may have
7 gone into that, but I may have chosen just to stick to
8 the core issue rather than elaborating any further.

9 241 Q. Yes. Can you recollect perhaps any reference to the
10 fact that the Commissioner had enlisted the Data 11:27
11 Commissioner, Mr. Hawkes, at the time, and that he had
12 written to the Committee, the Public Accounts Committee
13 strongly --

14 A. I can't recollect that.

15 242 Q. -- in strong terms? 11:27

16 A. I can't recollect. I am not saying he didn't say it to
17 me, but again, it wasn't something that I was going
18 into on the radio, because I was making the point, as
19 is outlined here, but not elaborating any further
20 because I didn't -- I wasn't taking notes, to the best 11:28
21 of my knowledge, in any way, shape or form of this, so
22 I was thinking of the general points (A) cooperation,
23 and (B) data protection.

24 CHAIRMAN: Mr. McGuinness, just vis-à-vis what you have
25 said, I think everyone agrees that whatever view 11:28
26 Mr. Hawkes took was a completely independent view,
27 based upon his view of the law and any advice he
28 received, just in case any misunderstanding might
29 appear.

1 MR. MCGUINNESS: Yes. No, I was just trying to probe
2 whether Mr. Kean might have been told of the Data
3 Commissioner's views by the Garda Commissioner.
4 A. I may well have been. As I say, we were on the phone
5 for a while, but I don't recollect. 11:28
6 243 Q. Yes.
7 A. It wasn't of relevance to me, I wasn't taking it in
8 from the point of view of bringing it out on the
9 programme.
10 244 Q. All right. The third paragraph there commencing "I 11:28
11 have no doubt":
12
13 "I have no doubt that GSOC investigation will fully
14 examine all of these matters and address any
15 wrongdoing." 11:28
16 A. Yes.
17 245 Q. And that was inserted at the suggestion of the
18 Commissioner?
19 A. Yes.
20 246 Q. And did you have any knowledge of the GSOC 11:29
21 investigation?
22 A. No.
23 247 Q. Okay. The Tribunal has heard evidence of a statement
24 issued by the Commissioner on the -- on the evening of
25 the 29th January, which made reference to the matter 11:29
26 being referred to the GSOC body. Were you aware of
27 that yourself?
28 A. No.
29 248 Q. All right. But if that happened, it obviously

1 post-dated or perhaps might have been in the
2 contemplation of the Commissioner when he spoke to you
3 on the 25th or 26th?

4 A. Yeah, I can't comment on that. I mean, that is a
5 matter for the Commissioner. 11:29

6 249 Q. Did he mention GSOC to you, that he was going to send
7 these matters off to GSOC?

8 A. He could well have. I mean, he could well have. I
9 mean, don't forget, we were having lengthy
10 conversations. I am really trying to focus just on the 11:29
11 core issue.

12 250 Q. Sure. The broad strokes, is it?

13 A. Well, the core issue of, did Sergeant McCabe cooperate,
14 and, if not, why not, and, you know, was he
15 obstructive. The data protection point was brought in 11:30
16 by the Commissioner, it wasn't raised by me, other than
17 saying, you know, I think it's wrong that information
18 might be going to independent TDs in the Dáil, or
19 something to that effect.

20 251 Q. Well, this is the letter that was sent back to Sergeant 11:30
21 McCabe.

22 A. Yes.

23 252 Q. Okay. And it doesn't obviously reveal or, I suppose,
24 disclose the fact that you had checked all of this with
25 the Commissioner prior to going on the programme. Was 11:30
26 there any reason why you --

27 A. Sorry?

28 253 Q. Was there any reason why you didn't, as it were,
29 disclose in this letter to Sergeant McCabe that you had

1 checked these matters with the Commissioner?

2 A. No, there was no reason. I mean, I think maybe at that
3 stage it could be that I was still trying to honour the
4 terms of the original request from the Commissioner,
5 and that is that, you know, he not be associated with 11:31
6 giving me the information. That might be the case.
7 But I wasn't rushing to say, oh, it was the
8 Commissioner told me this. Not at that stage, no.

9 254 Q. And obviously the intricacies of the law of libel and
10 defamation, it seems to be a feature now that it can be 11:31
11 part of a defence to show that you have made reasonable
12 inquiries.

13 A. Yes.

14 255 Q. Don't you know that?

15 A. Yes. 11:31

16 256 Q. Yes. And that is, in fact, what you pleaded as part of
17 your defence at --

18 A. Subsequently, yes.

19 257 Q. -- paragraph 16.5.

20 A. Yes. 11:31

21 258 Q. But did you make a conscious decision then not to take
22 that line in this piece of correspondence?

23 A. Yeah, I think I was still very much believing that the
24 information I had given was correct, because the
25 Commissioner had not backed down in any way, shape. He 11:31
26 didn't suggest one minute, oh, we might have a problem
27 here or -- you know, so at that stage I'm still
28 confident that this matter won't be going any further,
29 despite Sergeant McCabe's annoyance, and, you know, it

1 wasn't -- you know, my main intention here was to get a
2 reply back with the Commissioner's input, and the
3 Commissioner didn't back down, the Commissioner was
4 still standing the ground as per the information he
5 gave me and I was happy to stand my ground based on 11:32
6 that information.

7 259 Q. Yes. I don't know, have you considered Superintendent
8 Walsh's statement that he made to the Tribunal --

9 A. No.

10 260 Q. -- which was furnished to you? 11:32

11 A. Yes, it was. I didn't get a chance to review them.

12 261 Q. Okay. Well, the investigators suggested to
13 Superintendent Walsh, who was acting as the sort of
14 private secretary to the Commissioner, that
15 Mr. Callinan, in fact, sent you text messages on the 11:32
16 morning of the 12th February at 7:51 in the morning.
17 Do you recall getting any text messages on that date
18 from the Commissioner?

19 A. On the morning of the programme?

20 262 Q. Of the 12th February. This is after these letters now. 11:33

21 A. Oh, sorry. No, I don't recollect getting one, no.

22 263 Q. Because you had a meeting then with Superintendent
23 Walsh on the 12th February, isn't that right?

24 A. Yeah, I didn't recollect that, but, now that I know, in
25 fact I actually knew Frank Walsh from years back. 11:33

26 264 Q. Yes.

27 A. So now I remember, yes, but I can't remember what was
28 in the text.

29 265 Q. Okay. But have you a recollection of getting the

1 texts, irrespective of what was in them?

2 A. I don't really, no, I don't really, but I am not saying
3 I didn't get it, I just don't recollect getting it.

4 266 Q. The investigators interviewed Superintendent Walsh, and
5 the Tribunal will hear from him, but I think you are 11:33
6 aware that he retrieved a diary entry showing an
7 appointment with you at 11:30 that day, isn't that
8 correct?

9 A. If that is what it says, yes.

10 267 Q. Yes. 11:33

11 A. Yes.

12 268 Q. Now, the letter that we have been looking at, the
13 response that you sent to Sergeant McCabe, that was
14 sent out on the 12th February?

15 A. Yes. 11:34

16 269 Q. Isn't that right?

17 A. Yes.

18 270 Q. And that was sent out after you had met Superintendent
19 Walsh?

20 A. I believe that to be the case. 11:34

21 271 Q. With the inclusions of the paragraphs that we've gone
22 through?

23 A. Yes, yes.

24 272 Q. And if we go to page 1783, do you see that, Mr. Kean?

25 A. I do, indeed. 11:34

26 273 Q. It's a handwritten --

27 A. Note.

28 274 Q. -- note. And we certainly understand that that is the
29 Commissioner's handwriting.

1 A. Is it?

2 275 Q. And have you seen that before?

3 A. Oh, yes, I have, yeah. Sorry, did you say it's the
4 Commissioner's handwriting?

5 276 Q. Yes. 11:34

6 A. Oh, is it? Yeah. That was the -- I was given that by
7 way of response to what amendments or alterations I
8 should make to the draft letter.

9 277 Q. Okay. And you think -- you think you are confident
10 enough to say you were given that, or a copy of it? 11:35

11 A. Oh, I am certainly confident, yeah, because the
12 phraseology in two of the paragraphs wouldn't be mine
13 at all. "The subject of the FCPS" wouldn't be mine.

14 278 Q. Yes.

15 A. No, that was given to me, I have no doubt about that,
16 from the Commissioner's office, to help me formulate a
17 response to Sergeant McCabe. 11:35

18 279 Q. Yes. And that first handwritten paragraph, that
19 appears on the first page with the third line of the
20 reply. 11:35

21 A. Yes, yes.

22 280 Q. The other three paragraphs we have seen, that text is
23 almost verbatim, with the exception of one word, what
24 is included at the top of page 2 of your actual
25 response to Sergeant McCabe? 11:35

26 A. Right.

27 281 Q. Isn't that right?

28 A. Yes.

29 282 Q. Now, there is a typewritten version of that at page

1 1782.

2 A. Yes.

3 283 Q. Do you recall getting that from Superintendent Walsh?

4 A. I couldn't remember who I got it from --

5 284 Q. Yes. 11:36

6 A. -- until I heard about this meeting, and I recollect

7 meeting Superintendent Walsh, and I believe that is

8 where I probably got this, because it wasn't emailed,

9 faxed or posted to me or anything like that.

10 CHAIRMAN: Mr. McGuinness, it might help, I suppose, 11:36

11 Mr. Kean and myself if, given that we didn't get any of

12 this from Mr. Kean when he said he hadn't got any

13 documents, you might indicate where the Tribunal

14 actually got it from, got all of these things from.

15 MR. MCGUINNESS: Yes. Well, I am just coming to 11:36

16 clarify a couple of issues.

17 285 Q. You didn't provide that to the Tribunal, either of

18 those two?

19 A. I didn't have that. No, no, I didn't have that.

20 286 Q. And my question, perhaps it was unclear at the time -- 11:36

21 CHAIRMAN: Sorry, Mr. Kean, you actually did have that.

22 A. No, no, I did not have --

23 CHAIRMAN: At one stage you did have it.

24 A. Yeah. I did not have it at the time --

25 CHAIRMAN: You are as familiar as I am with an 11:36

26 affidavit of discovery.

27 A. Yes.

28 CHAIRMAN: "I have in my possession". In the next

29 paragraph: "I once had in my possession but no longer

1 have and the time I last had it in my possession is on
2 the schedule."
3 A. Yes, from --
4 CHAIRMAN: That is kind of what every lawyer knows, so
5 you did have this. 11:37
6 A. Yes, but I was not aware I had -- I did not remember
7 having that, I did not remember having that.
8 CHAIRMAN: Okay. So we were just going on to where we
9 got it from.
10 A. Yes. 11:37
11 287 Q. MR. MCGUINNESS: So the handwritten document that you
12 looked at and I had understood you to agree with me
13 that that was provided to you on the day that you met
14 Superintendent Walsh, on 12th February 2014?
15 A. I believe that to be the case, yeah. 11:37
16 288 Q. And --
17 A. Sorry, I should also point out that there is no
18 benefit - this is of great assistance to me, this
19 document - there is no benefit for me to not produce
20 this document, because this document proves, in my 11:37
21 opinion, and I was very happy to get it, that there was
22 an active response from the Commissioner's office to
23 help me with the draft letter that I did, so I was very
24 pleased to get this document.
25 289 Q. Now, you may not have retained that, is that the case? 11:38
26 A. Yes, that's correct, no.
27 290 Q. We, in fact, got this from disclosure from the
28 Commissioner's office, ultimately discovered by
29 Mr. Murrinan in late December.

1 A. Yes, yes. And it also has to be said it wouldn't be
2 unusual that, at that meeting, I didn't get the
3 document. It may have been a case it was put in front
4 of me and I dictated the letter based on that, maybe,
5 because I never got the document. 11:38

6 291 Q. Yes.

7 A. It would not be unusual for me to dictate a letter, as
8 I did, on the same day incorporating that, but I was
9 very pleased to get this from the Tribunal.

10 292 Q. Yes, but I do want to nail this down. Have you a 11:38
11 recollection of having that produced to you in your
12 office where the meeting took place with Superintendent
13 Walsh on the 12th February 2014?

14 A. I have a vague recollection of getting that information
15 on that day, which enabled me to send out the letter. 11:38

16 293 Q. Okay. Well, there is a typewritten version that we
17 were just going to ask you to look at, at --

18 A. At 1782?

19 294 Q. Yes, 1782. Superintendent Walsh has told the Tribunal
20 he typed up this version of what is the handwritten 11:39
21 one.

22 A. Right.

23 295 Q. Have you any recollection of seeing that on the day?

24 A. I am not sure -- I am assuming it was a typed version I
25 saw that I worked, you know, and dictated the letter 11:39
26 from, I am assuming that. I am not sure when I saw the
27 written one or the typed one, but as they are both
28 identical, I am not sure which I saw.

29 296 Q. Yes.

1 A. I am sure Superintendent Walsh could clarify that.
2 CHAIRMAN: I am just a wee bit confused as to, and
3 there has been mention of a text apparently coming from
4 Superintendent Walsh, there has been mention of a
5 handwritten document, there has been mention of a 11:39
6 typescript of a handwritten document and there has been
7 mention of dictating something, there has been mention
8 of seeing something, but the actual sequence of what
9 came when and what was done with it, I'm just -- at
10 this point, I am just not getting it, and that is 11:40
11 entirely my fault, Mr. McGuinness.
12 MR. MCGUINNESS: Perhaps I will just try and revisit it
13 with the witness.
14 297 Q. And sorry, Mr. Kean, just, the Chairman wants to be
15 clear and I want to be clear on this too. 11:40
16 A. No problem.
17 298 Q. You met Superintendent Walsh?
18 A. Yes.
19 299 Q. On the 12th February?
20 A. Yeah. I actually hadn't recollected that until it was 11:40
21 mentioned to me, but, yes, I did, I remember that we
22 did, yes.
23 300 Q. And you met him for the purpose of -- you were anxious
24 to respond to Sergeant McCabe?
25 A. Correct. 11:40
26 301 Q. The draft that you'd sent to the Commissioner, he
27 hadn't replied to that letter in any form of
28 correspondence?
29 A. No, I had no correspondence from the Commissioner at

1 any time in relation to this matter.

2 302 Q. And apparently the Commissioner and Superintendent
3 Walsh agreed it wouldn't be appropriate for him to
4 reply, did you know that?

5 A. I assume that's correct, yes, bearing in mind that the 11:41
6 Commissioner had already told me that he didn't want me
7 to disclose where I was getting my information from in
8 advance.

9 303 Q. But Superintendent Walsh, whom I think you knew for
10 over 30 years -- 11:41

11 A. Yes, yes.

12 304 Q. -- was the Commissioner's private secretary.

13 A. Yes.

14 305 Q. Isn't that right?

15 A. Well, if you say so. I am assuming he was. He was 11:41
16 certainly in his office.

17 306 Q. Yes. But you had acted professionally for him?

18 A. I did, yeah. I would say, I am guessing 20 years ago.

19 307 Q. In the purchase of a house, some property anyway, is
20 that right? 11:41

21 A. Yeah. I don't remember, but I did act for him, and I
22 am assuming that's correct, but it was a long time ago.

23 308 Q. Yes. And he came to your office?

24 A. Yes.

25 309 Q. And I am trying to be clear on this, did he come with 11:41
26 one or other or both of these?

27 A. I don't remember that.

28 310 Q. And show them to you?

29 A. I don't remember that. He certainly showed them to me

1 because that's why my letter was amended.

2 311 Q. Yes. And can we take it then that it's a very clear
3 recollection and something you can happily swear to,
4 that one or other of these was shown to you and, as a
5 result, you amended your letter and included these in 11:42
6 your reply to Sergeant McCabe?

7 A. Yes, and when you say "shown", he may have read it out
8 to me. You know, there is a strong possibility, as
9 would not be unusual, that I dictated the letter when
10 he was with me, I don't remember. But I am certainly 11:42
11 satisfied that they were either read to me, shown to me
12 and/or possibly given to me, though I have no record of
13 that, that that then assisted me in drafting the reply
14 and amending the reply accordingly.

15 312 Q. Yes. Now, just to go to a portion of your statement. 11:42
16 You do say, at the bottom of page 1736, of your shock
17 on the day of the broadcast, and then telephoning the
18 former Commissioner for further clarification. That is
19 at the bottom of page 1736.

20 A. Right, yes. 11:43

21 313 Q. Were you concerned on that day, having regard to the
22 phone call from Sergeant McCabe, that there might be
23 follow-up, and then there was, in fact, follow-up?

24 A. Yes, yeah, I mean, I was concerned, yeah. I mean, I
25 was shocked, as I said. 11:43

26 314 Q. And did you say that to the Commissioner when you spoke
27 to him on the 26th?

28 A. I don't recollect what I said, but I think it's fair to
29 assume that I was ringing him to express serious

1 concern about what I had just heard.

2 315 Q. Yes. Well, did you adopt a wait-and-see approach,
3 because the letter from Sergeant McCabe didn't come
4 immediately?

5 A. No, no, it didn't, yeah. And my attitude was very much 11:44
6 wait and see.

7 316 Q. Yes. But it did come on the -- it did come on the 6th
8 February, and you immediately sent it to the
9 Commissioner on the 6th February, isn't that correct?

10 A. That is correct. 11:44

11 317 Q. And did you have some conversation then with the
12 Commissioner to, as it were, enlist his assistance and,
13 in particular, in relation to the issue as to whether,
14 whether you were free to say in your defence, as it
15 were, in the letter, that you'd consulted him 11:44
16 beforehand?

17 A. Well, I certainly would have been looking to him to
18 provide evidence that what he had told me and what I
19 subsequently stated in the Marian Finucane show was
20 correct, so I was hoping to get some evidence to prove 11:44
21 that he was correct in giving me the information.

22 318 Q. Yes.

23 A. And I subsequently relaying it on the Marian Finucane
24 show.

25 319 Q. Yes. Because the letter -- the letter that you wrote 11:45
26 to him simply asked for him to look at the letter?

27 A. Yeah.

28 320 Q. But it didn't contain a request for evidence or
29 documentation.

1 A. No, no.

2 321 Q. So when did you ask him for that?

3 A. No, I am not saying -- I am saying -- what I said was,
4 I could have asked him for that. I expected that, I
5 expected something that would say, listen, the reason 11:45
6 not to worry, as I told you, is because here, 1, 2, 3,
7 4, 5, but I didn't get that.

8 322 Q. Why did you expect that if you hadn't asked for it in
9 the letter, unless you'd asked for it perhaps in a
10 phone call or -- 11:45

11 A. I would expect it because I have got a letter from
12 Sergeant McCabe saying the information I gave was wrong
13 and that all the information in relation to his
14 cooperation was false, and that was information the
15 Commissioner gave to me. So, at that stage, it 11:45
16 wouldn't be unusual to expect a substantive response by
17 way of some evidence that what he said -- what the
18 Commissioner said was correct.

19 323 Q. You see, I have asked you about any text messages from
20 Mr. Callinan to you on the morning of the 12th, but 11:46
21 there is a call from Superintendent Walsh to you on the
22 morning of the 12th at 8:26 a.m. Do you recall him
23 phoning you?

24 A. I don't, but I have no doubt he did, and the text might
25 have been from the Commissioner along the lines of, and 11:46
26 I am only suggesting an educated guess, to say, listen,
27 expect a call from Superintendent Walsh, or something
28 to that effect.

29 324 Q. Okay. And presumably you knew exactly who he was then

1 at that stage, Superintendent Walsh, you had acted
2 for --

3 A. No, I wouldn't say that. I have acted for hundreds of
4 guards. I mean, I can't, with certainty, say I knew
5 exactly who it was, but certainly, when I met him, I 11:46
6 knew who he was.

7 325 Q. Yes. But the drafts that we have looked at there with
8 the four extra paragraphs, I mean, you said in your
9 statement to the investigators that you checked the
10 file and you confirmed that a copy of that wasn't on 11:47
11 the file, and you go on to say at page 1740, perhaps
12 we'd just look at that, it's line 248, if you want to
13 just check that there:

14

15 "A. I have checked my file and I confirm that a copy 11:47
16 of the Exhibit GK5 is not on the file. I believe now
17 that it is fair to say that the former Commissioner
18 Callinan, or somebody on his behalf, assisted in some
19 way in drafting my response letter dated 12/2/2014."

20 A. Yes. 11:47

21 326 Q. And did you not recall at this stage the attendance of
22 Superintendent Walsh --

23 A. I didn't, no.

24 327 Q. -- whom you had known and acted for, attending at your
25 office on the 12th? 11:48

26 A. No, I didn't recollect that, no, no, but, I mean, it
27 would be wrong of me if I said I did. I don't. But I
28 was delighted, and I repeat this, and the inspectors
29 were -- will note this, I was delighted to see this

1 note, because, to me, it went a long way towards
2 reaffirming everything I had been saying, but I don't
3 remember how I got that.

4 CHAIRMAN: But, Mr. Kean, it's not kind of every day
5 that the personal secretary of the Garda Commissioner
6 turns up to one's office carrying a handwritten note
7 personally written by the Garda Commissioner with a
8 view to assisting you in correspondence with a public
9 figure. It's hard to know why you didn't remember
10 that.

11 A. Well, very simple: I mean, if I am seeing 30, 40
12 people a day, six days a week, and this is, you know,
13 this is a meeting that is arranged at short notice, I
14 would be delighted to remember this, I mean it would
15 have given me great pleasure to have had this note at
16 the very start; in fact, it would have been a great
17 pleasure to have had it during the course of
18 proceedings, but I didn't have it, and I was delighted
19 that we got it.

20 328 Q. MR. MCGUINNESS: But you certainly had your original
21 letter to the Commissioner with your original draft
22 response?

23 A. I did, yes, yes.

24 329 Q. And you had the response that you actually issued, and
25 you sent none of them to the Tribunal.

26 A. Oh, well, no. I apologise for that. That is an error
27 on my part. At that stage, the Tribunal, who I have
28 said on two occasions thanked me for all my
29 contributions and help, I made everything available

1 that I had at that time, but, to be fair to me, I was
2 very much concentrating, as you can imagine, on being
3 sued in the High Court for defamation by a plaintiff.
4 This is the sole and this is my main concern. But I
5 don't think there can be any doubt, unless you want to 11:49
6 talk to the inspectors, about the level of cooperation
7 I have given from the very start and the speed at which
8 that was given.

9 330 Q. Well, in fairness, perhaps I should ask you to look at
10 another answer there at page 1741. 11:49

11 A. Yes.

12 331 Q. Because you do obviously talk about your own defence
13 here. It's at line 257. You are being asked about the
14 handwritten or the typed note.

15 A. Yeah. 11:50

16 332 Q. "I have no recollection of ever seeing this handwritten
17 or typed note previously, but that does not mean I did
18 not receive them."

19 A. Yes.

20 333 Q. "However, having now viewed the response issued by me 11:50
21 to Sergeant McCabe dated 12/2/2014, I note that the
22 points listed in GK5 have been included in part of my
23 file and response issued to Sergeant McCabe. As such,
24 it is clear to me now that there was some input from
25 the former Commissioner Callinan or somebody on his 11:50
26 behalf in drafting my response to Sergeant McCabe. The
27 whole purpose of sending my draft response to the
28 former Commissioner Callinan in the first instance was
29 that there would be a considered response from him in

1 order to protect myself and I expected that he would
2 evidence what he had stated to me over the phone on
3 25th January 2014."

4 A. Yes.

5 334 Q. But was it ever unclear to you that the response that 11:50
6 you sent to Sergeant McCabe hadn't come from the
7 Commissioner, because you'd written to him only --

8 A. No, I believe --

9 335 Q. Only written to him for that purpose?

10 A. Absolutely. No, I believe that the, and I have said 11:51
11 that in my affidavit, I believe that the amendments or
12 the additions that were proposed came from the
13 Commissioner, yes, I believe that. I mean, he may have
14 got advice internally, whatever, that is not for me to
15 say, but certainly, he is the only one I contacted. 11:51

16 336 Q. But what I am mystified is, is that how can you be --
17 have suggested that it might have come from some other
18 agent?

19 A. Well, no, what I am talking about there is, and I
20 certainly don't want you mystified, I want to be very 11:51
21 clear on this, what I am trying to say there is that I
22 don't know who in the Commissioner's office, or if it
23 was him, that helped me with this response. I wrote to
24 him, but I am just saying that I can't say it was him.
25 Maybe it was one of his assistants that drafted the 11:51
26 response on his behalf, but I am confident it came on
27 foot of my letter --

28 CHAIRMAN: It may be difficult -- it's kind of
29 difficult for me to imagine, certainly sitting here

1 now, someone in the Garda Commissioner's office
2 dictating something to him and him writing it down in
3 his own handwriting.

4 A. Yes, yes, but I didn't know that was his handwriting.
5 I had no idea whose handwriting that is. It was even 11:52
6 suggested to me at one stage was it somebody in my
7 office's handwriting, and I said no.

8 CHAIRMAN: Well, obviously we don't know until people
9 tell us.

10 A. Yeah. Well, I don't know, but it's been said to me 11:52
11 it's the Commissioner, I think, is that correct, that
12 you said to me that's the Commissioner's handwriting?
13 I didn't know this. But it doesn't surprise me.

14 337 Q. Yes. Can I just, in fairness, put to you what
15 Superintendent Walsh has said at page 1839 of his 11:52
16 statement, and perhaps at 1838, to put it in context.
17 At line 88, it says:

18
19 "The Commissioner and I discussed the contents of this
20 letter and attachments. I recall the Commissioner 11:53
21 being concerned as to the appropriateness of sending a
22 written response to Mr. Kean. My recollection is that
23 his concern centred on the fact that litigation was
24 mentioned or contemplated which would have involved a
25 member of An Garda Síochána. I think Commissioner 11:53
26 Callinan probably would have discussed this with me in
27 some detail as I have studied law myself for a little
28 while and he would sometimes ask for my
29 non-professional opinion on legal issues. I recall

1 that I was in agreement that it would probably be
2 inappropriate for the Commissioner of An Garda Síochána
3 to be seen to be advising a member of the legal
4 profession on a matter that may come before the courts
5 involving a member of An Garda Síochána. Gerald Kean, 11:53
6 solicitor, is personally known to me and acted for me
7 in a professional capacity on a house purchase in the
8 past. I have known Gerald Kean for probably 30 years.
9 I told Commissioner Callinan of my relationship with
10 Gerald Kean and I believe I offered to discuss the 11:53
11 matter further with Gerald Kean."
12

13 Now, can I just stop you there and ask you a few
14 matters. The view taken at that time, therefore, seems
15 to be, on the part of the Commissioner and 11:54
16 Superintendent Walsh, that it was inappropriate to get
17 involved in this matter. But did you not see that it
18 was inappropriate for you to be seeking his help?

19 A. No, no, I thought it was very -- I thought it was
20 vital. 11:54

21 338 Q. To defend yourself against Sergeant McCabe?

22 A. No, I thought it was vital because -- and let me repeat
23 what I said, and I think this goes very clear to
24 clarifying the point that the Chairman raised. There
25 is a very strong possibility that I never got this 11:54
26 note. They didn't want any link between their office
27 and my office, which, now, in hindsight, I understand
28 why. So there is a very strong possibility, and that
29 is why I can't find anything about this, and that is

1 why the letter that went out went out the same day, and
2 there is a very strong possibility that I dictated that
3 letter with Superintendent Walsh. That is a
4 possibility.

5 339 Q. Yes. 11:54

6 A. So the question -- to answer your question do I find it
7 unusual, not at all; in fact, I find it absolutely
8 imperative that I get to the Commissioner, give him the
9 letter of complaint from Sergeant McCabe and then ask
10 him, why have I got this? Why is he saying this? 11:54

11 340 Q. Yes. You don't seem to have followed up in
12 correspondence or in writing in any way with asking the
13 Commissioner, well, you know, what is the evidence
14 behind what you have told me?

15 A. No, no, no, I didn't -- 11:55

16 341 Q. How are you going to back me up?

17 A. Yeah, exactly. But I can tell you that when he -- when
18 I left the programme and rang him, that was the reason
19 for the call, listen, we have a problem here, Sergeant
20 McCabe is saying that what I said is incorrect, you 11:55
21 told me this, so now I am going to enlist your help in
22 dealing with this problem. Now, I then waited, a
23 wait-and-see, as you say, and then the letter came in
24 and then I sent it to him and say, right, now let's --
25 you know, we need to respond to this. 11:55

26 342 Q. Okay. Well, just to pick up where I left off in the
27 quotation where Superintendent Walsh says:

28

29 "I believe I have offered to discuss the matter further

1 with Gerald Kean."

2
3 Did Superintendent Walsh discuss it with you?

4 A. I don't have a recollection of what was discussed. I
5 am assuming he did, yeah. 11:55

6 343 Q. "The reason for this was that the Commissioner remained
7 concerned as to an official response to the letter of
8 the 6th February 2014, but was nevertheless conscious
9 of the need not to ignore the letter and to try and
10 take some action to provide a response. The 11:56
11 Commissioner and I agreed I would meet with Mr. Kean,
12 and I subsequently arranged a meeting with Mr. Kean on
13 12/2/2014 at 11:30 a.m. at his office. The
14 Commissioner had written some notes, which I believe
15 was an attempted guidance perhaps for me in advance of 11:56
16 the meeting. I believe I probably typed them up for
17 clarity and was probably conscious that if Mr. Kean
18 asked for a copy of the notes, that I wouldn't be
19 giving him a handwritten version. I met with Mr. Kean
20 at 11:30 a.m. at his office on 12/2/2014. I had a 11:56
21 general conversation with him initially, pleasantries,
22 and then a discussion about his correspondence of the
23 6/2/2014. I have no note of the conversation, but
24 would have confined any comments to the notes that I
25 typed up. I was not aware of the Marian Finucane radio 11:56
26 programme on the 26/1/2014 which Gerald Kean was on,
27 until the correspondence was received at the
28 Commissioner's office. Therefore, I could not go into
29 the matters in any great detail so I relied on

1 Commissioner Callinan's note that I had. To the best
2 of my recollection, Mr. Kean made notes, but I don't
3 believe I gave him a copy of the typed notes, but I am
4 open to correction on that. Again, my best
5 recollection is the notes were meant to assist, were 11:57
6 all matters that were already in the public domain. On
7 my return to the office, I would have briefed the
8 Commissioner on the meeting and subsequently would have
9 asked that the letter and attachment and notes would be
10 filed." 11:57

11

12 So does that help you in any way?

13 A. It does, yeah. It means that several days of
14 exhaustive work carried out by employees in my office
15 looking for a note that we thought might have been lost 11:57
16 or misfiled, I think it's fair to accept was never
17 given to me.

18 344 Q. Okay. Did you perhaps not think it prudent to ring
19 Superintendent Walsh when this arose in the context of
20 a request from the Tribunal, to see had he given you a 11:57
21 note or --

22 A. I didn't even remember his involvement. I would have
23 been delighted to, because I repeat what I said, this
24 note is very helpful to me.

25 345 Q. Just as a side issue, had you any contact with Deputy 11:58
26 Commissioner O'Sullivan at that time in relation to any
27 of these matters?

28 A. Oh, sorry --

29 346 Q. Nóirín O'Sullivan?

1 A. No, I don't believe I have ever spoken to Nóirín
2 O'Sullivan in my life.

3 347 Q. Okay.

4 A. I don't believe I ever met her.

5 348 Q. And to be fair to yourself and obviously Commissioner 11:58
6 Callinan, did he ever mention to you any criminal
7 investigation that had occurred in relation to Sergeant
8 McCabe?

9 A. No, other than mentioning that there was possible
10 criminality involved in relation to breaches of the 11:58
11 Data Protection Act, or words to that effect.

12 349 Q. And had he ever raised any issue of any sexual abuse
13 allegations --

14 A. No.

15 350 Q. -- on anyone? 11:58

16 A. No.

17 351 Q. At any stage?

18 A. No.

19 352 Q. A file going to the DPP?

20 A. No. 11:58

21 353 Q. Did you ever speak to Commissioner Callinan about any
22 of these matters after this correspondence of the 12th
23 February?

24 A. No, I don't believe I did, I don't believe I did.

25 354 Q. Had you yourself heard any rumours about Sergeant 11:59
26 McCabe?

27 A. No, I heard nothing, if you are referring to
28 specifically the --

29 355 Q. Well, any rumours?

1 A. No, none. I didn't hear anything about Tusla until I
2 read it, no, no.

3 356 Q. Just looking at the overall events in terms of what was
4 occurring in the political context and involving the
5 Commissioner and the Public Accounts Committee, did you 11:59
6 not see a danger in seeking out the view of the
7 Commissioner and speaking publicly then?

8 A. No, I didn't, at that time. At that time -- I mean,
9 hindsight is a great virtue and, you know, at that time
10 I didn't. I genuinely felt, because I was brought up 12:00
11 in a house with my dad as a sergeant, that, you know,
12 people like the Commissioner were beyond reproach. I
13 mean, if I am wrong or if I was wrong, and I am not
14 saying I am wrong, that is my fault. But, you know, I
15 didn't see anything -- you know, I was going to the 12:00
16 Commissioner believing that he was somebody beyond
17 reproach, and when he gave me such very clear
18 statements as to what the position was, I felt
19 comfortable, and bearing in mind that the -- you know,
20 as I say, the Minister for Justice had already 12:00
21 reiterated these points some several months earlier.

22 357 Q. But this is something that you chose to do, you
23 intended to do and you did do, and putting out the
24 Commissioner's view --

25 A. Yes. 12:00

26 358 Q. -- sub rosa, without disclosing to either the Marian
27 Finucane Show or the public that you had spoken to the
28 Commissioner, and that was the way he wanted it?

29 A. Yeah, well, I can't comment about him. But in relation

1 to your point, I'm -- while you are saying and pointing
2 out the Commissioner's view, I thought that I was
3 pointing out the official views and approaches of An
4 Garda Síochána --

5 359 Q. Yes.

12:01

6 A. -- hierarchy, not just the Commissioner. But I know
7 what you are saying. But I didn't turn around and say,
8 well, forget about what the guards think, I am going to
9 say what the Commissioner thinks. I genuinely believed
10 that the Commissioner was speaking on behalf of

12:01

11 management and An Garda Síochána at the very top level.
12 MR. MCGUINNESS: All right. Perhaps you would answer
13 any further questions.

14 CHAIRMAN: Maybe I could just comment. Given that
15 everything has been gone through very thoroughly, I
16 would ask people to be as concise as they can. So
17 Mr. McGarry.

12:01

18 MR. MCGARRY: Chairman, I just have a couple of
19 matters.

20
21 MR. KEAN WAS CROSS-EXAMINED BY MR. MCGARRY:

12:01

22
23 360 Q. MR. MCGARRY: Mr. Kean, Paul McGarry is my name. I am
24 one of the counsel representing Sergeant McCabe. You
25 have given evidence that Commissioner Callinan was a
26 man who you had met once and possibly had a phone
27 conversation with on one other occasion before all of
28 this?

12:01

29 A. Yes.

1 361 Q. And yet you spoke to him for approximately almost one
2 hour in total in the lead-up to the programme?
3 A. Yes.
4 362 Q. And you made it clear to him that you were going to use
5 the information that he provided you on the programme? 12:02
6 A. Yes, that is correct.
7 363 Q. And he told you not to say that it came from him?
8 A. That is correct.
9 364 Q. How did he say that to you?
10 A. Mr. McGarry, I can't remember the exact wording, but he 12:02
11 certainly said it to me on a couple of occasions, and
12 possibly three occasions, I can't remember, but it
13 wasn't just once. He said, listen, please don't
14 mention that we spoke or please don't mention that I'm
15 clarifying this position or giving you this 12:02
16 information, or words to that effect.
17 365 Q. Did you not think that was a bit strange, a bit odd?
18 A. I didn't at the time, no, because, you know, I am
19 conscious that some people might want to remain
20 anonymous. As I say, I am not an investigative 12:02
21 journalist, but there is quite a lot of information
22 appears in the paper from anonymous sources, so I
23 didn't think it was strange at the time, no.
24 366 Q. Well, you know that some of the information that he
25 gave you wasn't correct? 12:02
26 A. I know now, or I believe so now.
27 367 Q. Yes. And you accepted him at his word at the time?
28 A. I did.
29 368 Q. Was that because he was the Garda Commissioner?

1 A. I think that is fair to say, yes.

2 369 Q. I see. So a person in his position could rely on the
3 fact that you would relay the information without
4 questioning whether it might be correct or otherwise?

5 A. I think that would be correct to say. 12:03

6 370 Q. And you didn't ask him for any back-up information or
7 evidence to support what he was saying?

8 A. No, I didn't, not in those conversations.

9 371 Q. He told you a number of things, you have said, in
10 relation to possible breaches of data protection, 12:03
11 cooperation with the O'Mahony investigation, other
12 Gardaí being the subject of disciplinary proceedings,
13 and, in fact, you have said in your evidence that he
14 told you that Sergeant McCabe was obstructive in the
15 investigation. You used the word "obstructive" I think 12:03
16 twice or three times in your evidence.

17 A. Yeah, yes. And I think, you know, the tenor of the
18 conversations, clearly, I'm clear that he continually,
19 and when I say continually but certainly at regular
20 intervals, referred to Sergeant McCabe as being 12:04
21 obstructive and/or difficult and/or not cooperative or
22 not helping or not -- you know, words to that effect.

23 372 Q. Did you not think it was odd that the Commissioner was
24 giving you this level of information about the internal
25 operations of An Garda Síochána? 12:04

26 A. Well, I didn't, because I think he had given a lot of
27 information already to the Minister for Justice some
28 three months earlier.

29 373 Q. Well, did you think it was proper or appropriate that

1 he would do that?

2 A. Again, because he had given it to the Department of
3 Justice or the Minister, I didn't think it was that
4 inappropriate, no.

5 374 Q. And you are familiar with the Garda Síochána and the 12:04
6 legislation covering An Garda Síochána, you said you
7 have represented gardaí in a whole variety of areas, so
8 you would be broadly familiar with --

9 A. Broadly familiar, yeah.

10 375 Q. And did you think in that context that him providing 12:04
11 you with what, on any reading, is internal information
12 about An Garda Síochána, disciplining four individuals,
13 obstructing inquiries, did you think that that was
14 permissible on the part of Mr. Callinan?

15 A. I didn't think there was any problem because I had 12:05
16 formed that view on the basis that, again, deputy --
17 or, sorry, Minister Shatter had, some three months
18 earlier, gone into great detail in the Dáil about the
19 difficulties of Mr. McCabe not cooperating, not being
20 helpful, not being -- and, in part, the -- as I have 12:05
21 said before, I am not an investigative journalist in
22 this, I am simply a panelist. I also wanted to make
23 sure that -- you know, it was on my mind had the
24 position changed since Deputy Shatter, that maybe
25 Mr. McCabe had spent the last three weeks in head 12:05
26 office providing information and details of his
27 complaints, I didn't know.

28 376 Q. And the information that Commissioner Callinan was
29 giving you, which subsequently you found out to be

1 incorrect, at the time he must have known it was
2 incorrect?

3 A. I believe that, yes.

4 377 Q. Yes. So, in reality, without questioning him in
5 advance, you were a conduit for incorrect information
6 being provided in the public domain about Sergeant
7 McCabe?

12:05

8 A. I believe that that is correct now, yes.

9 MR. MCGARRY: Thank you.

10 A. Not at all.

12:06

11

12 MR. KEAN WAS CROSS-EXAMINED BY MR. MICHAEL O'HIGGINS:

13

14 378 Q. MR. MICHAEL O'HIGGINS: Good afternoon, Mr. Kean.
15 Michael O'Higgins. I am counsel on behalf of
16 Superintendent Taylor, and I don't have very many
17 questions for you, I hope. I hope to finish before
18 lunch, which is at 12:30.

12:06

19 You spoke to Commissioner Callinan --

20 CHAIRMAN: Mr. O'Higgins, sorry, can I just ask, we
21 have to bear in mind nothing has been said about
22 Superintendent Taylor in this evidence.

12:06

23 MR. MICHAEL O'HIGGINS: Chairman, if I could indicate
24 to you what I respectfully contend may be relevant for
25 my client.

12:06

26 CHAIRMAN: Yes.

27 MR. MICHAEL O'HIGGINS: My client's case in his
28 statement to the Tribunal, in essence, says two things:
29 one, I briefed against Sergeant McCabe, and two, I did

1 that under the direction of Commissioner Callinan. And
2 what I'm hoping is relevant and what I'm assuming is
3 relevant in terms of any questions I have for Mr. Kean
4 is, if Commissioner Callinan, if it is demonstrated
5 that he is briefing, in the background, two
6 individuals, we would contend that is supportive of my
7 client's position that he was being directed by
8 Commissioner Callinan.

12:07

9 CHAIRMAN: That makes sense, Mr. O'Higgins, if that is
10 so.

12:07

11 MR. MICHAEL O'HIGGINS: And I don't intend to conduct a
12 lengthy cross-examination.

13 CHAIRMAN: Well, half an hour is a long time. And as I
14 said, absolutely nothing has been said now against
15 Superintendent Taylor.

12:07

16 MR. MICHAEL O'HIGGINS: Well, that is my only interest.

17 CHAIRMAN: And indeed the question was asked by
18 Mr. O'Higgins: "were you contacted by the Garda Press
19 Office?" "I don't think I was. I can't remember, but
20 I don't think so."

12:07

21 MR. MICHAEL O'HIGGINS: Well, Chairman --

22 CHAIRMAN: Sorry, just let me continue. "Were you
23 briefed negatively by Superintendent Taylor in relation
24 to Sergeant McCabe?" "No, I don't believe I was."
25 And then the other thing is, I am taking from his
26 evidence that, as regards the Tusla matter, which I
27 think is what was referred to, he didn't know about the
28 Tusla matter, or indeed any allegation of sexual abuse.
29 So how it is going to assist me, I don't know, but

12:08

1 please carry on as concisely as you can.

2 MR. MICHAEL O'HIGGINS: That is my only interest.

3 A. Could I take insulin -- I need to take insulin. It's a
4 two-second process --

5 CHAIRMAN: Wouldn't it be better maybe that you had 12:08
6 your lunch and come back --

7 A. No, no, it will only take --

8 CHAIRMAN: No, please, if you want to go outside, there
9 is a door there and you can go out into the corridor.

10 12:08

11 THE WITNESS THEN STOOD DOWN BRIEFLY.

12

13 CHAIRMAN: Thanks, Mr. Kean, you are sorted now.

14 A. Thank you, Chairman.

15 379 Q. MR. MICHAEL O'HIGGINS: Mr. Kean, when you spoke to 12:09
16 Commissioner Callinan and he briefed you and he
17 indicated that he wanted the briefing that he had given
18 you kept confidential, isn't that so?

19 A. Yes, Mr. O'Higgins, yes.

20 380 Q. And you've indicated that you didn't find that 12:09
21 particularly surprising; information appears in the
22 media all the time based on anonymous sources?

23 A. That's correct, Mr. O'Higgins.

24 381 Q. And did you form a view as to why he wanted the matter
25 kept confidential? 12:09

26 CHAIRMAN: But if he did form a view, again, I'm
27 seriously not interested; it's what goes on in
28 Mr. Kean's mind.

29 MR. MICHAEL O'HIGGINS: All right.

1 382 Q. When the programme completed, you've aired the concerns
2 that you felt might arise from Sergeant McCabe's
3 complaints, isn't that right?
4 A. Yes, that's correct.

5 383 Q. And you spoke to Commissioner Callinan? 12:10
6 A. That's correct.

7 384 Q. And during the course of your calls with him, did the
8 issue arise as to whether his involvement with you
9 might become public?
10 A. I can't be sure. It wouldn't be beyond the realms of 12:10
11 possibility that he might have said, you know, don't
12 forget, please keep me out of this or keep my name away
13 from it, but I can't remember anything specific.

14 385 Q. And did he say why he was anxious to remain in the
15 background? 12:10
16 A. I don't know, but I am not saying that happened, but
17 are we talking about the Sunday call? But he certainly
18 said it on the Saturday.

19 386 Q. Well, I am particularly interested in the Sunday call.
20 A. Yes. 12:11

21 387 Q. In the light of the fact that Sergeant McCabe had made
22 a mistake and this might follow on, so to speak?
23 A. Yeah. Sergeant McCabe might have made a mistake?

24 388 Q. No, Sergeant McCabe had complained --
25 A. Yes, correct. 12:11

26 389 Q. -- there had been things said?
27 A. I am not sure and I can't recollect if the Commissioner
28 again repeated, please keep my name out of it.

29 390 Q. Well, I am asking you a slightly different question.

1 Did he express any concern: look, I have been in the
2 background now, it looks like I might come to the
3 foreground and I don't want that? Did he say anything
4 along those lines?

5 A. No, no, no. He said that he stood by everything he 12:11
6 said and he didn't see any problem, or words to that
7 effect, this will all wash itself out, or...

8 391 Q. You used a sentence or two here, and bear in mind I am
9 not a transcript, but you said it was obvious to you
10 now that the Commissioner didn't want a link between 12:11
11 his office and you and, in hindsight, it's clear to you
12 why that was. why do you think the Commissioner didn't
13 want a link between himself and your office?

14 A. Well, I believe that, in hindsight, that, and this is 12:12
15 just my own personal belief, that he used me to promote
16 a position that supported his stance in the matter and
17 that which, in my opinion, was incorrect, and I ended
18 up in the firing-line.

19 392 Q. And he had commenced that with you on the basis of
20 keeping it confidential, and in his subsequent dealings 12:12
21 with you by having Superintendent Walsh attend your
22 office and so forth, he wanted to assist you but he
23 wanted to assist you in such a way that that assistance
24 would not be apparent, isn't that so?

25 A. Well, I believe that to be the case. 12:12

26 393 Q. Do you remember at this stage, because it's just
27 unclear to me from listening to your evidence,
28 Superintendent Walsh attending at your office and
29 reading out that note to you?

1 A. When I was reminded who it was, I do recollect that
2 meeting taking place.

3 394 Q. So is your answer, therefore, that absent other people
4 who have gained knowledge from documents, you literally
5 have no memory of it, good, bad or indifferent? 12:13

6 A. Well, no, I do have memory of it now when -- what
7 clicked was when they said Frank Walsh, and I
8 remember -- in fact, this was actually brought to my
9 attention before I came in, and I said yes, I remember
10 Frank, actually now I remember this chap coming in, and 12:13
11 we did speak and he did help me and I believe that -- I
12 now believe, as I say, that I never got the note, but
13 it was definitely given to me, so I incorporated same
14 in my letter.

15 395 Q. Given that the contents of the note appear in your 12:13
16 letter in slightly different sequence, you have
17 paragraph 1 and then you have your letter and then you
18 have paragraph 2, 3 and 4 --

19 A. Yes.

20 396 Q. -- is it the case that you dictated into a dictaphone 12:14
21 what was said to you?

22 A. I would normally dictate into a dictaphone, yeah.

23 397 Q. So is it the case that the superintendent produced the
24 note, read it to you and you dictated it into your
25 dictaphone and handed the note back? 12:14

26 A. There is a number of possibilities. That is one. He
27 could have shown me the note and I could have dictated
28 with the note in front of me. That is two. Number
29 three is, he could have spoken to me as I am doing the

1 letter. There is a number of possibilities. I can't
2 remember which one.

3 398 Q. Well, again, I don't want to be wasting everyone's time
4 in examining theoretical possibilities, but it does
5 seem to me that this is an event which would be of 12:14
6 singular significance that would stand out for you for
7 a whole variety of reasons: you were under threat of
8 being sued, it was contact with the Commissioner, the
9 Commissioner's private secretary was in your office. I
10 mean, would this not be something that would imprint 12:15
11 strongly on you?

12 A. Well, it clearly didn't. And, I mean, again I repeat
13 that when my first meeting is at 6:45 in the morning
14 and I am going until 8:00 at night, this meeting could
15 have taken five minutes. There is many other things 12:15
16 that happen in my day that should, and possibly don't,
17 imprint on my mind. But what I am saying is, is that I
18 am obviously happy that somebody has appeared in front
19 of me from the Commissioner's office and is helping me
20 draft a reply. So, as far as I am concerned, the 12:15
21 minute I get that information, draft my reply, next
22 meeting, I am moving on.

23 399 Q. Do you think it odd, as a solicitor and also as a
24 potential defendant in a proceeding, that you were
25 being handed material to assist you in your response, 12:15
26 which was actually drafted in the first person,
27 expressing your views on particular matters, did that
28 strike you as an odd thing to occur?

29 A. No, not necessarily. I mean, I had asked for

1 assistance, and it didn't strike me as being odd. I
2 mean, what I do, you know, what I -- what became clear
3 to me was that the Commissioner didn't want to send any
4 correspondence to me, that is why I had no letters, I
5 had nothing in my file. There was no file opened, it 12:16
6 was only -- the file only started opening when I got
7 the letter from Sergeant McCabe in my reply -- in my
8 response. But to be fair, the way that it's drafted by
9 the Commissioner, or whoever in his office did it, it
10 was very helpful to me. I didn't -- you know, it 12:16
11 didn't strike me as being unusual.

12 400 Q. I think, Mr. Kean, it's probably the way I am putting
13 the question. I accept in the peculiar or unusual
14 circumstances it may not be unusual if you ask the
15 Commissioner for information and he provided 12:16
16 information, but what I am suggesting an unusual
17 feature is, in addition to providing information, he
18 used your voice and used the word "I", and clearly did
19 so with the intention that this would be inserted into
20 your letter, and I am putting it to you that, as a 12:17
21 solicitor, that is a very unusual procedure?

22 A. Well, again, my view on that is, it doesn't strike me
23 as being unusual, but, yes, I mean, you know, in
24 hindsight, maybe, but it didn't strike me as being
25 unusual. I mean, I don't know who drafted it, I 12:17
26 assumed it was the Commissioner, it may have been
27 somebody in his office, but I was happy to get some
28 sort of input to help me in the draft response.

29 401 Q. I mean, a solicitor might send papers to counsel with

1 attendances and instructions and counsel might draft a
2 letter, which would include the solicitor speaking in
3 the first person as the solicitor's agent, that is a
4 circumstance where you might sign a letter in the first
5 person. But this particular circumstance, I am 12:17
6 suggesting to you, is very, very different, and perhaps
7 unprecedented. Would you like to comment on that?
8 A. I have no comment on that, no.
9 402 Q. You have no comment to make on that. Well, just in
10 conclusion then, you made a statement to the Tribunal, 12:18
11 isn't that so?
12 A. Yes.
13 403 Q. And you were anxious to impress, understandably, that
14 you spoke to the Commissioner and you were careful to
15 establish the facts as you saw them and you pressed him 12:18
16 three or four times to clarify, to make sure there was
17 no mix-up, isn't that so?
18 A. Yes.
19 404 Q. And again, I think you said on a number of occasions
20 that the Commissioner was the ultimate authority, he 12:18
21 was beyond reproach, and I understand what you are
22 saying when you are using that phraseology is that it
23 wasn't only what he was saying, but the fact that it
24 was coming from a person holding the rank of Garda
25 Commissioner gave it extra weight? 12:18
26 A. I would agree with that.
27 405 Q. And as far as you were concerned, if a person was
28 saying something that had with it the additional weight
29 of emanating from a Garda Commissioner, you were taking

1 MR. KEAN WAS CROSS-EXAMINED BY MR. CONNOLLY:

2

3 407 Q. MR. CONNOLLY: Thanks, Mr. Kean. I just have a couple
4 of short questions. I suppose the most obvious one is,
5 was John Wilson mentioned in the briefing that you 12:20
6 received from the former Commissioner at the time?

7 A. I believe he was, yes.

8 408 Q. Can you maybe elucidate in what context what was said
9 to you with regard to former guard John Wilson?

10 A. Very little, and whatever it was was quite 12:20
11 insignificant because I don't recollect it and --

12 409 Q. Well, I suppose I would have to suggest to you it
13 wasn't that insignificant in that you said in the -- on
14 the show, when it aired on the 26th January, that it
15 was, you used the plural, "they breached"? 12:20

16 A. Whistleblowers?

17 410 Q. Yes, they breached the Data Protection Act?

18 A. Yes.

19 411 Q. So you'd agree with me that it was significant?

20 A. Oh, sorry, I answered it wrong. What I meant to say 12:21
21 is, there was nothing specific to Mr. Wilson, other
22 than what I have said already in the programme and in
23 my affidavit. There was nothing outside that.

24 412 Q. Yes. And I think that's a matter of record and it's
25 been opened before the Tribunal. 12:21

26 A. Yes.

27 413 Q. The last thing I want to ask you is, obviously you have
28 given in evidence that Sergeant McCabe phoned the show
29 at the time just as it was -- you were in mid-flow, or

1 419 Q. Did you, for instance, inquire as -- you know, there
2 was a report done by the Comptroller & Auditor General
3 which had sort of said there were problems with
4 cancellations of fixed charge penalty notices.

5 A. Yes.

12:23

6 420 Q. Did you look to any other sources of information?

7 A. No, I didn't, no, no. This was the day before the
8 programme. No, I didn't. It was a Saturday afternoon.

9 421 Q. You just went with the view you were being given?

10 A. I went with the view that I believe was given, but, in
11 addition to that, was already in the public domain.

12:23

12 MR. CONNOLLY: Thanks. I don't have any further
13 questions, Chairman.

14 CHAIRMAN: Sorry, just before I come to Mr. O'Higgins.
15 It is Mr. O'Higgins? Yes. Is there any other question
16 on behalf of any other represented party here?

12:23

17 Mr. O'Higgins, would you prefer to break until after
18 lunch? It might be an opportune time.

19 MR. MÍCHEÁL O'HIGGINS: Yes.

20 CHAIRMAN: We will take an hour now then, Mr. Kean.

12:23

21

22 THE HEARING ADJOURNED FOR LUNCH

23

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29

1 bank of information that you had in your mind in
2 relation to the John O'Mahony report and the penalty
3 points issue globally was pretty well information that
4 was in the public domain, firstly, information that you
5 had garnered from what Minister Shatter had said in the 13:29
6 Dáil and perhaps publicity surrounding that, isn't that
7 so?

8 A. Yes, and there may have been some other information
9 that I read casually in newspapers, or whatever.

10 426 Q. Yes, understandably. Because this issue was in the 13:30
11 news at the time.

12 A. Yes.

13 427 Q. And also, of course, information that you learned in
14 the telephone conversations with Martin Callinan in the
15 period that has been under review in your evidence? 13:30

16 A. That's correct.

17 428 Q. Now, in relation to -- and you're aware, of course,
18 that, broadly speaking, the relevant chronology was, in
19 terms of the PAC, Martin Callinan gave evidence before
20 the PAC on the 23rd, the Thursday, and then you may not 13:30
21 have any familiarity with this, but the next day there
22 the -- what became the controversial meeting in the car
23 park on the 24th, of Bewley's Hotel, on the 24th
24 January 2014, and in the news at the time there was a
25 certain degree of flow-back from the former 13:30

26 Commissioner's comment, the use of the adjective
27 "disgusting" in relation to the methods being used by
28 the whistleblowers, all right. And that was
29 interpreted as something that was said in the direction

1 of the whistleblowers, and there was a controversy
2 surrounding that; were you, broadly speaking, aware of
3 that?

4 A. Broadly speaking, yes.

5 429 Q. All right. Well, now, we're looking then at page 1348, 13:31
6 and this is a part of the transcript from the PAC, and
7 we needn't call it up on the screen, but the context is
8 that Deputy Deasy, from whom the Tribunal heard
9 yesterday or the day before yesterday, had asked Martin
10 Callinan a question about his views on how the 13:31
11 committee had been doing its business in terms of
12 looking into the PAC and the proposal to call Sergeant
13 McCabe, and Martin Callinan was giving his views. So
14 this is the context of the bit I'm just going to ask
15 you to consider. So it's on page 1348 and it says the 13:31
16 following, and this is Martin Callinan speaking:

17
18 "I should preface my remarks by indicating that one of
19 the people who is now engaged in this so-called
20 whistleblowing exercise is a person who is a serving 13:32
21 member of An Garda Síochána, as I understand it. If
22 that is the case, then he or she is subject to the
23 disciplinary regulations, if it is the case that at any
24 time, at any place, anywhere, a member of An Garda
25 Síochána can step outside the ordinary standards 13:32
26 expected of that member. If that is the case, then I
27 would have to consider whether I would have to access
28 to the disciplinary regulations to deal with that
29 issue. I'm not for a moment suggesting that I would go

1 down that road of exercising discipline in this
2 particular case, but it was certainly something on
3 which I would have to reserve my position. If I am
4 asked in general terms whether it's appropriate for a
5 member of An Garda Síochána to use this Committee as a 13:32
6 platform for exercising whatever it is he or she wishes
7 to exercise, and make unsubstantiated allegations or
8 provide sensitive personal data to a third party, such
9 as this Committee, then I will have to seriously
10 consider my position and their position. I have 13:32
11 already indicated to the Chairman --" that is the
12 Chairman of the PAC "-- that I have very serious
13 concerns about the information, the data that has been
14 passed on to the Committee. I am not aware of what is
15 contained in that data, but I can also presume it from 13:33
16 the response of the Committee. I have no issue with
17 the Committee taking legal advice in deciding how best
18 to do its business, but it is the case that I have also
19 taken legal advice and I am told that, as we speak, I
20 am in breach of the Data Protection Act and that it is 13:33
21 possible that the person who supplied that information
22 is in breach of the Data Protection Act. This is
23 clearly a matter on which I will need to take action.
24 I will reserve my position with regard to how I will
25 deal with that. If I am asked in a general sense 13:33
26 whether I would be in favour of a member of the Garda
27 Síochána coming in here and using this forum, this
28 Committee to expose material in the fashion in which it
29 has been exposed or to make allegations it hasn't

1 substantiated, I think that is fundamentally wrong."

2

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6

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8

9

A. Yes.

10 430

Q. Isn't that fair?

13:33

11

A. It seems so, yeah.

12 431

Q. Right. And I'm not, of course, inviting you to say who has the side of right in that issue between Sergeant McCabe and Martin Callinan, but undoubtedly, I think you'd agree with me, there were two points of view that were almost diametrically opposed on the whole issue surrounding how the data was dealt with?

13:34

13

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18

A. Yes.

19 432

Q. Right. And just if we read on further, Deputy Deasy, who was asking the question, came back and asked:

13:34

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"Deputy John Deasy: The Commissioner is also making the case that it is not possible to make a comprehensive case because not all the information is available, is that correct?"

13:34

And then Martin Callinan is noted to have said the following:

1 "If I may put it this way, I do not know what the
2 Committee has at its disposal. Certainly, if it is
3 anything like the level and extent of the knowledge
4 that the assistant commissioner had at his disposal
5 about the allegations made, if that mirrors what the 13:35
6 assistant commissioner was dealing with, clearly it
7 would be impossible to make a judgment. That was part
8 of my concern which I articulated in the letter to the
9 Chairman. For instance, if the information is
10 anonymous and if this Committee were to rely on 13:35
11 providing statistics in a public forum, then we are in
12 a very rocky place, unless these matters can be
13 explored and properly teased out. I have indicated to
14 the Committee that there were issues within the system
15 that needed to be corrected and this has been done. 13:35
16 However, I emphasise it is very important that, as a
17 disciplined force, we do not allow a situation to occur
18 in which 13,000 members of An Garda Síochána start
19 making complaints about one another and investigating
20 one another. We have to exercise some form of control. 13:35
21 It is important that, as Commissioner, I have control
22 and authority over the force. How can I manage the
23 force unless I have access to that type of control?
24 The organisation could not perform its policing or
25 security remits if I and my officers were not in a 13:35
26 position to exercise that type of control? I do not
27 want it to be said that I am considering disciplinary
28 action with regard to these people. I have given it
29 very careful consideration and I will continue to do

1 so. However, there may come a point at which I will
2 have to seriously consider this matter for all the
3 reasons I've indicated. I cannot allow a situation to
4 continue where information is being bandied around. I
5 realise people are relying on a certain section of the
6 law as an authority." 13:36

7
8 And then over the page, the photocopying seems to have
9 clipped a bit out, but he concludes by saying:

10
11 "Wrongdoing by any member of An Garda Síochána will not
12 be tolerated by me or by any member of my office. The
13 Committee can take that as a given. There is a
14 difference between reporting wrongdoing and
15 consistently putting about large volumes of material. 13:36
16 These are the parameters I must consider. When I
17 became aware of it, I issued a very clear direction to
18 the two members involved. We had a discussion with
19 Deputy McDonald on the last occasion I was before the
20 Committee as to when I became aware of the identities 13:36
21 of these people and what they were saying. I have
22 carefully checked my records since then. In December,
23 following on from the information that the required
24 member of the -- sorry, that the retired member of the
25 force and a serving member of sergeant were working 13:37
26 together to provide information and material for the
27 elective representative, I took advice and I was
28 advised that this was wrong."
29

1 And again, broadly speaking, that was the perspective
2 of Martin Callinan, isn't that right?

3 A. Well, I assume so.

4 433 Q. All right.

5 A. You can see it.

13:37

6 434 Q. Well, just to fill that out slightly further, and I
7 appreciate that it may not be ultimately the
8 disposition or desire of the Tribunal to in any sense
9 referee this issue about the data breaches, if they
10 were data breaches, and this issue about the rights or 13:37
11 wrongs of a serving member going on the PAC, but, in
12 that context, could I ask perhaps if page 1916 might be
13 brought up, which is part of the statement of John
14 O'Mahony, who is the author of the internal Garda
15 investigation into the penalty points issue. If 13:38
16 Mr. Kavanagh might scroll down a little bit because I
17 just want to bring you to the relevant portion. It
18 starts "I was aware". Yes:

19

20 "I was aware that on the 14th December..."

13:38

21

22 So this now, just to set this in context for you,
23 Mr. Kean, this is a part of the statement of John
24 O'Mahony, now retired, who carried out the
25 investigation, and he says the following:

13:38

26

27 "I was aware that on the 14th December 2012 the
28 then-Commissioner Callinan issued a direction to
29 Sergeant Maurice McCabe and to John Wilson to desist

1 from accessing Pulse and from disclosing to third
2 parties sensitive personal data regarding the
3 cancellation of FCNs (fixed charge notices) by members
4 of An Garda Síochána. Sergeant McCabe was informed of
5 this direction firstly by his chief superintendent on 13:38
6 the same date. Garda Wilson was informed by his
7 district officer on the same date. The Commissioner's
8 direction further informed both members that 'if they
9 had any further concerns, and without prejudice to
10 their rights under the confidential reporting 13:39
11 mechanism, such matters should be brought to the
12 attention of Assistant Commissioner John O'Mahony,
13 Crime and Security, who willfully investigate those
14 concerns'. My examination was in full process at this
15 time. 13:39

16
17 The Commissioner issued a second directive on 27th
18 November 2012, directing both members to 'desist
19 searching Pulse and dissemination to third parties of
20 sensitive personal data and restricting access to Pulse 13:39
21 until further notice'.
22

23 Garda Wilson was informed of this direction on the same
24 date by the district officer Monaghan. Efforts to
25 communicate this directive to Sergeant McCabe failed 13:39
26 due to his unavailability and he reported sick on the
27 31st December 2012. He returned off sick leave on the
28 31st March 2013. On the 1st April 2013, the second
29 directive from the Commissioner was communicated to him

1 by his district officer. The Commissioner's direction
2 of the 27th November 2012 did not include reference to
3 my examination. However, in communicating this
4 direction, I believe that his superintendent --"

13:40

5
6 I will pause there. I understand that is a
7 Superintendent Curran, from whom a statement, I think,
8 is available. Sorry, I've lost my place there.

9
10 "-- I believe that his superintendent did inform
11 Sergeant McCabe that if he had any further issues, he
12 should contact me as I had been appointed by the
13 Commissioner to examine the anonymous allegations made
14 concerning the operation of the FCPS. Neither Sergeant
15 McCabe nor Garda Wilson contacted me as a direct result
16 of these directives. I concluded my examination the
17 last week of March 2013 and I finalised my report on or
18 about the 27th March 2013. I forwarded my report with
19 appendices to the Commissioner on the 28th March 2013.
20 It subsequently became public knowledge that my report
21 had been forwarded to the Minister on the 28th March
22 2013. While the report had been forwarded on this
23 date, it had not been published. The report was, in
24 fact, published on the 15th May 2015. It would appear
25 that the Tribunal may already have a copy of my final
26 report, but, if it does not, a copy can be furnished on
27 request."

13:40

13:40

13:40

13:41

28
29 And then he says the following in relation to the

1 contact that he personally had, it seems, with Sergeant
2 McCabe:

3
4 "Sergeant McCabe contacted my office by phone on the
5 23rd April 2013. I missed his call but reverted to him 13:41
6 approximately an hour and a half later. Detective
7 Sergeant Ger Mealy, my personal assistant at the time,
8 was present in the office during the call. Sergeant
9 McCabe introduced himself to me as the person who had
10 made the original complaints regarding fixed charge 13:41
11 penalties. This was, in fact, the first time that I
12 formally became aware of the identity of the anonymous
13 author. Sergeant McCabe wanted to know why he had not
14 been interviewed by my inquiry team. He stated that he
15 was aware that I had his list of allegations. I 13:41
16 informed him that it was my understanding that the
17 Commissioner had informed him the previous December
18 that if he had any concerns he should contact me. He
19 stated that this was not true and that his chief
20 superintendent told him he had to contact me before 13:41
21 contacting anyone else. I informed him this was not my
22 understanding of what he had been told. The
23 Commissioner's direction does not make any reference to
24 contacting anyone else."

25
26 And then it goes on a little bit further, but we might
27 scroll over - and I'm sure everybody else can read out
28 a portion they feel is necessary - to the second-last
29 paragraph of the same page, of the next page, page

1 1918. That's it there, thank you. And it commences --
2 sorry, the portion that I think may be relevant reads
3 as follows:

4
5 "While Sergeant McCabe did not wish to engage with my 13:42
6 examination, he did engage with An Garda Síochána
7 subsequently in relation to the matters I had examined.
8 On the 4th June 2013, he made a complaint against three
9 named officers under the Garda anti-fraud policy in
10 respect of 16 individualised FCN terminations conducted 13:42
11 by three authorised members. The content of these
12 allegations is similar to those made by the anonymous
13 author in issue. These complaints were investigated by
14 a chief superintendent, who forwarded an investigation
15 file for consideration to the office of the DPP on the 13:42
16 22nd November 2013. I'm aware that the DPP has
17 directed in these cases that there was to be no
18 prosecutions.

19
20 In the course of my examination, no third party 13:43
21 approached me or any member of my team with any
22 information of relevance to the examination. My
23 examination would naturally have incorporated any such
24 approach. Notwithstanding that my final report had
25 already been submitted at the time, if Sergeant Maurice 13:43
26 McCabe had provided me with any further additional
27 material or information, I would have forwarded such
28 material information to the Commissioner."
29

1 And that statement is signed John O'Mahony, Assistant
2 Commissioner, dated 7th April 2017.

3 CHAIRMAN: Mr. O'Higgins, there is a question arising
4 out of that, I appreciate it, because otherwise we will
5 lose the train of thought, I suppose, in a way. 13:43

6 MR. MÍCHEÁL O'HIGGINS: Sorry, Judge, yes.

7 435 Q. So, sorry, now, for reading that long tranche that you
8 may not be familiar with.

9 A. That is no problem.

10 436 Q. But really, the point I'm wishing to ask you to deal 13:44
11 with is this: Sergeant McCabe has a particular view on
12 the issue as to whether it is or is not correct as to
13 whether he did participate or take up an opportunity of
14 participating in the O'Mahony investigation, or, as it
15 might be put, as to whether he failed to do so, all 13:44
16 right? He has a view on that. I want to ask you,
17 would you agree with me, from your contacts with the
18 Commissioner, is it fair to say that Martin Callinan,
19 former Commissioner, had, in his mind at any rate, a
20 very clear view in relation to the question as to 13:44
21 whether Sergeant McCabe had availed of an opportunity
22 to speak to Assistant Commissioner O'Mahony for the
23 purpose of the report? He had a clear view on that,
24 and his view was that he had failed to do so?

25 A. Yes. 13:45

26 437 Q. Right. And that was a view genuinely held by him,
27 would that be fair? You wouldn't dispute that notion?

28 A. Well, that's not a question for me to answer. I don't
29 know. But, I mean, he certainly was very clear in his

1 view to me.

2 438 Q. Yes.

3 A. I'm assuming he believed what he was saying. But I
4 don't know in hindsight, I have no idea. At the time I
5 believed him.

13:45

6 439 Q. Yes. Well, not only that, but I'm suggesting to you,
7 and this is why I read out the portion from the Dáil
8 transcript of the PAC meeting, insofar as he conveyed
9 to you material about the O'Mahony investigation and
10 his views on whether or not there had been
11 participation or cooperation with that, he was really
12 doing no more than he had already done in, and that he
13 subsequently did on the public record, in terms of what
14 he told the PAC, he was fundamentally against Sergeant
15 McCabe appearing before the PAC and he was

13:45

13:46

16 fundamentally against the release of sensitive personal
17 information belonging to citizens, isn't that fair?

18 A. Yeah, that would seem to be correct, having seen this,
19 yeah.

20 440 Q. Right. Now, can I ask you then in terms of the means
21 by which you made contact with An Garda Síochána. As
22 you know, I also act for Diarmuid O'Sullivan, retired
23 Chief Superintendent Diarmuid O'Sullivan, and my
24 understanding from Diarmuid O'Sullivan, and I
25 appreciate, I think you've indicated you regard him as
26 a very reliable person, who is distinguished and who I
27 think in the past, and we needn't go into any private
28 details, but you had certain inquiries in relation to a
29 business, in relation to your own role and I think in

13:46

13:46

1 relation to a house burglary, and you were helped out
2 by the guards in relation to that?

3 A. Yes.

4 441 Q. And I think it was in that context that you came to
5 have an acquaintance with Chief Superintendent 13:47
6 O'Sullivan?

7 A. That's correct.

8 442 Q. Would it be fair, and I don't mean this pejoratively in
9 any sense, but just judging by your disposition, you're
10 a person who is well able to talk, you're an 13:47
11 accomplished speaker and you are an outgoing
12 personality.

13 A. Thank you very much.

14 443 Q. All right.

15 A. I appreciate that. 13:47

16 444 Q. Well, the reason I'm mentioning that, apart from the
17 general desire to get a witness on side, is that it's
18 relevant to your contacts, if I may put it this way?

19 A. Yeah.

20 445 Q. You're somebody who is respectful and you will chat 13:47
21 with somebody about affairs of the day, even if it's
22 the case that you've a specific purpose for a call, you
23 might also --

24 A. Yeah.

25 446 Q. -- not immediately get to the point, would that be fair 13:47
26 and you've --

27 A. I'm long-winded?

28 447 Q. Well, I wouldn't use that expression, but --

29 A. Well, no, you could be correct. I mean, you know, I'm

1 lucky that I have people I can call and get information
2 from, from time to time.

3 448 Q. Right.

4 A. And, you know, I would be personable, I would like to
5 get on with them and I would like to be very open and 13:48
6 transparent with them. There's no question, I would
7 never ask somebody for information under false
8 pretences, or anything like that, no. But I would be
9 outgoing.

10 449 Q. And I'm not suggesting you did that at all. 13:48

11 A. No, no.

12 450 Q. And is it possible then in the context of your
13 discussions with Diarmuid O'Sullivan and also I think
14 perhaps with Martin Callinan, you were also -- also
15 chatting over the telephone about things, about social 13:48
16 matters --

17 A. Absolutely.

18 451 Q. -- wholly unrelated to --

19 A. Absolutely. I mean, there's no question about that. I
20 mean, I wouldn't start with -- I wouldn't have got 13:48
21 straight to the point; I would have talked about many
22 issues I couldn't think of offhand, you know, that
23 wouldn't be related to this particular topic.

24 452 Q. Indeed. So, insofar as there's been mention made that
25 if one tots up the total number of minutes of the 13:48
26 telephone call --

27 A. Oh!

28 453 Q. -- that wouldn't be to suggest that the total number of
29 minutes were talking about fixed charge penalties?

1 A. Oh, not at all, no, no. We could have been talking
2 about anything: my father, my late uncles, holidays,
3 the charity event in cork, which is something I support
4 every year, as a Garda Síochána outing --

5 454 Q. Yes. 13:49

6 A. -- the lunch. You know, and I tend to do with the
7 radio most weeks on some channel or another. So topics
8 would range. It wouldn't have been a call to say, can
9 I ask you something, thank you, good luck, good-bye.
10 No. 13:49

11 455 Q. Well, in relation to Diarmuid O'Sullivan then, his
12 recollection, and in fairness I don't want to suggest
13 to you that he has a verbatim recollection, he has a
14 limited recollection of the calls, but he believes you
15 may have mentioned, in the course of your chats with 13:49
16 him, that you had met Commissioner Callinan, and I
17 think you may have instanced the event in cork, the
18 charity event?

19 A. Yeah, that could well be correct.

20 456 Q. Is that a possibility? 13:49

21 A. That is a strong possibility, yeah.

22 457 Q. All right. And my understanding of matters is that the
23 gist of your request of Diarmuid O'Sullivan was to
24 effectively ask his assistance in ascertaining to whom
25 you might speak to enable you, I don't know, get more 13:50
26 information in relation to the O'Mahony report and the
27 fixed charge penalties?

28 A. I think that is a strong possibility, yeah.

29 458 Q. Right. And that was really the long and the short of

1 Diarmuid O'Sullivan's role in matters?

2 A. I believe so, yeah.

3 459 Q. Right. Moving then to Commissioner Callinan, it is
4 important, I need to put one or two matters to you now,
5 Mr. Kean. 13:50

6 A. No problem.

7 460 Q. And give you an opportunity to deal with it.

8 A. No problem.

9 461 Q. The first of them is, his position is that when you
10 made contact with him, and I think you do fairly accept 13:51
11 it was you who contacted An Garda Síochána rather than
12 the other way round?

13 A. Absolutely correct.

14 462 Q. Right. And his understanding of matters and
15 recollection is that your original request was to seek 13:51
16 information relating to the O'Mahony investigation, as
17 it had been published, and, in that context,
18 Commissioner Callinan was comfortable providing you
19 with such information as he had relating to that, it
20 was a published report; you wouldn't disagree with 13:51
21 that?

22 A. I wouldn't disagree with that. I think it is probably
23 important just to point out that when I made contact
24 with him, I would certainly initially have outlined to
25 him why I was wanting to talk to him and that I was 13:51
26 doing the programme on Sunday and that Sergeant
27 McCabe's scenario and Sergeant Wilson were part of this
28 discussion.

29 463 Q. Yes.

1 A. So it wasn't that I just rang up to inquire about the
2 O'Mahony investigation without explaining that. So I
3 think it's just fair to point that out.

4 464 Q. I'm not suggesting to you for a moment that you pulled
5 off a trick, or anything like that. 13:52

6 A. Okay, sorry.

7 465 Q. Nobody is saying that at all. So now the one thing I
8 do want to -- have to confront you with, if you don't
9 mind --

10 A. No problem. 13:52

11 466 Q. -- or make clear to you, there is a point of issue --
12 difference: Martin Callinan indicates that, in fact,
13 he didn't tell you not to say "don't mention my name",
14 his position on that, so that you have an opportunity
15 to deal with it, is that, in fact, that issue as to 13:52
16 whether you did or didn't or should or shouldn't have
17 mentioned his name never, in fact, arose because he was
18 only speaking about facts that he had that he felt were
19 in the public domain, and there was no specific raising
20 of "don't mention my name" or anything of that nature, 13:52
21 is that a possibility?

22 A. No, that is simply incorrect.

23 467 Q. All right. Well, you see, I want to suggest to you
24 that, and again give you an opportunity to deal with
25 it, if you're going to go on the radio, as you do from 13:53
26 time to time, being a person who has a wide variety of
27 interests and are invited on radio programmes quite a
28 bit, would that be fair?

29 A. Absolutely, yes.

1 468 Q. If, as you did on this occasion, prior to going on a
2 radio programme, you want to make sure that you have
3 some degree of briefing information, however light,
4 however brief and you avail of -- would it be fair to
5 say your general tendency, if you have a phone number, 13:53
6 avail of it, if needs be go to the top, if it means you
7 improve your bank of knowledge?
8 A. Yeah, well, I always like to check --
9 469 Q. Yes.
10 A. -- double-check, and that's what I did here. 13:53
11 470 Q. Yes.
12 A. I wanted to double-check. But can I tell you, which
13 might help you in getting to the point, I would have
14 dearly loved to have said on that show that this
15 information was given to me by the Commissioner. 13:54
16 471 Q. Yes.
17 A. I would be very happy to say, I am very pleased to say
18 that I had a conversation with the Commissioner
19 yesterday and he told me the following: Sergeant
20 McCabe didn't cooperate, Sergeant McCabe was 13:54
21 obstructive, Sergeant McCabe was difficult. I would
22 have loved that opportunity.
23 472 Q. Right. well, you see, we have to agree to differ on
24 that. But I'm suggesting to you that the last thing
25 you might do on a radio programme would be to sort of 13:54
26 blurt out who your particular source is in any piece of
27 information, because that'd mean your information-flow
28 would simply dry up, and the next radio programme you
29 went on, you wouldn't have any information because

1 nobody would speak to you, I think is that a fair
2 point?

3 A. Well, that's not the way I'd look at it, because for a
4 number of reasons. First of all, I didn't foresee that
5 I would be ringing the Commissioner again. I'm not -- 13:54
6 as I say, I'm not an investigative journalist. I do
7 the radio every couple of weeks, I do the TV every
8 couple of weeks, a lot of that is social, or my
9 commentary in relation to general matters. It's not
10 as -- you know, it might not -- I didn't foresee myself 13:55
11 coming back and doing another programme and Sergeant
12 McCabe or Garda Wilson, so I didn't see that. And, I
13 mean, if, for example, Martin Callinan hadn't said it,
14 not to mention his name, I think I would have said, do
15 you mind if I mention your name? And if he had said 13:55
16 yes, well, then, why would my sources dry up, because
17 he would have given me permission? But he specifically
18 told me that, you know, don't say we spoke or don't say
19 we had a chat or don't say I gave you information.
20 That is very clear in my mind. 13:55

21 473 Q. I wish to suggest to you respectfully, I suggest to you
22 that you are mistaken in relation to that and that
23 simply didn't arise in the conversation. That is a
24 view you formed, you shouldn't use his name, and you
25 didn't use his name, but I'm suggesting to you that was 13:55
26 a decision you took yourself and it simply didn't arise
27 in your conversation, that is my instruction.

28 A. Well, you know, I don't know how to answer that, other
29 than to say to you that I would have loved to have

1 mentioned on the programme - in fact, I would have
2 loved to have, talking to Sergeant McCabe after the
3 programme and say, by the way, I'm sorry if there's
4 something wrong here but I got this information from
5 the Commissioner. That is simply not true. I mean, I 13:56
6 would have loved to have said on the show that this
7 information was given to me and I would love to have
8 been able to clarify that I spoke to the Commissioner
9 one-on-one, me on him, and he told me this, and
10 therefore this is why we're in the situation. But I 13:56
11 couldn't say that at that time because I respected his
12 views and, for that reason, I didn't mention his name.

13 474 Q. Yes. Now, staying now with Martin Callinan for a
14 moment. Is it possible altogether that, in fact -- is
15 it possible altogether that Diarmuid O'Sullivan is 13:56
16 something of a red herring altogether, because, in
17 fact, and I'm not sure this was put to you, but my
18 understanding of matters, in fact, you may have had
19 contact with Mr. Taylor, with Superintendent Taylor, is
20 that right, and conveyed -- 13:56

21 A. I said already, I can't remember. I'm not denying I
22 did, I just can't remember if I spoke to Inspector
23 Taylor.

24 475 Q. All right. Would you agree with me that, on foot of
25 whatever approach you had made to David Taylor, the 13:57
26 Commissioner telephoned you and you had a general
27 conversation of about 15 minutes or so, that appears to
28 be in accordance with the records, would that be right?

29 A. Well, I think the records confirm that.

1 476 Q. Right.

2 CHAIRMAN: Does it? I mean, I'm sorry, I'm not saying
3 it doesn't, Mr. O'Higgins, I am just genuinely
4 interested. Is there a record of a telephone
5 conversation between David Taylor and Mr. Kean? 13:57

6 MR. MÍCHEÁL O'HIGGINS: Sorry, no, this is -- excuse
7 me, Chairman, between Martin Callinan and this witness,
8 and Mr. Kean.

9 CHAIRMAN: I'm not following then, please excuse me,
10 but I don't understand. I thought the import of it was 13:57
11 that either David Taylor, acting as Garda Press
12 Officer, as he was then, rang Mr. Kean or Mr. Kean rang
13 David Taylor as Garda Press Officer, and the nature of
14 the query was such that he had to be passed on, that is
15 what I was taking from it. I may be wrong in taking 13:58
16 that, but is that what you are saying?

17 MR. MÍCHEÁL O'HIGGINS: Yes, what I'm saying, Chairman,
18 is that Superintendent Taylor mentioned to Martin
19 Callinan, to my client, Martin Callinan, that Mr. Kean
20 would wish to speak with him in relation to the fixed 13:58
21 charge penalty notice investigation.

22 CHAIRMAN: All right. Mr. O'Higgins, I don't know is
23 that part of your instructions?

24 MR. MICHAEL O'HIGGINS: We're just checking on it,
25 Judge. It's a very specific thing. I proceeded on the 13:58
26 basis that my client wasn't in the loop, but we will
27 come back to it before the witness goes.

28 CHAIRMAN: Sorry, it's new, so we will come back to it.
29 And I take it, as you didn't ask the question,

1 Mr. O'Higgins, as well, that Superintendent Taylor is
2 not saying that he ever briefed Gerald Kean negatively
3 in any way as to sex abuse or as to untrustworthiness
4 or anything?

5 MR. MICHAEL O'HIGGINS: That is certainly -- we would 13:59
6 like to know and assist the Tribunal as to whether we
7 are even a link on the chain.

8 CHAIRMAN: But certainly, Mr. O'Higgins, your client's
9 case, that is to say Commissioner Callinan's case, is,
10 that the query came to Diarmuid O'Sullivan in some way 13:59
11 through the Press Office and David Taylor and that it
12 was mentioned in the conversation between him and
13 Mr. Kean that he had already spoken to David Taylor,
14 that is to say Mr. Kean had spoken to David Taylor; is
15 that the position? 13:59

16 MR. MÍCHEÁL O'HIGGINS: No, that the -- as I understand
17 it, the direction of it was that Commissioner Callinan
18 spoke with Superintendent David Taylor on Saturday the
19 25th January, and Superintendent Taylor mentioned to --
20 mentioned that the witness, Mr. Kean, wished to speak 13:59
21 with Commissioner Callinan in relation to the fixed
22 charge penalty notices investigation.

23 MR. MCGUINNESS: That is not in any of the statements.

24 CHAIRMAN: Well, it may not be in anybody's statement,
25 but if it is the instructions, I would still like to 14:00
26 find out, so...

27 MR. MÍCHEÁL O'HIGGINS: Yes.

28 CHAIRMAN: And forgive me if I am getting it wrong
29 because I'm hearing it for the first time, the

1 conversation was between who and who? Just start out
2 with...

3 MR. MÍCHEÁL O'HIGGINS: Between Martin Callinan and
4 David Taylor.

5 CHAIRMAN: Right. And then prior to that there had 14:00
6 been a conversation between David Taylor and Gerald
7 Kean?

8 MR. MÍCHEÁL O'HIGGINS: Well, we don't know that, but I
9 think it can be inferred from that that there was. We
10 don't know what was said in that, but -- 14:00

11 CHAIRMAN: Well, certainly David Taylor was saying,
12 look, Gerald Kean has been on to me to talk about the
13 fixed charge penalty notices?

14 MR. MÍCHEÁL O'HIGGINS: Well, I don't know if he had
15 been on to the office, but certainly David Taylor 14:00
16 relayed -- my instructions are, Superintendent David
17 Taylor relayed to Commissioner Callinan that Mr. Kean
18 was looking to speak to him in relation to the
19 investigation.

20 CHAIRMAN: Well, the ordinary way of knowing that would 14:00
21 be if Mr. Kean had rung up the Press Office.

22 MR. MÍCHEÁL O'HIGGINS: Quite possibly.

23 CHAIRMAN: I mean, they weren't meeting over coffee, I
24 presume. I mean, did you perhaps ring the Garda Press
25 Office? 14:01

26 A. I can't remember, Mr. Chairman.

27 CHAIRMAN: Would you have rung the Garda Press Office
28 before?

29 A. Em, no. They would have rang me years ago. But I

1 don't remember ringing them, no. I wouldn't have their
2 number readily available.

3 CHAIRMAN: And was Superintendent Taylor a person you
4 would speak to in the sense --

5 A. No, not nobody I would know, no. 14:01

6 CHAIRMAN: No, I mean beyond if you met him at a
7 reception or something?

8 A. I wouldn't know him, no. I mean, if I met him, I don't
9 remember, unlike Diarmuid O'Sullivan, who I would know.

10 CHAIRMAN: Diarmuid O'Sullivan, you had a burglary, I 14:01
11 understand all of that.

12 A. Yeah.

13 CHAIRMAN: But connection with David Taylor, you had no
14 connection?

15 A. I don't recollect any connection at all. 14:01

16 CHAIRMAN: But you realise what is being put to you is
17 this: that David Taylor had rung the Commissioner to
18 say you were interested in speaking about fixed charge
19 penalty notices.

20 A. That may be the case, but I'm not sure that information 14:01
21 came from me.

22 CHAIRMAN: Yes. You don't know how that might have
23 come about?

24 A. I don't know. I mean, you know, if David Taylor says I
25 rang him, then I'm happy to accept that, but I do not 14:02
26 remember that. I remember ringing Diarmuid O'Sullivan
27 and I remember saying to Diarmuid, you know, who should
28 I go to to clarify this and that I'd met the
29 Commissioner, would he be the man.

1 CHAIRMAN: And you're saying that basically because you
2 had dealings with him in the past of a business and
3 also professional variety --

4 A. Yes.

5 CHAIRMAN: -- vis-à-vis crimes that had been committed 14:02
6 against you --

7 A. Yes.

8 CHAIRMAN: -- your normal course would have been, who
9 do I need to speak to in the Gardaí? Diarmuid
10 O'Sullivan is the person who would come to your mind? 14:02

11 A. Absolutely correct.

12 CHAIRMAN: Not David Taylor?

13 A. No, no, not at all.

14 CHAIRMAN: Okay. But you are not ruling it out?

15 A. I'm not ruling it out, no, no. 14:02

16 MR. MICHAEL O'HIGGINS: Can I just indicate, Chairman?

17 CHAIRMAN: Yes.

18 MR. MICHAEL O'HIGGINS: This is an issue that has taken
19 us slightly by surprise, but I can confirm my solicitor
20 is contacting my client now, that Mr. Kean was in 14:02
21 contact with him on this issue. When I have further
22 instructions, we will inform the Tribunal. My
23 solicitor is contacting the client now.

24 CHAIRMAN: All right. well, it is all new. But
25 anyway, we will carry on. 14:02

26 477 Q. MR. MÍCHEÁL O'HIGGINS: And I'm going to ask you then
27 in relation to the contact that you had with Martin
28 Callinan on foot of that, and would you agree with me
29 that there was a general conversation and you

1 mentioned, I think you have already indicated, that you
2 were invited on or you were waiting to hear whether you
3 would be featuring on the Marian Finucane programme on
4 the Sunday, and that didn't last terribly long, and the
5 records indicate there was a text message sent 14:03
6 subsequently, and my client's understanding of matters
7 is that that would have indicated you and he could
8 speak later?

9 A. Right.

10 478 Q. So you, in other words, had -- you had introduced in a 14:03
11 general sense your purpose, you were going to go on the
12 Marian Finucane programme and that is why you were
13 looking for information?

14 A. Yes.

15 479 Q. And my understanding of matters is that you rang back 14:03
16 later that day and he was not in a position to deal
17 with you, and then he telephoned you later on, I think
18 around the five o'clock mark, and again there was
19 general conversation about charity work, social
20 engagements and some degree of conversation about 14:04
21 acquaintances that were mutual to two of you in the
22 Cork area. Would you differ with any of that?

23 A. No. Yeah, as long as it's not being suggested that's
24 all we spoke about.

25 480 Q. Not at all, no? 14:04

26 A. I have no doubt whatsoever that those conversations
27 went on.

28 481 Q. I will bring it on to the relevant portions.

29 A. Yes.

1 482 Q. I'm suggesting to you that you asked Commissioner
2 Callinan about the O'Mahony investigation, and he
3 provided you with details in relation to that, because,
4 as he says, it was a public document, and this was
5 mostly around the cancellation process, do you recall 14:04
6 any of that?

7 A. Yeah, I'm reasonably confident that I didn't
8 specifically refer to the -- I think the first question
9 I would have said would have been, listen, I'm going on
10 this programme, there seems to be suggestions that 14:04
11 Sergeant McCabe is not cooperating with the internal
12 investigations, is that correct? I mean, what is the
13 position? What is happening here? That's the sort of
14 question -- I'm not sure I went specifically into the
15 O'Mahony Tribunal. I kept as at a very generic 14:05
16 question, because, for all I knew, there might have
17 been other investigations going on other than O'Mahony
18 which I didn't know, so I didn't have that information.
19 So my question would have been very generic, in that is
20 Sergeant McCabe not cooperating with investigations, 14:05
21 internal investigations?

22 483 Q. It might help you, Mr. Kean, if I outline what my
23 instructions are in relation to --

24 A. Right.

25 484 Q. -- my client's recollection of the conversation. 14:05
26 A. Okay.

27 485 Q. And then you can say if you agree or disagree.
28 A. Yes.

29 486 Q. So my client indicates that you asked him about -- in a

1 general way about issues that had been raised at the
2 PAC around the data protection and giving directions to
3 whistleblowers, and so on. Do you recall that?

4 A. No, I don't recall asking him specifically. I mean,
5 I'm going back to this, and I hope I'm not being 14:06
6 obstructive here, I'm quite confident that when I
7 started speaking about this, it was in very generic
8 terms. I don't ever remember saying, listen, can we
9 talk about the data protections breaches or can we talk
10 about Sergeant McCabe not cooperating with a specific 14:06
11 O'Mahony inquiry. I think I would have gone on and
12 said, listen, can you help me here, I have this
13 programme, there's suggestions that I am reading in the
14 media and the Minister seems to be suggesting that
15 Sergeant McCabe is not cooperating. So is he not 14:06
16 cooperating? And then the conversation would have
17 passed over to the Commissioner, who then went off and
18 gave me his response.

19 487 Q. You mentioned that part of the source of your
20 information that enabled you speak about these matters 14:06
21 knowledgeably on the radio was stuff that was in the
22 public domain. You didn't use the word "stuff", but
23 material that was in the public domain and what you had
24 read?

25 A. Yes. 14:07

26 488 Q. So is it possible, therefore, that you had already in
27 your mind a certain degree of information that enabled
28 you ask general questions of Martin Callinan during
29 this conversation?

1 A. I think that is fair to say, yes.

2 489 Q. would that be fair?

3 A. I think that is fair to say.

4 490 Q. All right. Do you recall the Commissioner indicating
5 his view that he didn't believe the PAC was an 14:07
6 appropriate venue for anybody to be making serious
7 allegations in what was a public forum?

8 A. I have a recollection of that.

9 491 Q. Right. And do you recall him mentioning his talking
10 about giving directions to prevent unauthorised 14:07
11 dissemination to third parties of sensitive material
12 concerning the --

13 A. I've a recollection of that.

14 492 Q. Right. And, well, you have already had read out to you
15 the John O'Mahony's position on that and, broadly 14:07
16 speaking, what those direction notices say. Does any
17 of that ring a bell for you?

18 A. Not specifically, no. You know, the specifics, I can't
19 recollect. Just the general comments.

20 493 Q. Right. My instructions are that you asked general 14:08
21 questions such as where the investigation was located,
22 what sort of numbers were involved in the inquiries,
23 and Commissioner Callinan indicated this was at Garda
24 Headquarters, but he'd have to get back to you in
25 relation to any questions about numbers because he 14:08
26 didn't have that at his --

27 A. That could well be the case.

28 494 Q. Right. And it is in that context that he came back to
29 you the following day, on the 26th January, with

1 further answers that he wasn't able to provide in the
2 first conversation?

3 A. Yeah, that could well be the case, yes.

4 495 Q. Right. And my understanding of matters is that on the 14:08
5 26th January you contacted him to say that you were on
6 the show and afterwards you had been told that Sergeant
7 McCabe rang into the programme taking issue with things
8 you had said, does that ring a bell?

9 A. Yes.

10 496 Q. And his recollection is that what you were -- relayed 14:09
11 to him was that what Sergeant McCabe appeared to be
12 aggrieved about was that your comments had attributed
13 to him the commission of criminal offences and also the
14 separate matter of not cooperating with the O'Mahony
15 inquiry, and that was something Sergeant McCabe was 14:09
16 aggrieved about?

17 A. Yes.

18 497 Q. Right. And I think was threatening legal action, did
19 you mention that?

20 A. I could well have. 14:09

21 498 Q. Right. And do you recall the Commissioner saying that
22 he had not heard the programme, but he would do his
23 best to listen to it later on?

24 A. That could be the case.

25 499 Q. Right. His understanding of matters and his 14:10
26 instructions are that he did not actually expressly
27 repeat, as I think you have indicated on a number of
28 occasions, that Sergeant McCabe did not cooperate; he
29 maintains, and I am putting this to you, that he told

1 you the facts as he understood them to be, which were
2 the facts that he had already put into the public
3 domain openly and was making no bones about, all right?
4 That is his position on that. Do you disagree with
5 that?

14:10

6 A. I totally disagree.

7 500 Q. All right.

8 A. I mean, I don't know everything he has put into the
9 public domain, but if he said that Sergeant McCabe was
10 a troublemaker and he was obstructive and he was
11 difficult, if that's in the public domain, well, fine,
12 but that's what he told me.

14:10

13 501 Q. Right.

14 A. Or words to that effect.

15 502 Q. He instructs me that his conversations with you were
16 focused on the O'Mahony investigation and also remarks
17 he had made at the PAC. I take it you don't disagree
18 with that?

14:10

19 A. Some of -- yes, part of the conversation would have
20 covered those points.

14:11

21 503 Q. Right. And I'm putting to you that he did not at any
22 time disclose personal information about Sergeant
23 McCabe, save that he would undoubtedly have made clear
24 his critical view of the notion of a serving guard
25 going on the PAC, but other than that, he did not
26 disclose any -- make any derogatory remarks about
27 Sergeant McCabe of any personal nature?

14:11

28 A. That's not correct.

29 504 Q. All right. And I'm suggesting to you that insofar as

1 you picked up a tone of criticism, it was in relation
2 to his fundamental problem with Sergeant McCabe and any
3 notion of a serving guard going on the PAC and
4 disclosing sensitive data belonging to citizens?

5 A. No, that is not correct.

14:11

6 505 Q. All right. Now, can I just ask you then to deal
7 with -- I think you've quite properly indicated to
8 Mr. McGuinness, counsel for the Tribunal, that you're
9 absolutely clear in your position that at no time did
10 Commissioner Callinan bring up any matter of a sexual
11 allegation or anything of that nature?

14:12

12 A. That is absolutely correct, he did not, no.

13 MR. O'HIGGINS: Thanks very much.

14 A. Thank you Mr. O'Higgins.

15

14:12

16 MR. KEAN WAS EXAMINED BY MR. BOUGHTON:

17

18 506 Q. MR. BOUGHTON: Mr. Kean, I think you said that before
19 you're invited on broadcasts, that you make a point to
20 inform yourself, is that right?

14:12

21 A. Yeah, I try and do that, yes.

22 507 Q. You said that you spoke to a number of Garda Síochána
23 on the day before the broadcast in a general sense, is
24 that right?

25 A. Yes.

14:12

26 508 Q. Where did you speak to those gardaí?

27 A. Well, I rang some, and the records are there, and I
28 also went to Wicklow Garda Station, and that was in
29 relation to a personal matter, and I had a coffee there

1 and spoke to a number of them as well.

2 509 Q. I think we know, as well, that you spoke to Diarmuid
3 O'Sullivan and Martin Callinan by phone?

4 A. Yes.

5 510 Q. When you spoke to Martin Callinan, were you asking him 14:13
6 of his views of the Sergeant McCabe situation or the
7 facts of the Garda McCabe situation?

8 A. Well, my recollection was, I started with, you know, we
9 probably went through pleasantries and all that and
10 then I told him I was going on the show, and I said, 14:13
11 look, can I ask you, what is the story with Sergeant
12 Maurice McCabe, like, is it true that he's not
13 cooperating? It would have been a general question
14 like that, that's what I'm trying to say, is it true
15 that he's not cooperating with investigations? Because 14:13
16 I hadn't formed an opinion there was only one
17 investigation at that stage. For all I knew, there
18 might have been another investigation within the force,
19 I don't know. I didn't know.

20 511 Q. Now, you appear regularly on television and radio in 14:13
21 relation to current affairs on a whole range of topics?

22 A. Yes, I do.

23 512 Q. Would you ever hesitate if someone had given you
24 information, be that person a celebrity, or a sports
25 person or an official, to say that you had spoken to 14:14
26 that person?

27 A. No, I would have no hesitation once it was okay with
28 them.

29 513 Q. In what circumstances would you refrain from naming

1 them?

2 A. Well, if I was asked not to, out of respect. If

3 somebody said "please don't mention my name here", I

4 wouldn't mention their name.

5 514 Q. It has been suggested that it might be unusual for you 14:14

6 to have access to senior Garda in respect of reaching

7 out to your personal or professional network. Would it

8 be unusual?

9 A. No, I would have been friendlier -- I only met Martin

10 Callinan, I think, once, but I would have been friendly 14:14

11 with previous commissioners and met them socially, and

12 I would have, you know, reasonably strong contacts

13 within An Garda Síochána and probably other

14 institutions.

15 515 Q. And if you were asked to comment on any other topics, 14:14

16 you've mentioned the HSE, for example, would you have,

17 within your network, the ability to reach out to senior

18 officials?

19 A. I would in -- I mean, I'm very critical of the HSE, so

20 I'm not sure they would talk to me, but in those cases 14:15

21 I tend to talk to people, frontline workers like the

22 nurses and get their views of what is happening. But I

23 would have contacts in other institutions, semi-State

24 bodies, that would ask for an opinion or an advice to

25 clarify something, and, you know, if they say "don't 14:15

26 mention my name", as I say, then I won't mention their

27 name.

28 516 Q. In relation to the handwritten note which we're told

29 was written by Martin Callinan and the subsequent typed

1 note --

2 A. Yes.

3 517 Q. -- we have heard that that came to you in a meeting
4 with Mr. Walsh, Garda Walsh, on the 12th February 2014?

5 A. Yes. 14:15

6 518 Q. I think your recollection has been jogged to a certain
7 extent of that meeting?

8 A. Pardon?

9 519 Q. Your recollection of that meeting has been jogged or
10 refreshed to a certain extent? 14:15

11 A. Yes, yeah.

12 520 Q. That handwritten and typed document, did you carry out
13 a search at any point to see if you had retained a copy
14 or the original?

15 A. Oh, we did exhaustive searches for several days 14:15
16 involving many staff in my office looking for it. But
17 in the light of what I have seen today, I'm now very
18 confident I never got that.

19 521 Q. And you've said that you didn't take any notes in
20 relation to that meeting. Are you certain that you 14:16
21 haven't --

22 A. I didn't, no, no.

23 522 Q. What is your usual way of recording a meeting such as
24 this?

25 A. Well, I would never record a conversation unless I had 14:16
26 the approval, but what I would do is, I would dictate
27 the letter and I believe it would have happened that I
28 would have dictated the response letter which went out
29 the same day as I met with Superintendent Walsh based

1 on the note that he had either shown me or given me or
2 read to me, but I didn't retain it, I don't believe I
3 retained a copy of it.

4 523 Q. The Tribunal wrote to you on the 12th December 2017
5 asking you whether you had any information in relation 14:16
6 to the reference material?

7 A. Yes.

8 524 Q. And I think you replied to that letter two days later
9 on the 14th December?

10 A. I know I responded immediately, yeah. 14:16

11 525 Q. And that letter has been read out to you already. In
12 that letter, you said you didn't have the file in front
13 of you at the time?

14 A. I didn't.

15 526 Q. I think you did give what we can call a full account of 14:16
16 the evidence that you have given to the Tribunal today
17 in that letter, would that be fair to say?

18 A. I think it is, yes.

19 527 Q. And I think four days later, on the 18th December, the
20 Tribunal wrote to you and asked you if you had any 14:17
21 documentation?

22 A. That's correct.

23 528 Q. Do you recall that? And I think you sent a reply by
24 email on the 20th December, and in that you said the
25 only document you have is the file in relation to the 14:17
26 defamation proceedings?

27 A. Yes, correct, because I believed all that to be --
28 yeah.

29 529 Q. And it's been suggested that that file was live at the

1 time because you had only recently delivered your
2 defence in that?

3 A. Yes, correct.

4 530 Q. Am I right in saying as well that those proceedings
5 came to a resolution around that time? 14:17

6 A. Correct.

7 531 Q. Are you familiar with the terms, without going into the
8 detail of those terms, of that resolution?

9 A. Sorry?

10 532 Q. Are you familiar with the terms by which the defamation 14:17
11 proceedings came to --

12 A. Well, the case against me was dropped. I made no
13 contribution to costs, made no contribution to
14 compensation. I was preparing a full defence to fight.
15 But it was agreed that the case would be dropped and it 14:18
16 was dropped against me at that stage.

17 533 Q. I think that is your last contact with the Tribunal
18 before Christmas 2017?

19 A. I believe so. I went away for Christmas then.

20 534 Q. Then, after Christmas, you had four meetings with the 14:18
21 investigation team, the first on the 17th January
22 2017 --

23 A. Yes.

24 535 Q. 2018, excuse me. In that first meeting, were documents
25 that we've seen today in your affidavit available to 14:18
26 you?

27 A. Yes, I believe they were, yes.

28 536 Q. And I think your affidavit contains the letter to
29 Martin Callinan, the draft response to Sergeant McCabe

1 and the handwritten and typed note?

2 A. That is correct.

3 537 Q. Is it fair to say those were in the possession of the
4 investigation team when you met them?

5 A. That is correct, yeah. 14:18

6 538 Q. I think you volunteered your phone records as part of
7 the investigation and those are before the Tribunal?

8 A. I did, I volunteered everything: the phone records, my
9 defamation file, correspondence in relation to
10 defamation. 14:18

11 539 Q. I think you were thanked for your speedy cooperation?

12 A. Oh, they were very complimentary, and I would like to
13 pay compliments to the inspectors as well. I mean, I
14 came down here three or four times, and we spoke on the
15 phone, got phone records, got details of texts, got 14:19
16 everything they wanted, and they were very thankful for
17 my support. But I also would like to compliment them,
18 they were very helpful to me and --

19 540 Q. And finally, Mr. Kean, I think you may have said this
20 this morning, but have you ever had penalty points 14:19
21 cancelled or quashed?

22 A. No, no.

23 MR. BOUGHTON: Thanks, Mr. Kean.

24 MR. MICHAEL O'HIGGINS: Chairman, I am in a position
25 now to provide information to the Tribunal, and I can 14:19
26 confirm there was contact and I would propose to put to
27 Mr. Kean what the contact was.

28

29

1 MR. KEAN WAS FURTHER CROSS-EXAMINED BY MR. MICHAEL
2 O'HIGGINS:

3
4 541 Q. MR. MICHAEL O'HIGGINS: Good afternoon again, Mr. Kean.
5 I'm just going to put a couple of matters on this very 14:19
6 discrete issue as ascertained by our client's
7 instructions.

8 A. Yeah.

9 542 Q. It would appear that you contacted the Garda Press
10 Office around 10:00 or 10:30am the weekend that you 14:19
11 were appearing on the Marian Finucane show, you spoke
12 to a sergeant there and you indicated you were looking
13 for a steer on the whistleblowers as you were going on
14 the Marian Finucane programme. Now, does that ring any
15 bell with you? 14:20

16 A. No, but I accept it could be correct. I would have
17 hoped that maybe the phone records -- because I was in
18 the car that day, so the phone records, I'm surprised
19 they don't show that, but that could well be the case,
20 yes. 14:20

21 543 Q. Now, I'm going to just inform you what's hearsay, but
22 just for the continuity of it, the sergeant in the
23 Press Office then contacted Superintendent Taylor and
24 informed Superintendent Taylor of your query and gave
25 Superintendent Taylor your phone number. Following 14:20
26 that exchange Superintendent Taylor rang you, you told
27 him that you were going on the Marian Finucane
28 programme and you were looking for a steer on
29 whistleblowers. He told you -- or, sorry, you told him

1 that you knew Commissioner Callinan but didn't have his
2 number, and Superintendent Taylor said "leave it with
3 me and I will be back to you". Does any of that ring a
4 bell?

5 A. It could be correct, but I got -- I had, and still 14:21
6 have, Martin Callinan's number, it may not be mobile,
7 it may be the Commissioner's office, but I don't
8 believe for one minute I said knew him well. I only
9 met the gentleman --

10 544 Q. whatever. 14:21

11 A. Yeah.

12 545 Q. In fact, my note is "told Superintendent Taylor that he
13 knew Commissioner Callinan but didn't have his number".
14 And Superintendent Taylor said "leave it with me and
15 I'll get back to you". Again, I'm just going to tell 14:21
16 you the hearsay just to keep the continuity.

17 A. Yeah.

18 546 Q. Superintendent Taylor then rang Commissioner Callinan,
19 informed him that you were after ringing the Press
20 Office and that he had called you back and that you 14:21
21 were looking for a steer on the whistleblowers as he
22 was going on the Marian Finucane programme and
23 Commissioner Callinan told my client to say that the
24 whistleblowers did not cooperate with the O'Mahony
25 investigation. He then called you back, this would be 14:22
26 a second phone call, and relayed that information to
27 you. He did not give you the Commissioner's phone
28 number. Does any of that ring a bell?

29 A. No.

1 MR. MICHAEL O'HIGGINS: All right. That's as far as we
2 can put the matter, Chairman.

3 CHAIRMAN: Is there any other source, do you think,
4 from which the Commissioner's number could have been --
5 you would have had it? Just talking about him -- 14:22

6 A. No, Mr. Chairman, no. I would hope Diarmuid
7 O'Sullivan's memory might be better than mine in what
8 we discussed on the -- when I first made contact with
9 him. Because I thought Diarmuid might have helped me,
10 you know, who to ring or who to call. But no, 14:22
11 Mr. Chairman, I can't think of any.

12 CHAIRMAN: You think it was Diarmuid O'Sullivan?

13 A. I thought so, yeah. I genuinely did. I mean, Diarmuid
14 O'Sullivan may have given me the Press Office number,
15 for example, and I may have rang. But, you know, I 14:22
16 can't remember who it was. But I did make the contact
17 to try and clarify. And just to be clear on this,
18 "steer" is not a word I'd use, but I appreciate this is
19 only --

20 MR. MICHAEL O'HIGGINS: It's paraphrasing. 14:23

21 A. I would be saying I would like to clarify, that is the
22 word I would tend to use. I wouldn't normally use the
23 word "steer".

24 CHAIRMAN: And you've no dispute with Martin Callinan
25 ringing you first? 14:23

26 A. No, no, Mr. Chairman.

27 CHAIRMAN: Then you would have had his number, unless
28 it was blocked, obviously, on the communication.

29 A. Yes, Chairman.

1 CHAIRMAN: All right.

2

3 MR. KEAN WAS RE-EXAMINED BY MR. MCGUINNESS:

4

5 547 Q. MR. MCGUINNESS: Mr. Kean, just a couple of matters. 14:23
6 We have Superintendent Taylor's billing records for the
7 period.

8 A. Yes.

9 548 Q. And they do not show on his mobile account any phone
10 call to your number. 14:23

11 A. Right.

12 549 Q. We also have your mobile records --

13 A. Yes.

14 550 Q. -- which stem from the 17th January onwards, and they
15 don't show a call from you to Superintendent Taylor's 14:23
16 mobile number either.

17 A. Yeah.

18 551 Q. Have you or have you not a memory of speaking to him?

19 A. I don't have a clear memory. What I have said is, it
20 may have happened, but I don't have a clear memory, no. 14:24

21 552 Q. Have you a memory of ringing the Press Office?

22 A. No. It's possible, I would hope -- I thought my phone
23 records might clarify this, but it's possible that if,
24 for example, Mr. O'Sullivan, Diarmuid O'Sullivan can
25 remember, Diarmuid might have said to me, here's the 14:24
26 number of the Press Office, give them a call. Diarmuid
27 might be able to throw some light on that. But I find
28 it hard to believe that I would ring up the Press
29 Office to -- I wouldn't have had their number that

1 easily, I would have had to go looking for it somewhere
2 or somebody who would have given it to me.

3 553 Q. Yes. Mr. O'Sullivan has said in his statement to the
4 Tribunal that he knew you through a number of different
5 methods, meeting you at rugby games. You had a nephew 14:24
6 who was a very good --

7 A. I forgot that.

8 554 Q. -- young rugby footballer, and his son was on the same
9 team in the same school, isn't that right?

10 A. That's right, yeah. I forgot that. 14:24

11 555 Q. And he said he met you socially?

12 A. Yeah.

13 556 Q. And he said he would have referred associates and
14 friends to you for advice.

15 A. Yes, correct. 14:25

16 557 Q. And he also refers to the unfortunate burglary of your
17 house as well as being --

18 A. Yes.

19 558 Q. So he was probably the person most familiar to you and,
20 in a sense, sort of local to you as well, would that be 14:25
21 fair to say?

22 A. It would be fair to say. You know, I would have got on
23 with other people in the guards, but Diarmuid is one
24 I've always had huge respect for, and, you know, he was
25 relatively high -- well, sorry, he was very highly 14:25
26 positioned within An Garda Síochána.

27 559 Q. Yes.

28 A. So I thought he would be the person I might go to and
29 say, listen, can you help me out, I just want to find

1 out what's happening.

2 560 Q. Yes. He was an energetic senior policeman?

3 A. I think he was a great man, yeah.

4 561 Q. Now, could you look at page 1793 of our papers. This
5 is a statement made by Martin Callinan, dated 4th
6 January 2018. It's got his handwriting on it there,
7 you see that?

14:26

8 A. Yes.

9 562 Q. With the date as well. It's received by the Tribunal
10 on the 19th February for some reason. But you will see
11 that what was sent to former Commissioner Callinan was
12 the letter that you sent to him, your proposed draft
13 response and the typewritten four paragraphs, together
14 with the handwritten four paragraphs, which
15 Mr. Marrinan had discovered in the disclosure. So
16 that's sent to him for his comment. He then says:

14:26

17
18 "I met Mr. Gerald Kean on a couple of occasions at
19 related charity events during my period as Commissioner
20 of An Garda Síochána. I was not in regular contact
21 with him on a social or professional basis. My initial
22 reaction to Mr. Kean's letter, which was marked
23 'private and confidential', was to draft some notes
24 reflecting my position on some of the matters that I
25 have already referred to publicly concerning data
26 protection, cooperation with the O'Mahony
27 investigation. However, on further consideration of
28 the matter, I determined that this was an inappropriate
29 letter to receive as Commissioner. I was now faced

14:27

14:27

1 with how and in what manner I might possibly respond.
2
3 I discussed the matter with Superintendent Frank Walsh,
4 then private secretary to the Commissioner. He also
5 agreed it was inappropriate to get involved. 14:27
6
7 As I recall, Superintendent Walsh indicated that he
8 knew Mr. Kean for a number of years and offered to meet
9 him to indicate that the Commissioner could not get
10 involved. I believe that meeting subsequently took 14:27
11 place. I recall speaking with Mr. Kean by telephone
12 within a short period of receiving his letter. I
13 indicated that while I was sure he would understand I
14 could not get involved, my position in relation to some
15 of the points raised in his draft response was a matter 14:28
16 of public record. I did not issue a written response
17 to Mr. Kean in respect of his correspondence to me."
18
19 Now, firstly, do you recall speaking to the
20 Commissioner after you sent your letter to him in early 14:28
21 February?
22 A. I have a recollection of that, yeah.
23 563 Q. Yes.
24 A. Yeah.
25 564 Q. Obviously, you'll recall I asked you and you said that, 14:28
26 you didn't mention the Commissioner's name in the
27 course of the broadcast?
28 A. Correct.
29 565 Q. Because he had asked you not to?

1 A. Correct.

2 566 Q. "Don't quote me on that" or --

3 A. Correct.

4 567 Q. You've no doubt about that?

5 A. Absolutely no doubt about that. 14:28

6 568 Q. No doubt about that. Okay. And the way he describes
7 it here, was that a continued or confirmation of his
8 position, as far as you were concerned, that he didn't
9 want you to get him involved?

10 A. Correct, yeah, yeah. 14:28

11 569 Q. And he didn't want you to disclose the contact you had
12 with him?

13 A. That is correct, yeah. That was clear to me at the
14 time.

15 570 Q. And is that the reason why both your initial draft 14:29
16 letter to Sergeant McCabe and the actual response you
17 issued to Sergeant McCabe doesn't identify the
18 Commissioner as having provided you with any of the
19 information, nor does it identify the fact that you
20 consulted him on your response? 14:29

21 A. That is correct.

22 CHAIRMAN: Sorry, Mr. McGuinness, again just to
23 understand the question, are you saying that the
24 response to the Tribunal --

25 MR. MCGUINNESS: I'm talking about the response to 14:29
26 Sergeant McCabe. I thought I had put that in.

27 CHAIRMAN: Oh, I'm sorry, I beg your pardon. All
28 right.

29 571 Q. MR. MCGUINNESS: And he doesn't mention here in this

1 letter to the Tribunal, in his third supplemental
2 statement, any briefing of you, in any way, shape or
3 form, on the 24th, 25th or 26th. Are you crystal clear
4 that all of those calls happened and that he provided
5 the information and steering, as it were, that you've
6 given the Tribunal about? 14:30

7 A. Well, when you ask did all the calls take place, yes,
8 the phone records are there. So that confirms the
9 record. Secondly, the fact that he and his office
10 chose to send me this letter -- or, sorry, to show me
11 this letter which helped me with my draft response, 14:30
12 shows there was an involvement from him at the start, I
13 believe. And thirdly, yes, I'm crystal clear about
14 what he told me about Sergeant McCabe.

15 572 Q. I'm just concerned about one issue. Obviously the 14:30
16 non-disclosure on the radio, you went along with that,
17 not revealing that the Commissioner -- you checked with
18 the Commissioner and this is what the Commissioner is
19 saying, and then the non-disclosure of it in the letter
20 to Sergeant McCabe and then in your initial response to 14:30
21 the Tribunal, you didn't reveal that you'd consulted
22 the Commissioner and that he had a hand in the drafting
23 of your response, would that not be suggestive of a
24 pattern of continued desire not to involve Commissioner
25 Callinan in these matters? 14:31

26 A. Well, I think you're absolutely correct insofar as the
27 first two. The third was an omission. I mean, the
28 first two I did not want it to be known on the radio
29 or -- I think a radio programme or a communication with

1 a complainant is different than dealing with the
2 Tribunal. So there was no intention on my part to hold
3 back. In fact, as I've said already, those four
4 paragraphs in that note and the fact they came from the
5 Commissioner's office was extremely helpful to me and 14:31
6 was important to me to show that what I was saying was,
7 I felt, a hundred percent correct. That is the way I
8 felt.

9 573 Q. Yes. Now, your counsel asked you about various
10 correspondence with the Tribunal and your responses to 14:31
11 it. I think it had been left at the end of the
12 statement that you gave the investigators that you were
13 going to search for further billing records?

14 A. Yes.

15 574 Q. And the Tribunal wrote to you on the 29th February and 14:31
16 with a further reminder, which you haven't replied to
17 yet.

18 A. No.

19 575 Q. Will you reply to that?
20 A. Oh, I will, of course, yeah. We are still chasing it. 14:32

21 576 Q. Yes. And make every effort --
22 A. Please remember, that if you look at the inspectors,
23 the reason that they wrote to me thanking me for my
24 cooperation and how I'd helped and come down here every
25 time I was asked at short notice, is, I'm very willing 14:32
26 to help in any way I can, and there's certainly no
27 intention on my part to -- there's nothing to be gained
28 by not helping in any way I can.

29 MR. MCGUINNESS: Thank you, Mr. Kean.

1 A. Thank you, Chairman.

2

3

THE WITNESS THEN WITHDREW

4

5

MS. LEADER: The next witness, sir, is Mr. Noel Brett. 14:32

6

Mr. Brett gave a statement in March of last year and

7

was interviewed by our investigators more recently.

8

Those materials appear at volume 6 at page 1530 of the

9

materials.

10

14:33

11

MR. NOEL BRETT, HAVING BEEN SWORN, WAS DIRECTLY

12

EXAMINED BY MS. LEADER:

13

14

577 Q. MS. LEADER: Mr. Brett, could you give a brief synopsis

15

of your career to date to the Tribunal, please?

14:33

16

A. Yes. I graduated from University College Dublin with a

17

social science degree in 1989. I moved immediately to

18

the United Kingdom where I did my postgraduate

19

training, and my earlier career was as a child

20

protection social worker. I subsequently worked in 14:33

21

mental health social work. I was then promoted to a

22

contracts manager with Kent County Council. I then

23

became the assistant director of social services in the

24

London borough of Newham in east London. And I

25

returned to Ireland in March 1999 to take up a position 14:33

26

as general manager of Mayo General Hospital in

27

Castlebar. I was promoted to assistant chief executive

28

of the then western Health Board in 2001, and I did

29

that job until 2004, at which point -- sorry, 2005, at

1 which point I was appointed as CEO of the new Road
2 Safety Authority. I was CEO there for eight years.
3 And I moved to my current role as Chief Executive of
4 the Banking and Payments Federation Ireland in October
5 2013, and I continue to hold that post. I should also 14:34
6 note that I am a member of the Board of the Policing
7 Authority and I am also a member of the Board of the
8 Western Development Commission.

9 578 Q. All right. Now, I think in around October 2012 in your
10 role, presumably, as Chief Executive of the Road Safety 14:34
11 Authority, you received certain information from
12 Mr. Faughnan in relation to irregularities in the fixed
13 charge penalty notice?

14 A. Yes, that's correct. I was Chief Executive at that
15 point of the Road Safety Authority. I had a statutory 14:34
16 responsibility -- or the authority had a statutory
17 responsibility for certain parts of the administration
18 of the penalty points system. I was contacted by email
19 by Conor Faughnan, who was the director of consumer
20 affairs in AA, the motoring association. In that 14:35
21 email, he told me that he had been contacted by a
22 serving member of An Garda Síochána and that there were
23 some worrying allegations in relation to impropriety
24 around the penalty points system and he asked me if I
25 would meet with Conor Faughnan, with himself, the next 14:35
26 time I was in Dublin. I should say the Road Safety
27 Authority is based in County Mayo. So I subsequently
28 met him in Dublin a few days after that.

29 579 Q. Right. And you took up the matter insofar as you

1 notified Assistant Commissioner Twomey, who was -- at
2 that time had responsibility for traffic, is that
3 correct?

4 A. Well, that's correct. What Conor Faughnan told me, he
5 gave me a very high level outline of alleged 14:35
6 impropriety, the cancellation, or the word "squaring"
7 of penalty points, but he also told me that one of the
8 board members of the authority --

9 580 Q. You needn't go into that.

10 A. Okay. 14:36

11 581 Q. We're not looking into the fixed charge penalty notice
12 system.

13 A. So -- well, just to finish off. So because he had
14 given me that information, I had asked him what he
15 want -- what he thought should happen, and he said he 14:36
16 would raise it with a contact he had, a Ms. Carmel
17 Foley, in GSOC, and I undertook to notify An Garda
18 Síochána at that point, and I immediately -- straight
19 after that, I phoned Assistant Commissioner Twomey and
20 I told him what I had been told and I asked him to 14:36
21 inform the Garda Commissioner.

22 582 Q. And you informed your own board, and I think you also
23 informed the Comptroller & Auditor General?

24 A. No. At that point, I briefed my own chairman, Mr. Gay
25 Byrne, and I informed the board. I only informed the 14:36
26 Comptroller & Auditor General and GSOC after I had met
27 with Sergeant McCabe and had all the detail.

28 583 Q. All right. And you met with Sergeant McCabe, I think
29 it was on the 25th October 2012, and discussed the

1 fixed charge penalty notice system, am I correct in
2 that?

3 A. Yes, that's correct. I met with Sergeant McCabe for
4 the first time that evening and he took me through the
5 penalty point allegations and, you know, I was 14:37
6 satisfied from speaking with him that there were very
7 serious issues and he had all of the back-up. And I
8 went home that night, and the very next morning I
9 referred the matter formally by registered post and
10 included the dossier. I sent it to the Comptroller & 14:37
11 Auditor General because of the alleged loss of revenue
12 to the State, and I sent it to GSOC because I believed
13 that GSOC had the statutory powers to formally
14 investigate it.

15 584 Q. So matters went on from there in relation to the fixed 14:37
16 charge penalty notice system. I want to bring you to
17 the following year, to July 2013, you had a meeting
18 with the Department of Justice with regard to the fixed
19 charge penalty notice system, is that correct?

20 A. Yes, that meeting was held in late July 2013. I was 14:37
21 asked by my then-Minister, Minister Varadkar, who was
22 Minister for Transport, to accompany him to a meeting
23 with the Minister for Justice to discuss the penalty
24 point issues.

25 585 Q. And who was at that meeting? 14:38

26 A. That meeting was attended by Minister Shatter, who was
27 then the Minister for Justice; Minister Varadkar, who
28 was the Minister for Transport; Brian Murphy, who the
29 Minister's special adviser; Maurice Treacy, who was the

1 principal officer at that point in the Department of
2 Transport; by Brian Purcell, who was the Secretary
3 General in the Department of Justice, and by myself.

4 586 Q. And I think immediately after that meeting you
5 telephoned Sergeant McCabe, and was that as a result of 14:38
6 something you'd heard during the meeting?

7 A. Yes, that's correct. During the meeting, Minister
8 Shatter was having an exchange with myself and Minister
9 Varadkar about whether or not Sergeant McCabe had
10 cooperated with the O'Mahony investigation. I knew 14:38
11 from speaking to Sergeant McCabe that he hadn't been
12 contacted and he hadn't been asked to participate. I
13 explained that to Minister Shatter at the meeting and
14 he was adamant that he hadn't. I was concerned, so
15 much so that, straight after the meeting, after I 14:39
16 parted company with Minister Varadkar, I immediately
17 rang Sergeant McCabe and I asked him, and he reassured
18 me that he had not been contacted and that what he had
19 told me originally stood. I believed at that point
20 that it was important to immediately ring the Secretary 14:39
21 General, Brian Purcell, and alert him to this, because
22 Minister Shatter seemed to believe the direct opposite.

23 587 Q. And you spoke to Mr. Purcell in relation to Sergeant
24 McCabe's cooperation?

25 A. I certainly did. 14:39

26 588 Q. And what he had relayed to you?

27 A. Yes.

28 589 Q. All right. Then if we could go on to February 2014, I
29 think you again contacted Sergeant McCabe to support

1 him, is that correct, to offer your support to him?

2 A. well, I had contacted Sergeant McCabe occasionally by
3 text or by phone call --

4 590 Q. Yes.

5 A. -- if I felt he was having a hard time in the media, or 14:40
6 whatever, because I was very concerned for him and I
7 felt -- I felt he was very marginalised and I would
8 have contacted him on occasion.

9 591 Q. And I think there were certain reports in the media at
10 that stage about his non-cooperation -- alleged 14:40
11 non-cooperation with the O'Mahony inquiry, is that
12 correct?

13 A. Yes, that's correct. I do remember a specific instance
14 when I did actually physically ring him up, as opposed
15 to text him, because the report was covered in the 14:40
16 media, I had read it, and I knew from my interaction
17 with him that it was untrue. So I rang him up to say,
18 look, you know, I still believe you.

19 592 Q. All right. Now, if we could then go on to 2013. You
20 met with Superintendent David Taylor on a number of 14:40
21 occasions?

22 CHAIRMAN: I am sorry, Ms. Leader, just before you go
23 on to that, was I right in thinking that the telephone
24 call about the non-cooperation, etcetera, was February
25 2014? 14:41

26 MS. LEADER: That's my understanding. Perhaps
27 Mr. Brett might clarify --

28 A. If I may just refer to my statement.

29 593 Q. The reference is page 1537 of the materials, if it

1 600 Q. MS. LEADER: How did you know Superintendent Taylor?
2 A. I had -- the Road Safety Authority and An Garda
3 Síochána would run a number of joint initiatives, such
4 as the Christmas drink driving campaign or conferences
5 or events like that, and the press, both organisations' 14:42
6 press offices would collaborate on those events, and I
7 knew David Taylor, Superintendent Taylor, in that
8 context.

9 601 Q. And was it a scheduled meeting in your office in Nassau
10 Street or was it a more casual affair? 14:43
11 A. That first meeting would have been very casual. He
12 would have texted, and I was free, so he turned up, and
13 I would have made him a cup of tea, he would have told
14 me about his thesis and given me the thesis.

15 602 Q. Okay. I think you've told the Tribunal investigators 14:43
16 there were two subsequent meetings with
17 Superintendent Taylor, is that correct?
18 A. Yes, that's correct. He next contacted me after he had
19 been suspended and arrested and he was off duty, and he
20 called to my office on two occasions after that. 14:43

21 603 Q. And can you be any more specific about dates?
22 A. I'm really sorry, I can't, and I don't -- they weren't
23 diaried events; they were, literally he turned up and I
24 felt I was being pleasant and made him a cup of tea and
25 spoke with him and off he went. 14:43

26 604 Q. All right. And I think Sergeant McCabe was discussed
27 during the course of those meetings?
28 A. Yes. The main thrust of those meetings was to do with
29 Superintendent Taylor's own situation, his suspension,

1 his arrest, you know, the fact that his children
2 visited him in the Garda cell, him being off payroll,
3 those kind of issues. But he did tell me -- or he did
4 talk briefly about the way Sergeant McCabe was being
5 treated by senior management in An Garda Síochána and 14:44
6 he made it clear to me that they were determined to
7 disprove the penalty point issues that I had referred
8 and that Sergeant McCabe had been talking about.

9 605 Q. Now, was he any more specific than saying "senior
10 management in An Garda Síochána"? 14:44

11 A. He would have said to me that Commissioner Callinan was
12 determined to bury this issue, as in, to finish this
13 issue off, and he went on and told me, you know, that
14 it was being treated in Crime and Security section,
15 which, as I understand, it is where particular types of 14:44
16 crime are dealt with, and he told me that in the
17 context of the seriousness in which the matter was
18 being dealt.

19 606 Q. Was there any other particular Garda officer mentioned
20 by name during the course of those two conversations? 14:45

21 A. No, not from memory, no.

22 607 Q. Now --

23 A. Sorry, I should clarify, in the context of Sergeant
24 McCabe, he only mentioned Commissioner Callinan. In
25 the context of the discussions about -- most of his 14:45
26 angst was directed at Commissioner Nóirín O'Sullivan,
27 or Acting Commissioner Nóirín O'Sullivan as she would
28 have been then, in the context of his own situation -
29 his arrest, his suspension and his predicament.

1 608 Q. And in relation to computers and phones, did he say
2 anything about those during the course of those two
3 meetings?

4 A. Yes. He told me that the Sergeant McCabe allegations
5 were being dealt with in the Crime and Security 14:45
6 section. He went on to tell me that there was a
7 particular computer system which was being used to deal
8 with the Sergeant McCabe allegations. He told me that
9 computer system was called Oisín and he went on to say
10 that it was named after the grandson of an assistant 14:46
11 commissioner. I asked him in the context of it being
12 treated in Crime and Security, that particular side of
13 the house, you know, was there any likelihood that my
14 phone would be intercepted, and he said to me that it
15 was very likely that it was. 14:46

16 609 Q. And did he say anything about media coverage in
17 relation to Sergeant McCabe?

18 A. No.

19 610 Q. Did you make any notes of any of those meetings,
20 anything like that? 14:46

21 A. Not of those three meetings, I didn't, No.

22 611 Q. Okay. Now, insofar as he said to you that it may be
23 likely that your phone had been intercepted, did you
24 make any inquiries yourself on foot of that piece of
25 information? 14:46

26 A. Yes, I did. I had had a concern earlier on that my
27 phone may have been intercepted, and that arose from
28 discussions I had had with Sergeant McCabe, because he
29 would repeatedly get me to phone him on different

1 phones and he had a phone behaviour that, you know -- I
2 asked him one time, why do you do this? And he said,
3 because it's possible our calls are being listened to.
4 On that occasion, I asked Assistant Commissioner
5 Twomey, who was well known to me and somebody I 14:47
6 respected and trusted, and he reassured me that that
7 wouldn't be the case, so I was happy on that occasion.
8 When Superintendent Taylor implied to me that -- or
9 told me that it was likely that my phone was being
10 intercepted, I thought that was more formal, and I took 14:47
11 it upon myself to ring the then-Commissioner Nóirín
12 O'Sullivan and I asked her formally was my phone
13 intercepted, being intercepted, and was it on the list
14 that is overseen by the justice, there's a process for
15 overseeing the interception of telephone traffic and 14:47
16 it's monitored independently by justice, and I
17 specifically asked her if my name and my phone was on
18 that list.
19 CHAIRMAN: It has to be authorised by a High Court
20 judge. 14:47
21 A. Okay, sorry, Chair, I'm not familiar with the process.
22 I just knew that there was a justice who had some
23 oversight.
24 CHAIRMAN: A justice is a what? Do you mean the
25 Department of Justice or -- 14:48
26 A. Sorry, I mean a High Court judge. Apologies,
27 apologies.
28 CHAIRMAN: Yes.
29 612 Q. MS. LEADER: And I think the then-Commissioner

1 O'Sullivan got back to you and provided you with some
2 reassurance, is that correct?

3 A. That's correct. Commissioner O'Sullivan came back to
4 me and told me that it wasn't on the list of phones
5 being intercepted as part of routine Garda work and
6 that my phone wasn't intercepted, and I took that at
7 face value. 14:48

8 613 Q. Now, did you know Commissioner O'Sullivan prior to
9 then? Had you spoken to her?

10 A. Yes. I would have known Commissioner O'Sullivan when
11 she was deputy commissioner operations, because she
12 would have had oversight of the traffic enforcement
13 side of the Garda Síochána, and I would have had a
14 limited amount of dealings with her. 14:48

15 614 Q. Okay. And in any of those dealings with former
16 Commissioner O'Sullivan, was there any discussion about
17 Sergeant McCabe? 14:48

18 A. Absolutely not. I can be very clear: no garda of any
19 rank, of Commissioner down to garda rank, has ever
20 raised with me any issues in relation to Sergeant
21 McCabe, ever. 14:49

22 615 Q. I suppose just to be specific about it, in relation to
23 former Commissioner Callinan, has there been any
24 discussion between you and him in relation to Sergeant
25 McCabe? 14:49

26 A. Absolutely not, absolutely not.

27 616 Q. So the only discussion you had amongst the guards in
28 relation to Sergeant McCabe was with
29 Superintendent Taylor, is that correct?

1 A. That's correct.

2 617 Q. And Assistant Commissioner Twomey, insofar as you were
3 notifying him of the alleged irregularities in the
4 fixed charge penalty notice system back in 2012?

5 A. That's correct.

14:49

6 MS. LEADER: If you would answer any questions anybody
7 else might have.

8 A. Thank you.

9

10 MR. BRETT WAS CROSS-EXAMINED BY MR. MCDOWELL:

14:49

11

12 618 Q. MR. MCDOWELL: Just briefly, Mr. Brett. Michael
13 McDowell is my name and I am one of the counsel for
14 Sergeant McCabe. Sergeant McCabe has a recollection
15 that you informed him that Commissioner Callinan had
16 become very angry in the course of a meeting you had
17 with him. Does that ring a bell with you?

14:50

18 A. Yes. I was asked by the inspectors about this, from
19 the Tribunal.

20 619 Q. The investigators, yes.

14:50

21 A. Yeah, sorry, the Tribunal investigators. My assumption
22 is that that refers to a meeting which was held at
23 Garda Headquarters to discuss routine road safety
24 business and it was a periodic meeting attended by my
25 then-chairman, Gay Byrne, myself, the Commissioner and
26 some of his top team, to address general road safety
27 performance issues. During that meeting
28 then-Commissioner Callinan became quite annoyed with me
29 on a particular topic and it became quite heated, so

14:50

1 much so that we actually left. That meeting, because
2 of the number of people present, perhaps gained some
3 currency out there. I think Sergeant McCabe may have
4 heard about that meeting and asked me about it, and I
5 did tell him that the Commissioner had become quite
6 annoyed. However, I must be clear that Sergeant McCabe
7 and the penalty point issues were absolutely not
8 mentioned in that meeting. I have never ever had a
9 discussion with Commissioner Callinan about Sergeant
10 McCabe.

14:51

14:51

11 620 Q. It's just that Sergeant McCabe made a protected
12 disclosure, and I just want to put to you that his
13 understanding was, and he doesn't want to have a major
14 dispute with you on this, but his understanding was
15 that you had on one occasion told him that the
16 Commissioner had become very angry in the context of a
17 discussion on Sergeant McCabe, and that his
18 recollection was that the Commissioner, the veins stood
19 out in his neck in an altercation with you on that
20 matter.

14:51

14:51

21 A. Yeah.

22 621 Q. Have you anything to say about that?

23 A. The altercation or the -- I wouldn't describe it as an
24 altercation. The heated exchange between myself and
25 the Commissioner was to do with a road safety
26 performance issue in An Garda Síochána. It was
27 absolutely not to do with Sergeant McCabe. And I did
28 tell Sergeant McCabe about the meeting. But there was
29 never a discussion about Sergeant McCabe. And I

14:51

1 wouldn't have told him that. So I think there's a
2 difference there.

3 622 Q. Maybe a misunderstanding, or whatever?

4 A. Well, all I can say to you is that I am very, very
5 clear, and there were so many people present, Sergeant 14:52
6 McCabe was not discussed in that meeting.

7 MR. MCDOWELL: I see. Thank you.

8 CHAIRMAN: Were the veins bulging out on his neck?

9 A. I can't recollect. It was a heated exchange, so much
10 so that Gay Byrne and I left. 14:52

11 CHAIRMAN: Is that the kind of thing you would say?

12 A. I honestly can't recollect, Chairman.

13 CHAIRMAN: You can't recollect.

14 A. Yeah.

15 MR. MCDOWELL: I don't want to put it further than 14:52
16 that, Chairman.

17 CHAIRMAN: No, no, it is fine. I understand.

18 MR. MCDOWELL: Sergeant McCabe was under the impression
19 that he was the subject of the conversation, and now we
20 hear he wasn't. 14:52

21 CHAIRMAN: It seems not. So it was about Garda
22 performance and checkpoints, the kind of thing that is
23 necessary to keep drivers behaving themselves?

24 A. That's correct, Chair. It was a short number of weeks,
25 maybe perhaps a few months, after I had formally made 14:52
26 the referrals, and, you know, I felt there was a
27 certain hostility towards me because I had done that.
28 That was my assumption. But it was primarily about
29 road safety and Garda activity.

1 CHAIRMAN: Yes. You put it down to human interaction,
2 the importance of the subject.

3 A. Absolutely.

4 CHAIRMAN: Fair enough.

5 MR. MCDOWELL: I'm happy with that. 14:53

6 CHAIRMAN: Mr. O'Higgins, do you have any questions?

7

8 MR. BRETT WAS CROSS-EXAMINED BY MS. BURNS:

9

10 623 Q. MS. BURNS: Good afternoon, Mr. Brett. My name is Tara 14:53
11 Burns and I'm appearing on behalf of Superintendent
12 Taylor. You've indicated to Ms. Leader that you had a
13 number of meetings with Superintendent Taylor. I take
14 it from your evidence that you're indicating they
15 occurred after you had completed your role with the 14:53
16 Road Safety Authority, is that correct?

17 A. Yes, that's correct, all three, and the reason I'm
18 certain of that is they took place in my current office
19 in Nassau Street in Dublin. And I started in that job
20 in October 2013. 14:53

21 624 Q. I see. Now, in relation to that, it seems that your
22 evidence in terms of the first meeting that you
23 recollect occurring, that you recollect that occurring
24 at a time when Superintendent Taylor provided you with
25 his thesis, is that correct? 14:54

26 A. That's correct, but I don't have a diary date, whether
27 it was late -- whether it was between October and
28 December 2013 or whether it was into 2014 or even into
29 2015, I don't recall. I'm very, very clear that the

1 second two meetings took place after he was arrested
2 and suspended.

3 625 Q. I see. And that is what I was wondering about. I take
4 it when he was providing his thesis to you that it was
5 a completed article at that stage? 14:54

6 A. I can't be certain. I think he was in the process of
7 being ready to submit, is my memory.

8 626 Q. I see.

9 A. It was a printed thesis, it wasn't a bound thesis.

10 627 Q. Certainly my instructions in relation to that is that 14:54
11 the thesis was completed and was to be submitted and he
12 provided it to you. I think you discussed a thesis
13 that you also were doing at the time, is that right?

14 A. No.

15 628 Q. No? 14:54

16 A. I wasn't doing a thesis, no.

17 629 Q. Can you recollect how it came about that he was
18 providing his thesis to you? was it just out of the
19 blue, or had there been any discussion about it?

20 A. I actually don't remember what the subject matter of 14:55
21 the thesis was. I do know I did receive it. He
22 contacted me by text to say could he come in. He came
23 in, I made him a cup of coffee or a cup of tea, he
24 talked about the course he was doing and he gave me the
25 thesis, he said "you might be interested in it". I 14:55
26 think it may have been something to do about policing
27 structures.

28 630 Q. Yes, yes. In relation to that, in terms of when he in
29 fact completed his thesis, he completed that in early

1 2016. Do you take issue with that being the first time
2 he perhaps had come into the office?

3 A. No, I don't. All I can say is, I am just certain it
4 happened in Dublin and I'm very certain about the
5 second two meetings, in that they happened after his 14:55
6 suspension and when he was off duty. I'm not clear of
7 the time-line. I just know it was after I started in
8 the RSA.

9 631 Q. I see.

10 A. And I wouldn't dispute his time-line. 14:55

11 632 Q. In terms of him visiting you again, he doesn't have a
12 recollection of coming into the office, but it
13 certainly seems to be from your evidence that you do
14 have a recollection of further meetings with him?

15 A. Oh, absolutely. There were definitely two further 14:56
16 meetings, absolutely, I mean -- absolutely, yeah.

17 633 Q. Now, in relation to the discussions that you had with
18 Superintendent Taylor and specifically in relation to
19 your phone and Maurice McCabe and the computer system
20 in Crime and Security, can you recollect how that 14:56
21 conversation came to pass?

22 A. Em, yes. That was in one of the second two meetings.
23 He was describing, explaining to me just his own
24 predicament in terms of being off work, off pay, all of
25 those issues, and he was explaining to me just how 14:56
26 serious, what he would describe as senior management,
27 in his own case, Commissioner O'Sullivan, and in the
28 case of Sergeant McCabe particularly, it would have
29 been Commissioner Callinan he was referring to, how

1 seriously they were taking the issue, and he went on
2 then to explain and illustrate that by saying this is
3 being dealt with, Sergeant McCabe issues are actually
4 being dealt with in Crime and Security, they even have
5 this standalone computer system, it's called Oisín, 14:57
6 it's named after an assistant commissioner's grandson,
7 and the fact that it is Crime and Security, kind of in
8 Garda parlance, gives it a certain status.

9 634 Q. I see. Now, in relation to that, was that the first
10 time you heard of anything to do with a computer 14:57
11 system, Oisín, or Sergeant McCabe's phone?

12 A. I'd never heard about the computer system, Oisín, ever
13 before then. It was news to me. It was the first time
14 I ever heard about it.

15 635 Q. You hadn't heard about that from Sergeant McCabe, had 14:57
16 you?

17 A. No, absolutely not.

18 636 Q. But Sergeant McCabe had discussed with you concerns he
19 had in relation to his phone, is that right?

20 A. Well, I would occasionally text or ring Sergeant 14:57
21 McCabe, because I genuinely believed the man and I was
22 satisfied with the information he had given me that I
23 had referred on, and I noticed that he changed his
24 behaviour, he would get me to ring him on a landline or
25 do different things, and I asked him upfront, why have 14:57
26 you done this? Are you concerned? Why is this? And
27 he said, I'm concerned that our conversation may be
28 intercepted.

29 637 Q. I suppose what I am asking you, Mr. Brett, just to cut

1 over you, you had had that discussion with Sergeant
2 McCabe prior to you then having the discussion with
3 Superintendent Taylor in relation to this?

4 A. Yes, that's correct. There were two separate issues of
5 concern about my phone. The first was with Sergeant 14:58
6 McCabe that led me to ask Assistant Commissioner Twomey
7 if it was possible. I got a reassurance. The second
8 one was when Superintendent Taylor told me that it was
9 likely in the context of it being handled by Crime and
10 security. That prompted me to go more formal and ring 14:58
11 Commissioner O'Sullivan, or maybe Acting Assistant --
12 Acting Commissioner O'Sullivan, I'm not sure what she
13 was at that date, and ask her upfront, formally, and
14 she came back to me and told me that it wasn't.

15 638 Q. I see. So I take it from that answer that your initial 14:58
16 information in relation to Sergeant McCabe's phone
17 possibly being monitored, if we put it that way, that
18 firstly came from Sergeant McCabe. You then, in the
19 course of a discussion which occurred some time after
20 Superintendent Taylor provides you with his thesis and 14:59
21 after he is arrested, that you then have a discussion
22 with Superintendent Taylor in relation to that, and, on
23 foot of all of that, you then speak to superintendent
24 Twomey, is that correct?

25 A. No. The first -- when I became -- when I had the 14:59
26 discussion with Sergeant McCabe, I rang Assistant
27 Commissioner Twomey, whom I trusted and knew very, very
28 well, I asked him, he gave me assurance that it
29 wouldn't happen. It was when I met with

1 Superintendent Taylor, possibly on the second occasion,
2 or maybe the third, but not the first, when -- because
3 the mood had changed between the thesis and the
4 suspension, when he said it to me that it was likely, I
5 then took it more formally with the Commissioner, with 14:59
6 Nóirín O'Sullivan.

7 639 Q. I see. My apologies for my misputting them into line.
8 A. Okay.

9 640 Q. Just in relation to the conversation you had regarding
10 the Oisín computer system, Superintendent Taylor agrees 14:59
11 that this was discussed with you. However, his
12 instructions to me are that that arose from a
13 conversation that you brought up in relation to
14 Sergeant McCabe's phone.

15 A. Sorry, you're asking me about the computer system Oisín 15:00
16 or about the phone?

17 641 Q. Yes, that discussion that you had emanated from you
18 bringing up the question as to whether it was likely
19 that your phone had been intercepted?

20 A. Yeah, I asked him, in the context of him describing to 15:00
21 me this case of Sergeant McCabe being dealt with in
22 Crime and Security, in my mind that denotes a very
23 particular kind of case, because he told me that, I
24 said, gosh, Crime and Security, you know, would they be
25 listening to my phone? And he said very likely. 15:00

26 642 Q. I see.
27 A. So that is what prompted me -- that's what prompted
28 that.

29 MS. BURNS: Thank you very much, Mr. Brett.

1 A. Thank you. Thank you, Chairman.

2 CHAIRMAN: In terms of the conversation, Ms. Burns,
3 there's no difference between you really?

4 MS. BURNS: No, Judge.

5 CHAIRMAN: As far as I can see, there is none. 15:00

6 MS. BURNS: No, Chairman.

7 CHAIRMAN: Yes. All right. Was there any other
8 questions? Mr. Barton?

9 MR. BARTON: No, thank you, Chairman.

10 MR. DIGNAM: Chairman, I have just have some questions 15:01
11 for Mr. Brett.

12 CHAIRMAN: Yes.

13

14 MR. BRETT WAS CROSS-EXAMINED BY MR. DIGNAM:

15 15:01

16 643 Q. MR. DIGNAM: Mr. Brett, my name is Conor Dignam. I
17 appear on behalf of An Garda Síochána, and I have some
18 questions for you on behalf particularly of former
19 Commissioner Callinan, and I am going to try and do it
20 quite quickly because in many respects I just want to 15:01
21 go through your statement and interview that you had
22 with the Tribunal investigators for the purpose of
23 clarification of some points, Mr. Brett, so I don't
24 intend to dwell on any points, and we should be able to
25 get through it reasonably quickly, in everybody's 15:01
26 interests.

27 A. Thank you.

28 644 Q. Just firstly, in relation to the question that
29 Mr. McDowell had asked you about Sergeant McCabe's

1 statement and protected disclosure about the
2 conversation which he claimed that you told him about
3 having with former Commissioner Callinan, if I can just
4 ask you to go to page 3 of your interview, which is
5 page 1532 of the booklet. You will see that you are 15:01
6 asked a question on line 35 of that interview, the
7 investigators put to you an extract from the statement
8 made by Sergeant McCabe to the Disclosures Tribunal on
9 the 15th March 2017, and I quote, this is Sergeant
10 McCabe's statement to the Tribunal: 15:02

11
12 "I am aware that former Commissioner Callinan
13 interviewed Noel Brett, the former Chairman of the Road
14 Safety Authority, and angrily denounced me to him.
15 Noel Brett later on told me about the hostile behaviour 15:02
16 he endured and how angry Martin Callinan was and that
17 senior officers were sent to his home shortly after a
18 family bereavement to interview him. Mr. Faughnan of
19 the AA Roadwatch was questioned about this meeting with
20 me and what documents were given to him. He was 15:02
21 sufficiently concerned with the tone of the meeting
22 with senior gardaí that he had to take legal advice."

23
24 Now, I think that is the passage that, in effect,
25 Mr. McDowell was asking you about. Did Commissioner 15:03
26 Callinan ever denounce Sergeant McCabe to you?

27 A. Absolutely not.

28 645 Q. You never -- I think your evidence was that, in fact,
29 you never discussed Sergeant McCabe with Commissioner

1 Callinan?

2 A. Yes, there was never, ever a discussion between I --
3 and nor would I, because I was the person who had
4 formally referred it back in 2012 to GSOC and the C&AG,
5 and I believed Sergeant McCabe and I believed this 15:03
6 would end up in a forum like this, so I was very clear
7 I would never, ever discuss it with the Commissioner.
8 What I just want to clarify for you, when you read me
9 out the piece there and the reference to Conor Faughnan
10 being concerned at the tone of the meeting with senior 15:03
11 gardaí, I understand that refers to the two gardaí that
12 came to interview me and interview Conor Faughnan. It
13 doesn't refer to the meeting with the Commissioner.

14 646 Q. No, no, I think that is right, and that is my
15 understanding as well, Mr. Brett. I will ask you about 15:04
16 that interview in just a few moments.

17 A. Okay.

18 647 Q. I can tell you, Mr. Brett, that Commissioner Callinan
19 accepts that there was a heated exchange that night,
20 and that he, in fact, phoned you later on that evening 15:04
21 to apologise, I think, for having that heated exchange
22 with you.

23 A. That's correct.

24 648 Q. I think it was about tachographs or some enforcement
25 issue. But can you offer any enlightenment, Mr. Brett, 15:04
26 as to how Sergeant McCabe could have formed the
27 impression or could have made a statement that you had
28 angrily denounced Sergeant McCabe to Commissioner
29 Callinan?

1 A. That the Commissioner had denounced him to me?

2 649 Q. Yes. Sorry.

3 A. I don't know. I am absolutely clear that I did have a
4 discussion with Sergeant McCabe and I did tell him
5 about the tone of that meeting and the way that myself 15:04
6 and my then-chairman were treated. It was so heated
7 that we actually left.

8 650 Q. Yes.

9 A. And, you know, I would have shared that with Sergeant
10 McCabe, absolutely. 15:05

11 651 Q. And I think you fairly said that you were in contact
12 with Sergeant McCabe. You had concerns for him. First
13 of all, you accepted the concerns that he raised about
14 the fixed penalty points system, and that you were
15 concerned for him and kept in touch with him to offer 15:05
16 support?

17 A. Yes, I tried to do that. And I would say to you, about
18 the meeting in the -- with the Commissioner, there were
19 a lot of people present in that room, and the news of
20 that meeting and of the interaction spread, so much so 15:05
21 that I was out a few weeks before Easter and somebody
22 said to me in a public venue, you know, "that should
23 never have happened to you". So it was well-known
24 throughout -- throughout An Garda Síochána and
25 throughout the public service what had happened. 15:05

26 652 Q. Yes.

27 A. So, you know, Sergeant McCabe may have heard it from
28 any source. But I'm very, very clear that I absolutely
29 told him about the way I felt I had been treated. And

1 in my mind, I probably was forming the view that the
2 treatment I got was because I had made the referral to
3 GSOC at the C&AG, but I stand over that.

4 653 Q. And did you ever ask Commissioner Callinan that, did
5 you ever say that to him?

15:06

6 A. No, I never discussed it with him again. He phoned, he
7 said, look, I'm sorry, that shouldn't have happened,
8 I'm under a lot of pressure. I said, look, forget
9 about it, it doesn't matter, and I continued.

10 654 Q. Now, in relation then to the -- you mentioned the
11 interview by two gardaí. On page 4 of your
12 statement -- or your interview, rather, which is page
13 1533, again you're asked to comment on a statement by
14 Sergeant McCabe, and Sergeant McCabe says -- sorry,
15 I've already put this quote to you, but specifically
16 Sergeant McCabe is quoted as saying:

15:06

15:06

17
18 "I'm aware that former Commissioner Callinan
19 interviewed Noel Brett, the former chairman of the Road
20 Safety Authority and angrily denounced me to him. Noel
21 Brett later on told me about the hostile behaviour he
22 endured and how angry Martin Callinan was and that
23 senior officers were sent to his home shortly after a
24 family bereavement to interview him."

15:06

25
26 Now, as I read that, and you might correct me if you
27 have a different impression, as I read that, there is a
28 link being drawn between your interview by two senior
29 officers, as they're described, and the denouncement of

15:07

1 Sergeant McCabe that is described in the first part of
2 that passage.

3 A. Well, I don't know. I mean, I can clarify for you what
4 the interview was and --

5 655 Q. Yes, I was going to ask you about that. 15:07

6 A. Yes.

7 656 Q. Firstly, there seems to be a suggestion there that
8 there was something inappropriate or wrong in relation
9 to that interview. Do you consider it to have been an
10 inappropriate or wrong interview or process that was 15:07
11 engaged in? And I will ask you about the details of
12 the process then?

13 A. Yeah, okay. No, I don't. There was an allegation that
14 Sergeant McCabe had breached the Data Protection Act by
15 giving me the information and that I had then sent it 15:07
16 on and I had it in my possession and had kept it in my
17 possession. The issue -- certainly, they did not come
18 to my home and it was not shortly after a family
19 bereavement. It was before a family bereavement. I
20 had actually taken those weeks off, my dad was dying at 15:08
21 that time, they contacted me, the detective
22 superintendent contacted me, and I said, look, I'll be
23 back in Dublin hopefully next week. And he said, no,
24 no, this has to happen now. I said, well, I'm in Mayo.
25 He said, that's fine, we'll come to Mayo, we'll be 15:08
26 there in the morning. And it took place at the Garda
27 station in Castlebar. And I was very clear, they were
28 extremely polite and extremely professional, and I
29 think I've said that in my statement.

1 657 Q. You did, yes.

2 A. But it struck me that they were seeking to prosecute
3 Sergeant McCabe, and I was concerned that I might get
4 prosecuted too.

5 658 Q. Yes. And was that -- I think part of the disclosure 15:08
6 which had been made to you by Sergeant McCabe, in that
7 disclosure there was a particular case, isn't that
8 right, but I don't want to get into the details or I
9 don't want to identify any individuals, there was a
10 particular claim or allegation made that a member of 15:09
11 the board of the RSA had had penalty points quashed,
12 isn't that right?

13 A. In the dossier that I was given, there were two -- it
14 was alleged that two members of the board of the
15 authority, so my board, if you like, I was reporting to 15:09
16 this board, had had penalty points quashed - one of
17 them on two occasions and a second person on one
18 occasion.

19 659 Q. Yes. And that was stated, I think, to Conor Faughnan
20 of the AA in the first instance, and then you 15:09
21 subsequently met Sergeant McCabe, and I think he
22 personally said that to you, isn't that right?

23 A. Well, Conor Faughnan only mentioned one board member to
24 me, he wasn't aware of the second. It was when I met
25 Sergeant McCabe and took possession of the dossier and 15:09
26 went through it in detail in the context of me having a
27 responsibility for the administration of penalty points
28 that it became clear this there was a second board
29 member, potentially a second board member. And

1 subsequently that turned out to be a case of two people
2 in the same village with the same name, but it wasn't
3 actually the board member, so it ended up with one
4 board member who had an allegation of it -- having
5 penalty points quashed on two occasions. When I met 15:10
6 that person and discussed it with them, it turned out
7 that it had actually happened on three occasions.

8 660 Q. And in relation to the person whose identity was
9 confused with another person, how significant would
10 that have been (a) for the individual and (b) for the 15:10
11 board if it had emerged that penalty points had been
12 quashed?

13 A. If it was a proven issue, it would have been very
14 significant for the board of the Road Safety Authority.
15 If it was a case that a board member who was tasked 15:10
16 with overseeing my work and the statutory work of the
17 authority was availing of quashing of penalty points,
18 well clearly there would be -- it would be a huge issue
19 of credibility.

20 661 Q. And I think to your credit, you treated it extremely 15:10
21 seriously. According to your first statement, the
22 original statement that you made to the Tribunal, you
23 almost immediately, I think, contacted the Chairman of
24 the board, you met him I think the very next day or
25 possibly even that evening, I don't need to get into 15:11
26 these details, Mr. Brett, and, in fact, there was a
27 board meeting scheduled for the very next day, and this
28 was dealt with by the board before the agenda items,
29 isn't that right?

1 A. Yeah, that's correct. I've set out the chronology in
2 my initial statement.

3 662 Q. Yes?

4 A. And those are from contemporaneous notes at the time.

5 663 Q. So you fully appreciated the significance of a board, a 15:11
6 board member possibly having penalty points quashed and
7 the credibility -- or the impact that would have on the
8 work of the RSA and on the individual?

9 A. Yes, that's correct. I mean, in terms of good
10 governance clearly you couldn't have a board or indeed 15:11
11 myself as CEO being in that situation. You just would
12 not have credibility.

13 664 Q. And it emerged then that in fact in one of the
14 instances the person identified wasn't in fact the
15 board member, it was simply a person of the same name? 15:11

16 A. The person of a same name in the same village, yes,
17 correct.

18 665 Q. And it had been Sergeant McCabe who had told you that
19 it was an RSA board member?

20 A. Well, it was contained in the dossier. 15:12

21 666 Q. Yes. And then to Sergeant McCabe's credit I think he
22 came to you a few days later, isn't that right, to say
23 in fact that's not the RSA board member?

24 A. Well, I was dealing with this matter with the Chairman
25 and the board, this was a serious matter. I had 15:12
26 contacted both of the board members that were named and
27 told them exactly what was here and the Chairman had
28 met one of them individually and had briefed the
29 Minister. The second person said to me, look it, this

1 is not me -- or this is not true. So I went back to
2 Sergeant McCabe and said you need to double-check what
3 you're saying about this individual and in fairness to
4 Sergeant McCabe he did that and he came back and
5 clarified that it was a person of the same name in the 15:12
6 same village, which in -- I don't want to name the
7 county, but you can see how that would happen.

8 667 Q. Yes. Did he explain why he hadn't done that
9 double-check before he passed the information to you?

10 A. We didn't have that discussion. 15:12

11 668 Q. Okay. Now was it that individual, and I may be wrong
12 in this, Mr. Brett, so please correct me if I am, was
13 it that individual who had made a complaint about
14 his -- about the disclosure of data?

15 A. No. 15:13

16 669 Q. No?

17 A. It was the individual with the three instances that led
18 to the Garda interview of me and the Data Protection
19 Commissioner also interviewing me under caution.

20 670 Q. Sorry, I was going to ask you that. There was a 15:13
21 separate Data Protection Commissioner investigation
22 which is independent of An Garda Síochána?

23 A. That took place in 2016 because the board member made
24 the original complaint, the guards interviewed me, it
25 didn't go anywhere and he remade the complaint in a 15:13
26 different format and the Data Protection Commissioner
27 then interviewed me under caution and as I understand
28 it, it didn't go any further.

29 671 Q. Now if I can just ask you briefly then, Mr. Brett, just

1 about technology matters. You have no knowledge other
2 than what Superintendent Taylor told you about Oisín
3 computers and Crime and Security issues, you've no
4 direct knowledge of any of that, is that right?

5 A. Absolutely not.

15:14

6 672 Q. Yes?

7 A. At the time of all of this I absolutely had not. And
8 you know, so I wouldn't have. In my role as a board
9 member of the Road Safety Authority subsequently I do
10 have some knowledge. But at the time all this was
11 going on I had absolutely nothing. And I know nothing
12 about the Oisín computer system. That is the only time
13 I ever heard it mentioned.

15:14

14 673 Q. I don't propose asking you about it so, Mr. Brett, just
15 to say that in fact that allegation I think was made in
16 Superintendent Taylor's protected disclosure also. In
17 fact, the assistant commissioner who is named as having
18 a grandson after which the computer system is named
19 doesn't in fact have a grandson of that name?

15:14

20 A. It's irrelevant to me. I don't know anything about
21 that.

15:14

22 674 Q. In relation then to the phone, the alleged phone
23 interception, in fairness to Sergeant McCabe he didn't
24 say to you watch your phones, they may be intercepted,
25 you asked him about it because of his behaviour or
26 manner of contacting you or asking you to contact him
27 on different numbers at different times, is that right?

15:14

28 A. That's correct. His behaviour changed. I asked him
29 why. He said because the call may be intercepted and

1 that is what prompted me to contact Assistant
2 Commissioner Twomey and ask him to get reassurance.

3 675 Q. Yes. You then left the Road Safety Authority in
4 October 2013 and you've had three meetings with
5 Superintendent Taylor: One at some point relatively 15:15
6 shortly after October 2013, some time in the year or so
7 after, that is the impression I have from what you are
8 saying, but you can't put a specific date on it?

9 A. Well, I would be happy to accept it's from whenever he
10 was ready to submit his thesis. So if I am told by his 15:15
11 barrister it's 2016 I have no difficulty with that.

12 676 Q. The second and third both seem to have happened, if I
13 understand your evidence correctly, after his arrest
14 and suspension?

15 A. That's correct. And I wouldn't even have described 15:16
16 them as meetings. He would have called him. I don't
17 even think they're in my diary.

18 677 Q. Yes. At that stage he indicated that he believed your
19 phone may have been intercepted?

20 A. Not as baldly as that. He was explaining to me about 15:16
21 the way Sergeant McCabe was being treated, the fact
22 that it was being dealt with in Crime and Security, the
23 fact that they were out to get him, the fact that, you
24 know, they'd stop at nothing to get him, if you like,
25 and I kind of said, gosh, Crime and Security, does that 15:16
26 mean my phone would be intercepted and he said that's
27 likely. That's what prompted me to formally contacted
28 the Commissioner and ask her, but ask her -- I asked
29 her a very pointed question, you know: Is my phone

1 intercepted and is it done formally with the High Court
2 Judge?

3 678 Q. In those conversations in 2016 and I think, sorry, just
4 to try and pinpoint it in time, Mr. Brett, I think it's
5 likely to have been late 2016 when you had that 15:17
6 conversation with Superintendent Taylor because in your
7 interview with the investigators you say that it's
8 likely that you had a --

9
10 "I can't be specific as to the date that 15:17
11 Superintendent Taylor warned me about my engagement
12 with Sergeant McCabe but it's likely that it may have
13 been in 2016 as this is what prompted me to contact
14 former Commissioner Nóirín O'Sullivan."

15 15:17
16 And earlier in your interview a few lines above that
17 you had said that you made that call to former
18 Commissioner O'Sullivan in late 2016.

19 A. I honestly, Chairman, cannot be clear with you on the
20 date. I know it was -- I was actually working in my 15:17
21 Brussels office and I rang her from Brussels, because I
22 remember where I was when I made the call, but I cannot
23 be specific. And I have checked through my diary, I
24 didn't make a diary entry, it was literally -- I
25 thought I was finished with all of this when I referred 15:17
26 to GSOC and C&AG and I didn't treat it as something to
27 make a note.

28 679 Q. And do I understand you correctly to say that during
29 the course of those conversations Superintendent Taylor

1 was at that stage telling you that the Gardaí had been
2 trying to do down Sergeant McCabe or trying to fight
3 against him or whatever phrase you used in your
4 evidence? Is it at that stage that he was giving that
5 information?

15:18

6 A. It was during the second or third meeting that he was
7 explaining in terms of how serious An Garda Síochána
8 were taking the Sergeant McCabe issue that it was being
9 managed in Crime and Security. Now, because I have
10 worked alongside An Garda Síochána for many years I
11 understand what Crime and Security means as opposed to
12 it's in B division or D division or whatever. So that
13 intimated to me that there was a very particular focus
14 being taken on Sergeant McCabe. He then -- I would
15 have replied God, Crime and Security, gosh, that's a
16 serious place, if you like, and he went on then to tell
17 me about this Oisín computer system and I would have
18 instinctively said, gosh, if Crime and Security are
19 dealing with this, you know, does that mean my phone is
20 being listened to, and he said it's likely and I then
21 contacted the Commissioner.

15:18

15:18

15:19

22 680 Q. When Superintendent Taylor was referring to that, was
23 he speaking in the present tense? Was he saying in
24 late 2016 this was going on?

25 CHAIRMAN: I must say I'm finding that very pretty
26 hard -- the difference between 2013 and 2016 is really
27 very, very stark.

15:19

28 MR. DIGNAM: That is what I want to explore.

29 CHAIRMAN: And as to whether it is, you know,

1 completing a thesis, beginning a thesis, having a
2 thesis in draft, I just don't see how someone can make
3 an error of three years. But there it is. It doesn't
4 make sense to me now.

5 A. I'm not trying to be in any way evasive, I just 15:19
6 genuinely do not know when the meeting took place. I
7 do know that the first time he came to my office he was
8 carrying a thesis. It wasn't a bound thesis. But
9 clearly he had to have completed his thesis and if his
10 barrister is saying to me -- 15:19

11 CHAIRMAN: It was bound in kind of blue buckram?

12 A. No. It was just loose leaf. Photocopy.

13 CHAIRMAN: That doesn't mean anything.

14 A. Well, it was a thesis, he gave it to me and I did read 15:20
15 it.

16 CHAIRMAN: What people are obliged to do when they
17 complete a thesis is to actually get it professionally
18 bound.

19 A. Yes.

20 CHAIRMAN: There's a shop there on Wexford Street, 15:20
21 isn't there --

22 A. I understand.

23 CHAIRMAN: -- and you go into there, and you get that
24 done. There's other places too. But it wasn't in that
25 format? 15:20

26 A. No, it absolutely was not a bound thesis. But I am
27 happy to accept the date, the timeframe that the
28 barrister -- Superintendent Taylor's barrister gives.
29 The reason I mentioned 2013 is I know it was in Dublin

1 and I know it was after I arrived there. So I'm quite
2 happy to accept that timeframe of 2016.
3 CHAIRMAN: You may be, but I may not be.
4 A. Sorry, Chairman.
5 CHAIRMAN: It's okay. You're trying to be helpful and 15:20
6 I appreciate that.
7 681 Q. MR. DIGNAM: Mr. Brett, I think my question was that
8 when -- you're quite sure that that conversation in
9 relation to the Garda opposition to Sergeant McCabe, if
10 I may put it that way, happened in the second or third 15:20
11 meeting and you're quite sure that the second and third
12 meetings happened in 2016?
13 A. Yes.
14 682 Q. Whatever about when the first meeting happened?
15 A. That's correct. 15:21
16 683 Q. Now --
17 A. And, as I say, the reason I can date those after 2016
18 is because I know that Superintendent Taylor was
19 suspended at that time.
20 684 Q. Yes? 15:21
21 A. So that is why I am very certain as to the timeframe of
22 then. Because that is what he was discussing with me.
23 685 Q. As a matter of interest, how did you know he was
24 suspended?
25 A. Because he told me. 15:21
26 686 Q. Right, okay. Was he was giving you this account --
27 this was my original question, Mr. Brett, was he giving
28 you this as happening in the present tense, in other
29 words in 2016, or something that had happened in

1 previous years?

2 A. No, I took it from him that it was in the past tense.
3 I didn't feel my phone was then being actively -- you
4 know, I felt it was at the time.

5 687 Q. So to come to a conclusion then, Mr. Brett, in your 15:21
6 interview with the investigators and indeed in your
7 original statement you refer to contacting Sergeant
8 McCabe about -- in your interview, newspaper reports,
9 about him not cooperating with the O'Mahony
10 investigation and in your original statement you deal 15:22
11 with the meeting that you had in the Department of
12 Justice at the request of the Minister for Transport
13 and Tourism at the time. And your statement doesn't
14 say it, but I read it as meaning that there had been a
15 discussion at that meeting, I am looking at paragraph 15:22
16 29, on page 1558, that there had been a discussion at
17 that meeting of Sergeant McCabe not cooperating with
18 the O'Mahony investigation. I think you've confirmed
19 that in your evidence in response to Ms. Leader's
20 questions. You then say that you contacted Sergeant 15:22
21 McCabe immediately after the meeting to check whether
22 he had cooperated and you had already had that
23 conversation with him, so you had a good idea what the
24 answer was I think. I just want to ask, were you aware
25 either from the Department of Justice meeting or indeed 15:23
26 from Sergeant McCabe of the Commissioner having sent a
27 letter to Sergeant McCabe in December 2012, whether you
28 know the detailed date or anything like that, had you
29 an awareness of a letter having been sent asking or

1 directing him to stop downloading matters from Pulse
2 and pointing him in the direction of the O'Mahony
3 investigation if he had any further concerns?

4 A. No, I wasn't at all. And just to be clear, if I texted
5 Sergeant McCabe or phoned any time, I would never be 15:23
6 discussing the detail. It was literally to say I hope
7 you're okay, is there anything you need, keep your chin
8 up. It was that type -- I wasn't discussing -- so I
9 wouldn't have any line of sight on internal
10 communication or direction he might get. I have to say 15:24
11 to you that when I phoned him after the meeting with
12 Minister Shatter I was quite annoyed, because I
13 believed what the Minister was saying and I felt I
14 was -- so I would have been quite robust with him in
15 saying, Maurice, you better not be telling me there's 15:24
16 something wrong here -- and he reassured me, and I
17 believed him. That is why I rang the Secretary General
18 to say you need to tell the minister so he doesn't go
19 into the Dáil and say that Sergeant McCabe didn't
20 cooperate because Sergeant McCabe is telling me that he 15:24
21 was never asked.

22 688 Q. And I should say I'm not asking these questions in any
23 critical way, Mr. Brett, I just want to get the clear
24 picture of what your state of knowledge was at the time
25 and indeed what you were told by the Department of 15:24
26 Justice or indeed any Gardaí you were speaking with or
27 indeed by Sergeant McCabe?

28 A. Well, just to be clear then, I mean I wasn't aware of
29 it. Indeed, I was taken aback that I wasn't

1 interviewed myself as part of the O'Mahony report given
2 that I was the person who was referring them. So you
3 know, I wasn't aware of where Sergeant McCabe was --
4 689 Q. well, I can ask the next two questions very quickly.
5 A. Okay. 15:25
6 690 Q. I think you'll be able to answer them very simply. The
7 first is: Were you aware that when Sergeant McCabe had
8 raised his issues, raised his concerns and complaints
9 with the Department of Justice that led to the O'Mahony
10 investigation that he had insisted on confidentiality? 15:25
11 A. I wasn't aware of that.
12 691 Q. And were you aware that when Assistant Commissioner
13 O'Mahony provided his report, and I don't think there
14 is any disagreement but that he hadn't spoken to
15 Sergeant McCabe when he provided his report, but that 15:25
16 Sergeant McCabe contacted him after it had been
17 provided to the Minister before it had been published
18 and that Inspector O'Mahony indicated that an
19 appointment or a meeting could be arranged with a
20 member of his team and Sergeant McCabe, were you aware 15:25
21 of that?
22 A. I would have no line of sight -- no knowledge of that.
23 692 Q. Just in conclusion then, just to be clear, Mr. Brett,
24 you never discussed Sergeant McCabe with former
25 Commissioner Callinan? 15:26
26 A. Absolutely never.
27 693 Q. He wasn't discussed at the meeting which you think is
28 the one that is being referred to by Sergeant McCabe
29 and certainly he wasn't denounced by former

1 Commissioner Callinan at that meeting?

2 A. Absolutely not.

3 694 Q. You have no complaint about being interviewed by the
4 two investigating Gardaí or the nature or manner or
5 tone of that interview? 15:26

6 A. None at all.

7 695 Q. The only person who gave you advice about your phone
8 perhaps being intercepted was Superintendent Taylor?

9 A. Yes. When I asked him --

10 696 Q. Yes? 15:26

11 A. -- you know, would they intercept my phone he said it's
12 likely. That's the level of the advice.

13 697 Q. Yes. And that was in late 2016, it seems, or likely to
14 have been late 2016?

15 A. It was after he was suspended. So whatever the date of 15:26
16 his suspension it was in the weeks after that.

17 CHAIRMAN: well then that is a completely different
18 date because that's 28th May 2015.

19 A. Well, I am really sorry, Chairman.

20 CHAIRMAN: I know, you can't know these things. I 15:27
21 appreciate you're taking a fact here and fact there and
22 you are trying to put it together.

23 A. Yeah. What I am trying to do, Chair, is to locate them
24 for you against other instances. So, in this case it
25 was after his suspension. So, he would have come to me 15:27
26 some time after his suspension.

27 698 Q. MR. DIGNAM: To be fair to you, Mr. Brett, and indeed
28 in the hope that it will be of some assistance to the
29 Tribunal in putting a date on that, on page 1541 of

1 your interview with the investigators, I don't want to
2 read a long excerpt, but you deal on the third line of
3 that page, you deal with the concern being raised
4 because of Sergeant McCabe's contacts with you from
5 different numbers, etcetera, and you say that you 15:27
6 raised it with Assistant Commissioner Twomey and you
7 say:

8
9 "I spoke to Assistant Commissioner Twomey after
10 Sergeant McCabe raising the issue with me but prior to 15:28
11 Superintendent Taylor warning me that it was likely my
12 phone was being intercepted. Subsequent to
13 Superintendent Taylor warning me about my phone, I did
14 ring Commissioner Nóirín O'Sullivan in 2016 and I asked
15 her to formally check whether my name and phone 15:28
16 appeared on the list of phone interceptions overseen by
17 the judicial oversight process. I told her I was
18 querying this in relation to the penalty points issue
19 and my interactions with Sergeant McCabe in that
20 context. From memory I did not tell former 15:28
21 Commissioner O'Sullivan what had caused my concern
22 regarding conversation with Superintendent Taylor. I
23 made the call to former Commissioner O'Sullivan in late
24 2006 --"

25
26 okay? 15:28

27
28 "-- I believe, and I do remember that I was working
29 from my Brussels office the day I phoned her. She

1 informed me that she would check and revert to me,
2 which she subsequently did. She subsequently told me
3 that my phone had not been intercepted.

4
5 My calls with former Commissioner Nóirín O'Sullivan 15:28
6 were professional. Former Commissioner Nóirín
7 O'Sullivan did not say that any another person's phone
8 was being intercepted when I spoke with her.

9
10 As I have already stated, I cannot be specific as to 15:29
11 the date when Superintendent Taylor warned me about my
12 engagement with Sergeant McCabe but it is likely that
13 it may have been in 2016 as this is what prompted me to
14 contact former Commissioner Nóirín O'Sullivan as
15 detailed above." 15:29

16 A. I'm sorry, I don't know the actual date, yeah.

17 699 Q. Superintendent Taylor never said anything to you, as I
18 understand from your interview, about the Ms. D
19 allegation or any allegation that may have been made
20 against Sergeant McCabe, is that right? 15:29

21 A. Never. Nobody did, no.

22 700 Q. He never told you that former Commissioner Callinan or
23 former Commissioner O'Sullivan had instructed him to
24 negatively brief against Sergeant McCabe?

25 A. That's correct, never discussed. 15:29

26 701 Q. And he never, as I understand your interview, never
27 spoke to you or never negatively briefed you in
28 relation to Sergeant McCabe?

29 A. That's correct.

1 702 Q. Thank you.

2 A. Thank you.

3

4 MR. McDOWELL: Chairman, just before Ms. Leader there
5 are two matters which arise after all of that, if I
6 may, Chairman? 15:30

7 CHAIRMAN: Yes.

8

9 WITNESS WAS FURTHER CROSS-EXAMINED BY MR. McDOWELL AS
10 FOLLOWS: 15:30

11 703 Q. MR. McDOWELL: Just one: You said that at the time you
12 surmised in your own mind that the anger that was
13 demonstrated to you at the meeting about the
14 tachographs may have had something to do with the fact
15 that you had made the GSOC reference of the penalty
16 points issue, is that right? 15:30

17 A. Yes, I have no evidence of that. I felt tense going
18 into that meeting because I knew it was the first time
19 I had seen the Commissioner. But he did nothing to
20 imply that to me. 15:30

21 704 Q. I appreciate that.

22 A. Yes.

23 705 Q. But isn't it equally possible that you somehow conveyed
24 to Sergeant McCabe that you were worried about it, that
25 that was the reason for his anger? 15:30

26 A. I don't believe so. I don't believe so.

27 706 Q. Because Sergeant McCabe seemed to connect the anger
28 with him --

29 A. Yeah.

1 707 Q. -- and I am just trying to wonder could you have said
2 to him, you know, I had an angry exchange?
3 A. No. I'm clear that I told him about the nature of the
4 engagement and the anger, but you know, there would be
5 no reason why I would say it was in relation to him. 15:31
6 708 Q. He has no recollection of tachographs being mentioned,
7 but it was present in your mind that the anger might
8 have been explained by reference of the penalty points
9 issue to GSOC, is that right?
10 A. I wouldn't have told Sergeant McCabe about tachographs, 15:31
11 I would have just told him about the nature of the
12 meeting and the fact that Gay Byrne and I had to leave.
13 I can't --
14 709 Q. Clearly wires were crossed, and I'm not suggesting they
15 weren't, but just in case it's suggested that Sergeant 15:31
16 McCabe was connected to two wholly unconnected thing,
17 in the back of your mind there was a possible
18 connection, is that right?
19 A. Yes, but I have no evidence for that.
20 710 Q. And secondly, you were just asked now by Mr. Dignam 15:31
21 about a letter in 2013 that was sent to Sergeant
22 McCabe, the evidence, you don't know this, but I just
23 want to remind the Chairman, is that there was no
24 letter sent to him; he was called to a meeting where a
25 directive was read to him, he asked to receive a copy 15:32
26 of the directive and he was told he would not be given
27 a copy of the directive, but he made a tape recording
28 of that.
29 CHAIRMAN: Are we talking about the two directive 14th

1 and 20th December 2012 where he was restricted access
2 to Pulse, as was John Wilson? Is that what we are
3 talking about here?

4 MR. MCDOWELL: No. As I understand it, he was called
5 to a meeting -- maybe I'm wrong. 15:32

6 CHAIRMAN: Yes. In Mullingar, did you say?

7 MR. MCDOWELL: No, listen, I could be wrong, Judge.
8 This witness doesn't know anything about it.

9 MR. DIGNAM: Sorry, Chairman, if it's of any assistance
10 I misspoke in saying that it was sent, I accept that it 15:32
11 was read at a meeting to Sergeant McCabe and if I said
12 it was sent and I think I probably did say it was sent
13 that was a misstatement on my part.

14 MR. MCDOWELL: That is fine, Judge. That is the end of
15 it then. 15:32

16 CHAIRMAN: Well, the documentary evidence indicates
17 that Pulse was restricted to Maurice McCabe, or from,
18 14th December 2012.

19 MR. DIGNAM: Yes.

20 CHAIRMAN: And there was another communication of some 15:33
21 kind about it, 27th December 2012.

22 MR. DIGNAM: That's right.

23 CHAIRMAN: But I only heard about the second one today.
24 I didn't know anything about it.

25 MR. MCDOWELL: My understanding, Chairman, and it's 15:33
26 probably wrong for me to even mention it with this
27 witness, my understanding is that a letter was read or
28 a directive was read to him --

29 CHAIRMAN: Well, that is probably the way it was done,

1 all right.

2 MR. MCDOWELL: -- and he asked for a copy and he wasn't
3 given it.

4 CHAIRMAN: Okay.

5 MR. DIGNAM: As I say, Chairman, I think I did say it 15:33
6 was sent and that was a misstatement on my part. It
7 was read at a meeting.

8 CHAIRMAN: It was certainly sent with somebody who then
9 read it out.

10 MR. DIGNAM: Yes. 15:33

11 CHAIRMAN: As opposed to getting it on your hall table
12 when you return room. Ms. Leader, did you have a
13 question?

14

15 WITNESS WAS RE-EXAMINED BY MS. LEADER AS FOLLOWS: 15:33

16 711 Q. MS. LEADER: One thing I should have asked you,
17 Mr. Brett. Mr. Varadkar in a letter sent to the
18 Tribunal on the 18th December 2017 told the Tribunal
19 that he was informed of rumours and innuendo about
20 Sergeant McCabe by you. I don't know if you are able 15:34
21 to enlighten the Tribunal about that?

22 A. Yes. I read An Taoiseach's letter in the pack I was
23 given for today.

24 712 Q. Yes?

25 A. I became aware of what I will say no more than rumour 15:34
26 and the content of the rumour that I heard was sex
27 abuse. I was never given any -- I never heard any
28 details as to whether that was, you know, adults,
29 children, anything like that. So that rumour was doing

1 the rounds and I alerted the Minister to that. But I
2 did take it upon myself to ring Sergeant McCabe and ask
3 him. I said, look, this kind of murmuring is going on
4 -- and I should say to you nobody from An Garda
5 Síochána ever told me, I heard it just generally 15:34
6 around, it was doing the rounds in the political
7 system, it was doing the rounds with journalists, and I
8 rang Sergeant McCabe and asked him and he reassured me
9 that there wasn't an issue, he didn't go any further
10 than that. In the course of briefing the Minister, my 15:35
11 Minister, I told him of that and I told him I had
12 spoken to Sergeant McCabe and that Sergeant McCabe had
13 given that assurance. I note in An Taoiseach's letter
14 that he goes on to talk about other things --

15 713 Q. Yes? 15:35

16 A. -- about computers and things, I have no knowledge of
17 those things, never had, never did and I never raised
18 them with the Taoiseach or the then-Minister. My
19 briefing of him was literally this rumour is doing the
20 asked, I have asked Sergeant McCabe, he has given me an 15:35
21 assurance and I believe him and we move on.

22 714 Q. You're happy the rumour didn't come from a guard?

23 A. Absolutely.

24 CHAIRMAN: It was just a floating rumour, if you like,
25 where you can't even say who told you, that kind of 15:35
26 thing.

27 A. Yes.

28 715 Q. MS. LEADER: You don't know who --

29 A. I'm sorry, I mean, literally you'd hear it in the civil

1 service, you'd hear it from media people, but it was as
2 vague as 'oh, you know, you can't trust him, he's got
3 issues', that kind of thing, and I felt I needed to
4 tell my Minister that and I did that. So I think
5 that's what the Minister's letter -- now Taoiseach's 15:35
6 letter is referring to.

7 716 Q. He was Minister for Transport?

8 A. He was my line Minister at that time.

9 717 Q. Thank you very much.

10 CHAIRMAN: When are we talking about, Ms. Leader, I 15:36
11 wonder? So that is up to October 2013, so it has to be
12 prior to that time.

13 A. Yes, I suspect it was in the briefing for the meeting
14 with Minister Shatter.

15 MS. LEADER: And that was in July 2013. 15:36

16 A. 2013, apologies.

17 CHAIRMAN: Yes. So it was probably prior to that
18 meeting?

19 A. I suspect it was in the immediacy, on our way to that
20 meeting. 15:36

21 CHAIRMAN: In or around then, yes. Okay, Ms. Leader,
22 if you are finished I just have a couple of questions.

23

24 WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN,

25 AS FOLLOWS: 15:36

26 718 Q. CHAIRMAN: The first one is this: I suppose I don't
27 know this, but you seem to have been the first official
28 person contacted about the fixed charge penalty notices
29 loss of revenue which of course impacts on the

1 discipline of people on the roads which is, to put it
2 mildly, very important to how the country operates and
3 people's safety, am I right in thinking that you were
4 the first person contacted or did you think you were?
5 A. Well, I believed I was -- well, I don't think I was the 15:37
6 first official. My understanding is that Sergeant
7 McCabe had -- when he spoke with me, it was like I have
8 gone to my line management, I've gone to the
9 confidential recipient, I've gone to the line
10 department, I've gone to the Department of Transport, 15:37
11 so that would be at official level, to civil servants,
12 I've gone to the Department of Taoiseach, I'm going
13 nowhere, now I'm coming to you. When I went through it
14 with him I believed him, I took it, I referred it
15 formally the very next morning by registered post to 15:37
16 GSOC and C&AG and I felt that was the end of it. So I
17 think other officials knew about it and had been
18 approached by him in an escalating fashion from his own
19 line management up, but I believe I'm probably the
20 first person that formally referred it. 15:37
21 719 Q. CHAIRMAN: And he eventually got to you?
22 A. Yes.
23 720 Q. CHAIRMAN: I presume there's a Road Safety Authority
24 Act but I'm not familiar with it, does it provide that
25 the Road Safety Authority shall be independent in the 15:37
26 exercise of its functions, etcetera, etcetera?
27 A. Absolutely. It's Road Safety Authority Act 2006. And
28 it does provide the Road Safety Authority has statutory
29 functions in administration of penalty points, putting

1 them on the Drivers Licence, things like that.

2 721 Q. CHAIRMAN: And how serious did you think this was for
3 road safety?

4 A. It was cutting to the chase of everything I had spent
5 the previous years trying to do. It was critical. If 15:38
6 the confidence couldn't be in the system, you know, why
7 would you be doing road safety?

8 722 Q. CHAIRMAN: In other words, what is the point of having
9 a police force if they are stopping people and
10 enforcing penalties and the penalties are just 15:38
11 disappearing willy nilly?

12 A. Yes.

13 723 Q. CHAIRMAN: So you felt it impacted on --

14 A. Yes. And I don't want to go to whose names are in the
15 dossier -- 15:38

16 724 Q. CHAIRMAN: No, no, and I don't want you to either.

17 A. But the types of names that were in there were also a
18 concern to me because of the role some of those people
19 held in society.

20 725 Q. CHAIRMAN: Okay. And the second thing that I wanted to 15:38
21 asked you about was this: This mention of Oisín, and
22 it's becoming a wee bit confused, as I understand it
23 there is a computer system - and I have looked at it -
24 in Garda Headquarters, which is Oisín, which is about
25 crime and security and it deals with terrorism, 15:39
26 organised crime, that kind of thing. Now, I am not
27 saying any more than that. But, the conversation you
28 had with Superintendent Taylor, I may be getting the
29 wrong impression so this is why I am asking you, a

1 stand alone computer system, was that one that related
2 solely to Maurice McCabe and whistleblowers or was it
3 that he had been put in the Crime and Security system
4 under the Oisín computer system? The name by the way
5 doesn't matter.

15:39

6 A. Chairman, what I understood from that was that this
7 investigation into Sergeant McCabe was being treated in
8 a special way, like a Crime and Security investigation
9 and it was in the system rather than in Pulse or a
10 routine day-to-day system, that it was in the special
11 Crime and Security system, but I have no knowledge
12 beyond that.

15:39

13 726 Q. CHAIRMAN: And then that's obviously a computer system
14 that is much harder to get at, if you like, than the
15 others?

15:39

16 A. Well, I really don't know. I assume it is.

17 727 Q. CHAIRMAN: Well, I mean, I presume, dealing with
18 terrorism and --

19 A. That's my understanding. That is what I took from that
20 discussion.

15:40

21 728 Q. CHAIRMAN: -- and also international police relations
22 on information on --

23 A. Yes. I assumed that it was only accessible by senior
24 managers and by people working in Crime and Security
25 and I took that that the investigation was being
26 treated with a certain seriousness in that context.

15:40

27 729 Q. CHAIRMAN: Okay. The third thing then was: Given that
28 David Taylor was suspended on the 28th May 2015, he was
29 questioned on the 28th and 29th May 2015 and then he

1 was at liberty thereafter, does that help you at all in
2 relation to --

3 A. I'm really sorry and I'm somewhat embarrassed I cannot
4 ground it for you more than that. I can't. I just
5 don't know. 15:40

6 730 Q. CHAIRMAN: But when you're saying 2016, I mean it could
7 easily be 2015?

8 A. It literally could, chair. And I'm really sorry for
9 that.

10 731 Q. CHAIRMAN: I'm not trying to suggest that to you or say 15:40
11 that that is the right answer because I don't know and
12 you don't know --

13 A. Yes.

14 732 Q. CHAIRMAN: -- but there is a range of dates and it
15 could go back to 2015? 15:40

16 A. It may.

17 733 Q. CHAIRMAN: And you think in any event you had, what,
18 you believe you had a first contact when you were in
19 Mayo or was it post October 2013 when you were in
20 Nassau Street? 15:41

21 A. No, no, the contacts all definitely happened after I
22 came to Nassau Street. And that is why I was vague as
23 to whether it was late '13, '14, '15 or even up into
24 '16, because the only reference I have is that it was
25 in Nassau Street. 15:41

26 734 Q. CHAIRMAN: Look, maybe you can't help us on this, I
27 don't know, but one of the things that is perhaps
28 important is the attitude of Superintendent Taylor
29 towards Nóirín O'Sullivan. I don't want to open this

1 up as a big item for discussion, but you did mention in
2 the course of your evidence that he called to your
3 office, after his suspension, so it is probably after
4 June 2015, June 2015 or after, and that the main thrust
5 was him and Nóirín O'Sullivan and the way he had been 15:41
6 treated. What had Nóirín O'Sullivan got to do with it,
7 can you recall?

8 A. Well, the main purpose of him coming to see me was not
9 to talk about Maurice McCabe, he came to talk about his
10 own woes or to tell me about his own woes. I don't 15:42
11 know why he chose to come and tell me, but he did. And
12 he talked about being suspended, being arrested, I
13 think he said he was in a Garda station in Balbriggan,
14 that his children had to visit him there. So, that was
15 the context. 15:42

16 735 Q. CHAIRMAN: All of that kind of stuff, all right. But
17 what has Nóirín O'Sullivan got to do with it? From the
18 conversation what did you understand Nóirín O'Sullivan
19 had do with it?

20 A. My recollection of it was that he was attributing the 15:42
21 blame for his predicament, that Nóirín O'Sullivan was
22 directing his arrest and the inquiry into him. That's
23 literally as much as I know about that.

24 736 Q. CHAIRMAN: I don't believe she ever had anything to do
25 with it, certainly on the face of the papers that I 15:42
26 have.

27 A. I have no sight, other than that -- his angst was
28 against Nóirín O'Sullivan when he saw me.

29 737 Q. CHAIRMAN: What was saying by Nóirín O'Sullivan?

1 A. Literally look, what she has done to him.

2 738 Q. CHAIRMAN: On what basis was he saying that?

3 A. I really don't know that, chair. He told me his story

4 about being arrested, he told me he was the second

5 superintendent since the foundation of the State to be 15:43

6 arrested, and all of those things, that was the

7 context. Now I wasn't -- I listened.

8 739 Q. CHAIRMAN: And you couldn't really weave into it any

9 kind of coherent narrative yourself as to --

10 A. Well, I didn't have -- I had nothing to correlate it 15:43

11 with.

12 740 Q. CHAIRMAN: And your purpose was tea and sympathy

13 basically?

14 A. I don't know why he chose to come to see me.

15 741 Q. CHAIRMAN: I don't mean that badly, Mr. Brett. 15:43

16 A. Yeah.

17 742 Q. CHAIRMAN: I mean that insofar as you were doing

18 anything there was nothing you could do, it was a

19 question of just listening and offering some kind

20 words? 15:43

21 A. Nothing more than that. And that was all I could do.

22 Maybe he came to me because I had assisted Sergeant

23 McCabe with a previous issue. But I had nothing I

24 could do for him.

25 CHAIRMAN: Thank you. 15:43

26 A. Thank you very much. And again my apologies for the

27 vagueness on those dates.

28 CHAIRMAN: It can't be helped. It's better than having

29 too definite a date, perhaps.

1 A. Thank you.

2

3

THE WITNESS THEN WITHDREW

4

5

MR. MARRINAN: The next witness is Diarmuid O'Sullivan. 15:43

6

His interview with the investigators is to be found in

7

Volume 7 on page 1809, sir.

8

9

MR. DIARMUID O'SULLIVAN, HAVING BEEN SWORN, WAS

10

DIRECTLY EXAMINED BY MR. MARRINAN AS FOLLOWS: 15:44

11

743

Q.

MR. MARRINAN: I think, Mr. O'Sullivan, that you

12

retired from An Garda Síochána in 2016, is that right?

13

A.

That's correct, Mr. Chairman.

14

744

Q.

I think it was after a long and distinguished career

15

and you retired at the chief superintendent level, is

16

that right? 15:44

17

A.

That's correct.

18

745

Q.

Would you just give a brief summary of your career in

19

An Garda Síochána for the benefit of the Chairman?

20

A.

Yes, Mr. Chairman. I joined An Garda Síochána in June 15:44

21

1977. Following my initial training I was transferred

22

to Harcourt Terrace Garda station. Then in 1982 I was

23

transferred to Special Branch, took up office in Dublin

24

Castle, as a matter of fact. In 1990, approximately, I

25

think, I was promoted to the rank of sergeant and was 15:45

26

transferred to Fitzgibbon Street Garda Station. I

27

returned to SDU in 1990, I believe, and worked as a

28

D/Sergeant in charge of one of the districts, a couple

29

of districts and also had responsibility for the Agent

1 Handling Unit, as it was known at the time. '92... '97
2 I think I was promoted to inspector, I went to the
3 parking fines office. I was then transferred to
4 Crumlin Garda station as an inspector and I returned to
5 SDU in '99 I think. I was then inspector with 15:45
6 responsibility for the southern division, I also had
7 responsibility for left wing, which was dealing with
8 ISIS, which are now known as, and I also had
9 responsibility for the Agent Handling Unit, I was
10 inspector in charge of the Agent Handling Unit. Then 15:46
11 in 2002 I was promoted to the rank of superintendent, I
12 was transferred on change of management to Garda
13 Headquarters. I returned to SDU as detective
14 superintendent in 2003 with responsibility for
15 operational matters in SDU, primarily the investigation 15:46
16 of subversive crime within and outside the
17 jurisdiction, as well responsibility for the management
18 of agents, and it was then known. I also had
19 responsibility for witness protection, part of my time
20 there. In 2012 I was promoted to chief superintendent. 15:47
21 I was transferred to Dun Laoghaire Garda station and I
22 was also, in the end of 2015 I think I took up
23 responsibility for Louth division and I retired in
24 January 2016.

25 746 Q. Now I think in common with other serving members and 15:47
26 former members of An Garda Síochána of the rank of
27 superintendent and above you were written to by the
28 Tribunal asking whether or not you had any information
29 in your possession that could be of assistance to the

1 Tribunal, isn't that right?

2 A. That's correct, Chairman. At this point I think it is
3 important for me to outline to yourself that at that
4 time when I made my first statement and my subsequent
5 statements I didn't appreciate the relevance of the 15:48
6 phone calls and my phone communication with Mr. Kean.
7 Having viewed them in the papers, in the Tribunal, and
8 having reviewed the phone contacts, phone contacts I
9 think I'm in a better position to help the Tribunal
10 with regard to that communication, Chairman. 15:48

11 747 Q. Well, that would indeed be helpfully, but I am just
12 simply putting this in context in the history, because
13 your statement to the Tribunal at page 1828 is your
14 response to the Tribunal and at that time you didn't
15 believe that you had any information that you could 15:48
16 give to the Tribunal and your statement is nine lines
17 long and indicates that you can't be of assistance to
18 the Tribunal, isn't that right?

19 A. That's correct.

20 748 Q. I think that subsequent to that you were interviewed by 15:48
21 our investigators on the 23rd February of this year
22 over nearly a two-hour period when they put certain
23 records in their possession to you and also quoted from
24 a statement that then had been made by Mr. Gerald Kean,
25 solicitor, isn't that right? 15:49

26 A. That's correct.

27 749 Q. And the focus of their inquiries clearly was to the
28 extent of trying to establish whether or not you were a
29 point of contact between Mr. Kean and former Garda

1 Commissioner Callinan, isn't that right?

2 A. That's correct.

3 750 Q. And I think that your stance during that period of time
4 and your statement interview which is 19 pages long and
5 starts at page 1809 of the material, that the stance 15:49
6 that you adopted at that time was that you had no
7 recollection at all of the phone call from Mr. Kean on
8 the 25th January of 2014 or any calls subsequent to
9 that, isn't that right?

10 A. That's correct, Judge. I just couldn't put any 15:50
11 significance to those calls. So that's why most of my
12 replies were I don't recall or I don't recollect or it
13 may have something to do with the Marian Finucane
14 programme.

15 751 Q. Well, I think all most of your responses were I don't 15:50
16 recall, I don't recollect. But when Mr. Kean's
17 recollection was put to you in relation to a memory
18 that you had perhaps been the point of contact you
19 answered "I have no reason to dispute what he has
20 said", do you recall that? 15:50

21 A. That's correct, Chairman. The reasoning behind that
22 was I think that Mr. Kean has said or indicated that it
23 may have something to do with the Marian Finucane
24 programme which went out on the 26th January 2014 and
25 I -- if that was the situation I had no reason to 15:51
26 dispute it whatsoever, that he may have discussed that
27 programme with me, like minded position at this point
28 in time.

29 752 Q. Well, what we are concerned about here is establishing,

1 as far as we can, what Mr. Kean's point of contact was
2 and how it came that former Commissioner Callinan
3 phoned him on the 25th January. You have been here all
4 day, have you, whilst he has been giving evidence,
5 Mr. Kean gave evidence?

15:51

6 A. That's correct, Chairman.

7 753 Q. I think that you know him well over the years, isn't
8 that right?

9 A. Yeah, I know him. I know him, I would have had
10 reasonable detailed discussion with him and talked to
11 him in relation to different matters, including
12 legitimate policing matters as well as, we'll say,
13 social matters.

15:52

14 754 Q. Yes. I suppose the appearance of former Commissioner
15 Callinan before the Public Accounts Committee on the
16 23rd January 2014 was a point of some controversy that
17 was in the public domain as well, isn't that right?

15:52

18 A. That's correct, Chairman.

19 755 Q. And Mr. Kean's phone calls with you and indeed contact
20 that you had with former Commissioner in the day after,
21 the subsequent -- on the Saturday, and indeed on the
22 Sunday, has your recollection of these events improved
23 having heard Mr. Kean's evidence? Have you now a
24 recollection of being a point of contact?

15:52

25 A. I don't believe for one second that I was a point of
26 contact. I believe that Gerald Kean called me on the
27 24th January 2014 where I had a conversation with him
28 for approximately five minutes, at approximately around
29 six o'clock.

15:53

1 756 Q. what was the conversation about?
2 A. I couldn't possibly be specific as to what that
3 conversation was about. I can only say, if it related
4 to a programme that he was participating on or if it
5 related to anything involving Assistant Commissioner 15:53
6 John O'Mahony's inquiry and investigation into the
7 quashing of penalty points I would not have got
8 involved in the discussion and I did not get involved
9 in the discussion with him, and it's quite possible, as
10 would have been my practice in the past, to refer it to 15:53
11 the Press Office. And if I can explain and expand
12 slightly on my practice in the past: I worked
13 primarily, most of my time, in Special Branch and I
14 would have been contacted on different occasions by
15 members of the media and I would always refer them to 15:54
16 the Press Office, because I think it is very important
17 because of the sensitivity and everything else that
18 goes with it, that was my natural protocol to refer
19 journalists. Also I would have had long time
20 experience in dealing with solicitors, because of the 15:54
21 investigation into subversive crimes, dealing with
22 prisoners, solicitors representing prisoners, so even
23 though I would see Gerald Kean's call to me was on an
24 unlegalistic perspective I would immediately, we'll
25 say, have got into my head saying, hang on a minute 15:54
26 now, I don't know what Gerald Kean is getting into here
27 and I would have also referred him to the most
28 appropriate place, which would have been the Press
29 Office.

1 757 Q. Were you in regular contact with the Commissioner
2 Callinan in around about that time?

3 A. Again, I can't be absolutely specific but I can for the
4 benefit of the Tribunal and yourself, Mr. Chairman, say
5 that there were sensitive matters in the division being 15:55
6 investigated at the time, as well issues in relation to
7 the closing of Stepside Garda station. So I would
8 have reason to be in communication with the
9 Commissioner more and above what would have been in
10 normal business. 15:55

11 758 Q. All right. So, for instance, had you phoned him to
12 perhaps offer him some support after his experience
13 before the Public Accounts Committee?

14 A. Absolutely not, Chairman.

15 759 Q. If we could have page 1831 up on the screen. Can the 15:55
16 Chairman take it that your stated position in relation
17 to this is that when Mr. Kean contacted you, even
18 though you have no recollection of the phone call, but
19 that would you have referred him to the Press Office,
20 is that right? 15:56

21 A. I certainly believe that my initial reaction would have
22 been: Mr. Kean, I think the best place for you to have
23 discussions in relation to that is the Press Office and
24 not me.

25 760 Q. Here we have a phone call on the 24th January 2014 from 15:56
26 Mr. Kean to you, lasting five minutes and 16 seconds at
27 18:03, do you see that?

28 A. Yes.

29 761 Q. It would appear that you didn't refer him to the Press

1 office because he phoned you the following morning, do
2 you see that?

3 A. I do.

4 762 Q. At 11:58:25?

5 A. Yes. 15:56

6 763 Q. And that call lasted 13 minutes and 18 seconds. Do you
7 see that?

8 A. Yes.

9 764 Q. And then not long after, about 40 minutes later, Martin
10 Callinan, the Commissioner, phoned Gerald Kean, do you 15:57
11 see that?

12 A. That's correct.

13 765 Q. That might suggest that in fact that you were a point
14 of contact, do you see there?

15 A. Yes. 15:57

16 766 Q. Now if we could just go down then to the day after --
17 or the day of the broadcast on the 26th January, do you
18 see there?

19 A. Yes.

20 767 Q. There's a call from former Commissioner Callinan to 15:57
21 Gerald Kean at 9:43 in the morning, it lasted five
22 minutes 26 seconds, followed by a text message shortly
23 afterwards. And then there's a subsequent call at
24 12:43, it lasted seven minutes and 51 seconds from
25 Gerry Kean again to former Commissioner Callinan, do 15:57
26 you see there?

27 A. That's correct.

28 768 Q. Then there is a contact between you and Gerald Kean at
29 15:54:36 lasting two minutes and 52 seconds, do you see

1 it there?

2 A. That's correct, Chairman.

3 769 Q. We're told by Mr. Kean that he thought that that might
4 be a comfort call that he had received from you. And
5 then immediately after that call you call Commissioner
6 Callinan and that call lasts 15 minutes 25 seconds. 15:58

7 A. That's correct, Chairman.

8 770 Q. You appreciate that the record there, from any common
9 sense point of view, would indicate that you were in
10 contact with Mr. Kean who was then in contact with 15:58
11 Commissioner Callinan. Mr. Kean appeared on the Marian
12 Finucane show, he contacted Mr. Callinan and then there
13 was contact between you and Mr. Kean and between you
14 and then Mr. Callinan. It would appear that you were
15 discussing in or around this time Mr. Kean's appearance 15:59
16 on the Marian Finucane show?

17 A. Yes, it could be perceived as that, but if I can
18 explain to you, Chairman, that may help you, we'll say,
19 understand these contacts. I never heard the Marian
20 Finucane programme on the day in question and actually 15:59
21 when it was brought to my attention that there was
22 something mentioned with regard to the John O'Mahony
23 investigation into the cancelling of speeding tickets
24 or Maurice McCabe, that it was mentioned in that
25 programme, I went on line to find out, well, what did 15:59
26 Gerald Kean say in this programme. So when I looked at
27 it on line I couldn't find anything.

28 CHAIRMAN: But you say when it was mentioned, who
29 mentioned it?

1 A. When the investigators mentioned it to me, when it was
2 brought to my attention, I subsequently went on line to
3 find out what was said in the programme, but I couldn't
4 find anything on it. And it's only last week when I
5 got the transcript of the programme that I discovered 16:00
6 that part of it obviously had been taken down. So when
7 I rang Gerald Kean at nearly four o'clock, 15:54, I had
8 absolutely no idea what happened on the Marian Finucane
9 programme. I was completely, we'll say, oblivious.
10 Because I hadn't heard it. And I still haven't heard 16:00
11 it to this day.

12 771 Q. MR. MARRINAN: well, you see, the only problem about
13 that is that you were phoning him at 15:54 on a
14 Sunday --

15 A. Yes. 16:00

16 772 Q. -- and you're obviously discussing something and it
17 happened to be the day on which he has appeared on the
18 Marian Finucane show, and immediately after that call
19 you phone the Garda Commissioner?

20 A. That's correct. 16:01

21 773 Q. Are you still resisting the suggestion that in fact you
22 had been the point of contact -- you may not have a
23 recollection of this, but are you resisting the
24 suggestion that you were the point of contact for
25 Mr. Kean? 16:01

26 A. For Mr. Kean with Commissioner Callinan?

27 774 Q. Yes.

28 A. I can't possibly say that I was, because --

29 775 Q. well, are you saying definitively that you weren't?

1 A. Well, if you're asking me, we'll say, did I assist
2 Gerald Kean in communicating with Martin Callinan,
3 Commissioner at the time, I'd have to say I'm not sure.
4 What I can recall was that when he asked me, and I
5 believe he did ask me, when I relook and revisit the 16:01
6 communication, who may be the appropriate person to
7 call, I first would have told him it was the Press
8 Office. If I suggested somebody else it possibly was
9 merely he may have said to me well, is it possible to
10 talk to the Commissioner, and I would have said to him 16:02
11 I'm not sure. But I mean, if you know him maybe that's
12 an appropriate person to talk to, but I can't give you
13 that information or advise you in that regard. And
14 secondly --

15 776 Q. And if he said, well, I don't have his mobile number 16:02
16 there would perhaps be absolutely nothing wrong with
17 you talking to the Commissioner and saying would you
18 mind ringing Gerald Kean?

19 A. Well, there probably wouldn't, but the thing is that he
20 did advise me, Gerald Kean had said to me that he knew 16:02
21 Commissioner Callinan at the time, that he had met him
22 at charity affair down in Cork and that they had each
23 other's phone numbers, is what I believe. And the
24 reason that I can now recall that was, I was thinking
25 what charity event was the Commissioner at, I wonder. 16:03
26 So that is merely, we'll say, the reason why I would --
27 that is why I think that it was Gerald Kean that said
28 to me, what about the Commissioner? I wouldn't have
29 put the Commissioner forward as a person that he should

1 be --

2 777 Q. Okay. Can we have your final position in relation to
3 this, because obviously, as I say, you've made a
4 statement to the Tribunal, you've been interviewed by
5 the Tribunal investigators, you're here to give 16:03
6 evidence in relation to this today, I put the telephone
7 records to you, I have suggested to you that it looks
8 on the basis of the telephone records that you were in
9 communication with Gerald Kean and he had phoned you,
10 that perhaps you had given him or you had asked 16:03
11 Commissioner Callinan to call Mr. Kean, and the
12 following day, after Mr. Kean was agitated because of
13 the phone call in from Sergeant McCabe, that you may
14 have been involved in phoning him that afternoon to, as
15 he put it, a comfort all, all right, and it looks as 16:04
16 though maybe immediately after that you had phoned
17 Commissioner Callinan, because the records suggest it,
18 and perhaps you had told him that you had put
19 Mr. Kean's mind at ease in relation to the information
20 that had been supplied? 16:04

21 A. Well, if I can take the last part of it first, I
22 certainly didn't call Mr. Kean in relation to a comfort
23 call, because I had no knowledge of what was discussed.
24 My communication with Commissioner Callinan subsequent
25 to that, I don't know exactly what it related to, it 16:04
26 could have -- we could have had mentioned something
27 about the Marian Finucane programme or did Gerald Kean
28 make contact with you or whatever, that could have
29 happened.

1 CHAIRMAN: You know, chief superintendent, it's a very
2 weird coincidence, you speak to Gerald Kean and
3 immediately you put the phone down you ring
4 Commissioner Callinan and you speak to him for 15
5 minutes. Now I don't mean to be showing off my primary 16:05
6 level ability with mathematics, but you actually spoke
7 to Gerald Kean for 31 minutes and 9 seconds, you add in
8 your communication with Commissioner Callinan in
9 relation to this, we're talking about just shy of 47
10 minutes, and you're saying I have no recollection, you 16:05
11 answered our letter by saying I have no recollection,
12 you said to our inspectors, that is what everyone is
13 calling them, the investigators, I've no recollection,
14 and then you see all these phone records and you say
15 well, oh, I have no idea what it is about. I mean, 16:05
16 seriously?

17 A. I'm certainly saying, Chairman, that I now believe that
18 it had to have something to do with the programme that
19 Gerald Kean was going on. I am absolutely quite happy
20 that that had to have something to do with the 16:05
21 programme he was going on. What I can say is that I
22 have no recollection of actually what the discussion
23 pertaining to the programme was.

24 CHAIRMAN: Here's a programme, they discuss Maurice
25 McCabe, Maurice McCabe is infuriated, he rings RTÉ, RTÉ 16:06
26 tell Gerald Kean, Gerald Kean comes off the programme
27 and at quarter to one 10 and behold he rings Martin
28 Callinan. Immediately after that you ring Gerald Kean
29 and immediately after speaking to Gerald Kean you ring

1 Martin Callinan. I mean, you know, if it was a jigsaw
2 puzzle you'd be putting it together.

3 A. Absolutely.

4 CHAIRMAN: So you put it together and you give me the
5 pattern, that is what Mr. Marrinan is asking you.

16:06

6 A. Well, what I am saying is that Gerald Kean rang me on
7 the 24th, I can't recall exactly what the conversation
8 was, it was in relation to five minutes and whatever.

9 Having a conversation with Gerald Kean, you can go on
10 before you ever get to the point of what the phone call
11 was for. So then, that's a short conversation. On the

16:06

12 15th -- or on the following day, when there was a
13 conversation for 13 minutes, I believe that at that
14 time that Gerald Kean mentioned the fact to me that he
15 was going on the Marian Finucane programme the

16:07

16 following day and who may be the appropriate person to
17 talk to. That's what I believed in that regard. I
18 believed that I said the most appropriate person is the
19 Press Office. We may further have on gone in relation

20 to having a discussion, who else might be the
21 appropriate person. He did suggest would it be

16:07

22 possible to talk to Martin Callinan, I would have said
23 to him well, I don't know, but I mean, if you know
24 Martin Callinan maybe, but I can't give you his phone
25 number and I won't be giving you his phone number in

16:07

26 that regard. At 16:14 on that day there was another
27 conversation with Gerald Kean, again I just can't
28 remember exactly, it may be that he either did get in
29 contact with Martin Callinan or whatever. I don't

1 know.

2 CHAIRMAN: Yes. Appreciating that it's difficult to be
3 dragged into these things --

4 A. Yeah.

5 CHAIRMAN: -- and that you're a very distinguished 16:08
6 policeman who had a very distinguished career and
7 offered the State service, I still would like you to
8 try and put things together. So, I'm going to leave it
9 to Mr. Marrinan now if he has any further questions.

10 778 Q. MR. MARRINAN: what is your final position in relation 16:08
11 to it? I mean, for instance, what are we to take of
12 the fact that on Sunday afternoon you were ringing
13 Gerald Kean and that immediately after you phoned
14 Martin Callinan? what were those phone calls about?

15 A. Well, first of all, in relation to my conversation with 16:08
16 Gerald Kean on the Sunday, I can't be sure, but it
17 could have to do with, did you get in contact with
18 somebody? Because as I have said, Mr. Chairman, I
19 never heard the programme, right. I didn't hear the
20 Marian Finucane programme. As well as that, I never 16:09
21 knew that Maurice McCabe contacted the programme. I
22 never knew that there was a civil action taken by
23 Maurice McCabe against RTÉ or Gerald Kean until about a
24 week ago or four days ago, or five days ago. I never
25 knew that happened. I knew nothing of those events. 16:09
26 So when I was communicating with Gerald Kean, my belief
27 and memory is that it was related to, did you get in
28 contact with somebody and did you appear on the
29 programme? It was a matter to that effect.

1 779 Q. And your call to the Garda Commissioner immediately
2 after that call?

3 A. Well, I called the Garda Commissioner immediately after
4 all that, I could have asked him did Gerald Kean make
5 contact with you, but we weren't -- I didn't get into 16:09
6 conversation in relation to the programme with him
7 because I know nothing about the programme and nothing
8 came from either the Commissioner or Gerald Kean in
9 relation to that programme that assisted me when I was
10 asked originally about making a statement, so it was 16:10
11 completely off my mind.

12 CHAIRMAN: And if the Commissioner had rung you up and
13 said look, would you ever ring up your man and calm him
14 down, would that stick in your mind?

15 A. Oh certainly. If anything of that nature happened it 16:10
16 would have resonated with me.

17 CHAIRMAN: It's very hard to know what you were talking
18 about. You certainly weren't talking about show
19 jumping. So, what else was it?

20 A. Well, as I say, I mean, you talk -- are you talking 16:10
21 about Gerald Kean or the Commissioner?

22 CHAIRMAN: I'm talking about this circle of
23 communication.

24 A. As I say, and as I said Chairman, I firmly believe that
25 the matter in relation to the Marian Finucane programme 16:10
26 was discussed between myself and Gerald Kean,
27 certainly. And who may be the appropriate person to
28 contact in relation to issues pertaining to the
29 investigation by John O'Mahony, that certainly I

1 believe. As for the rest of the conversation I can't
2 possibly tell you, other than I did ring Gerald Kean
3 back on the Sunday and I do believe that that
4 conversation related to did he get in contact with
5 somebody, did he go on the programme and then, as you 16:11
6 can see, it's only for two minutes and whatever, so I
7 got very little information from Gerald Kean, for
8 whatever reason, at that time and then that could have
9 precipitated, well, what is going on with Gerald Kean,
10 he didn't give me any information whether he was on the 16:11
11 programme or not, that could have precipitated my call
12 to Commissioner Callinan. And I'm merely saying that
13 could have precipitated my call to Commissioner
14 Callinan. It could also have been work related or
15 issues in relation to what was happening in Dun 16:11
16 Laoghaire at that time. It could have. But as you say
17 it would be reasonable to assume it had certainly
18 something to do with the programme, but I can be honest
19 with you and say that there was nothing discussed. For
20 instance, the Commissioner never brought it to my 16:11
21 attention that he had been in communication with Gerald
22 Kean after the programme and something happened in the
23 programme that may have concern for other people.
24 MR. MARRINAN: Maybe Mr. Callinan can fill in the gaps.
25 Thank you very much. 16:12

26 A. Thank you.

27

28 WITNESS WAS CROSS-EXAMINED BY MR. MCDOWELL AS FOLLOWS:

29 780 Q. MR. MCDOWELL: Chief superintendent, just one question.

1 CHAIRMAN: If you wouldn't mind explaining to the chief
2 superintendent who you are for, he probably knows.

3 781 Q. MR. MCDOWELL: I am appearing for Sergeant Maurice
4 McCabe, among other counsel. Did you ever hear any
5 rumours in An Garda Síochána about Sergeant McCabe and
6 sexual abuse? 16:12

7 A. No. I heard rumours in relation to him being
8 investigated for matters, but I wasn't a hundred
9 percent sure. I heard -- describe them as floating
10 rumours, about something about some sexual matters. 16:12
11 But I have absolutely no knowledge or specifics in
12 relation to it. And it was one of the areas that I
13 avoided, we'll say, to the best of my ability, other
14 than that kind of distant rumour and I never actually
15 asked anybody ever what actually are the specifics of 16:12
16 the relationship. I'm absolute believer, if you don't
17 know the specifics and if you don't know the facts and
18 you don't know the evidence and you have no evidence to
19 support what has been said keep your mouth shut.

20 782 Q. Thank you. 16:13

21

22 WITNESS WAS CROSS-EXAMINED BY MS. BURNS AS FOLLOWS:

23 783 Q. MS. BURNS: Mr. O'Sullivan, I'm Tara Burns and I appear
24 on behalf of Superintendent Taylor. You've indicated
25 in your evidence to Mr. Marrinan that your normal 16:13
26 practice would be to refer any inquiries on to the
27 Press Office, is that correct?

28 A. That's correct, Chairman.

29 784 Q. I see. And in terms then of your communications with

1 Mr. Kean, they occurred on the evening of the 24th
2 January at six o'clock in the evening just after that
3 and then the following morning at 11:58 on the 25th
4 January, is that correct?

5 A. That's correct.

16:13

6 785 Q. So I suppose there's the possibility that if Mr. Kean
7 took up your option of contacting the Press Office that
8 obviously could have happened that morning before he
9 contacted you?

10 A. It could have happened then or subsequent, I'm not
11 sure.

16:14

12 786 Q. Thank you very much.

13 A. Thank you.

14

15 MR. LEHANE: Mr. Chairman, I just have one question for
16 this witness.

16:14

17

18 WITNESS WAS CROSS-EXAMINED BY MR. LEHANE AS FOLLOWS:

19 787 Q. MR. LEHANE: Good afternoon my name is Darren Lehane
20 and I appear for John McGuinness. Just in connection
21 with the 15-minute telephone call that you had with
22 Mr. Callinan on the 26th, do you have any recollection
23 of him mentioning that he met with Deputy McGuinness a
24 short while prior to that telephone call?

16:14

25 A. I'm quite satisfied he didn't. That conversation never
26 occurred or arose.

16:14

27 788 Q. Thank you.

28

29 CHAIRMAN: Sorry, I beg your pardon. Mr. Lehane, if

1 you give me a question to read your question again,
2 sorry. All right. So, there was no mention of any
3 meeting in a car park. All right. So that is fine.
4

5 WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL O'HIGGINS AS 16:14
6 FOLLOWS:

7 789 Q. MR. MÍCHEÁL O'HIGGINS: Mr. O'Sullivan, just one or two
8 matters. Can you assist the Tribunal just in relation
9 to putting your best description on it, your
10 acquaintance with Mr. Kean, was it reasonably limited 16:15
11 or was it more full?

12 A. It's reasonably limited. I might have a call from
13 Mr. Kean, we'll say, on 1st November 2011 and I
14 mightn't hear from him again until 1st November 2012.
15 That may be the way. And then I might have a 16:15
16 conversation with him on two or three different
17 occasions.

18 CHAIRMAN: Is it All Souls Day you're referring to?

19 A. Sorry.

20 CHAIRMAN: Why 1st November? 16:15

21 A. Oh, I just picked November, sorry.

22 CHAIRMAN: All right.

23 790 Q. MR. MÍCHEÁL O'HIGGINS: Mr. Kean has indicated, we
24 don't want to go into any unnecessary private matters,
25 but he indicated his contacts with you in large measure 16:15
26 would have been arising out of the burglary that he
27 suffered and also a business premises in the Dun
28 Laoghaire area I think?

29 A. Yes. He has a business interest in Dun Laoghaire and I

1 had discussions with him in relation to policing
2 matters in that regard.

3 791 Q. I think you also met him at, I think your son's rugby
4 match and he was there supporting a nephew at a cup
5 final or something of that nature? 16:16

6 A. That's right. He attended his nephew's games on
7 occasions and my son was also playing.

8 792 Q. You have indicated to the Chairman that you yourself at
9 no point actually listened to the Marian Finucane
10 programme on the weekend in question? 16:16

11 A. That's correct.

12 793 Q. And that it was only in fact when you had a chance to
13 read the transcript of the programme in the Tribunal
14 papers that you managed to actually read the excerpts
15 dealing with Mr. Kean's contributions concerning the 16:16
16 penalty point question?

17 A. That's correct, Chairman.

18 794 Q. Just broadly speaking in a general way did these series
19 of phone calls and did your contacts with Mr. Kean on
20 this occasion, did they loom large in your life or do 16:17
21 they stick out in your life as a memorable event?

22 A. Absolutely not, Chairman. As a matter of fact they
23 have no relevance to me whatsoever. And when I was
24 asked to make a statement originally I actually
25 contacted the investigators here in Dublin Castle to 16:17
26 find out exactly what areas I was to cover and that is
27 basically, we'll say, why my first statement related
28 to -- only amounted to nine lines. Because I thought I
29 didn't have any dealings with Maurice McCabe but I

1 subsequently in relation to reading that, I was a chief
2 superintendent in Dun Laoghaire when a complaint was
3 made from the Data Protection Commissioner, which was
4 investigated by the office in Dun Laoghaire and I had
5 briefed Superintendent Martin Fitzgerald in relation to 16:18
6 that investigation and advised him as to what he should
7 do relative to that inquiry, investigation.

8 795 Q. You needn't go into any names in relation to that, but
9 that was something that was dealt with in a normal
10 routine way, statements obtained, sent up the line, and 16:18
11 that took its normal course?

12 A. Yeah. I distinctly remember having a conversation with
13 Superintendent Fitzgerald and advising him, listen,
14 this is how this is to be done: Statement number one,
15 statement number two, statement number three, up to me, 16:18
16 we will send it up for advice and take our cue from
17 there and follow the investigation according to the
18 advice that we receive from HQ.

19 796 Q. Other than that peripheral connection, did you yourself
20 personally to your knowledge ever cross paths with 16:18
21 Sergeant Maurice McCabe?

22 A. I don't believe I did. As I said in my statement, I
23 would have had occasion to travel, we'll say, across
24 country in relation to subversive investigations and
25 Cavan-Monaghan would be an area we would visit very 16:19
26 regularly, so it is possible that I may have met
27 Maurice McCabe but I just have no recollection of it or
28 I can't recall it happening.

29 797 Q. Thanks very much.

1 A. Thank you.

2 CHAIRMAN: Thank you.

3 MR. MARRINAN: Thank you very much.

4 A. Thanks Mr. Chairman.

5

6 THE WITNESS THEN WITHDREW

7

8 MR. MCGUINNESS: Chairman, that concludes all the
9 evidence of the witnesses scheduled for today. There
10 are more scheduled for tomorrow.

11 CHAIRMAN: Do you want to tell me about that?

12 MR. MCGUINNESS: It includes Mr. Seamus McCarthy, the
13 Comptroller and Auditor General, and Mr. McLindon and
14 Mr. Brian Purcell the former secretary.

15 CHAIRMAN: All right. Thank you very much.

16

17 THE HEARING THEN ADJOURNED UNTIL FRIDAY, 13TH APRIL
18 2018 AT 10:00AM

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