

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON FRIDAY, 13TH APRIL 2018 - DAY 65

65

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 13TH APRIL
2 2018:

3
4 MR. MARRINAN: The first witness this morning, sir, is
5 Mr. Séamus McCarthy, please. His statement is to be 10:02
6 found at page 1504 of the materials.
7

8 MR. SÉAMUS MCCARTHY, HAVING AFFIRMED, WAS DIRECTLY
9 EXAMINED BY MR. MARRINAN AS FOLLOWS:

10 1 Q. MR. MARRINAN: Mr. McCarthy, I think that you hold the 10:03
11 post of Comptroller & Auditor General, isn't that
12 right?

13 A. That's correct.

14 2 Q. And as such, you have a number of responsibilities in
15 relation to auditing of accounts of monies administered 10:03
16 under the authority of the Oireachtas, is that right?

17 A. That's correct.

18 3 Q. And part of that remit includes the audit of the annual
19 appropriation account prepared in relation to the vote
20 for An Garda Síochána, is that right? 10:03

21 A. That's correct.

22 4 Q. And that is carried out and reported on by you in a
23 manner provided for in section 3 of the 1993 Act, isn't
24 that right?

25 A. Correct. 10:03

26 5 Q. Now, by way of background, I think on three occasions
27 prior to you taking up the role -- when was it you took
28 up the role?

29 A. In 2012, May 2012.

1 6 Q. Yes. I think that you were aware that on three
2 occasions between 2000 and 2007 your predecessor had
3 examined and reported on aspects of the controls
4 operated by An Garda Síochána in relation to the fixed
5 charge notice system or what was then its predecessor, 10:04
6 the fine on the spot system, isn't that right?
7 A. Correct.

8 7 Q. I think that did those examinations uncover anything?
9 A. They did. They found weaknesses in the control system
10 operated by An Garda Síochána and there would have been 10:04
11 hearings of public accounts to deal with the reports on
12 those occasions.

13 8 Q. Now, I think that in July of 2012, Sergeant Maurice
14 McCabe contacted your office by phone, seeking a
15 meeting to discuss concerns he had about the operation 10:05
16 of the fixed charge notice system, is that right?
17 A. That's correct.

18 9 Q. I think that at your direction, Mary Henry, who is the
19 deputy director of the audit, met with Sergeant McCabe
20 on the 7th August of 2012, and received a file of 10:05
21 information from him, isn't that right?
22 A. That's correct.

23 10 Q. You didn't yourself meet with Sergeant McCabe, is that
24 right?
25 A. I didn't on that occasion. 10:05

26 11 Q. Now, I think in late October of 2012, you received a
27 similar file of information from Mr. Noel Brett, who we
28 heard from yesterday, who is the Chief Executive
29 Officer of the Road Safety Authority, is that right?

1 A. That's correct, it arrived by post.

2 12 Q. And it was indicated that he had received that from a
3 member of An Garda Síochána, is that right?

4 A. Correct, specifically a garda sergeant.

5 13 Q. Yes. Now, I think that the information that had 10:06
6 been -- that was presented in the file prepared by
7 Sergeant Maurice McCabe related to around about 4,000
8 cases which have been extracted from An Garda Síochána
9 Pulse system, where it appeared that fixed charge
10 notices issued had subsequently been cancelled, 10:06
11 including multiple notices cancelled by some
12 individuals, is that right?

13 A. That's correct.

14 14 Q. I think it was also alleged in the file that in certain
15 cases the notices selected had been cancelled corruptly 10:06
16 and illegally by senior garda officers and in a number
17 of cases the drivers whose notices had been cancelled
18 inappropriately had subsequently committed more serious
19 driving offences, isn't that so?

20 A. That is my recollection of a scan of the material that 10:06
21 was supplied.

22 15 Q. I think that the information presented to your office
23 by Sergeant McCabe appeared to indicate that matters
24 raised in the previous Comptroller & Auditor General's
25 reports had not resulted in an improved or sufficiently 10:07
26 improved operation of the relevant control systems in
27 An Garda Síochána?

28 A. That was my conclusion from surveying the material that
29 had been supplied.

1 16 Q. Now, I think that you decided to carry out a further
2 examination of the operation of the fixed charge notice
3 system, is that right?
4 A. Correct.

5 17 Q. And that was to be undertaken as part of the audit of 10:07
6 the 2012 Garda Síochána appropriation account?
7 A. Correct.

8 18 Q. I think that your report on that examination was
9 presented to Dáil Éireann on the 30th September 2013,
10 and you have kindly provided us with a copy of that 10:07
11 report?
12 A. I have, and it's a publicly available document.

13 19 Q. Yes. You will appreciate that is not a matter that we
14 are actually considering?
15 A. I'm quite aware, yeah. 10:08

16 20 Q. I think that --
17 CHAIRMAN: Well, Mr. Marrinan, it certainly is a
18 background to the thing which I think I am entitled to
19 take notice of at the same time.
20 MR. MARRINAN: Yes, yes. 10:08

21 21 Q. I think in the preparation of that report, I think that
22 you did not meet or speak with Sergeant Maurice McCabe,
23 is that right?
24 A. That's correct.

25 22 Q. I think the examination by your office was focusing on 10:08
26 the adequacy of the systems and procedures and
27 practices that were implemented by the bodies that you
28 audit, isn't that right?
29 A. Correct. That's the only focus I can really have in

1 relation to a matter such as this.

2 23 Q. And as a result of that, the examination that you
3 carried out did not attempt to address or investigate
4 the allegations of corruption, illegality or the
5 offences outlined in the file that had been presented 10:08
6 by Sergeant McCabe?

7 A. No, those would not be matters that I can inquire into
8 or should inquire into.

9 24 Q. Now, the file that you had received from Sergeant
10 McCabe was reviewed only by yourself and by your 10:09
11 colleague, Ms. Mary Henry, is that right?

12 A. That's correct.

13 25 Q. I think at all times it was securely stored in a locked
14 safe while in possession of your office, isn't that
15 right? 10:09

16 A. It was. We were very concerned that individuals --
17 identifiable individuals were named in the file of
18 material and we would regard that as highly sensitive
19 information.

20 26 Q. And indeed, the cases that you identified in the files 10:09
21 did not form part of the evidence that you examined or
22 relied upon, isn't that right?

23 A. No, we did not.

24 27 Q. So there was no reference to any individuals?

25 A. Not a single one. 10:09

26 28 Q. I think by letter of the 18th February 2013, your
27 office notified the accounting officer for the vote,
28 who at the time was Commissioner Martin Callinan, that
29 an examination would be carried out and what it would

1 focus on, isn't that right?

2 A. Yes, that is the standard procedure.

3 29 Q. Fieldwork for that examination was conducted by your
4 staff between mid-February and mid-May of 2013?

5 A. Correct. 10:10

6 30 Q. I think that representative samples of notices that had
7 been cancelled were extracted from the Pulse system as
8 the basis for your examination, is that right?

9 A. Yes, there was computer-assisted examination of the
10 whole file for two years but we extracted samples in 10:10
11 six districts to examine in more detail.

12 31 Q. I think analysis of the data and the report drafting
13 was carried out between mid-May and the end of July
14 2013, isn't that right?

15 A. Yes, and I would have been more directly involved in 10:11
16 the drafting process.

17 32 Q. And as already indicated, that report was presented to
18 Dáil Éireann on the 30th September?

19 A. Correct.

20 33 Q. Of 2013. I think the draft report as presented 10:11
21 indicated and disclosed that information had been
22 received from a whistleblower, is that right?

23 A. That's correct.

24 34 Q. And that that had prompted your examination?

25 A. Yes. 10:11

26 35 Q. However, the identity of the whistleblower was not
27 revealed in the draft report and was not made known to
28 An Garda Síochána during your examination?

29 A. That's correct.

1 36 Q. Now, I think that prior -- when the report was
2 completed, a draft report was sent to An Garda Síochána
3 on the 31st July 2013, is that right?
4 A. That's correct, again standard procedure.

5 37 Q. And a formal response received from that report was 10:12
6 received in relation to that report on 6th September
7 2013?
8 A. Correct.

9 38 Q. I think there were appropriate amendments to reflect
10 the comments that had been received, where you deemed 10:12
11 appropriate?
12 A. Mm-hmm.

13 39 Q. And a second draft was issued to An Garda Síochána on
14 12th September 2013, is that right?
15 A. Correct. 10:12

16 40 Q. And a reply was again received from An Garda Síochána
17 on 18th September, and then considering the comments
18 that you had received from the Gardaí, the report was
19 ultimately published on 30th September 2013, which,
20 again, had taken into account the comments and 10:12
21 representations that had been made by the Garda
22 Commissioner in relation to that report, isn't that
23 right?
24 A. That's correct. I might just point out that the report
25 was published as one of a series in an annual report 10:13
26 that I present to the Oireachtas at the end of
27 September each year.

28 41 Q. Yes. Was the report in Chapter 7 of that?
29 A. It's Chapter 7, yeah.

1 42 Q. Now, I think that after the publication of the report,
2 your office sought the views of the Data Protection
3 Commissioner, is that right?

4 A. That's correct.

5 43 Q. What was that in relation to? 10:13

6 A. It was in relation to how we should dispose of the
7 material that we had from Sergeant McCabe. The office
8 policy, first of all, is not to take information from
9 any data source that identifies individuals other than
10 what is strictly necessary for the purposes of an 10:13
11 examination, and our policy then is to dispose of it,
12 any material we do take, in a controlled fashion, but
13 because we were concerned about the data protection
14 issues specifically that arose in this case, we
15 contacted the Data Protection Commissioner. 10:14

16 44 Q. And I think the advice that you received from the
17 Commissioner was that the files should be returned
18 securely to An Garda Síochána, is that right?

19 A. That's correct, by way of letter from a member of the
20 staff of the Commissioner on the 22nd November 2013. 10:14

21 45 Q. And I think on the 17th January of 2014, the material
22 that had been received directly from Sergeant Maurice
23 McCabe was handed over to An Garda Síochána, is that
24 right?

25 A. Yes, delivered to Garda Headquarters on the 17th, and 10:14
26 receipted.

27 46 Q. And I think the file that had been received from
28 Mr. Brett was handed over to An Garda Síochána on 22nd
29 January 2014, is that right?

1 A. That's correct.

2 CHAIRMAN: Mr. Marrinan, I know you have adopted, if
3 you like, a perfectly railroaded system of not
4 mentioning Sergeant McCabe in relation to the dossier
5 to Mr. Brett, but we had the evidence yesterday and we 10:15
6 know it was Sergeant McCabe, and I just want to make
7 sure that it's not anybody else we are talking about.

8 MR. MARRINAN: Yes, all right.

9 47 Q. The material that was in Mr. Brett's file that had been
10 supplied to you effectively mirrored the material that 10:15
11 had been handed in by Sergeant Maurice McCabe, is that
12 right?

13 A. The appearance of the material was similar. We didn't
14 have any identification that would indicate it was the
15 same, and our sense was, from scanning it, we didn't do 10:15
16 a paragraph-by-paragraph match, but our sense was that
17 there were some different cases.

18 CHAIRMAN: They may be different, but I am concluding
19 it's Sergeant McCabe unless someone wants to contradict
20 me. 10:16

21 MR. MARRINAN: I think that seems to be common case,
22 sir.

23 48 Q. But in any event, to summarise the position up until
24 that point in time, it appears that the material had
25 been sent in by Sergeant Maurice McCabe. You had 10:16
26 examined it, you had -- because it wasn't within your
27 remit you hadn't examined any of the allegations that
28 accompanied it of corruption or otherwise, and you had
29 focused on the system that was being operated. You

1 didn't use any of the personal data contained therein
2 in the Pulse records, but merely focused on the fact
3 that the record existed, isn't that right?

4 A. Yes. Our focus -- we didn't examine the material that
5 was presented by Sergeant McCabe. Our focus was to 10:17
6 look at the matters that were alleged to have happened,
7 to identify what control weaknesses would have had to
8 occur in order for those events that were alleged to
9 have happened, the point being that we then set out a
10 programme of work to test and see if Garda systems 10:17
11 could have allowed instances such as were reported
12 by -- or documented by Sergeant McCabe to have
13 occurred.

14 49 Q. I think in or around about autumn of 2012, you had
15 become aware of statements in Dáil Éireann and media 10:17
16 reports about whistleblower allegations of improper
17 cancellation by members of An Garda Síochána of fixed
18 charge notices for motoring offences, isn't that right?

19 A. That's correct.

20 50 Q. And you were also aware of the fact obviously that 10:18
21 there had been a Garda internal examination of alleged
22 improper cancellation of fixed charge notices which had
23 been undertaken by Assistant Commissioner John
24 O'Mahony, isn't that so?

25 A. That's correct. 10:18

26 51 Q. I think as part of your examination, you reviewed the
27 assistant commissioner's report when it was published
28 in May of 2013?

29 A. That's correct.

1 52 Q. I think that following the publication of your own
2 report, you became aware, again through media reports,
3 of a complicated story in relation to a paedophile case
4 in the Cavan-Monaghan Garda district, is that right?
5 A. That's correct. 10:18
6 53 Q. Will you just tell us what you had heard in that
7 regard.
8 A. My recollection of it was that a computer had gone
9 missing, a computer that was in the control of An Garda
10 Síochána, that it was potentially evidential or had 10:19
11 evidential material in relation to allegations against
12 a priest of paedophile activity, that the computer had
13 gone missing and there was some reference to a role
14 played by a station sergeant in relation to the loss.
15 54 Q. And the station sergeant, was that in a context of that 10:19
16 that's the station sergeant being a whistleblower?
17 A. I don't recall from the stories -- actually, yes, in
18 January, there was a reference to the station sergeant
19 being a whistleblower.
20 55 Q. And did you link that in any way to Sergeant Maurice 10:19
21 McCabe, that story that you had heard?
22 A. The circumstances that I was aware of suggested that it
23 might be related to Sergeant McCabe but I certainly had
24 no knowledge that it was related to him.
25 56 Q. And had you heard any other rumours in relation to 10:20
26 Sergeant McCabe that may have been circulating?
27 A. No, I had not.
28 57 Q. Now, I think that you were -- you attended a meeting of
29 the Committee of Public Accounts on the 23rd January

1 2014, isn't that right?

2 A. That's correct.

3 58 Q. I think that you are a permanent witness at the
4 Committee, isn't that right?

5 A. That's correct. I attend most of the meetings of 10:20
6 Committee of Public Accounts.

7 59 Q. And your appropriation accounts and your reports to
8 Dáil Éireann are formally examined at the meetings of
9 that Committee, is that right?

10 A. That's correct. 10:21

11 60 Q. And I think that the accounting officer for the vote is
12 the primary witness and on this occasion it was to
13 examine the vote of the Garda Commissioner, is that
14 right?

15 A. That's correct. The vote of An Garda Síochána and the 10:21
16 chapter from my report.

17 61 Q. Yes. Now, will you just tell us in your own words
18 then, before you went in to the chamber, do you recall
19 meeting Commissioner Callinan?

20 A. Yes, I do. 10:21

21 62 Q. Where did you meet him?

22 A. I met him in the lobby at the -- the meeting room is in
23 a basement of one of the buildings that form the
24 complex of Leinster House, and when I arrived at the
25 level where the meeting was being held, there were a 10:21
26 group of senior people from An Garda Síochána at the
27 bottom of the stairs and I met the Commissioner at that
28 point.

29 63 Q. Where is this in relation to the coffee dock, I think

1 it's --

2 A. The coffee dock is on the level above.

3 64 Q. Above. And there were a group of people there you

4 say --

5 A. Correct. 10:22

6 65 Q. -- do you recall how many?

7 A. A significant number, six, seven.

8 66 Q. And were they members of An Garda Síochána, that you

9 could see?

10 A. They were. Deputy Commissioner O'Sullivan was with 10:22

11 Commissioner Callinan, Assistant Commissioner Twomey

12 was with him, Superintendent Dave Taylor was there and

13 somebody who I subsequently identified as Assistant

14 Commissioner O'Mahony, who had carried out the report,

15 the internal report. 10:22

16 67 Q. And had you previously been acquainted with all those

17 people?

18 A. I was acquainted with Assistant Commissioner Twomey

19 from an investigation that he carried out into issues

20 around 2000. It was related to a report that my 10:23

21 predecessor had carried out and which I was deeply --

22 heavily involved in myself. So he was the one I was

23 most familiar with. I would recognise the others from

24 maybe previous meetings of public accounts, where

25 representatives of Garda Síochána would have appeared. 10:23

26 68 Q. And previously, had you spoken to the Garda

27 Commissioner?

28 A. I might have nodded to him on one occasion when he

29 appeared at public accounts with his predecessor as

1 Commissioner, but that would have been many years
2 before. I have never had a conversation with him
3 before.

4 69 Q. And on this occasion, did you engage in conversation
5 with him?

10:23

6 A. I did.

7 70 Q. Will you just tell us about that.

8 A. As I was accompanied by two colleagues, two team
9 members who had worked on the report, as we arrived at
10 the bottom of the stairs, the Garda Síochána
11 representatives were there. My recollection is that
12 the Commissioner came forward to have a word with me.

10:24

13 71 Q. Right. And did he have a word with you then?

14 A. Yes, yes.

15 72 Q. And will you tell us the conversation?

10:24

16 A. We -- my recollection is that we were apart from both
17 groups, so my colleagues were not party to the
18 conversation and the colleagues with Commissioner
19 Callinan were not party to the conversation. We began
20 just with sort of normal greetings and -- but very
21 quickly the Commissioner raised Sergeant McCabe's name
22 in the conversation, along the lines that Sergeant
23 McCabe is not to be trusted, that he had questions to
24 answer and that there were sexual offence allegations
25 against him.

10:24

10:25

26 73 Q. Were you surprised by this?

27 A. I was surprised, certainly. My immediate concern was
28 Sergeant McCabe's name being raised in the
29 conversation, because, as far as I was concerned, that

1 was not a name that we had shared with the Garda
2 Síochána at any stage during the examination and I had
3 already, on occasions, in Public Accounts, resisted
4 revealing who the whistleblower was.

5 74 Q. And how did you react to the suggestion that he wasn't 10:25
6 to be trusted and that he had questions to answer and
7 that there were allegations of sexual offences against
8 him?

9 A. My immediate response was that the whistleblower --
10 that I hadn't relied at all on the whistleblower 10:26
11 information, so there was no aspect of the report that
12 depended on the character effectively of any
13 whistleblower. But I didn't confirm that Sergeant
14 McCabe was the whistleblower in question.

15 75 Q. In terms of the suggestion that there were allegations 10:26
16 of sexual offences against him, your recollection is
17 that, is it, that this was plural?

18 A. Yes, yes, sexual offences is my recollection of it.

19 76 Q. And that there were -- they were allegations as opposed
20 to past allegations that had been investigated? 10:26

21 A. Yes, my recollection was that it was tied very closely
22 to, that he has questions to answer.

23 77 Q. And how did you respond to what was being said to you?

24 A. As I said, I immediately made the point that my report
25 was not dependent on material supplied by any 10:27
26 whistleblower and then we continued to talk about the
27 matters that were in the report rather than about the
28 allegations that he had made.

29 78 Q. And how did the conversation end then?

1 A. We talked about the -- some of the control issues, we
2 talked about the importance of An Garda Síochána having
3 the ability to exercise discretion in relation to the
4 issuing of penalty -- not penalty points, fixed charge
5 notices. We talked about reliance -- An Garda 10:27
6 Síochána's operational reliance on goodwill of the
7 community and what that would mean in terms of the
8 manner in which a fixed charge notice regime would be
9 applied and there was a reference to one specific case
10 in the report which we had drawn attention to, where 10:28
11 somebody had petitioned to have a speeding ticket
12 quashed, effectively, because he was, as was recorded
13 in the papers we had seen, that he was rushing back to
14 his farm because bees were attacking livestock.

15 79 Q. I think that he indicated that it was important to have 10:28
16 discretion in those circumstances because --

17 A. Correct.

18 80 Q. -- the civilian in question had assisted An Garda
19 Síochána in other respects, is that right?

20 A. That's correct. That he was regularly somebody who was 10:28
21 of assistance to An Garda Síochána.

22 81 Q. And then did you part company and go into the chamber
23 for the meeting?

24 A. We did. The normal procedure is that when the meeting
25 starts, I am in attendance to assist the Committee 10:29
26 while they go through correspondence and consider
27 financial statements and so on that have been presented
28 and once that process is over, the chief witnesses for
29 the day are called.

1 82 Q. And during the subsequent Committee meeting, did you
2 have cause to reflect on what had been said to you by
3 Commissioner Callinan?
4 A. Yes, I had. Obviously, once the conversation with the
5 Commissioner had finished, I went into the meeting -- 10:29
6 into the room where the meeting was happening. It was
7 a very busy few minutes while correspondence was taken,
8 so I was engaged with that. The opening part of the
9 meeting is where I present my report and my conclusions
10 on the audit of the financial statements, or the 10:30
11 appropriation accounts in this case, and I give the
12 introduction, and after that, I have an opportunity to
13 reflect on matters.
14 83 Q. And having reflected on the matter in terms of what you
15 had been told, did you link it to anything? 10:30
16 A. I suppose I was thinking about the statements that
17 Commissioner Callinan had made to me. I was trying to
18 recollect what they might have referred to and what
19 they might have been connected with. The only thing
20 that I could think of was the issue that I was aware of 10:31
21 where a whistleblower had been alleged to be involved
22 in the disappearance or the loss of a computer and I
23 concluded that the matters that the Commissioner was
24 referring to were in fact that situation.
25 84 Q. So I think that the Commissioner then gave evidence, 10:31
26 isn't that right?
27 A. That's correct.
28 85 Q. And you were present throughout that?
29 A. I was.

1 86 Q. And then later on that afternoon the meeting of the
2 Public Accounts Committee concluded, isn't that so?
3 A. That's correct, my recollection is at around
4 three o'clock in the afternoon.

5 87 Q. You'll appreciate that Commissioner Callinan, when 10:32
6 confronted with your allegation in relation to this
7 matter, has completely denied that he said anything in
8 relation to Sergeant McCabe not being somebody who, in
9 the first instance, or suggestion that he shouldn't be
10 trusted, and the second instance, that he was somebody 10:32
11 who had serious questions to answer or that he had been
12 involved in any sexual assault or paedophile case or
13 otherwise, you appreciate that he is denying this?
14 A. I appreciate that, and I certainly don't suggest that
15 the word paedophile was used in the conversation. 10:32

16 88 Q. Right. But sexual assault was, you say?
17 A. Oh -- sexual assault offences, yeah -- allegations of
18 sexual assault. I am sorry, allegations of sexual
19 offences, I think was the formula.

20 89 Q. Was the words that you used, yes. You didn't mention 10:33
21 this to anybody at the time, is that right?
22 A. No, I didn't.

23 90 Q. When was the first time that you alluded to this to
24 anybody?
25 A. Following the Tribunal's appeal for anybody with 10:33
26 information relevant to the matters of inquiry to come
27 forward.

28 91 Q. And that was on the 13th March when you made your
29 statement to the Tribunal, is that right?

1 A. Well, I think the appeal was made earlier.

2 92 Q. Yes.

3 A. So I prepared the statement following the appeal.

4 93 Q. Well, you'll appreciate that Mr. Callinan will have a
5 view in relation to this matter and his view would be 10:33
6 that this allegation comes very late. You'll
7 appreciate that it couldn't -- no matter how you view
8 it, it would be entirely inappropriate for the Garda
9 Commissioner to make the comment that he did,
10 specifically in relation to sexual offences being 10:34
11 investigated in relation to Sergeant McCabe, isn't that
12 right?

13 A. Well, I presume that that is a matter for the Tribunal
14 to determine, whether it was appropriate.

15 94 Q. But your own view in relation to it? 10:34

16 A. Well, I would certainly find it highly unusual, yes.

17 95 Q. Well, you see, I suppose that he would advance the
18 argument to say, well, you know, if it was said and
19 somebody in your position, the natural reaction would
20 be perhaps to report what had been said or to confront 10:34
21 him at the time and to say, you know, hang on a minute,
22 should you be saying this to me? Is this appropriate
23 as part of our conversation?

24 A. It didn't occur to me to say that.

25 96 Q. It didn't occur to you. Okay. Would you answer any 10:35
26 questions, please.

27 A. I will indeed.

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29 MR. MCDOWELL: No questions, Chairman.

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THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM:

97 Q. MR. DIGNAM: Hello, Mr. McCarthy, my name is Conor Dignam. I appear on behalf of members of An Garda Síochána, and in particular in relation to former Commissioner Callinan, I have a number of questions to put to you.

10:35

The purpose of the questions, Mr. McCarthy, just to clarify, or confirm to you where I am coming from, is to explore mainly the information given in your statement and now given in evidence to the Tribunal, to look at where there is agreement between yourself -- your account of the conversation with Commissioner Callinan -- former Commissioner Callinan and to look at where there are differences and disagreements between the two, and to put to you Mr. Callinan's account of the conversation to give you an opportunity to reply to that

10:35

10:36

A. Of course.

10:36

98 Q. And the other purpose for doing that is to explore what I will be suggesting to you is differences in the accounts arising from a mistake or misunderstanding between yourself and Mr. Callinan, so that's where I am coming from, if I might put it that way?

10:36

A. I understand.

99 Q. I won't be looking at the detail of the very important report that you did into the fixed penalty points system, because I think as the Chair has said, that is

1 the background to it, but it isn't the focus of your
2 evidence, but just to confirm, I think you have very
3 fairly said in response to Mr. Marrinan's questions you
4 didn't look at the substance of these allegations and
5 in particular you didn't look at the complaints or 10:36
6 charges that there was corruption or unlawfulness at
7 hand here, isn't that right?

8 A. That's correct.

9 100 Q. Yes. You have had the benefit, I think, of
10 Mr. Callinan's statements to the Tribunal, and in 10:37
11 particular his statement where he deals with your
12 statement to the Tribunal and your account of this
13 conversation. So I don't think anything I will be
14 saying to you will come as any surprise.

15 A. That's fine. 10:37

16 101 Q. You will in fact know, I think, that there is broad
17 agreement about a lot of conversation or a lot of the
18 interaction you had with former Commissioner Callinan
19 but also some key differences also.

20 A. Yes. 10:37

21 102 Q. In your evidence to Mr. Marrinan, you indicated that
22 you didn't know former Commissioner Callinan
23 particularly well at all, I think your memory is you
24 met him perhaps once in passing when he was attending
25 the PAC with his predecessor? 10:37

26 A. That is my memory, yeah.

27 103 Q. I think you describe yourself as a permanent witness to
28 the PAC, that is completely understandable given the
29 role of the PAC and your role; what does that involve?

1 How often do you attend before the PAC? How often does
2 the PAC sit?

3 A. Weekly during parliamentary sessions. So, in total, 30
4 to 35 weeks a year.

5 104 Q. So you would be in and around Leinster House 10:38
6 frequently?

7 A. I would be very frequently in Leinster House, yes.

8 105 Q. Yes. If you then just turn to the events of the 23rd
9 January and your interactions with former Commissioner
10 Callinan. As I said, there are certain matters of 10:38
11 agreement and I just want to get those out of the way,
12 so to speak. The first is, you describe yourself as
13 not having had any direct personal communication or
14 conversation with Mr. Callinan about your report. He
15 agrees with that. 10:38

16 A. Correct.

17 106 Q. The second is that you describe the conversation as
18 being a brief conversation, and about not more than
19 five minutes?

20 A. That is my recollection. 10:39

21 107 Q. And he also agrees with that also, it was a brief
22 conversation. You said that there was no one else
23 either from your office or indeed from An Garda
24 Síochána were a party to the conversation, and former
25 Commissioner Callinan agrees with that also. You 10:39
26 described the conversation as having commenced and
27 taken place in the lobby outside the Committee room?

28 A. Correct.

29 108 Q. There is a degree of agreement but there is one

1 difference which I am not sure that anything really
2 turns on but former Commissioner Callinan describes the
3 conversation as starting at the top of the stairs
4 leading down to the lobby and then continuing as you
5 went down the stairs and continuing in the lobby. 10:39

6 A. No, that is not my memory of it.

7 109 Q. Yes.

8 A. I distinctly remember arriving at the bottom of the
9 stairs and there was a group.

10 110 Q. He also agrees that he did refer to Sergeant McCabe by 10:39
11 name when he was conversing with you and he also agrees
12 that you spoke about some of the report content and in
13 fact --

14 A. Correct.

15 111 Q. -- he has a distinct memory as well of discussing the 10:40
16 case that you mentioned, which is the bees?

17 A. It's very memorable.

18 112 Q. Yes, it's quite a colourful account. I think you
19 describe it in the report, and I'm not going to get
20 into an individual case for obvious reasons, 10:40
21 Mr. McCarthy, but you describe it as a case where the
22 person provided assistance or service to An Garda
23 Síochána. I am not sure whether you are aware of the
24 specific assistance that is provided?

25 A. I am aware, but the reason I didn't specify it in the 10:40
26 statement was because it could identify the individual.

27 CHAIRMAN: well, it is better not to because --

28 A. And I didn't think it was relevant.

29 CHAIRMAN: -- I don't know how often bees attack cows,

1 but in itself it is highly memorable. And, you know,
2 there is a rule about -- if this is what we are dealing
3 with, I don't know if it is?

4 113 Q. MR. DIGNAM: Yes. No, no, there is no row at all. I
5 just want to put to you, and again I don't want to get 10:41
6 into -- for the same reason as you, Mr. McCarthy, but
7 in fact it was a service that was provided to the wider
8 community as well as An Garda Síochána.

9 A. Well, that may be, yeah, yeah.

10 114 Q. Now -- 10:41

11 A. I mean, I am perfectly willing to supply a written
12 statement in relation to it, if it helps in
13 corroboration but I don't believe it does.

14 115 Q. I don't think it is necessary.

15 CHAIRMAN: No, it doesn't. We have had enough about 10:41
16 bees, horses and cattle.

17 116 Q. MR. DIGNAM: Mr. McCarthy, as you say in your
18 statement, you didn't keep a contemporaneous note and
19 you didn't discuss this conversation with anyone, isn't
20 that right? 10:41

21 A. Yeah, and I neither made a note nor kept a note.

22 117 Q. Fair enough. And you said that you didn't discuss it
23 with anyone until the Tribunal was established. Could
24 I just ask you --

25 A. That's correct. 10:41

26 118 Q. Could I just ask but that last portion? Do I
27 understand directly to mean that when the Tribunal was
28 established you discussed it with the Tribunal or did
29 you discuss it with other people?

1 A. When the Tribunal was established, I was aware of the
2 general purpose of the Tribunal, so I watched the
3 opening statement by the Chairman, and it was quite
4 clear to me that I was obliged to come forward and make
5 a statement in that context. 10:42

6 119 Q. And did you discuss it with anyone after that point?

7 A. At that point I discussed it with the senior managers
8 of my office.

9 120 Q. In relation to the necessity to provide a statement
10 rather than the substance of the statement, I presume, 10:42
11 is that right?

12 A. Oh, certainly not in regard to the substance because
13 clearly, nobody else would have -- would have known. I
14 felt it was important because I was going to have to
15 spend some time researching the matter, I was going to 10:42
16 have to seek files, there was inevitably a potential
17 reputational concern around it, so I felt it was
18 important to -- that they would be aware of what was
19 happening.

20 121 Q. Yes. And to be clear, Mr. McCarthy, I am not 10:43
21 criticising you for having that discussion. It was
22 just a point that I was interested to get clarification
23 on. But that being the case, your memory of this
24 conversation is entirely based on -- sorry, your
25 account of this conversation is entirely based on your 10:43
26 memory, isn't that right?

27 A. Correct.

28 122 Q. Yes. And that being the case, your account of the
29 conversation and the interactions with Commissioner

1 Callinan, and I will come back to the details of it in
2 just a moment, but it's not a verbatim account of the
3 conversation you had with Commissioner Callinan?
4 A. No, it's not a quotation, I am not representing it as a
5 quotation. 10:43
6 123 Q. No. And you don't in any way in your report.
7 A. No.
8 124 Q. And in fact, you also qualify your account in
9 paragraphs 23 and 24 of your original statement to the
10 Tribunal by the use of the phrase "to the effect" when 10:44
11 you are describing the remarks that Commissioner
12 Callinan made to you and indeed the remarks that you
13 made to Commissioner Callinan?
14 A. Yes.
15 125 Q. And can I take it that that is an indication that you 10:44
16 are conveying the substance of the conversation but not
17 the precise words that were used?
18 A. That is my belief.
19 126 Q. Yes. Can I just ask you about paragraphs 17, 19 and 26
20 of your original statement to the Tribunal? They are 10:44
21 on page 1506 and 1507.
22 A. I have them.
23 127 Q. And Mr. Marrinan has asked you about this already,
24 Mr. McCarthy. As I understand what you are saying
25 there, that once you had received this material from, 10:44
26 who we now know to be Sergeant McCabe, you were then
27 keeping an eye on the media and monitoring the media to
28 see if there was anything of relevance and again that
29 is not said in any critical way.

1 A. No. And I think just to be clear, I would be
2 monitoring the media anyway in my role as C&AG.

3 128 Q. Yes. And I would expect nothing less, Mr. McCarthy.
4 A. So it would be one of many things that I would be
5 scanning media reports for. 10:45

6 129 Q. So you are in essence keeping an eye out for anything
7 that is relevant to your work in general?
8 A. Absolutely.

9 130 Q. And this being part of your work you are keeping an eye
10 out to see if there is anything of relevance to that 10:45
11 piece --
12 A. Correct.

13 131 Q. And you say in paragraph 19 that following publication
14 of the audit report you became aware of what you
15 describe as media reports of a complicated story of an 10:45
16 historic paedophile case in the Cavan-Monaghan Garda
17 district and subsequent disappearance of a computer,
18 etcetera, and I take it that that was sometime after
19 September 2013?
20 A. Correct. 10:45

21 132 Q. And that raised the possibility in your mind that this
22 may refer to the whistleblower who we now know to be
23 Sergeant McCabe?
24 A. That's correct. There were various references to
25 whistleblowers having produced evidence to various 10:46
26 public representatives and so on, or in the media,
27 which I found -- I wasn't sure -- I knew that there was
28 another whistleblower at a point in time, but my
29 understanding was that what he was alleging was

1 something different, but then it began to be apparent
2 that he may have been making representations about the
3 quashing of fixed charge notices as well, but I had no
4 evidence of that.

5 133 Q. Yes. I think you say in your statement to the 10:46
6 Tribunal, sorry your -- yes, your statement to the
7 Tribunal, that this story entered your mind then on the
8 23rd January after you had this conversation with
9 former Commissioner Callinan?

10 A. That's correct. From my scanning of media, I felt that 10:47
11 while there were matters of substance involved in
12 reference to that case, it wasn't something that
13 impinged on my report. I didn't take a copy of any of
14 the media reports at the time. By comparison, if there
15 had been a reference to matters that touched on 10:47
16 procedures or systems in An Garda Síochána, I would
17 probably have copied that and sent it to the team, who
18 would be preparing a brief for me for the public
19 accounts. But the records that we have did not contain
20 any media reports or copies of media reports in 10:47
21 relation to this specific case.

22 134 Q. Yes. I don't think there is any dispute but that there
23 were some media reports --

24 A. That's correct.

25 135 Q. -- in -- and in fact, two of them I think have already 10:48
26 been handed in to the Tribunal but I don't need to get
27 into that. I think it's not in dispute that there were
28 some media reports in relation to that case.

29 A. Yes. There is one matter that I can point out, I

1 remember Mr. Clifford's report which was just a few
2 days before public accounts, and the reason it was
3 memorable was because he used the abbreviation WB,
4 which I first thought, who is WB, that is not Maurice
5 McCabe, but obviously WB is whistleblower. 10:48

6 136 Q. Yes.
7 CHAIRMAN: Okay. Sorry, I didn't get it.
8 A. And I didn't first either.
9 CHAIRMAN: I didn't see those, Mr. Dignam. I mean, I
10 have seen the GRA publication and I have seen all the 10:48
11 articles vis-á-vis Ms. D published in The Irish
12 Independent but I haven't seen those. I am not sure
13 they are terribly relevant, once it's agreed that there
14 was some reference to the Fr. Molloy computer case.
15 And his name is out in the open, by the way, as well. 10:49
16 MR. DIGNAM: Yes. Chairman, they were in the booklet
17 of media articles that were handed in during Deputy
18 McGuinness's evidence, but I agree, that I don't need
19 to get into the contents or any detail.
20 CHAIRMAN: That is fine. 10:49
21 MR. DIGNAM: It was simply to ask Mr. McCarthy how he
22 became aware or how this came to his attention.
23 137 Q. And I think, Mr. McCarthy, in fact you had mentioned an
24 article that had appeared --
25 A. Days before. 10:49
26 138 Q. -- days before. I think it was the 20th January, so
27 three days before you went into the PAC on the 23rd --
28 A. That's correct.
29 139 Q. -- dealing with this in some detail, it's at tab 2 of

1 the book of articles. If I can just then come to the
2 interaction that you had with former Commissioner
3 Callinan and just to explore the areas where there is
4 perhaps less agreement or disagreement between your two
5 accounts. 10:50

6 A. Mm-hmm.

7 140 Q. Mr. Callinan will say that he didn't say that Sergeant
8 McCabe was not to be trusted or that he had questions
9 to be answered, and of course, you don't ascribe those
10 specific words to Mr. Callinan because you qualify it 10:50
11 by saying it was words to that effect, okay, I am going
12 to put this to you and then give you an opportunity to
13 reply.

14 A. Okay.

15 141 Q. He will say that he did use the word "question" but 10:50
16 that that was in the context of saying that some of the
17 allegations that were made by Sergeant McCabe were
18 questionable, and you have seen that from his
19 statement, because he will say that, as we know, some
20 of the allegations had in fact turned out to be 10:50
21 incorrect. He also accepts that what he was trying to
22 convey was that care should be taken about the
23 assessment or consideration of the allegations that are
24 being made by Sergeant McCabe, okay? So that is his --

25 A. I understand. 10:51

26 142 Q. -- account of the use of the word -- of how the word
27 "question" or "questions to be answered" or
28 "questionability" came into the conversation.

29 A. I understand.

1 143 Q. And can you comment on that?

2 A. I understand that is his position, but it's not my
3 memory of what was said.

4 144 Q. Yes. And I have to put it to you then, Mr. McCarthy,
5 that it flows from that that you would reply, well 10:51
6 look, my report had nothing to do with an assessment of
7 the allegations or indeed of the credibility of the
8 whistleblower, it was simply, that is what prompted my
9 audit, I conducted the audit but without reference to
10 assessing the truth or correctness of any of the 10:51
11 allegations that are made, it would naturally flow from
12 Commissioner Callinan's account that you might say
13 that?

14 A. I think it also flows that, because I had not relied in
15 any way on the material presented to me, I hadn't 10:52
16 engaged with Sergeant McCabe, that nothing in my report
17 relied on anything that had been provided by Sergeant
18 McCabe.

19 145 Q. Yes. Then in relation to the reference to allegations
20 of sexual offences, again you say, in your statement, 10:52
21 that it was words to that effect, okay? And in fact,
22 when you were being questioned by Mr. Marrinan on page
23 18 line 15, you said that it was sexual assault and
24 then you said sexual assault offences and then in
25 fairness to yourself you corrected yourself to say 10:52
26 sexual offences?

27 A. Yes, allegations of sexual offences.

28 146 Q. Yes. But I have to put it to you that you are not
29 entirely clear on what exactly was said by former

1 Commissioner Callinan?

2 A. No, I think I am.

3 147 Q. Yes. And Mr. Callinan's account of that conversation
4 will be, again as you have seen from the statement,
5 that he didn't raise the question of sexual 10:53
6 allegations, but that you told -- you said to him that
7 you had heard rumours about Sergeant McCabe being
8 investigated over an allegation of a sexual nature,
9 that is Mr. Callinan's account?

10 A. And that is incorrect. I didn't raise Sergeant 10:53
11 McCabe's name. I was on guard not to do that.

12 148 Q. Sorry, no --

13 A. And I didn't raise any question of allegations of
14 sexual offences.

15 149 Q. I didn't mean to suggest that you raised Sergeant 10:53
16 McCabe's name.

17 A. No, I didn't.

18 150 Q. Mr. Callinan has said that he raised Sergeant McCabe's
19 name, so that's how his name came into the
20 conversation, okay? At this stage you were aware of 10:53
21 the Molloy case?

22 CHAIRMAN: So the conversation, just to be clear,
23 Mr. Dignam, went something like, Commissioner Callinan
24 says be careful in relation to Sergeant McCabe and the
25 problem with whistleblowers is that they are not always 10:54
26 right, or something to that effect, and some indeed
27 allegations have proved to be incorrect, and that you
28 chimed in and I believe he has sexual offence
29 allegations against him, something to that effect, that

1 is what is being put to you, am I right?

2 A. And that is not correct.

3 151 Q. MR. DIGNAM: what Mr. Callinan will say is that
4 Mr. McCarthy said oh, I have heard rumours about sexual
5 allegations. Mr. McCarthy quite properly didn't say 10:54
6 and there are allegations against him, he simply said
7 that he had heard rumours.

8 A. I did not say that.

9 CHAIRMAN: You chimed in with I've heard -- all right.

10 A. I didn't. 10:54

11 152 Q. MR. DIGNAM: And that Mr. Callinan -- and what I have
12 to put to you, Mr. McCarthy, is that it is possible
13 that that occurred and indeed I will come on to say
14 it's more likely that it occurred in that way.
15 Firstly, it's possible that that occurred because it's 10:55
16 entirely logical that if Mr. Callinan said something
17 which caused you to interpret him as saying that there
18 were questions to be answered or it was questionable,
19 that you would then say well, I have heard rumours, but
20 in fact I didn't look at the whistleblower or the 10:55
21 individual at all, or the allegations he was making,
22 it's simply what prompted my audit report and I have
23 made my findings completely independent of anything
24 that might be said about the whistleblower or anything
25 about the allegations? 10:55

26 A. That's sort of rather complicated, but I certainly did
27 not -- my intention was immediately Sergeant McCabe's
28 name was mentioned, to retort that that is not
29 something that concerns me, my report does not rely on

1 that in any way. And then I took the conversation into
2 the space of what the report was about: Systems,
3 procedures and practices. And that we had drawn our
4 own samples and relied only on our own samples.

5 153 Q. And then just to go to the final couple of points, 10:56
6 Mr. McCarthy. I have to put it to that you that it's a
7 perfectly understandable disagreement in two accounts
8 where a conversation like this happens, and that your
9 recollection is simply mistaken in circumstances where
10 you didn't keep a note where it was a brief 10:56
11 conversation?

12 A. I don't believe that's the case. I would never have
13 associated the idea of sexual offence allegations
14 against Sergeant McCabe, even with the newspaper
15 reports. My understanding of it was that it was a 10:56
16 disciplinary matter, had a computer or had evidential
17 matter gone missing, and the idea that it would be
18 sexual offences against Sergeant McCabe was puzzling.

19 154 Q. Yes. Now, it's a matter for the Chairman at the end of
20 the day, Mr. McCarthy, but just to give you an 10:57
21 opportunity --

22 A. I appreciate that.

23 155 Q. I just want to give you an opportunity comment on two
24 points -- on one point broken down into two parts.

25 A. No, that is fine. 10:57

26 156 Q. I have to put it to you that Mr. Callinan's account is
27 the more likely correct account of how the conversation
28 flowed, or his memory of how the conversation flowed is
29 the more likely memory, more likely correct memory and

1 I say that for two reasons. Firstly, Mr. Marrinan has
2 already touched on this, here you have the Commissioner
3 of An Garda Síochána coming to you doing something
4 which is improper, okay?

5 A. I am sorry, what is that word. 10:57

6 157 Q. He is coming to you doing something which is improper,
7 in other words making an allegation of sexual offences
8 or whispering in your ear about sexual offences in
9 order to do down Sergeant McCabe in your eyes, okay?
10 And you, I suggest to you, would have known that that 10:58
11 was improper, it would have caused you unease and
12 concern and you would have noted it and possibly even
13 taken it further and taken some action on it.

14 A. I certainly thought about it afterwards. I suppose it
15 did occur to me that there was something I didn't know, 10:58
16 perhaps that the Commissioner did. I would have been
17 aware of An Garda Síochána's resistance, perhaps, to
18 some of the suggestions, or the implications of what
19 was in Sergeant McCabe's file -- or the material
20 provided to us, because we had had an engagement about 10:58
21 that. My understanding or my interpretation of what
22 had transpired was that it was somehow an attempt to
23 maybe shake my convictions about my -- the findings in
24 my own report, but of course it was completely moot at
25 that stage. The report was presented and I stood over 10:59
26 it and I still do, as a report.

27 158 Q. And the second reason why I say that it's more likely
28 that former Commissioner Callinan's memory of the
29 conversation is correct, is that you have said in

1 evidence you didn't know each other, in fact you
2 didn't -- you barely knew each other at all, that you
3 had met once -- paths had crossed once?

4 A. That's correct.

5 159 Q. In those circumstances, Mr. McCarthy, I have to put it 10:59
6 to you that, and as I said, ultimately it's a matter
7 for the Tribunal, but I just want to give you an
8 opportunity comment, that you have Mr. Callinan going
9 to a constitutional office holder, who he doesn't know,
10 doing something which is very, very wrong, and that 10:59
11 would carry with it the very obvious risk that you
12 could report it, you could take some action on it, he
13 had no idea of your form, how such a comment would be
14 received, I have to say to you that in those
15 circumstances it would be very unlikely for him to have 11:00
16 done that?

17 A. That's a matter of opinion I think. I would say,
18 though that the relationship between an accounting
19 officer and the Comptroller & Auditor General is -- you
20 know, there is a background to it. There is a process 11:00
21 of engagement. Staff from my office would have been
22 engaging with him and with other members of management
23 in An Garda Síochána, and I think it -- I would not
24 accept -- it's a professional engagement. I think
25 anyone who is looking at the report, they know they are 11:00
26 looking at my report, they know how I got to it, so I
27 wouldn't characterise it as somebody effectively
28 meeting a stranger on the street.

29 160 Q. No, I appreciate that.

1 A. It's quite a different relationship.

2 161 Q. And then finally, Mr. McCarthy, just whatever you
3 recall Commissioner Callinan saying to you, what it led
4 you to believe he was referring to was the lost
5 computer case? 11:01

6 A. That is what I concluded that the matter had related
7 to.

8 162 Q. Thank you, Mr. McCarthy.

9 A. You are welcome.

10 11:01

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

12 163 Q. MR. MARRINAN: Sorry, just I left it to Mr. Dignam to
13 put Mr. Callinan's case to you, but there is a second
14 limb to it. Just that the first limb to it is that he
15 is suggesting that it was you who introduced a 11:01
16 reference to an offence or an allegation of a sexual
17 nature, do you understand?

18 A. Yes.

19 164 Q. So, in other words, he didn't introduce it to the
20 conversation, you introduced it to the conversation? 11:02

21 A. I understand that that is his position.

22 165 Q. What do you have to say?

23 A. That is not true. I had no idea that there were --
24 that there was any suggestion of sexual offences
25 against Sergeant McCabe at that point. 11:02

26 166 Q. But then there is a second limb to it, because he says
27 that you didn't elaborate or specify what the rumours
28 were that you had heard, but he then goes on to say at
29 page 693 in a statement that he made to the Tribunal:

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"I indicated to Mr. McCarthy that that was several years ago and that the Director of Public Prosecutions directed no prosecution."

A. I don't recall anything of that nature being said. 11:02

167 Q. Well, he is asserting that he is linking this rumour that you introduced into the conversation to an actual investigation that had occurred, one presumes, in 2006, that resulted in --

A. I don't believe that those points were made in the conversation. 11:03

168 Q. Yes.

A. And I was certainly not aware of any allegations from 2006 or the involvement of the Director of Public Prosecutions. The sense I had was that it was a matter currently being investigated. 11:03

169 Q. Thank you very much.

THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

CHAIRMAN: Just a couple of things, Mr. McCarthy. 11:03

A. Yes, Chairman.

170 Q. CHAIRMAN: You hold office under Article 33 of the Constitution?

A. That's correct.

171 Q. CHAIRMAN: And the protections around your office are the same as a judge; you can't be removed except by resolution of both Houses of the Oireachtas, isn't that right? 11:03

A. That's correct.

1 172 Q. CHAIRMAN: As I understand it, your job under the
2 Constitution is to audit account for, inquire into
3 monies being spent by the State, value for money,
4 whether money is being wasted, that's the kind of remit
5 you have, isn't that right? 11:04

6 A. Yes. The Article in the Constitution is quite
7 specific. It's to control all disbursements and to
8 audit all accounts of funds under the control of
9 Oireachtas Eireann. If you like, the broader remit and
10 the broader structure within which I operate is the 11:04
11 1993 Comptroller & Auditor General Amendment Act, which
12 specifies that I can carry out audits of financial
13 statements of various kinds and examinations of value
14 for money. I don't have any general remit to inquire
15 into any other matters. Specifically I must operate by 11:04
16 means of an audit or what is called a section 9
17 examination.

18 173 Q. CHAIRMAN: Did that change from the 1923 Act then?

19 A. Yes, certainly, it was a broadening of the powers under
20 the 1923 Act. 11:05

21 174 Q. CHAIRMAN: But what you don't have is you don't have
22 any decision over economic policy or whether a vote is
23 a good idea, just to take an instance, if someone
24 decides to run a railway line from Tralee to Limerick,
25 you may think that is a terrible idea, I am not saying 11:05
26 anything one way or the other --

27 A. And I am certainly not.

28 175 Q. CHAIRMAN: -- no, but you can't -- you can't intervene
29 and say look, that is a terrible waste of money or

1 anything like that?

2 A. No. If there were a question of value for money, I can
3 look at the process whereby a decision was made, but I
4 can't question the decision itself. So it's the
5 underpinnings that I would be looking at rather than 11:05
6 the merits.

7 176 Q. CHAIRMAN: In that instance, and I certainly don't
8 intend to say anything in relation to -- it's only an
9 example because I know there is a railway line between,
10 isn't it, is it Ennis and Limerick which is -- 11:05

11 A. Yes.

12 177 Q. CHAIRMAN: -- subject of some controversy, I am just
13 taking that as an example --

14 A. I understand.

15 178 Q. CHAIRMAN: -- you would look at the procurement, for 11:06
16 instance, of track, of stone, of labour and whether the
17 best value had been obtained, that is basically your
18 remit?

19 A. Yes. I mean, obviously if a railway is being procured,
20 let's say it was being done by CIE, that would be 11:06
21 outside my remit, so I wouldn't examine in that
22 situation, but I could look at the economic case and
23 how an economic case was built up, to merit the -- or
24 for the Government to make a decision to commit to a
25 project of a scale. 11:06

26 179 Q. CHAIRMAN: Yes. But they would ask you that, I think
27 is the case?

28 A. Sorry.

29 180 Q. CHAIRMAN: They would ask you to do that?

1 A. No. No, they would not ask me to do it, I suggest. I
2 am completely independent.

3 181 Q. CHAIRMAN: You know and I don't, I am sorry --
4 A. I am completely independent in what I choose to
5 examine. It's my decision and mine alone. 11:07

6 182 Q. CHAIRMAN: So, if the decision is to extend the M3 all
7 the way to Donegal, you would be entitled once that
8 decision is floated or once that decision is under
9 examination, at white paper stage maybe, or green paper
10 stage to look at it? 11:07

11 A. Yes. Economic assessment to look at it.

12 183 Q. CHAIRMAN: And would that make -- and this is why I am
13 asking you this.

14 A. Okay.

15 184 Q. CHAIRMAN: Does that cause a certain tension between 11:07
16 you and politicians in consequence?

17 A. I mean, certainly the relationship is -- well, I
18 suppose it's well-trying at this stage. Modes of
19 operation have been very well set down over 60 --
20 nearly a hundred years at this stage. Everybody 11:07
21 understands -- everybody who is operating in the system
22 understands the role that the other fulfils. I think
23 there have been tensions and nobody would welcome an
24 examination by the Comptroller & Auditor General, but I
25 think the system generally is prepared for it, is 11:08
26 well-gearred to deal with it and so on. So we have
27 procedures which stand us in good stead, I think.

28 185 Q. CHAIRMAN: If you move on from there to something you
29 said earlier in your evidence, that in consequence of

1 examining the fixed charge penalty system you had
2 suggested a number of improvements to the Garda
3 Síochána, was that correct?

4 A. In my report or in the earlier ones?

5 186 Q. CHAIRMAN: In the earlier ones now. 11:08

6 A. At the time the practice was not to make specific
7 recommendations in the earlier reports. Because the
8 reports are examined by the Committee of Public
9 Accounts, it was normally left to the Committee of
10 Public Accounts to examine the information presented by 11:08
11 the Comptroller and then to make their recommendations,
12 which the Minister for Finance would respond to.

13 187 Q. CHAIRMAN: Please understand that this is a completely
14 open question, there is no resonance behind it at
15 all -- 11:09

16 A. Okay.

17 188 Q. CHAIRMAN: -- but, is there any sense in your mind of a
18 Sisyphus-like exercise of trying to get the Gardaí to
19 do things but the inertia being such as to perhaps
20 frustrate you or anything like that? 11:09

21 A. Yes. And I think it's a matter that was canvassed with
22 the Commissioner by Deputy Deasy in the course of the
23 examination. He was quite pressing of the Commissioner
24 on the point, when is this going to change? And so on.
25 And I think that was part of my thinking when we saw 11:09
26 the dossier that had been prepared by Sergeant McCabe:
27 This hasn't changed, it merits looking at again.

28 189 Q. CHAIRMAN: And given that you didn't know the
29 Commissioner, there is obviously no reason for you to

1 have any particular view about him one way or the
2 other, as to whether -- in the realm of whether he is a
3 nice man or anything like that --

4 A. Yes.

5 190 Q. CHAIRMAN: -- but is it the case that perhaps what you 11:10
6 have spoken about can lead to a certain degree of
7 tension between the person responsible for accounting
8 for the vote and the Comptroller & Auditor General,
9 whose job is to ensure that money voted by the
10 Oireachtas is well used? 11:10

11 A. Yes. I mean, it certainly does arise from time to
12 time. As I said, nobody welcomes an examination -- an
13 in-depth examination like this because it's going to be
14 in the public arena and debated in the public arena.

15 191 Q. CHAIRMAN: And then I suppose the last thing is 11:10
16 vis-à-vis, I don't -- I am not aware of any Comptroller
17 & Auditor General, former Comptroller & Auditor General
18 being appointed to the Court of Auditors of the
19 European Union, for instance?

20 A. No, that hasn't happened. 11:11

21 192 Q. CHAIRMAN: Is that because, perhaps, of the tension
22 between the political system and perhaps understandable
23 desires within the political system to have certain
24 projects and perhaps the cold water holders of your
25 office maybe sloshing on top of them? 11:11

26 A. Yeah. I suppose it raises interesting questions around
27 the malleability and the independence of a C&AG if
28 there are plums or appointments that could be held out
29 as being attractive. So I think it's probably better

1 in the scheme of things that that not be canvassed or
2 talked about.

3 193 Q. CHAIRMAN: So it's like the old thing, you have nothing
4 to gain and nothing to lose?

5 A. That is exactly the point. 11:11

6 CHAIRMAN: All right. Well, unless there is anything
7 arising out of that, thank you.

8

9 THE WITNESS THEN WITHDREW

10 11:12

11 MS. LEADER: The next witness, sir, is Mr. Andrew
12 McLindon. His statement is at volume 6 of the
13 materials at page 1564.

14

15 MR. ANDREW McLINDON, HAVING BEEN SWORN, WAS DIRECTLY 11:12
16 EXAMINED BY MS. LEADER:

17 194 Q. MS. LEADER: Mr. McLindon, I think you joined the Garda
18 Síochána in September 2013 as a civilian recruit, is
19 that correct?

20 A. That's correct. 11:13

21 195 Q. And you were specifically appointed Director of
22 Communications at that time, is that correct?

23 A. That's correct.

24 196 Q. And if you could outline in brief your career up to
25 that time, please. 11:13

26 A. After college I spent ten years, nearly ten years as a
27 technology and business journalist and editor. I then
28 moved into public PR, worked for one of the biggest PR
29 consultancy firms in the country in the corporate

1 sector advising many major organisations in relation to
2 the public relations. I then went to work for Bus
3 Eireann as the Head of PR and Marketing for five years,
4 and then following that role I took up my role in An
5 Garda Síochána. 11:13

6 197 Q. Had you any previous involvement with An Garda Síochána
7 in an employment context?

8 A. No.

9 198 Q. No. So your involvement with the guards before that
10 would be like anybody else in the country? 11:14

11 A. Yes.

12 199 Q. Am I right about that?

13 A. Yes, yes.

14 200 Q. Did you know the then-Commissioner Callinan prior to
15 your joining the organisation? 11:14

16 A. No, I didn't. But he sat on my final interview board,
17 that is the only time I met him previous to my taking
18 up my role.

19 201 Q. All right. And what about the then-Deputy Commissioner
20 O'Sullivan? 11:14

21 A. No.

22 202 Q. And did you know Superintendent Taylor?

23 A. No, Superintendent Taylor, I met Superintendent Taylor
24 about a week before I was to take up my position, he
25 invited me in to have a chat about the role, I met them 11:14
26 then and obviously on my first day then was the kind of
27 first official meeting with Superintendent Taylor.

28 203 Q. And in September 2013, did you have any awareness of
29 Sergeant McCabe?

1 A. No.

2 204 Q. Right. Now, what did you understand you were meant to
3 be doing as director of communications in the guards?

4 A. My role is to provide strategic communication advice
5 principally to the Commissioner, who is my line 11:15
6 manager, but also to senior officers and senior
7 managers within the organisation in order to enhance
8 and protect the reputation of the organisation.

9 CHAIRMAN: There is one thing that I am not clear
10 about, which is vis-á-vis David Taylor, is he answering 11:15
11 to David Taylor or is he working in the same office?
12 It may be totally different.

13 MS. LEADER: I was going to --

14 CHAIRMAN: I am sorry for jumping in.

15 MS. LEADER: That is all right. 11:15

16 205 Q. So you are communications adviser to the guards, is
17 that correct?

18 A. Effectively, yes.

19 206 Q. And I don't come from a PR background, so I don't know
20 if you could explain that a little bit more for the 11:15
21 benefit of the Tribunal, please.

22 A. Yes. Effectively my role was to provide advice
23 effectively around, if you like, the corporate image of
24 the organisation and then, to answer the Chair's
25 question, the press officer in the reporting structure 11:16
26 would report to me and they would be in charge of, if
27 you like, the day-to-day operation of the Press Office,
28 so they would be dealing with queries in relation to
29 investigations, ongoing operations, matters like that.

1 That was, I suppose, the technical reporting structure.
2 When I joined the organisation there hadn't been a
3 director of communications for a number -- I think it
4 was about 18 months. Superintendent Taylor had been
5 press officer for a number of months previous to that, 11:16
6 so effectively he was kind of taking both roles, and he
7 had established a good working relationship with
8 Commissioner Callinan. So effectively he had a direct
9 reporting line to the Commissioner as well.

10 207 Q. And in relation to the hierarchy, if I can put it that 11:16
11 way, Mr. McLindon, there was the Commissioner obviously
12 in charge of the Guards and then the deputy
13 commissioner?

14 A. Yes.

15 208 Q. And are you on the same level as an assistant 11:17
16 commissioner?

17 A. No, I am on the same level as chief superintendent.
18 But I suppose my role is unusual, in that I do report
19 directly to the Garda Commissioner but that was a
20 recommendation from a report into civilianisation a 11:17
21 number of years ago.

22 209 Q. All right. And Superintendent Taylor then is a rank
23 underneath you, albeit you are a civilian, is that
24 correct?

25 A. That's correct. 11:17

26 210 Q. Okay. Superintendent Taylor's job was to deal with the
27 day-to-day Press Office queries --

28 A. Yes.

29 211 Q. -- as you understand it. Just in relation to the

1 physical layout of offices, were you part of the Press
2 Office?

3 A. Yes. There is one kind of small -- there is a block I
4 suppose, if you like, called the Commissioner's block,
5 and we are at the one end of the Commissioner's block. 11:17
6 My office is beside the press officer's and there is a
7 deputy press officer, but at that time Dave Taylor had
8 the office to himself, so he was in the office adjacent
9 to me, and then, above us, up the stairs, is the Press
10 Office where the Press Office staff work. 11:18

11 212 Q. So you were part of the general Press Office part of
12 Garda Headquarters in Phoenix Park?

13 A. Yes.

14 213 Q. And was the Commissioner's office and the deputy
15 commissioner's office apart from that area? 11:18

16 A. They are in what is called the Commissioner's block but
17 that is -- there's actually divisions between them, so
18 you would have to walk into -- you would have to come
19 out of my office, walk a minute and then go into a
20 separate office even though they are all part of the 11:18
21 same block. So there is a good separation between us.

22 214 Q. Okay. So is it fair to say by reason of physical
23 proximity alone, if nothing else, that you would have,
24 one would expect, a fairly close working relationship
25 with the press officer, who was at that time 11:18
26 Superintendent David Taylor?

27 A. Yes, that wouldn't be unusual. Like, I have an
28 open-door policy and so did Superintendent Taylor, so
29 we would regularly walk into each other's offices to

1 discuss the matters of the day. That is not unusual.
2 I do that with all my other press officers that have
3 been there in that role since Superintendent Taylor.
4 Obviously when you are in the middle of controversial
5 circumstances and issues are breaking on a daily, 11:19
6 sometimes hourly basis, you are in regular contact. So
7 yes, I would have spoken daily to Superintendent
8 Taylor.

9 215 Q. All right. And in relation to your dealings with the
10 then-Commissioner Callinan, would that have been on a 11:19
11 daily basis, a weekly basis?

12 A. No, it would have on a much more irregular basis,
13 Superintendent Taylor was the main conduit to
14 Commissioner Callinan.

15 216 Q. Okay. And how did that happen? 11:19

16 A. Well, it would depend on what was happening on a
17 particular day, but on a more structured basis, what
18 would happen in the Press Office is you receive a lot
19 of queries on, particularly on a Friday afternoon, from
20 Sunday newspapers and in that circumstances 11:20
21 Superintendent Taylor would meet with Commissioner
22 Callinan to go through those queries and to agree a
23 response to those queries and then if something
24 controversial was breaking Superintendent Taylor would
25 usually be speaking to Commissioner Callinan on it and 11:20
26 then I would only have a conversation with Commissioner
27 Callinan if there was a formal meeting.

28 217 Q. Okay. So as I understand it now, the Press Office
29 deals with day-to-day press queries, is that correct?

1 A. That's correct.

2 218 Q. So they could be anything from a breaking investigation
3 or recent high profile arrest or any arrest that are
4 heard of in the media, is that right?

5 A. That's correct, yes. 11:20

6 219 Q. And the press would make queries in relation to same
7 via the Press Office, is that correct?

8 A. That's correct.

9 220 Q. And is that happening on a daily basis?

10 A. That is happening on a daily basis. The Press Office 11:20
11 operates from 7:00 in the morning to 11:00 at night.
12 It's probably the busiest press office in the country
13 in terms of handling level of queries and putting out
14 press releases.

15 221 Q. And those routine queries are dealt with by the Press 11:21
16 Office under the supervision of the superintendent in
17 the Press Office?

18 A. That's correct.

19 222 Q. Do you have any, and did you at the time, have any
20 input into routine queries, if I can put it that way? 11:21

21 A. Not into routine queries, no.

22 223 Q. So you let the Press Office get on with their job in
23 dealing with day-to-day queries?

24 A. Yes.

25 224 Q. We then have the Friday queries, if I can categorise 11:21
26 them that way, coming from Sunday newspapers, is that
27 correct?

28 A. That's correct.

29 225 Q. And when you joined the Press Office, when

1 Superintendent Taylor was superintendent, he dealt with
2 those on his own with Commissioner Callinan, is that
3 correct?

4 A. Yes, that's correct.

5 226 Q. And did you understand that to be different from the 11:21
6 formal reporting procedure?

7 A. No, that was -- as far as I was concerned that was
8 established practice, and it seemed to work well in
9 terms of being an efficient and effective way of
10 handling those kind of media queries. Most of those 11:22
11 kind of queries are not of an operational nature, they
12 tend to be around the organisation, so I felt it was
13 fine for that to be done. My main issue was to make
14 sure that we had the Commissioner's position on those
15 queries by the deadline for the Sunday newspapers so 11:22
16 that we would have our side of the story in those
17 articles.

18 227 Q. Okay. And you were happy that was a system that
19 worked?

20 A. I was, yes. 11:22

21 228 Q. It was an efficient system?

22 A. Yes.

23 229 Q. Do you have an input into those type of queries at this
24 time under the present press officer?

25 A. Yes, I would, yes. 11:22

26 230 Q. Yes. Do you deal with them yourself?

27 A. I generally deal with most of them myself now, yes.

28 231 Q. And do you consult with the current Commissioner in
29 relation to those kind of queries?

1 A. Yes.

2 232 Q. So the current superintendent of the Press Office
3 defers to you and the Commissioner without his
4 particular involvement, do I understand the situation
5 correctly? 11:23

6 A. Yes. Well, unfortunately there is a vacancy there at
7 the moment, but there is a deputy press officer who is
8 an inspector, but yes, I would deal with all the
9 corporate matters for the organisation now.

10 233 Q. Okay. And when did that change? 11:23

11 A. That changed when Nóirín O'Sullivan became interim
12 Commissioner.

13 234 Q. Okay. And that was in March 2014 --

14 A. That's correct.

15 235 Q. -- is that correct? Now, in relation to other matters, 11:23
16 what other matters do you deal with that have media
17 sensitivity?

18 A. Well, any kind of controversial issues that the
19 organisation is facing, which has been a number of -- a
20 fair number over the last number of years. I would 11:23
21 generally be the main person who would be dealing with
22 those from a public relations point of view.

23 236 Q. In conjunction with the Commissioner, is it?

24 A. In conjunction with the Commissioner or assistant
25 commissioner or deputy commissioner, depending on what 11:24
26 the particular issue was.

27 237 Q. All right. And do you attend a monthly meetings in the
28 Commissioner's office, of the management team?

29 A. Yes, I am a member of the senior management team so I

1 attend all the senior management team meetings and we
2 meet twice a month.

3 238 Q. And that has been the case since you joined the
4 organisation in 2013?

5 A. Yes. 11:24

6 239 Q. All right. And the press officer, I understand,
7 doesn't attend those management meetings?

8 A. No.

9 240 Q. Is that correct?

10 A. That's correct. 11:24

11 241 Q. And that was no different when Superintendent Taylor
12 was in situ in the Press Office?

13 A. Yes, that's correct.

14 242 Q. Now, in relation to you starting off in your role in
15 2013, did you receive any particular guidance from 11:24
16 anybody, insofar as you hadn't worked in the guards
17 before?

18 A. Well, before I started I met with Superintendent Taylor
19 for kind of a briefing meeting, he provided me with
20 kind of a briefing pack that was -- that showed kind of 11:25
21 the speeches that would have been provided to the
22 Commissioner, press releases that would have gone out,
23 they would have had, as far as I can recall, the Garda
24 Code, the Data Protection Act and general information
25 in relation to the organisation. So that was very 11:25
26 beneficial. And then Superintendent Taylor would have
27 assisted me in terms of informing about how the
28 hierarchy works, how you even address, you know,
29 certain senior officers or officers who are more senior

1 to you. And then, you also have to learn yourself in
2 relation to the culture of the organisation and how it
3 works and the different units within the organisation.

4 243 Q. All right. And I think there is a specific chapter of
5 the Garda Code dealing with Press Office matters, is 11:25
6 that correct?

7 A. That's correct.

8 244 Q. I think it might be Chapter 17 or --

9 A. That is my memory, yes, but I might be wrong on that.

10 245 Q. Yes. Now, you say in your statement that within a 11:26
11 short period of you joining the organisation it became
12 apparent to you that Superintendent Taylor and
13 Commissioner Callinan enjoyed a close working
14 relationship?

15 A. Yes, that's correct. 11:26

16 246 Q. And I wonder could you expand on that a little bit,
17 please.

18 A. Well, I suppose because they had been working together
19 and Superintendent Taylor had effectively been running
20 all press operations for a number -- I can't recall the 11:26
21 length of time, but certainly it appeared to me that he
22 had been having close contact with Commissioner
23 Callinan. I think they had gone through a number of
24 kind of controversial issues together, so that kind of
25 forms a bond. And then in general I felt as well that 11:26
26 Commissioner Callinan, just the culture or nature of
27 the organisation was more lent to listening to advice
28 from members of the organisation rather than civilians.

29 247 Q. Okay. Was that something that caused a difficulty

1 between yourself and Commissioner Callinan?

2 A. No, it was never, as far as -- there was never anything
3 in terms of, he was never rude or dismissive or
4 anything like that or unprofessional to me, and I would
5 hope not vice versa either. I just took that as the 11:27
6 culture of the organisation, and that was something
7 that I had to work with and work around, if I could.

8 248 Q. Okay. And did that differ insofar as Deputy
9 Commissioner O'Sullivan's attitude to civilians and
10 advice from outside, or can you help me on that? 11:27

11 A. Yeah, I think in general, I think it would be fair to
12 say that Commissioner O'Sullivan was more readily --
13 would more readily listen to advice from civilian
14 members of An Garda Síochána and also external advice.

15 249 Q. Okay. And your work practices changed when she became 11:27
16 Acting Commissioner, is that correct?

17 A. That's correct, yes.

18 250 Q. And the change, one of the changes, how it manifested
19 itself was the Friday meetings, is that correct?

20 A. Well, I wouldn't have had Friday meetings necessarily 11:28
21 with Commissioner O'Sullivan, but I would have had
22 regular, again particularly in controversial
23 circumstances I would have had daily contact with
24 Commissioner O'Sullivan, and then if we needed to meet
25 we would meet, it wouldn't have been as kind of 11:28
26 scheduled as every Friday, but if issues were breaking
27 we would sit down or talk or we would be talking on the
28 phone.

29 251 Q. All right. Now, I think a few months after you joined

1 the organisation one of the high-profile matters you
2 had to deal with was the Public Accounts Committee and
3 the fixed charge penalty notice matters?

4 A. Yes. That was a significant matter of public interest
5 and a significant controversy that the organisation was 11:28
6 facing.

7 252 Q. How did you familiarise yourself with that issue?

8 A. Well, I tried to read as much of the press coverage as
9 I could in advance and obviously I read the O'Mahony
10 report as well. So that is how I did that. 11:29

11 253 Q. And did you have any meetings with Assistant
12 Commissioner O'Mahony in relation to the matter?

13 A. No, not directly. The only meetings I attended in
14 relation to that were the pre PAC formal meetings where
15 there was a number of senior officers in attendance. 11:29

16 254 Q. All right. And going up to the Public Accounts
17 Committee meeting, was that what you did on a daily
18 basis, prepare for that and help the Commissioner deal
19 with the matter?

20 A. Yes, my role in relation to preparing for the PAC 11:29
21 meeting was to draft the opening submission for the
22 Commissioner, his opening address, and then also to
23 prepare for any particular questions that I think may
24 be asked based on media coverage by the members of the
25 PAC to the Commissioner and the members of the team 11:29
26 attending.

27 255 Q. All right. So you've mentioned in your statement that
28 you met with the assistant commissioner of traffic on
29 the 11th December 2013?

1 A. Yes.

2 256 Q. Is that correct?

3 A. That's correct.

4 257 Q. And at that stage you'd read the O'Mahony report and
5 you'd followed up on the media coverage of the matter, 11:30
6 is that correct?

7 A. Yes. That was kind of a technical meeting in terms of
8 actually -- because I was familiarising myself with the
9 how the penalty points system actually worked.

10 258 Q. All right. Did you know at that time who the 11:30
11 whistleblowers were?

12 A. Not to the best of my recollection at that time, no.

13 259 Q. When do you think you found out that Sergeant McCabe
14 was one of the whistleblowers?

15 A. I think that was in early January as we came into -- 11:30
16 started to come into the pre PAC meetings, that name
17 was circulating.

18 260 Q. All right. And did you speak to Superintendent Taylor
19 about Sergeant McCabe at that stage or Commissioner
20 Callinan? 11:31

21 A. No, not in relation to Sergeant McCabe, on a personal
22 basis.

23 261 Q. All right. Now, prior to going into the meetings in
24 preparation to the Public Accounts Committee, I think
25 you had reason to accompany Commissioner Callinan to 11:31
26 RTÉ prior to Christmas, is that correct?

27 A. That's correct, yes. He was doing a kind of --
28 annually we do an interview with the Commissioner, the
29 Commissioner does an interview with Crimecall to

1 basically give a public safety message and to thank the
2 public for their support during year and to thank the
3 Garda members for their work.

4 262 Q. And it's more I suppose, not to put it down in any way,
5 but it's more a publicity thing for the organisation 11:31
6 and to encourage people to cooperate with the guards
7 and so forth, is that correct? Is that the idea of
8 that?

9 A. Yeah, that is effectively the idea, yes.

10 263 Q. And did a controversy or a disagreement arise as to 11:32
11 what should be covered in that programme?

12 A. It did. Generally what happens is that there is a
13 production meeting of the morning of the programme. I
14 attended it that time because the Commissioner was
15 going on. I wouldn't attend them on a monthly basis 11:32
16 but I felt, just to be sure, it was my first time, the
17 Commissioner doing a Crimecall interview so I wanted to
18 make sure it went well, so I attended the production
19 meeting. At that production meeting the presenters --
20 there's generally an agreed area of topics that is 11:32

21 going to be covered within the two- to three-minute
22 interview and the presenters brought forward a proposal
23 that Commissioner Callinan should be asked about
24 matters raised at the Smithwick Tribunal or following
25 the Smithwick Tribunal's final report. I had an issue 11:32
26 with that because I didn't feel it was in fitting with
27 the Crimecall style format of interview, and also the
28 Commissioner had done a press conference for the media
29 in relation to the Smithwick Tribunal report and had

1 dealt with those matters then. And so, I didn't feel
2 that it was appropriate for it to be dealt with in
3 Crimecall.

4 264 Q. All right. I think ultimately the differences were
5 resolved, is that correct? 11:33

6 A. They were, yes.

7 265 Q. Right. And insofar as the Commissioner may have had a
8 conversation with Mr. Boucher-Hayes, were you party to
9 any such conversation?

10 A. No. I recall them having a conversation. Generally 11:33
11 what happens is the Commissioner arrives, he is met by
12 executives from RTÉ, sometimes the Director General,
13 sometimes people of that stature, and talks to the
14 presenters as well and he talks to people who are --
15 Garda members who have appeared on the programme, and 11:33
16 certainly I recall him leaving the green room, walking
17 to the studio and as he was doing so, having a
18 conversation with Mr. Boucher-Hayes, but I wasn't party
19 to that conversation or heard that conversation.

20 266 Q. When you say the green room, is that the room where 11:34
21 people wait before they go on air?

22 A. Yes, it is, yes, yes.

23 267 Q. And do you remember the penalty points ever having been
24 raised by Mr. Boucher-Hayes as a subject that should be
25 dealt with on the programme? 11:34

26 A. I don't. My recollection is that it was, the main
27 issue was the Smithwick issue.

28 268 Q. Okay. The main issue was -- were whistleblowers in any
29 way to be discussed in any way?

1 A. I don't recall that being mentioned, no.

2 269 Q. So then, there were a series of meetings in preparation
3 for the Public Accounts Committee meetings, and I think
4 we have been given the minutes of those meetings, which
5 appears in volume 5, starting at page 1202. It might 11:34
6 be of assistance to you.

7 A. Thank you.

8 270 Q. It's at the very beginning.

9 A. Yes.

10 271 Q. Now, I suppose generally if I can just do an overview. 11:35
11 I think there was a meeting on the 6th January 2014,
12 the 9th January 2014, the 14th January 2014, the 16th
13 January 2014, the 21st January 2014, and the 22nd
14 January 2014.

15 A. Yes, that is my recollection. 11:35

16 272 Q. And it doesn't appear that you were at the meetings on
17 the 6th January 2014 and the 22nd January 2014, do you
18 think that could be correct or --

19 A. That is my recollection, that I think there was an
20 oversight in the Commissioner's office and I wasn't 11:35
21 invited to the 6th January meeting. The 22nd January
22 meeting I am not too sure why I wasn't invited to
23 attend that.

24 273 Q. But do you think you were at it or not?

25 A. I don't have -- from my recollection, I don't have any 11:36
26 notes of attending that meeting.

27 274 Q. All right. Okay. Now, in relation to the other
28 attendees at those meetings, I think the Commissioner
29 always attended, is that correct, Commissioner

1 Callinan?

2 A. That's correct.

3 275 Q. And Deputy Commissioner O'Sullivan attended at all of
4 them as well, it would appear?

5 A. The ones that I attended, yes. 11:36

6 276 Q. Yes. And thereafter, it would appear Assistant
7 Commissioner O'Mahony attended at a good few of those
8 meetings?

9 A. Yes.

10 277 Q. As one would expect, he had prepared the report? 11:36

11 A. Yes.

12 278 Q. And then there were various other people who attended,
13 including Mr. Ruane, the Head of Legal Affairs, and
14 Detective Chief Superintendent Clavin, was he involved
15 in traffic or something of that nature at the time? 11:36

16 A. My recollection is that he was the head of the Garda
17 Professional Standards Unit.

18 279 Q. Yes.

19 A. Yes.

20 280 Q. And Deputy Commissioner Twomey had an involvement in 11:37
21 matters at that stage as well, and the assistant to the
22 Commissioner?

23 A. Yes.

24 281 Q. And I think Chief Superintendent Healy also attended at
25 some of those meetings? 11:37

26 A. He did as kind of Head of Policing Law and Policy.

27 282 Q. Now, it doesn't appear that Superintendent Taylor, from
28 those notes, attended at any of the meetings, is that
29 your recollection of matters, or could he have attended

1 at some of the meetings?

2 A. I thought he had attended at least one, but I'll accept
3 the --

4 283 Q. They may not be accurate?

5 A. They may not be, but I couldn't be certain either way 11:37
6 to be honest with you.

7 284 Q. Yes. You think he attended at one, at least?

8 A. I thought he had, yes.

9 285 Q. Yes.

10 A. But I may be -- my memory mightn't be correct on that. 11:37

11 286 Q. All right. Now, so I think you have said in your
12 evidence already that your job for the Public Accounts
13 Committee was to prepare Commissioner Callinan's
14 address to the Committee, is that correct?

15 A. That's correct. 11:38

16 287 Q. And also to point to particular areas that might be
17 asked of him in the Public Accounts Committee?

18 A. Yes, that's correct.

19 288 Q. And I think you prepared a draft of potential questions
20 from the Public Accounts Committee re the fixed charge 11:38
21 penalty notices, is that right?

22 A. That's correct.

23 289 Q. And if you could turn to page 1286 of the materials
24 which is in that volume, are they the questions that
25 you prepared for Commissioner Callinan? 11:38

26 A. They are.

27 290 Q. Yes. They are Commissioner Callinan's set of
28 questions, with his notes written beside them.

29 A. Okay.

1 291 Q. Now, first of all, there is a list of potential
2 questions in relation to the fixed charge penalty
3 notice itself, isn't that right?
4 A. That's correct.

5 292 Q. As one would expect. And then you ask a number of 11:39
6 questions directed at whistleblowers, those being:
7
8 "Does An Garda Síochána have sufficient protection for
9 whistleblowers?
10 what is your reaction to allegations of intimidation of 11:39
11 the whistleblowers by senior management?"
12
13 Questions involving had these matters been
14 investigated. And then down the page you have:
15 11:39
16 "What is the Commissioner's view of the character,
17 integrity of the whistleblowers?"
18 A. Yes, that's correct.

19 293 Q. Yes. They are your questions?
20 A. Yes. I felt that the whistleblowers and our attitude, 11:39
21 or the organisation's attitude to whistleblowers would
22 be one of the several of potential questions that could
23 be asked of the Commissioner at the PAC.

24 294 Q. And also his view of the whistleblowers themselves?
25 A. Yes. 11:40

26 295 Q. Yes. Did anybody prompt you to include those questions
27 or was that from your studying of media coverage of the
28 matters to date?
29 A. That was my -- from my study of media matters.

1 296 Q. All right. To date. Now, while the notes of the
2 preparation meetings for the most part deal with the
3 fixed charge penalty notice system, as one would
4 expect, the system itself, any weaknesses in it,
5 statistics around the system, it would appear that 11:40
6 Sergeant McCabe was dealt with in some way during the
7 preparation for the Committee meeting. Do you think
8 you drafted those questions before all of the meetings
9 or was it as a result of the meetings?

10 A. My recollection is that I drafted those questions 11:40
11 for -- in early January and provided them to Deputy
12 Commissioner O'Sullivan and then Assistant Commissioner
13 Twomey as part of my initial thoughts. So my
14 recollection is that before the meetings I had drafted
15 these kind of questions already. 11:41

16 297 Q. All right. So if we just turn to some notes of the 9th
17 January --
18 CHAIRMAN: Ms. Leader, this particular draft on 1286,
19 that, although it went, I suppose, to get feedback from
20 Deputy Commissioner O'Sullivan and Assistant 11:41
21 Commissioner Twomey, it did eventually get to
22 Commissioner Callinan, I am presuming that?

23 298 Q. MS. LEADER: well, my understanding was, you drafted it
24 for Commissioner Callinan, is that correct?

25 A. Yes, I would have provided -- presented this to the 11:41
26 meetings, to the pre PAC meetings so as we went through
27 the meetings and went through the issues that we could
28 take into account these questions may arise.

29 299 Q. And you are happy Commissioner Callinan got it?

1 A. Yes.

2 300 Q. And if you would just turn to page 1286, is that
3 Commissioner Callinan's writing?

4 A. I don't know, to be honest with you.

5 301 Q. You don't know. Well, maybe we could solve it this 11:42
6 way. 1285, it would appear that those notes as
7 supplied to us were handwritten notes believed to be of
8 former Commissioner Callinan?

9 A. Okay. I wasn't familiar with the Commissioner's
10 handwriting. 11:42

11 302 Q. Yes. All right. So if we could just -- I want to take
12 you to the references to Sergeant McCabe in the pre PAC
13 meetings, and the first one as far as I can see appears
14 on 9th January meeting and you were present at that
15 meeting, isn't that right? 11:42

16 A. That's correct.

17 303 Q. And at that meeting, if we could just go to
18 Superintendent McPartlin's notes at 1220, you see there
19 "ST". Is that Sunday Times, do you think?

20 A. Yes, I would -- I believe it is, because I think that 11:43
21 should read rather than "Justice McCarthy", it should
22 read Justine McCarthy.

23 304 Q. Yes. And "Article ST"?

24 A. Yes.

25 305 Q. And underneath it you see: 11:43
26
27 "McCabe, Mick O'Sullivan's investigation, informed Mick
28 O'Sullivan he had handed them over."
29

1 Now you must have understood at that stage that
2 Sergeant McCabe was the whistleblower, am I correct in
3 saying that?
4 A. Yes.
5 306 Q. When do you think that information was first given to 11:44
6 you?
7 A. I would say it was just either at that meeting or just
8 before that meeting.
9 307 Q. Okay. And then you see:
10
11 "Letter of 24/12/2013 to PAC, okay." 11:44
12
13 And that related to alleged data breaches, you are
14 familiar with that letter, are you, to the --
15 A. I am not familiar with the contents of it but I am 11:44
16 familiar with the issue that Commissioner Callinan had
17 in relation to data breaches and potential, his -- as
18 data controller.
19 308 Q. Right. Okay. And they were certainly discussed at the
20 meeting, it would appear from that note? 11:44
21 A. Yes, it would, yes.
22 309 Q. All right. Now, if you could just turn over the
23 page --
24 CHAIRMAN: Sorry, Ms. Leader, would you mind going back
25 please to 1220? There is probably a handwritten 11:45
26 version of that some place.
27 MS. LEADER: Yes.
28 CHAIRMAN: But how do we know that it is anything to do
29 with Maurice McCabe? Is it because of the reference to

1 Justine McCarthy and The Sunday Times, is it?
2 MS. LEADER: It immediately underneath it, it looks
3 like --
4 CHAIRMAN: Oh, yeah, "McCabe, Mick O'Sullivan
5 investigation", so it has to be that McCabe. 11:45

6 310 Q. MS. LEADER: Do you understand that to be the case?
7 A. Based on that note, I understand that to be the case,
8 yes.

9 311 Q. And I think Mick O'Sullivan, was he an assistant
10 commissioner in the guards, Michael O'Sullivan? 11:45
11 A. I think at the time he was a chief superintendent.

12 312 Q. And I think he may have conducted some sort of review
13 of the penalty points or traffic system?
14 A. That is my understanding, yes.

15 313 Q. Is that correct? 11:45
16 A. Yes, that is my understanding.

17 314 Q. And the letter of the 24/12/2013 to PAC related to
18 alleged data breaches in relation to the matter, and
19 that related to Sergeant McCabe providing information
20 to the Public Accounts Committee, is that correct? 11:46
21 A. Yes.

22 315 Q. All right. And if we just turn over the page then to
23 1221. If we just go to:
24
25 "No interview by JOM." 11:46
26
27 You see that?
28 A. Yes, I see that.

29 316 Q. Yes.

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"AD docs, unsigned, anonymous, examined on that basis.
Because of nature was suspicious of who it was."

And then there is a reference to another whistleblower. 11:46
And then there is "MMCC", do you understand that to
relate to Sergeant McCabe?

A. The "MMCC", I would imagine so, yes.

317 Q. And then it says:

"Commissioner instructed both 14/12/ and 28/12." 11:46

was that in relation to cooperation or do you know what
that reference is to?

A. I would say it does because that was a concern of 11:47
Commissioner Callinan's, that he felt that the two
individuals had been instructed to comply with the
O'Mahony investigation and that they had not. That was
Commissioner Callinan's view.

318 Q. And was that your understanding of where matters were 11:47
at that stage?

A. That, as far as I was concerned, that was the
Commissioner's view and therefore it was the
organisational -- organisation's view.

319 Q. Okay. And it was something that was discussed in 11:47
preparation for the Public Accounts Committee meetings?

A. Yes.

320 Q. And then you see:

1 "McCabe went sick at Christmas. Paddy McMenamin."
2
3 Paddy McMenamin I think was a superintendent or chief
4 superintendent who was in charge of Sergeant McCabe at
5 that time in Mullingar, is that right? 11:47
6 A. Yes.
7 321 Q. Okay. So certainly there was discussion about Sergeant
8 McCabe and, as the Commissioner then saw it, his
9 non-cooperation with Assistant Commissioner O'Mahony?
10 A. Yes. 11:48
11 322 Q. All right. And that was how that matter was to be
12 dealt with in the Public Accounts Committee hearing, is
13 that correct?
14 A. Yes.
15 323 Q. Was that your understanding of it? 11:48
16 A. Yes, without reference to individuals.
17 324 Q. Without reference to named individuals?
18 A. Named individuals, yes.
19 325 Q. All right. And then if we look at Assistant
20 Commissioner Nolan's notes of that meeting of the 9th 11:48
21 January, they start at page 1244. If you scroll down
22 to the next page, there is a handwritten page, which if
23 we turn to the next page because it's slightly
24 difficult to read that.
25 A. Yes. 11:49
26 326 Q. Maybe on the 9th -- on 1245, and the 9/1/2014, it would
27 appear that he has listed a number of issues that were
28 dealt with at that meeting and he also, included in
29 that list are the name of a whistleblower and then

1 "Sergeant McCabe issues". If we just scroll down a
2 little bit. Sorry, that is 1245, I think, sorry,
3 Mr. Kavanagh.

4 CHAIRMAN: Does it say "Wilson McCabe issues"?
5 MS. LEADER: Yes, "Wilson McCabe issues", yes, is dealt 11:49
6 with. There is the beginning of the meeting and we
7 scroll down a little bit we have:
8
9 "Wilson McCabe issues and John O'Mahony's
10 investigation." 11:50

11 A. Yes.

12 327 Q. It would seem again to be consistent with Chief
13 Superintendent McPartlin's investigation.

14 A. Yes.

15 328 Q. Now, on the 14th January, you were -- 11:50
16 CHAIRMAN: Well, is there a reference in that to the
17 bee keeping story? Am I perhaps imagining -- have I
18 got bees on the brain? If one looks at page 1245, just
19 under "1.46 million notices in three years", "bees" or
20 "beekeeper story???" As I understand it, bees very 11:50
21 rarely attack cattle.

22 MS. LEADER: Yes. What it says is "beekeeper story???"

23 CHAIRMAN: I mean, if this is the best -- and they are
24 supposed to be fenced in anyway.

25 A. Yeah, I seem to recall that -- 11:51
26 CHAIRMAN: They can fly, after all.

27 A. Yes. I seem to recall that Jack Nolan didn't think
28 that we should be using that beekeeper story.

29 CHAIRMAN: He didn't think much of it?

1 A. No.

2 329 Q. MS. LEADER: And we see a typed version of those notes
3 at 1245A, they are slightly redacted?
4 CHAIRMAN: The bees are cut out of that, Ms. Leader.
5 MS. LEADER: The bees are cut out. 11:51
6 CHAIRMAN: I don't know why.

7 330 Q. MS. LEADER: That is 1245. Then if we could go, on the
8 14th January, you were at that meeting as well, I
9 think, Mr. McLindon?

10 A. Yes, I think so. 11:51

11 331 Q. And at 1255 of the materials, there is a note by Chief
12 Superintendent Clavin, I think, and it would suggest
13 that, it refers to Sergeant McCabe there. It's
14 slightly difficult to read. But I think there is a
15 typed version of his notes at page 1259 which will come 11:52
16 up on the screen in front of you.

17 A. Yes.

18 332 Q. And you will see there that he has recorded:
19
20 "Commissioner's office, prepare for PAC meeting, find 11:52
21 out when Sergeant Maurice McCabe was informed of
22 Commissioner's direction about data disclosure. Next
23 meeting Thursday morning."

24 A. Yes.

25 333 Q. So that was his job out of the meeting, to nail that 11:52
26 down in relation to --

27 A. Yes.

28 334 Q. -- in relation to data disclosure matters, is that
29 correct?

1 A. That would appear to be the case, yes.

2 335 Q. All right. And then the next meeting of relevance
3 insofar as Sergeant McCabe is concerned, would appear
4 to be the 21st January 2014, and if we just look at
5 assistant commissioner -- your notes, first of all, 11:53
6 which are at page 1282 of the materials.

7 A. Yes.

8 336 Q. That is your handwritten note, is that correct?

9 A. That's correct.

10 337 Q. And you see there you have something about "personal 11:53
11 injuries claim 2009, 2007, 2008 defamation". And then
12 "2006 first incident, sergeant serving".

13 A. Yes.

14 338 Q. What do you think that relates to?

15 A. I can't recall exactly but I -- given the kind of 11:53
16 time-lines we are talking about, I imagine it does
17 reference Sergeant McCabe.

18 339 Q. All right.

19 CHAIRMAN: But in what context?

20 340 Q. MS. LEADER: Yes, that is what I wanted to ask you 11:54
21 about, Mr. McLindon.

22 A. I think the context was, in case we got a question in
23 relation to -- from the PAC members on how the sergeant
24 who brought forward the issues, what was their
25 background, what was their current status within the 11:54
26 organisation. Now, in answering that question I would
27 imagine that we would have had to be very mindful, I
28 would have hoped, of the fact that that was made under
29 a confidential recipient process, that is my

1 understanding, or at least it was under a whistleblower
2 process, so the confidentiality of that would have had
3 to have been respected.

4 341 Q. All right. well, I don't know if I quite understand
5 your answer, Mr. McLindon. You see, it relates to the 11:54
6 whistleblowers, is that correct, that paragraph?

7 A. Yes, that would appear to be the case.

8 342 Q. You are happy with that?

9 A. Yes.

10 343 Q. All right. And do you think it relates to Sergeant 11:55
11 McCabe in particular?

12 A. I don't have a note that it actually refers to Sergeant
13 McCabe by name. So -- but my -- I could say, by
14 looking by the time-lines, I can say that it probably
15 related to Sergeant McCabe but I can't say definitively 11:55
16 that it related to Sergeant McCabe.

17 344 Q. All right. well, if we look at Assistant Commissioner
18 Nolan's note of that meeting, it's the handwritten
19 version is at page 1246 --

20 A. Yes. 11:55

21 345 Q. -- we will see there the first thing that he records,
22 which is funnily enough more or less the first thing
23 you recorded is:
24
25 "Start Sergeant McCabe 2006. Shift of emphasis from 11:55
26 fixed charge penalty notice to whistleblowers."
27
28 And then:
29

1 "where internal system was used, all allegations were
2 investigated."

3

4 The typed copy appears at page 1246A.

5 A. Yes.

11:56

6 346 Q. So are you happy your note refers to Sergeant McCabe
7 having had the benefit of Assistant Commissioner
8 Nolan's note?

9 A. Yes, I am.

10 347 Q. All right.

11:56

11 CHAIRMAN: Ms. Leader, one must be puzzled, I suppose,
12 as to what was supposed to have started in 2006? I
13 mean, I am aware of the chronology, you are aware of
14 the chronology, and the context is really kind of what
15 I'm wondering about.

11:56

16 MS. LEADER: Yes. Yes.

17 348 Q. Now, if we just go on to the second page of Assistant
18 Commissioner Nolan's notes, and I appreciate -- the
19 handwritten page is at 1247.

20 A. Yes.

11:57

21 349 Q. So the first thing we have is the first page with the
22 reference to "Sergeant McCabe 2006" and then at the top
23 of the next page, which is 1247, we have "motivation of
24 whistleblowers"?

25 A. Yes.

11:57

26 350 Q. Do you see that?

27 A. I do.

28 351 Q. And I just find hard to read the handwritten note. So
29 if you could turn to the next page, 1247A of the

1 materials.

2 A. Yes.

3 352 Q. You see underneath that "Sergeant McCabe, 2010" and
4 then "Derek Byrne investigation, four complaints about
5 Bailieboro" and there are three superintendents named 11:57
6 and "confidential recipient x 2."

7 A. Yes.

8 353 Q. So I presume, Mr. McLindon, you were aware that a
9 complaint was made by a daughter of a sergeant, Ms. D,
10 of an alleged sexual assault which she said had been 11:58
11 committed by Sergeant McCabe, and that goes back to
12 2006, you understand -- are you aware of that?

13 A. I am.

14 354 Q. Okay. So do you think your note, and you are free to
15 disagree or agree with me, but the note you have in 11:58
16 relation to the 2006 matter, and it's at page 1282,
17 just bring it up in front of you.

18 A. Yes.

19 355 Q. You see "2006 first incident, sergeant serving"?

20 A. Yes. 11:58

21 356 Q. Do you think it's likely that refers to the D
22 investigation, considering the complaint was made in
23 2006?

24 A. I think it's likely, but I don't recall in those
25 meetings that incident being discussed in that level of 11:59
26 detail.

27 357 Q. All right. well, can you point to anything else in
28 relation to "sergeant serving 2006 first incident"?
29 And you will appreciate you have agreed with me that

1 that refers to Sergeant McCabe, that general note of
2 yours?

3 A. Yes.

4 358 Q. Can you point to anything else that it could be?

5 A. No, that is -- that is why I say the likelihood is high 11:59
6 that is in relation to Sergeant McCabe.

7 359 Q. And in relation to the investigation, the D
8 investigation in 2006?

9 A. It would certainly seem to be likely but, as I said, I
10 don't recall that being discussed in detail at those 11:59
11 meetings.

12 360 Q. Well, I suppose it's one thing to discuss something in
13 detail because you were there to actually discuss the
14 fixed charge penalty notice system, isn't that correct?

15 A. That's correct. 11:59

16 361 Q. And at this particular meeting, the motivation of
17 whistleblowers would seem to have been something on the
18 table and you have seen that from Assistant
19 Commissioner Nolan's notes?

20 A. Yes. 12:00

21 362 Q. And the background of the various whistleblowers, is
22 that right?

23 A. Yes, that's correct, yes.

24 363 Q. So was this something that was discussed, do you think,
25 having had regard to the notes and Assistant 12:00
26 Commissioner's Nolan's notes, in relation to something
27 in the background of Sergeant McCabe?

28 A. Yes, I think that is a fair comment, yes.

29 364 Q. All right. And do you think the investigation file was

1 produced at any time or anything like that?

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

3 365 Q. Okay. So it was definitely something that was opened
4 up, though? Are you happy to say that at this stage?

5 A. I think it's fair to say that that was discussed in 12:00
6 case it became a matter that had to be discussed at the
7 PAC.

8 366 Q. Well, how would it ever become a matter that had to be
9 discussed at PAC?

10 A. Well, you have to look at all the potential questions, 12:00
11 even if they are left field questions that may be asked
12 by the members of PAC, and Oireachtas Committees can go
13 in significantly different directions than the issue in
14 hand, based on what a deputy or a senator wishes to
15 bring to the Commissioner's attention. So in those 12:01
16 meetings part of the process is to examine all
17 potential angles so the Commissioner and the team
18 representing the organisation is well-prepared to
19 answer questions even if they may be slightly left
20 field questions. 12:01

21 367 Q. But everybody was dealing with it on the basis of
22 anonymity at that stage, isn't that correct?

23 A. That's correct.

24 368 Q. All right. And this investigation had been thoroughly
25 investigated by Superintendent Cunningham, who had 12:01
26 recommended no prosecution, isn't that correct?

27 A. That's correct.

28 369 Q. You are aware of that now?

29 A. Yes, I am aware of that.

1 370 Q. And the DPP had directed no prosecution in
2 circumstances where they were of the view that no crime
3 had been committed?
4 A. That's correct.

5 371 Q. So how would it have ever have been something to have 12:01
6 been dealt with at PAC?
7 A. Well, that is a good question, I suppose, I recall
8 looking at it again, I think we looked at all the
9 different issues that may arise but, as I said I think
10 in an earlier answer to one of your questions, we would 12:02
11 have had to bear in mind or certainly those giving
12 evidence at PAC would have had to bear in mind the fact
13 that this was a confidential process and respected the
14 confidentiality. And I think that was done at PAC.

15 372 Q. All right. 12:02
16 A. From my recollection.

17 373 Q. So as far as you were concerned, the discussion of the
18 2006 allegation, it doesn't stick out in your mind, is
19 that correct?
20 A. That's correct, yes. 12:02

21 374 Q. And you regard it as part of proper preparation for the
22 Public Accounts Committee meeting?
23 A. Yes.

24 375 Q. In relation to the fixed charge penalty notice system?
25 A. Yes. 12:02

26 CHAIRMAN: Could I just ask one question, Ms. Leader,
27 arising out of what you have asked just there. Were
28 references to Sergeant McCabe warm, cold or what?
29 A. Chair, I think it would be fair to say that

1 Commissioner Callinan's view on Sergeant McCabe was
2 that Sergeant McCabe effectively hadn't cooperated with
3 the O'Mahony investigation and that was his strong
4 view. I think I reference in my statement that Chief
5 Superintendent Fergus Healy, I can't recall the date of 12:03
6 the meeting, and I don't have a note of the meeting
7 because I wasn't the secretary of the meeting, but he
8 did bring forward a suggestion at one stage that the
9 whistleblowers should be complimented for bringing
10 forward their issues and Nóirín O'Sullivan supported 12:03
11 that and as did I, but Commissioner Callinan had a
12 contrary view to that and I think that was expressed at
13 PAC.

14 CHAIRMAN: But what Ms. Leader is asking you, and I
15 know your answer has been, look, you have to prepare 12:03
16 for everything because left field questions can come,
17 but I still don't understand why anyone is dragging up
18 the 2006 allegation in relation to Sergeant McCabe. I
19 really don't understand that it at all and I wonder can
20 you help me at all in relation to that. 12:04

21 A. I don't -- I am sorry, Chair, all I can say is that all
22 matters were discussed and I can't recall who actually
23 brought up that matter. I just took a note of it.

24 CHAIRMAN: That is fine. But policemen are lawyers
25 just as I am a lawyer, okay, it's a different aspect of 12:04
26 the work but it's still the same thing. There is a
27 thing called the presumption of innocence and, as
28 Ms. Leader put to you, if somebody makes a complaint,
29 if the DPP rules on it, look, there wasn't even a crime

1 committed here, I am mystified as to why this should be
2 on the table at all at a high-level meeting of An Garda
3 Síochána, I really need your help on it.

4 A. Yes, Chair, I fully accept the situation in relation to
5 Sergeant McCabe and the DPP directions and the lack of 12:04
6 evidence in that regard or no evidence in that regard,
7 and I would have fully --

8 CHAIRMAN: It's not a question of no evidence -- said
9 there was no crime, "if what happened occurred it did
10 not amount to a sexual assault or indeed to an assault 12:05
11 at all" I quote.

12 A. Yes, absolutely. Fully accepted, Chair. I'd like to
13 be of assistance but all I can say is I took a note of
14 what was said, and I can't recall who brought the
15 matter up and why the matter was brought up. My role 12:05
16 was to prepare the Commissioner in relation to any
17 potential questions that he may have and to draft his
18 submission to the PAC.

19 376 Q. MS. LEADER: Now, I think in all, you drafted six
20 speeches, one after the other, for Commissioner 12:05
21 Callinan?

22 A. Yes.

23 377 Q. Which was to be his opening statement to the Public
24 Accounts Committee?

25 A. Yes. 12:05

26 378 Q. And he signed off on the sixth one, it was a process
27 that you went through --

28 A. Yes.

29 379 Q. -- between Commissioner Callinan and the attendees at

1 the meetings, is that correct?

2 A. That's correct.

3 380 Q. And you also at some stage prepared the list of
4 possible questions that could be put to Superintendent
5 Callinan so he would be prepared to deal with possible 12:06
6 questions?

7 A. Yes, that's correct.

8 381 Q. And you have referred to, you think it was Chief
9 Superintendent Healy suggesting that whistleblowers
10 should be supported and a public acknowledgment of same 12:06
11 should be made by the Commissioner, isn't that right,
12 at one of the meetings?

13 A. Yes. Well, I suppose Commissioner Callinan would have
14 supported whistleblowers coming forward with
15 information. I think Chief Superintendent Healy wanted 12:06
16 to be more specific in terms of without naming the
17 individuals, giving some thanks to those specific
18 whistleblowers for bringing forward their information
19 and the fact that that had had some positive impact in
20 relation to how we operated the FCPN process. 12:07

21 382 Q. All right. And that was a suggestion to be included in
22 Commissioner Callinan's opening address, is that
23 correct?

24 A. Yes, that's correct.

25 383 Q. But it never made it because Commissioner Callinan 12:07
26 vetoed that idea, is that correct?

27 A. That's correct.

28 384 Q. And had Deputy Commissioner O'Sullivan a view on the
29 matter, can you remember?

1 A. Yes. My recollection is the deputy commissioner would
2 have supported Chief Superintendent Healy's view on the
3 matter.

4 385 Q. Okay. And I think a direction was figured out as to
5 how to deal with the PAC meetings, and you have set 12:07
6 that set at page 1566 of your statement, that the
7 direction on the matter was:
8
9 "-- not to name Sergeant McCabe so as to protect his
10 identity, even after he was named publicly by others, 12:07
11 point out support for whistleblowers in bringing
12 forward issues of concern, and that the O'Mahony report
13 had found no evidence of criminality, and most of the
14 allegations had not been correct as per Commissioner
15 Callinan's evidence." 12:08
16
17 Is that right?

18 A. That's correct.

19 386 Q. Okay. And was that figured out before or after PAC
20 meeting or as a result of it? 12:08
21
22 A. As a result of the meetings. But effectively, the
23 Commissioner, Commissioner Callinan's view was that the
24 O'Mahony report was effectively the bible that we were
25 going to operate from in relation to PAC. So, kind of, 12:08
26 every answer should refer back to the O'Mahony report
27 because the O'Mahony report was the official position
of the organisation.

28 387 Q. Okay. Now, in relation to the D investigation or the D
29 allegations, was that something which, to your

1 knowledge, was spoken about in Garda Headquarters?
2 Obviously we know there was mention of it in that
3 meeting on the 9th January, but I don't know if you
4 could help the Tribunal with regard to it being spoken
5 about other than by that -- 12:09

6 A. I think it was spoke -- yeah.

7 388 Q. And I am particularly asking you in view of your
8 working relationship with Superintendent Taylor,
9 Commissioner Callinan, Deputy Commissioner O'Sullivan.

10 A. It was spoken about in general in Garda HQ, it wasn't 12:09
11 -- I don't recall, apart from the note there of that
12 meeting, of it being discussed in general by those
13 individuals.

14 389 Q. All right. So when you say it was discussed in
15 general, what do you mean by that? 12:09

16 A. Well, there was a general -- there was a general kind
17 of rumour mill within Garda HQ, so it was part that
18 have kind of rumour mill.

19 390 Q. Okay. And is that unspecified people were talking
20 about it? 12:09

21 A. Yes.

22 391 Q. All right. And were the Commissioners -- Assistant
23 Commissioner O'Sullivan and Commissioner Callinan
24 talking about it?

25 A. I don't recall them talking about it, no. 12:09

26 392 Q. Are you sure about that?

27 A. Well, all I can say is I don't recall them talking
28 about it.

29 393 Q. Okay. And what about Superintendent Taylor?

1 A. I don't recall Superintendent Taylor talking about it
2 either.

3 394 Q. Okay. Did you yourself want to figure out what was at
4 the bottom of this, considering you must have known
5 something about it and in view of the high-profile of 12:10
6 the whistleblowers, the PAC at the time, what was going
7 on generally with regard to Garda issues?

8 A. Well, the information that I had, and I took it on face
9 value, was that the matter had been investigated and
10 there was effectively nothing to it. So, as far as I 12:10
11 was concerned, that was it. It was a rumour. But I
12 didn't take any credence of it or take it into account
13 because it was a groundless matter.

14 395 Q. Well, how does that fit in with it coming up at a
15 high-level meeting in preparation for the Public 12:10
16 Accounts Committee meeting? Do you understand, it
17 would seem to be a conflict between your --

18 A. Well, I understand that --

19 396 Q. -- what you are telling the Tribunal.

20 A. Well, I understand that, but again, those are my notes 12:11
21 of the meeting of someone speaking. I didn't raise the
22 issue. All I am doing is taking a note of that being
23 raised at the meeting.

24 397 Q. All right. Well, I suppose on one -- and this is only
25 one view of matters, you did draft a list of questions 12:11
26 for Commissioner Callinan and one of them refers to the
27 integrity of the whistleblowers?

28 A. Yes.

29 398 Q. So you were definitely asking some questions about the

1 whistleblowers at that stage and their integrity?

2 A. Yes.

3 399 Q. To be of assistance to Commissioner Callinan?

4 A. Yes.

5 400 Q. Yes. But did the D matter come into that question at 12:11
6 all?

7 A. Not that -- not that I recall, no. But from my
8 perspective it didn't, because from my perspective
9 there wasn't anything in that so I didn't feel that
10 that was a matter -- and I didn't think it was going to 12:11
11 be discussed at PAC in itself. I couldn't imagine
12 politicians bringing that up in a public forum and the
13 appropriateness of that, and vice versa for the Garda
14 Commissioner to do likewise either would be, I would
15 have thought, highly inappropriate. So I didn't see 12:12
16 that being a matter. But I think in general there is
17 always issues, and this is not personal to any
18 individual whistleblowers, but if you look at
19 whistleblower coverage in general, and not just in this
20 country but in other countries, there is always 12:12
21 potentially negative issues around whistleblowers and
22 question-marks raised against them, whether that is --
23 whether that actually has grounds or not, that can
24 happen in a whistle-blowing process.

25 401 Q. Okay. So if I could just come to the 23rd January. 12:12
26 You were present in the Dáil that day, is that right?

27 A. That's correct. I was sitting in the back row with
28 Superintendent Taylor as the Commissioner gave his
29 evidence.

1 402 Q. And the deputy commissioner was there, Ms. O'Sullivan,
2 and Assistant Commissioner O'Mahony, isn't that right?
3 A. And Assistant Commissioner Twomey, Ken Ruane and
4 Michael Culhane as well, and there may have been
5 others. There was a significant team, and then there 12:13
6 was also, as far as I recall, someone from the
7 Department of Justice as well.

8 403 Q. All right. And if I could just, first of all, deal
9 with the "disgusting" remark made by Commissioner
10 Callinan on that day. Do you remember it being made 12:13
11 during the course of the hearings?

12 A. Yes, I do.

13 404 Q. And what was your reaction to it?
14 A. I was shocked and surprised and concerned.

15 405 Q. And if could you explain to me why that is the case? 12:13
16 A. Well, we had done a lot of preparation, as you have
17 gone through there, we had done a lot of meetings, it
18 was never discussed at the meeting that that kind of
19 approach would be taken to whistleblowers. I also felt
20 that it was a very strong term, very strong language to 12:14
21 use. Now I can understand in terms of the meeting had
22 been going on for quite some time, the Commissioner had
23 been under -- under sustained questioning and pressure,
24 but I certainly I felt, even though I could see where
25 the Commissioner was coming from in relation to his 12:14
26 concerns about information entering into the public
27 domain, I felt that that was too strong a term to use
28 and I felt it was open to misinterpretation or a
29 perception would be created that he was attacking

1 individual whistleblowers and calling them individually
2 disgusting, and I thought that would be a significant
3 issue for him as Commissioner and for the organisation.
4 406 Q. Okay. Well, I suppose, you were there at the time, so
5 do you remember any reaction from the Garda Síochána 12:14
6 team at the meeting?
7 A. Well, no, one of the issues -- now --
8 407 Q. At the meeting itself, I am asking you.
9 A. -- at the meeting itself was that we didn't have a
10 break, and it went on for, I think, I stand to be 12:15
11 corrected on this, five hours continuously. I felt if
12 we had actually had a break that we could have
13 addressed the issue, but there was no break, so you
14 couldn't address the issue in the actual PAC situation.
15 408 Q. All right. Well, I suppose you were there to support 12:15
16 Commissioner Callinan, isn't that correct?
17 A. That's correct, yes.
18 409 Q. Yes. So there are different ways of providing or
19 taking remedial action immediately and one of them
20 might be trying to get his attention and say something 12:15
21 to him, was that considered at all?
22 A. Yes. I suppose that would have been open to me all
23 right, yes, and I could have taken that course of
24 action. I felt from the Commissioner's demeanour that
25 he wouldn't necessarily listen to advice at that stage. 12:15
26 That was my perception at the time.
27 410 Q. And did you think of speaking to an intermediary like
28 Assistant Commissioner O'Mahony and maybe prompt him to
29 say something to Commissioner Callinan?

1 A. I can't recall the line-up. I know Deputy Commissioner
2 O'Sullivan was sitting beside him on one side, I can't
3 recall who was sitting on the other side, but yes, I
4 could have taken that option, but I didn't.

5 411 Q. All right. Deputy Commissioner O'Sullivan has said she 12:16
6 passed a note to Commissioner Callinan?

7 A. Yes.

8 412 Q. Did you see that?

9 A. I saw her writing a note, I saw her passing a note but
10 I couldn't see what was on the note. 12:16

11 413 Q. Okay. But you are happy you saw that happen?

12 A. Yes.

13 414 Q. Okay. Did Commissioner Callinan read it, do you think?

14 A. I can't recall. I think -- sorry, I think he might
15 have taken a quick glance at it and kind of maybe 12:16
16 pushed it slightly to the side and then continued on.

17 415 Q. Okay. And do you know what happened the note?

18 A. No.

19 416 Q. Okay. Did you ever see it?

20 A. No. 12:17

21 417 Q. Did you discuss the matter with Deputy Commissioner
22 O'Sullivan afterwards?

23 A. I did, yes, I would have -- we would have -- I can't
24 remember was it later on that day or the next day, we
25 would have had a conversation where I would have 12:17
26 expressed my concern about "disgusting" I would have
27 also expressed my concern in relation to that to
28 Assistant Commissioner Twomey and Assistant
29 Commissioner O'Mahony in the hope that they could maybe

1 persuade the Commissioner to move off the "disgusting"
2 term.

3 418 Q. All right. Did you discuss the matter with
4 Superintendent Taylor at all?

5 A. Yes, I did, yes, and I think the date is the -- it's 12:17
6 maybe a week after --

7 419 Q. Not immediately?

8 A. -- the PAC. Myself and Superintendent Taylor would
9 have discussed it, yes, immediately after PAC, yes, and
10 we both would have had a concern in relation to 12:17
11 "disgusting", yes.

12 420 Q. And a week afterwards, what happened in relation to it?

13 A. A week afterwards it was obvious that the "disgusting"
14 term was -- there was significant negative media and
15 political commentary in relation to it. It was, I 12:18
16 felt, causing -- undermining the Commissioner's
17 position and undermining the organisation. I felt that
18 it was important for him to move off that "disgusting"
19 term. I discussed it with Superintendent Taylor. He
20 agreed. We felt it was best if we went to Commissioner 12:18
21 Callinan personally, so we arranged to meet him on a
22 Friday. We went and discussed it with him. He was
23 open to the suggestion of doing something about it. So
24 I sent him a proposal later on that day that he would
25 do a radio interview and basically move off the 12:18
26 "disgusting" term and basically I would hope ultimately
27 withdraw it, but certainly move back from it and say
28 that it was too strong a word to use.

29 421 Q. All right. And I think that proposal is attached to

1 your statement, is that right?

2 A. That's correct.

3 422 Q. It appears at tab C to your statement, which is at
4 page -- sorry, it's 1628 it starts at. 1629, sorry,
5 Mr. Kavanagh. 12:19

6 A. Yes.

7 423 Q. So it would appear you sent an email to the
8 Commissioner and Superintendent Taylor --

9 A. Yes.

10 424 Q. -- setting out, you were proposing that there would be 12:20
11 an interview between the Commissioner and Seán O'Rourke
12 to address issues in relation to the fixed charge
13 penalty notices and also to put out a message about the
14 good work An Garda Síochána do every day of the week
15 and all of the members of An Garda Síochána? 12:20

16 A. Yes. I felt that the, kind of, the "disgusting" issue
17 had taken away from that and I felt there was a need to
18 bring that back into context and demonstrate that there
19 is a lot more going on in the organisation than just
20 that one issue. 12:20

21 425 Q. All right. And then, at the same time, that a press
22 release be sent to the national media announcing
23 various initiatives in relation to the fixed charge
24 penalty notice process?

25 A. Yes. I felt that by being more open and transparent 12:20
26 around how we handled the FCPN process that that would
27 gradually build trust among the public and politicians
28 that we had made the required changes needed to the
29 FCPN process.

1 426 Q. All right. Did you discuss the matter with the
2 Commissioner?
3 A. Yes. We sat down and we met with him and we discussed
4 it for approximately, I would say, 30 to 45 minutes.
5 427 Q. And what came of that? 12:21
6 A. The Commissioner said he would consider it and so I
7 said I will send you a proposal in writing, which I
8 sent at -- later on that day. He said he would
9 consider it over the weekend. He rang me on the Monday
10 morning at approximately 9:00am to say that he had 12:21
11 considered it but he wasn't prepared to change his
12 position at this time.
13 428 Q. All right. Did you leave the matter rest there?
14 A. I did, yes.
15 429 Q. You had done your bit. In relation to the day of the 12:21
16 PAC meeting, 23rd January, no doubt you are aware of
17 the evidence that Deputy McGuinness has given to the
18 Tribunal?
19 A. Yes.
20 430 Q. Did you hear anything of that conversation? 12:22
21 A. No, my -- I was aware that they had a conversation
22 because that's kind of the standard practice that the
23 Chair of the PAC or Chair of Justice -- or an
24 Oireachtas Committee would come down and speak to the
25 Commissioner. 12:22
26 431 Q. Yes.
27 A. But my focus at the end of such occasions is actually
28 speaking to the media, to get kind of their perception
29 or their view of how it went, what particular issues

1 they were going to focus in on and whether they had any
2 questions that needed clarifying.

3 432 Q. Okay. So you didn't hear any comments made by
4 Commissioner Callinan --

5 A. No. 12:22

6 433 Q. -- to Deputy McGuinness?

7 A. No.

8 434 Q. Did Superintendent Taylor tell you about any of them?

9 A. No.

10 435 Q. All right. Okay. And in relation to Mr. McCarthy's 12:22
11 evidence this morning and Mr. Deasy's evidence as well
12 on Monday, were you aware of any of those comments
13 allegedly made by -- because they are disputed by
14 Commissioner Callinan -- to those people, prior to the
15 Disclosures Tribunal being set up? 12:23

16 A. No, I wasn't party to those or privy to those
17 conversations.

18 436 Q. Okay. Had you heard anything about them?

19 A. No.

20 437 Q. Okay. Now, if we can go to the next day, the 24th 12:23
21 January, the Commissioner had an engagement in Dundalk
22 that day.

23 A. That's correct.

24 438 Q. And you were there as well, is that correct?

25 A. That's correct. It would be standard practice that the 12:23
26 director of communications and generally the press
27 officer would attend with the Commissioner when he is
28 doing major media briefings or interviews.

29 439 Q. All right. And I think at some stage Commissioner

1 Callinan spoke about Deputy McGuinness, is that
2 correct?

3 A. That's correct. There was -- we were preparing for the
4 media briefing in the superintendent's office and
5 Commissioner Callinan, I can't remember did he get a 12:24
6 phone call or did he make a phone call, but following
7 from the end of the phone call he said that he had an
8 offer from Deputy McGuinness or there was an
9 opportunity meet Deputy McGuinness as the Chair of PAC
10 to discuss whether Sergeant McCabe would appear at PAC 12:24
11 or not.

12 440 Q. Okay. And what was your reaction to this?

13 A. Well, the Commissioner kind of basically opened it up
14 to the room and said what do you think? My view at the
15 time was that the organisation's view was that Sergeant 12:24
16 McCabe shouldn't be appearing at PAC because it may
17 undermine the Commissioner's ability to oversee a
18 hierarchical command and control organisation and then
19 there was also concerns over data protection issues as
20 well. So, taking on board the organisation's view I 12:24
21 felt that if there was an opportunity to meet the Chair
22 of the PAC, to have a discussion with him on that
23 basis, that it was worthwhile doing even if it was a
24 bit of a last chance saloon scenario but it was worth
25 trying. My concern was that given the sensitive nature 12:25
26 of the media briefing and then also events -- an event
27 later on that night, my concern was primarily that the
28 Commissioner did -- that there was time to do the media
29 briefing and then get him back in time for that event

1 later on this evening. Because if he'd have missed or
2 been late to that event in particular it would have had
3 significant reputational damage to the Commissioner.

4 441 Q. All right. Where did you understand that meeting was
5 to happen, the meeting with Deputy McGuinness? 12:25

6 A. Somewhere in a hotel in Dublin. I don't think the
7 actual location was mentioned at that meeting.

8 442 Q. And did anybody at any time think it would be an idea
9 for somebody to accompany the Commissioner at that
10 meeting -- to that meeting? 12:26

11 A. No.

12 443 Q. All right. Were you -- I know you hadn't been working
13 with the guards for that long, but had you come across
14 a situation before where a meeting was arranged at very
15 short notice between the Commissioner and the Chairman 12:26
16 of PAC, which was at that time considering the fixed
17 charge penalty notices, without any minutes being kept
18 or anything of that nature?

19 A. No.

20 444 Q. And do you think in retrospect it was a terribly good 12:26
21 idea for the Commissioner to go to that meeting?

22 A. Not on the basis that it was going to be -- I wasn't
23 aware it was going to be held, for instance, in a car
24 park or anything else like that. I think it would have
25 been of benefit to all parties if there had have been 12:26
26 secretaries from both sides at such a meeting.

27 445 Q. All right. But you stand over that it was a good idea
28 for the Commissioner to discuss the matter with Deputy
29 McGuinness in relation to --

1 A. On the basis that it was in relation to the appearance
2 of Sergeant McCabe at PAC in terms of the concern that
3 the Commissioner had in relation to being able to
4 control a command and control organisation and the
5 potential for sensitive data to be provided to an 12:27
6 Oireachtas Committee and that potentially to be in
7 breach of data protection.

8 446 Q. And were you aware that the Commissioner had been
9 thinking about writing to the Committee with regard to
10 setting up an alternative way for Sergeant McCabe to 12:27
11 deal with the fixed charge penalty notice matters
12 otherwise than by way of appearing before the
13 Committee?

14 A. I was aware of correspondence between the Commissioner
15 and the Committee in terms of Sergeant McCabe 12:27
16 appearing, but I wasn't aware of the detail of that
17 correspondence.

18 447 Q. Yes. All right. And were you aware that it had been
19 proposed that he send further correspondence in
20 relation to nominating a chief superintendent to deal 12:28
21 with the matter?

22 A. I don't recall being aware of that.

23 448 Q. Okay. Was it something that had been brought to your
24 attention by Superintendent Taylor or Commissioner
25 Callinan at all? 12:28

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

27 449 Q. Okay.

28 CHAIRMAN: Ms. Leader, I wonder could we leave it until
29 half past one.

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THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2

3 450 Q. MS. LEADER: If I can just take you back to the 24th
4 January 2014, you said Commissioner Callinan put it out
5 to the room about meeting Deputy McGuinness, is that 13:33
6 right?

7 A. That's correct.

8 451 Q. And as far as you know, there had been some telephone
9 communication between Deputy McGuinness and
10 Commissioner Callinan just prior to that, is that 13:33
11 right?

12 A. That's correct.

13 452 Q. And you're not sure who initiated the telephone
14 contact?

15 A. No. 13:33

16 453 Q. Had there been any discussion between the Commissioner
17 and yourself or maybe between you and
18 Superintendent Taylor prior to the 24th about meeting
19 Deputy McGuinness or meeting Sergeant McCabe, as
20 suggested, do you remember Deputy McGuinness suggested 13:33
21 meeting with an employee who had a difficulty?

22 A. No, I don't recall that being a matter of conversation
23 between us.

24 454 Q. When you say you don't recall it, is it possible that
25 you did have some sort of conversation along those 13:34
26 lines?

27 A. It's possible when we were in Dundalk it may have been
28 mentioned that there is a potential for that, depending
29 on phone calls, but I can't recall exactly.

1 455 Q. All right. And when it was put out to the room in
2 Dundalk about whether the Commissioner should meet with
3 Deputy McGuinness, who was in the room?
4 A. Myself, Superintendent Taylor, there were other
5 officers there, but I'm not a hundred percent on who 13:34
6 they may be.
7 456 Q. All right. Well, Superintendent Taylor in his
8 interview, it's at page 140 of the materials, and it
9 would appear that Assistant Commissioner Kenny was
10 there at the time, does that sound right to you? 13:34
11 A. That does, yes.
12 457 Q. He names you. Detective Superintendent Clyne, does
13 that sound right?
14 A. Yes, that is potentially right, yes.
15 458 Q. I think he was involved in the particular investigation 13:35
16 that was under consideration?
17 A. Particular investigation, yes.
18 459 Q. And what about Superintendent Gerry Curley?
19 A. That sounds right, yes.
20 460 Q. Can you think of anybody else who may have been there? 13:35
21 A. No.
22 461 Q. Was it ever suggested that the matter should be
23 considered by the deputy commissioner prior to a
24 decision being taken?
25 A. I don't remember the deputy commissioner coming up in 13:35
26 conversation at all.
27 462 Q. And what did you understand from the Commissioner at
28 that time the purpose of the meeting with Deputy
29 McGuinness?

1 A. I suppose the purpose of the meeting was to try and
2 persuade the chair of PAC not to call Sergeant McCabe
3 because of the concerns that the Commissioner had, that
4 it would undermine his ability to lead a hierarchical
5 command and control organisation if Garda members could 13:36
6 be invited in, without his knowledge and permission,
7 into an Oireachtas committee, and also the concern that
8 sensitive information in relation to individuals might
9 be provided by a public means via the PAC.

10 463 Q. Okay. So you think the primary purpose was to try and 13:36
11 persuade Deputy McGuinness not to call Sergeant McCabe
12 as a witness to PAC?

13 A. Yes. Or, failing that, to find a mechanism so that it
14 wouldn't be held in public.

15 464 Q. And was that discussed at all between the members in 13:36
16 the room when the Commissioner said, should I meet
17 Deputy McGuinness?

18 A. I think the discussion -- well, it wasn't really -- it
19 was a very short discussion, from my memory. It was
20 kind of more, whether I should meet -- whether 13:36
21 Commissioner Callinan should meet Deputy McGuinness
22 there and then, within the -- in the immediate, within
23 the next hour or two. I don't think there was really
24 that level of discussion in terms of the nature of the
25 meeting or the appropriateness of the meeting. That 13:37
26 wasn't really discussed, as far as I can recall.

27 465 Q. When the Commissioner came back from the meeting, was
28 there a further discussion as to what had transpired,
29 keeping in mind that he'd already discussed the meeting

1 prior to it happening?

2 A. No, the last time that I saw -- the time that I saw the
3 Commissioner next was just before that significant
4 event that he had to attend. We didn't have a
5 conversation in relation to it. He went -- I was 13:37
6 standing outside the venue, he went -- I could see him
7 and he went past me, and we might have nodded to each
8 other, but I didn't have a conversation with him in
9 relation to it or the outcome of it, then or
10 afterwards. 13:37

11 466 Q. Were you not a bit curious as to what had transpired,
12 keeping in mind how high profile the Public Accounts
13 Committee matter was at that time and the mention of
14 the word "disgusting" and your concern about that?

15 A. Yes, I was curious, but, at the same time, it's the 13:38
16 Commissioner's decision, so whatever had decided
17 between the Commissioner and the chair of PAC was a
18 matter between them.

19 467 Q. Did you discuss the matter with Superintendent Taylor
20 at any time? 13:38

21 A. I think Superintendent Taylor, the next day, confirmed
22 that they had actually met, because at that stage there
23 was talk of them meeting, but, actually, it hadn't been
24 confirmed to me that they had actually met. So I think
25 it was the next day that Superintendent Taylor 13:38
26 confirmed to me that they had met. But I don't think
27 he had any details of the actual nature of the meeting
28 or the outcome of the meeting.

29 468 Q. Now, we know from yesterday's evidence that Mr. Kean

1 person.

2 474 Q. well, isn't that the point, really, that he was, on one
3 version of events, that he was contacting the Press
4 Office for information in relation to the
5 whistleblowers -- 13:40

6 A. Yes.

7 475 Q. -- so he'd be properly briefed about it, as he looked
8 at matters, when the programme was to be aired on the
9 Sunday?

10 A. Yes, that would be very unusual. 13:40

11 476 Q. And did Superintendent Taylor speak to you about it?

12 A. No.

13 477 Q. When did you first hear about it?

14 A. The first I heard of that was in the evidence that
15 Mr. Kean gave. 13:40

16 478 Q. And his statement?

17 A. And his statement that I would have read in advance of
18 this, yes.

19 479 Q. Okay. Was it discussed in any way when RTÉ were sued
20 in relation to the matter and Mr. Kean? 13:40

21 A. No. As far as I was concerned or aware at that time,
22 that was a matter between Mr. Kean and RTÉ.

23 480 Q. Now, if we can just -- the official response to
24 Sergeant McCabe's cooperation with the O'Mahony inquiry
25 was that he hadn't cooperated, isn't that the case? 13:41

26 A. Yes, I believe Commissioner Callinan kind of outlined
27 that at PAC.

28 481 Q. All right. And then it turned out that there had been
29 a recording of a particular conversation in relation to

1 being interviewed by Assistant Commissioner O'Mahony,
2 isn't that right?

3 A. Yes.

4 482 Q. And could you tell the Tribunal about that, please?

5 A. There seemed to be an issue coming through in the media 13:41
6 that the Commissioner was of the view that Sergeant
7 McCabe hadn't cooperated with the O'Mahony
8 investigation. As far as I recall, Sergeant McCabe put
9 out a press release or made a comment that included a
10 transcript of the conversation between him and the 13:42
11 chief superintendent who had been sent to supposedly
12 give the instruction to cooperate with the O'Mahony
13 Tribunal.

14 483 Q. Yes.

15 A. Or the O'Mahony investigation, excuse me. And it 13:42
16 showed a bit of a variance in terms of whether that
17 instruction was necessarily as clear-cut as
18 Commissioner Callinan felt.

19 484 Q. Yes. Did you take any steps on foot of that media
20 controversy? 13:42

21 A. Well, I suppose I did consider whether there would be
22 queries in relation to it. As part of that, that
23 wouldn't be unusual, I'd look at situations, individual
24 situations or controversies as they arise and I have to
25 look at all the different potential media questions 13:42
26 that we may get and potential responses to it.
27 Generally, my process is that I kind of have a think
28 about it, jot down either in my notebook or send myself
29 an email so it is kind of fresh in my mind the next

1 morning, kind of initial thoughts, and then have a look
2 at it and start to draft potential statements or
3 responses to queries.

4 485 Q. And I think you did that on the 26th February 2014 in
5 relation to this one, is that correct? 13:43

6 A. I did, yes.

7 486 Q. And you sent an email to yourself, which went no
8 further than that, is that right?

9 A. That's correct.

10 487 Q. And that's at page 1637. 13:43

11 A. Yes. So that was my consideration at the time and I
12 considered it then. I sent it to myself at two minutes
13 to eleven o'clock at night. And when I looked at it
14 the next morning, I decided it wasn't a good idea in
15 terms of -- or it wasn't a good approach in terms of a 13:43
16 response to a potential media query, so I did nothing
17 further with it.

18 488 Q. Okay. Insofar as there is a reference to the 13,000
19 colleagues and one member of the force being able to
20 break the rules, it resonates with the, I suppose, 13:43
21 "disgusting" comment made by the Commissioner at the
22 PAC on the 23rd January?

23 A. Yes. Well, I suppose as part of my responsibilities, I
24 have to reflect the organisation's position.

25 489 Q. Yes. 13:44

26 A. And that was the organisation's position at that time,
27 in not those exact words, but it was the organisation's
28 position, particularly Commissioner Callinan's
29 position, that Sergeant McCabe had not cooperated with

1 the O'Mahony investigation.

2 490 Q. Okay. So I suppose, Mr. McLindon, it's fair enough to
3 say that, on your evidence and the information you've
4 provided to the Tribunal, that Commissioner Callinan
5 had a certain hostility towards Sergeant McCabe -- 13:44

6 A. Well --

7 491 Q. -- it would appear from what you have said today?

8 A. I don't know about the word "hostility", but certainly
9 he had a strong viewpoint in relation to the fact that
10 he felt that Sergeant McCabe had not cooperated with 13:44
11 the O'Mahony investigation.

12 492 Q. Right. And that was the message that was to be sent
13 out, is that --

14 A. Well, that was the message that the Commissioner said
15 himself. 13:45

16 493 Q. Yes.

17 A. As far as I can recall.

18 494 Q. All right.

19 A. Now, I suppose I would have a different position in
20 relation to that, without the specifics of it, without 13:45
21 necessarily the specifics of it, because I wasn't aware
22 vis-à-vis what the relationship was in terms of the
23 cooperation element or not, but I suppose if you want a
24 more reflective position of my view at the time, it was
25 of the next day, that was sent on the 26th, and the 13:45
26 next day I sent an email to the Deputy Commissioner
27 Nóirín O'Sullivan on the 27nd/2nd where I outlined what
28 I felt should be our media strategy in relation to the
29 Garda Inspectorate report, where I felt that the

1 whistleblowers should be complimented on bringing
2 forward issues. So that was more reflective of what I
3 felt our PR strategy should be.

4 495 Q. Yes. And I will just come to that. It's at page 1369
5 of the materials. 13:46

6 A. Yes.

7 496 Q. So it's an email addressed to Ms. O'Sullivan, saying:
8
9 "Subject to seeing the final version of the report, I
10 feel that our best approach is to take the criticism on 13:46
11 the chin by welcoming the Inspectorate's analysis of
12 how further enhancements can be made and committing to
13 their implementation, while noting that we have already
14 made improvements to the system that we are working
15 with." 13:46

16 A. Yes.

17 497 Q. "It may also be a useful opportunity to flag the
18 positive contribution made by the confidential
19 reporters without conceding on the central points of no
20 criminality and that most of the allegations did not 13:46
21 stand up to scrutiny."

22 A. Yes.

23 498 Q. Now, that was addressed to the deputy commissioner at
24 the time. Was there any reason for that, that it was
25 the deputy commissioner and not the Commissioner that 13:46
26 it was sent to?

27 A. My recollection is that I think the deputy commissioner
28 asked me for a potential media strategy to prepare for
29 this. My recollection is, the Inspectorate report and

1 our response to the Inspectorate report would fall to
2 the deputy commissioner, who at the time was deputy
3 commissioner Operations, and, as far as I can recall,
4 deputy commissioner Governance and Strategy. So she
5 held two portfolios. So, under those portfolios, she 13:47
6 would have been dealing with the Inspectorate report.

7 499 Q. Well, would you expect that email would have been
8 forwarded to the Commissioner to deal with the matter
9 ultimately, or maybe you wouldn't? I don't know.

10 A. I don't know, to be honest with you, quite frankly. 13:47

11 500 Q. Right. Okay. In any event, the acknowledgment of the
12 confidential reporter's role in the fixed charge
13 penalty notices saga did not make it into the final
14 press release, isn't that correct?

15 A. That's correct. 13:47

16 501 Q. And did you draft the final press release?

17 A. I did, yes.

18 502 Q. And I think that is dated 12th March 2014?

19 A. Yes.

20 503 Q. And it's just been distributed now. It's at page 3003 13:47
21 of the materials, and it will be seen there in its
22 entirety, but there was no praise of whistleblowers or
23 confidential reporters in it, is that right?

24 A. No, there was not.

25 504 Q. And this was another occasion where a suggestion had 13:48
26 been put forward by somebody of acknowledging the
27 positive contribution by whistleblowers or confidential
28 reporters that hadn't been taken on board, isn't that
29 right?

1 A. That's correct.

2 505 Q. You've referred to one earlier on made by Chief
3 Superintendent Healy?

4 A. Yes.

5 506 Q. Isn't that right? 13:48

6 A. That's correct.

7 507 Q. And there was also -- you had suggested to Commissioner
8 Callinan that maybe he should do a media event to deal
9 with the "disgusting" comment, and that wasn't taken up
10 either? 13:48

11 A. Correct.

12 508 Q. So you see what I mean, Mr. McLindon, that there is a
13 pattern emerging there, isn't there, on your evidence,
14 in relation to the attitude of Commissioner Callinan to
15 the whistleblowers? 13:49

16 A. Well, certainly I think it's fair to say, yes, that
17 there was -- Commissioner Callinan had a position and
18 he wasn't moving from that position.

19 509 Q. Okay. And was that a position, to your knowledge,
20 shared by Deputy Commissioner O'Sullivan and thereafter 13:49
21 Acting Commissioner O'Sullivan?

22 A. No, it wasn't shared, as far as I was aware.

23 510 Q. If we could go on to March. Later on in March of that
24 year, I think it's the 20th March, the now-Taoiseach,
25 Mr. Varadkar, had at that stage said Mr. McCabe was 13:49
26 distinguished and not disgusting?

27 A. That's my recollection, yes.

28 511 Q. Yes. And then we see a media release in relation to
29 that matter on the 20/3/2014, and that's at page 2999

1 of the materials. It should have been just circulated
2 to you, Mr. McLindon.

3 A. Okay. Sorry, yes.

4 512 Q. So earlier on in the month in relation to the press
5 release of the 12th, the "disgusting" remark was 13:50
6 clarified, and that's at page 3004 of the materials, it
7 had already been done?

8 A. Yes.

9 513 Q. "And there is one other matter, I'll just read it out,
10 that I would like to address and which has been in the 13:51
11 public domain for some time and which refers to the use
12 of the term 'disgusting' at my recent Public Accounts
13 Committee appearance on the 23rd January 2014. I want
14 to clarify that my use of that term was not in
15 reference to the character of either Sergeant McCabe or 13:51
16 former Garda Wilson, but the manner in which personal
17 and sensitive data was inappropriately appearing in the
18 public domain without regard to due process and fair
19 procedures."

20 13:51

21 And then it's stated:

22

23 "I stated at the PAC, and reiterate now, my absolute
24 support and commitment to any member of An Garda
25 Síochána who reports wrongdoing of any kind." 13:51

26

27 And then he says:

28

29 "In conclusion, I am conscious that an examination of

1 some of these matters is currently being undertaken by
2 GSOC and it would not be appropriate to comment further
3 until GSOC is finished its work."

4 A. Yes.

5 514 Q. And then on the -- you drafted that --

13:51

6 A. I did.

7 515 Q. -- for the Commissioner. And was it the result of both
8 of you working together on it, perhaps, with
9 Superintendent Taylor or did you just present it to the
10 Commissioner?

13:52

11 A. Generally, the process is that I would do a draft.
12 Depending on the circumstances, there would be a
13 meeting in relation to it. I don't recall there being
14 a meeting in relation to this. So I would draft it,
15 send it to the Commissioner's office and the
16 Commissioner's office then would talk to the
17 Commissioner about it and make any changes that the
18 Commissioner wanted and then confirm that it was the
19 final version to be distributed and when it was to be
20 distributed.

13:52

13:52

21 516 Q. Okay. And then later on in that month, on the 20th
22 March, there was a briefing which emanates from the
23 Press Office, and that's at page 2999 of the materials.

24
25 "Briefing text on the record. Line to be used against
26 Minister Varadkar's comments today, 20/3/2014."

13:52

27
28 And it refers back to the clarification of his use of
29 the word "disgusting".

1 A. Yes.

2 517 Q. And it would seem that's accredited to you. Did you
3 draft that?

4 A. Yes.

5 518 Q. Did you discuss the matter with former Commissioner 13:53
6 Callinan --

7 A. Yes.

8 519 Q. -- prior?

9 A. I would have done -- prior to releasing anything in the
10 Commissioner's name, I would have to discuss it with 13:53
11 them to make sure they were happy with that position.
12 So it was basically a reiteration of the previous
13 statement, but obviously given the then-Minister
14 Varadkar's comments had heightened media interest in
15 that issue, so I felt that it was important that we 13:53
16 reiterated our stance and the organisation's stance on
17 that matter.

18 520 Q. And I think in actual fact the Commissioner had
19 actually left the organisation at that time, is that
20 correct, four days after? 13:54

21 A. Four days after, yes.

22 521 Q. Now, I think it's apparent from your own evidence that
23 you regard the word "disgusting" as -- it's fairly
24 emotive language, isn't that right?

25 A. Yes. 13:54

26 522 Q. It's strong?

27 A. Yes.

28 523 Q. And it was unscripted?

29 A. Yes.

1 524 Q. Yes. And it's something that the Commissioner was
2 obviously happy to say in public, and it was a while
3 afterwards that he clarified it in any way, isn't that
4 right?

5 A. Yes. Well, I suppose, and I'm not here to speak on 13:54
6 behalf of Commissioner Callinan, but --

7 525 Q. Yes. Well, there was some clarification on the day --

8 A. Yes.

9 526 Q. -- but thereafter you had advised him, isn't that
10 right -- 13:55

11 A. Yes.

12 527 Q. -- to attend a media event?

13 A. Yes.

14 528 Q. Particularly with reference to that word?

15 A. Yes. That to move off that word and to kind of 13:55
16 basically say that he regretted using that word and it
17 was too strong a term to use.

18 529 Q. Okay. So it would suggest that there was a very
19 emotional response to the whistleblowers by former
20 Commissioner Callinan? 13:55

21 A. Well, certainly I think you could say that Commissioner
22 Callinan was exercised by the situation. He felt that
23 his position was that the O'Mahony report was the true
24 position and that the media reports that were
25 suggesting otherwise, he found that that was kind of 13:55
26 undermining of the organisation. I think he felt that
27 it was potentially undermining of his position. And I
28 think as portrayed by his public comments, he felt that
29 certain members of An Garda Síochána weren't behaving

1 in line with what you -- what was expected of them. I
2 think that is a fair summation of his view.

3 530 Q. And he was happy to publicly state that, isn't that
4 right?

5 A. Yes, he stated that publicly, yes. 13:56

6 531 Q. So I suppose the next thing I wanted to ask you,
7 Mr. McLindon: If he was happy to go that far in
8 public, one would wonder was he going much further in
9 private in relation to the whistleblowers, on a less
10 public forum or a less public stage? 13:56

11 A. Well, certainly not in any conversation that I have
12 ever had with Commissioner Callinan did he go down that
13 route.

14 532 Q. Okay. well, you understand that we have had a series
15 of people come in, one of them this morning, which 13:56
16 attribute Commissioner Callinan with saying that
17 Sergeant McCabe was accused of sexual assault matters?

18 A. Yes.

19 533 Q. You understand that?

20 A. I do. 13:56

21 534 Q. We have had Deputy McGuinness in relation to the
22 matter.

23 A. Yes.

24 535 Q. And we have had Mr. McCarthy in relation to the matter.
25 We've looked at your own notes this morning in relation 13:56
26 to preparing for the PAC.

27 A. Mm-hmm.

28 536 Q. So I would have to suggest to you that these were
29 things, taking that side of the case for the moment,

1 not deciding anything --

2 A. Mm-hmm.

3 537 Q. -- that would suggest that he was happy to put a
4 message out there that Sergeant McCabe was other than a
5 person who was bringing things forward in the public 13:57
6 interest?

7 A. Well, all I can say in relation to that is that he
8 never said anything to me in relation to such matters
9 insofar as that I should put those matters into the
10 public domain. 13:57

11 538 Q. All right. Did Superintendent Taylor say anything to
12 you about it?

13 A. In terms of? Sorry, excuse me, I don't quite
14 understand.

15 539 Q. A campaign -- 13:57

16 A. No.

17 540 Q. -- if I can put it in those terms?

18 A. No.

19 541 Q. You will appreciate that Superintendent Taylor has a
20 different view of that? 13:57

21 A. Yes.

22 542 Q. If can I just maybe open up parts of his statement to
23 you. What he says at page 118 of the materials is
24 that -- it might be -- it's volume 1, yes. It will
25 come up in front of you. 13:58

26 A. Okay.

27 543 Q. "My role as Garda Press Officer was mainly reactionary
28 and included keeping the Commissioner briefed on what
29 was happening day to day. I was the public face of An

1 Garda Síochána. Again, I would classify my role as
2 being reactionary and the director role was, I have
3 said, to be more strategic. However, the director
4 would also be fully briefed as to what was going on at
5 all times. The director would have dealt with press 13:58
6 queries if there were any set interviews and would have
7 dealt with these solely."

8
9 So he is suggesting that you knew what he says was
10 going on, that he was told by former Commissioner 13:59
11 Callinan to brief negatively against Sergeant McCabe.

12 A. I wasn't aware of any campaign of any such nature.

13 544 Q. Well, you worked closely with Superintendent Taylor,
14 isn't that right?

15 A. That's correct. 13:59

16 545 Q. You were in close physical proximity office-wise, isn't
17 that right?

18 A. That's correct.

19 546 Q. And you were also present at very many public
20 occasions, isn't that right? 13:59

21 A. Correct.

22 547 Q. And there was no reason, really, to keep you out of the
23 loop, from Superintendent Taylor's point of view, in
24 relation to what was going on?

25 A. Well, all I can say is that Superintendent Taylor never 13:59
26 discussed anything of that nature with me.

27 548 Q. You see, on page 1119 of the materials, again we have
28 Superintendent Taylor:

29

1 "When Andrew McLindon took up the position, following a
2 public appointments competition for a five-year term, I
3 briefed him fully on the office, on the roles and
4 responsibilities and parameters we were working to. I
5 prepared a briefing document for him at that time." 14:00

6
7 You agree with all of that, isn't that right?

8 A. Yes.

9 549 Q. And then:

10
11 "From then on, I always briefed Andrew in the same way
12 as I did the Commissioner and Deputy Commissioner." 14:00

13
14 And what he is referring to there is in relation to
15 media queries about Sergeant McCabe, you understand
16 that? 14:00

17 A. Yes.

18 550 Q. And what he would do in response to those media
19 queries, i.e. brief negatively if he got the
20 opportunity to do so? 14:01

21 A. No.

22 551 Q. You understand?

23 A. No, sorry, that's -- yes, he was quite -- that was what
24 he was doing in his role, was to keep me, the deputy
25 commissioner and the Commissioner briefed on media
26 queries relating to any issue in relation to the FCPN
27 or any controversial matter, but, no, he never would
28 have briefed me on, this is the line that I'm putting
29 out in a negative manner in relation to Sergeant 14:01

1 McCabe. I was not aware of anything of that nature.

2 552 Q. But, I mean, Mr. McLindon, it wasn't entirely
3 inconsistent with what you were doing, say, for
4 instance, when you sent off that email reminder to
5 yourself in relation to the taping of conversations and 14:01
6 the response to it, that it's not entirely inconsistent
7 with --

8 A. Well, that was a passing thought that I sent to myself.

9 553 Q. Yes.

10 A. And I didn't do anything with it further. So I think 14:01
11 there's a significant difference between a passing
12 thought that you send to yourself and then actively
13 engaging in a so-called smear campaign against somebody
14 else. Also, I think my record, track record in terms
15 of what I suggested as a PR strategy throughout the 14:02
16 process demonstrates that I felt that the organisation
17 should have been more vocally supportive of
18 whistleblowers and the fact that they had made a
19 positive contribution to the organisation.

20 554 Q. Yes. That was your thoughts on the matter, isn't that 14:02
21 correct, your personal thoughts on the matter?

22 A. In relation to the email that I wrote to myself?

23 555 Q. No, no, in relation to how the organisation should deal
24 with whistleblowers?

25 A. Well, that was my professional communications advice. 14:02

26 556 Q. Your professional advice?

27 A. Yes.

28 557 Q. In relation to -- and that advice wasn't followed,
29 isn't that correct --

1 A. Yes.

2 558 Q. -- insofar as Commissioner Callinan dealt with matters?

3 A. Yes, on the key matters it wasn't followed, no.

4 559 Q. And when you went to prepare an email, and I'm just
5 taking this as an instance, for instance, in relation 14:02
6 to a potential reaction to Sergeant McCabe taping
7 conversations, you understand what I am saying?

8 A. Yes.

9 560 Q. You prepared it in line with what you understood the
10 Commissioner's reaction would be? 14:03

11 A. Yes.

12 561 Q. That's right. So what I'm suggesting to you is: What
13 Superintendent Taylor says here, in relation to you
14 being aware of taking any opportunity that was
15 available to the Gardaí to brief negatively against 14:03
16 Sergeant McCabe, do you understand that --

17 A. Yes.

18 562 Q. -- that the email you sent in February is consistent
19 with that, because that was an opportunity to brief
20 negatively against -- I know you thought twice about 14:03
21 it?

22 A. Well, I did more than think twice about it, I didn't
23 actually do anything with it.

24 563 Q. You didn't send it?

25 A. Yes. 14:03

26 564 Q. But it would suggest that you know that this was
27 an opportunity to brief negatively against Sergeant
28 McCabe?

29 A. I had knowledge that that -- my consideration was that

1 this was a potential opportunity to defend the
2 organisation.

3 565 Q. Yes.

4 A. And to establish the organisation's position in
5 relation to the cooperation, or otherwise, of Sergeant 14:03
6 McCabe.

7 566 Q. Okay. But you had no knowledge of a campaign?

8 A. Absolutely not.

9 567 Q. Okay. If I can just turn then to page 127 of the
10 materials, and if we go down to line 186, you were 14:04
11 asked -- Superintendent Taylor was asked:
12

13 "Whether any other person was present when these
14 instructions, the instructions being to brief
15 negatively against Sergeant McCabe, were given to me, 14:04
16 or whether any other person was aware of these
17 instructions given to me by Commissioner Callinan."
18

19 He says:

20 14:04

21 "I can confirm that nobody else was present when I
22 received these verbal instructions. However, I can say
23 Andrew McLindon was aware of these instructions as I
24 discussed them with him."

25 A. No. 14:05

26 568 Q. All right. If I could just go to April 2014, and you
27 will be aware that that month has a particular
28 significance as Mr. Williams had gone to interview
29 Ms. D and decided he was going to write an article

1 about it, and he actually did.

2 A. Yes.

3 569 Q. And Superintendent Taylor told you about this, isn't
4 that right?

5 A. Yes, he came into my office, I can't remember the 14:05
6 specific date unfortunately, but he came into the
7 office and, quite rightly, as -- in his role as the
8 press officer, told me about a media query that he had
9 received that might have an impact on the
10 organisation's reputation. 14:05

11 570 Q. What did he tell you about the media query?

12 A. He basically said that Paul Williams was going up to
13 interview Ms. D, that was about the extent of it, in
14 relation to the allegations that she had in relation to
15 Sergeant McCabe. 14:05

16 571 Q. Continue on. Did he say anything else?

17 A. No. I kind of got the impression from his demeanour
18 that he felt that that would be significant and that
19 this might -- that this might be of benefit to the
20 organisation insofar as it might show that there was an 14:06
21 issue in relation to Sergeant McCabe.

22 572 Q. Okay. So he thought it was of benefit to the
23 organisation that an article would be published with
24 regard to an interview with Ms. D, that that was
25 Superintendent Taylor's take on it, is that right? 14:06

26 A. Well, I think my take on what his version of it was,
27 that there was potential for that. Now, he wasn't -- I
28 wouldn't say he was definitive on it, but he was saying
29 that there was the potential for that.

1 573 Q. And what was your reaction to that?
2 A. Well, my reaction in general was that I didn't think
3 that that, without knowing the -- necessarily I hadn't
4 talked to Paul Williams in relation to it, so I didn't
5 know the direction that he was going to take or not 14:06
6 take in relation to it, but, in general, I felt that
7 the article would not name Sergeant McCabe or would not
8 necessarily allude or make any direct allegations
9 against Sergeant McCabe because of libel laws.

10 574 Q. And are you sure what Superintendent Taylor was saying 14:07
11 to you was that Mr. Williams was going to interview
12 Ms. D?

13 A. My recollection was that he said Paul Williams has a
14 query here, he's going -- I think he said he's going to
15 interview Ms. D. Now, I could be wrong, he could have 14:07
16 said Paul Williams has interviewed Ms. D. But my
17 recollection was that he was going to, but I could be
18 wrong on that.

19 575 Q. Okay. Did you think this was something significant?
20 A. Em, I didn't really, to be honest with you. Basically, 14:07
21 I didn't think that it would put Sergeant McCabe in a
22 spotlight because of the libel laws and obviously
23 because of the groundless nature of the matter in the
24 first place, so I didn't feel that there was anything
25 there from that perspective. And I think basically 14:08
26 from my recollection of it, the articles focused more
27 on the fact that Ms. D felt that the Garda
28 investigation hadn't been sufficient and actually the
29 criticism was more towards the Garda organisation than

1 to anybody else. That is my recollection of the
2 articles.

3 576 Q. Yes. But surely that was something which was in your
4 department, protecting the reputation of the guards,
5 and here was somebody saying that an allegation of 14:08
6 sexual assault hadn't been properly investigated?

7 A. Yes.

8 577 Q. Did you take any steps on foot of that?

9 A. On foot of the article, is it?

10 578 Q. Yes. Or on foot of the knowledge that Mr. Williams was 14:08
11 going up to meet Ms. D?

12 A. Well, as far as I was aware, Deputy Commissioner
13 O'Sullivan was aware of it, and, as far as I was aware,
14 Commissioner Callinan was aware of it, so if they
15 wished me to do something in relation to it in terms of 14:09
16 putting out a comment or a statement, then they could
17 have done so. I suppose the issue was, that on a
18 sensitive matter like that, we would not comment on it
19 anyway in general.

20 CHAIRMAN: Sorry, Ms. Leader, it's a bit more than 14:09
21 that. The Garda, as an organisation, had officially
22 been involved on foot of a complaint. The matter had
23 been investigated very thoroughly by Inspector
24 Cunningham. It had been sent to the DPP, with a
25 recommendation from the State solicitor and from 14:09
26 Inspector Cunningham that there should be no
27 prosecution. The DPP had ruled there was no offence.

28 A. Yes.

29 CHAIRMAN: Yet you were being made aware that a

1 journalist was about to make a fuss in relation to
2 this. So was it not your duty to step in and say
3 "stop"?

4 A. Well, as far as I was aware, Superintendent Taylor told
5 him in relation to the DPP matter. 14:09

6 CHAIRMAN: How do you know that?

7 A. Well, that's what superintendent told -- Superintendent
8 Taylor went back to Paul Williams. My understanding
9 is, that is what he said to Paul Williams.

10 CHAIRMAN: Well, they certainly have a dispute as to 14:10
11 what they said to each other.

12 A. Well, my understanding from what Superintendent Taylor
13 told me in terms of how he was going to respond to Paul
14 Williams, that he was going to respond along those
15 lines, Chairman. 14:10

16 CHAIRMAN: And now there is a further dispute as to
17 whether he was going up or had gone up and was raising
18 queries. How do you feel? Do you think you should
19 have intervened?

20 A. Maybe, in hindsight, I should have intervened and maybe 14:10
21 we should have looked at putting some kind of stronger
22 statement in relation to the matter. I suppose it was
23 a very sensitive matter for both parties and I suppose
24 that was a concern.

25 CHAIRMAN: Well, a sensitive matter for both parties 14:10
26 isn't necessarily helped by an airing in the press.

27 A. Yes. But I can't stop Mr. Williams interviewing an
28 individual if he feels that there's a potential media
29 story in doing that.

1 CHAIRMAN: well, according to himself, he was -- he had
2 an unawareness of the file or the DPP ruling --

3 A. Yes.

4 CHAIRMAN: -- which was within the procurement of An
5 Garda Síochána, certainly, for which you work, so... 14:11

6 A. Yes. And as far as I was aware, Superintendent Taylor
7 provided that information to Mr. Williams.

8 CHAIRMAN: well, that is what you might expect.

9 A. Yes.

10 CHAIRMAN: But, on his own account, he's not exactly 14:11
11 showing a huge friendship towards Sergeant McCabe.

12 A. Sorry, Chair, is that Mr. Williams or
13 Superintendent Taylor?

14 CHAIRMAN: You might actually pick either, but it is
15 certainly Superintendent Taylor on this. 14:11

16 A. well, the information that I had was Superintendent
17 Taylor was dealing with the media query and his
18 response to Mr. Williams on that matter was, he
19 informed him of the DPP directions. Potentially, in
20 hindsight, maybe I should have sent an official 14:11
21 statement to Mr. Williams to put it on the record.

22 Maybe that would have been much more clearer.

23 CHAIRMAN: How would it help for anyone to interview
24 Ms. D?

25 A. I don't -- 14:12

26 CHAIRMAN: How would that help, from a PR point of
27 view?

28 A. well, it wasn't helpful, it wasn't helpful for the
29 organisation in any way, shape or form, and I wasn't --

1 I wasn't, so to speak, jumping up and down that
2 Mr. Williams was going to be covering this story in any
3 way, shape or form.

4 CHAIRMAN: Well, that doesn't seem to be what Garda
5 Headquarters thought at the time, to use a collective 14:12
6 term.

7 A. Well, it wasn't -- I can't speak to that, Chair. But
8 all I can say, from my perspective, that wasn't my
9 viewpoint.

10 579 Q. MS. LEADER: I just want to go back to your statement, 14:12
11 Mr. McLindon, at page 1569. What you say in relation
12 to this matter is that:

13
14 "In late March or early April 2014, Superintendent
15 Taylor quite rightly brought it to my attention 14:12
16 information that Mr. Paul Williams of the Irish
17 Independent had interviewed Sergeant McCabe's alleged
18 victim."

19
20 Do you see that? 14:13

21 A. Yes.

22 580 Q. "This was the right thing to do by Superintendent
23 Taylor, as this could potentially have an impact on the
24 organisation's reputation. Superintendent Taylor made
25 no claim to me that he had been instrumental in getting 14:13
26 one of the country's most well-known journalists to
27 talk to Sergeant McCabe's alleged victim."

28
29 That is a matter that is not settled, you understand

1 that?

2 A. Yes.

3 581 Q. Yes, that particular line. But did you understand that
4 Superintendent Taylor was instrumental in doing it?

5 A. I have no knowledge of that. All I took from it, that 14:13
6 Paul Williams had rang Superintendent Taylor to inform
7 him that he had either done the interview or was
8 planning to do the interview, and that Superintendent
9 Taylor was informing me of that. I had no knowledge of
10 any interaction before in relation to that. 14:13

11 582 Q. Sorry, you had no knowledge of any interaction in
12 relation to what?

13 A. In relation to how Paul Williams came to interview
14 Ms. D.

15 583 Q. Okay. But you, in your statement, would seem to 14:14
16 suggest that Superintendent Taylor was instrumental in
17 it?

18 A. No.

19 584 Q. That he had not been instrumental --

20 A. Yes. 14:14

21 585 Q. -- in getting one of the country's -- so you seem to be
22 definite about that?

23 A. Well, certainly that was the impression that I got from
24 Superintendent Taylor, that this phone call from Paul
25 Williams and the fact that there was going to be an 14:14
26 interview with Ms. D or there had been an interview
27 with Ms. D, I got the impression from Superintendent
28 Taylor that that was a surprise to him.

29 586 Q. A surprise to him?

1 A. Yes.

2 587 Q. And you say you recall saying to Superintendent Taylor:
3 Despite Mr. Williams' reputation as a highly credible
4 journalist, that in your professional opinion "no
5 article would appear naming Sergeant McCabe in relation 14:14
6 to this allegation because of libel laws."

7 A. Yes.

8 588 Q. "When the article did appear on the 12th April 2014, it
9 did not refer to Sergeant McCabe by name and
10 concentrated on allegations by the alleged victim that 14:15
11 her complaint had not been properly investigated by An
12 Garda Síochána."

13 A. Yes.

14 589 Q. All right. So how did you know the matter had been
15 brought to the Commissioner's attention? 14:15

16 A. I think Superintendent Taylor told me that he had
17 informed the Commissioner about it.

18 590 Q. All right. And you were happy to leave it at that?

19 A. Yes.

20 591 Q. You see, that might also suggest, Mr. McLindon, that 14:15
21 you were aware that this was the line that was to be
22 taken in relation to Sergeant McCabe: make the best
23 use of any opportunity you can get to downgrade him,
24 that might suggest that that was actually the case
25 because you didn't do anything on foot of your 14:15
26 knowledge of this article's publication, despite you
27 being in a major way responsible for the organisation's
28 reputation?

29 A. Well, as I said, Superintendent Taylor, as far as I was

1 aware and concerned, had provided Mr. Williams with the
2 information in relation to the DPP's directions and, as
3 far as I was concerned, that that was the fair thing to
4 do in relation to Sergeant McCabe.

5 592 Q. Yes. But what about the reputation of the 14:16
6 organisation, about not investigating matters properly?

7 A. Yes, absolutely, but we wouldn't comment -- we don't
8 comment on individual investigations. And again, I
9 don't recall, but maybe it was, that maybe, I don't
10 know if Ms. D had made an allegation to GSOC and that 14:16
11 was under investigation by GSOC. If that was the case,
12 we don't comment on GSOC investigations.

13 593 Q. So this, and you were happy to leave it at that, at
14 that stage, on that basis?

15 A. I was. 14:16

16 594 Q. That might be difficult to believe when we have heard
17 the evidence that we have heard this week in relation
18 to people being told by Commissioner Callinan about
19 Sergeant McCabe and an alleged sexual assault.

20 A. Well, Commissioner Callinan never discussed that matter 14:17
21 with me.

22 595 Q. I should ask you, did you ever receive any queries in
23 relation to any anonymous communication that may have
24 been sent to any media groups in relation to Sergeant
25 McCabe, can you remember? 14:17

26 A. I don't recall anything of that nature.

27 596 Q. But it could have happened, perhaps, or are you ruling
28 it out totally?

29 A. I don't quite understand the question, Ms. Leader,

1 sorry.

2 597 Q. Did you ever receive a query via the Press Office in
3 relation to any anonymous communication relating to
4 Sergeant McCabe that may have been received by any
5 media organisations? 14:18

6 A. No, not that I recall, no.

7 598 Q. All right. And just in relation to your own
8 interactions with journalists, did you ever speak to
9 any journalists yourself about Sergeant McCabe?

10 A. No, not particularly, no. 14:18

11 599 Q. How do you mean "not particularly"?

12 A. Well, obviously Sergeant McCabe would come up in
13 conversation.

14 600 Q. Yes.

15 A. You can't have a conversation if someone rings you and 14:18
16 says these are the latest allegations being made by
17 Sergeant McCabe on X, Y and Z, but my focus was on
18 dealing with the allegations, and obviously I'm very
19 constrained and the organisation is very constrained on
20 what we can comment on in relation to anything that is 14:18
21 made public or not or comes into the public domain, I
22 don't know how they come into the public domain, that
23 is made under either the confidential recipient process
24 or whistleblower process or protected disclosures. We
25 have a very strict policy that we do not comment on 14:19
26 matters that have been brought forward into the public
27 domain, however they came into the public domain, via
28 protected disclosures, whistleblower processes. So I
29 wouldn't be in a position to comment on them, other

1 than to say that they are being examined or being
2 looked at or we have dealt with those issues in the
3 past.

4 601 Q. And is that an on-the-record comment?
5 A. Yes. 14:19

6 602 Q. And are you aware of any off-the-record briefing that
7 journalists may be given?
8 A. Not in relation to Sergeant McCabe, no.

9 603 Q. Does it happen in the Garda generally?
10 A. Off-the-record briefings do happen on certain issues, 14:19
11 yes.

12 604 Q. And do you participate in them?
13 A. You see, if you like, there's an -- off-the-record
14 briefings that may happen on official matters, but
15 unfortunately An Garda Síochána is a very leaky 14:19
16 organisation, so there are lots of, unfortunately,
17 briefings done by lots of people who should not be
18 involved in briefings, providing information to the
19 media, and that's an issue for the organisation.

20 605 Q. Okay. Well, what I asked you is -- you've acknowledged 14:20
21 that there are off-the-record briefings, and I have
22 asked you, do you participate in those off-the-record
23 briefings?
24 A. Very occasionally, depending on the circumstances, if I
25 feel that it is necessary to do so. 14:20

26 606 Q. And when might it be necessary to do so?
27 A. It might be necessary to do so, to provide the media
28 and the public with the perspective of the organisation
29 without being seen to get into a confrontational

1 position with another organisation.

2 607 Q. All right. So am I correct in saying what that
3 actually means is, you want to get a message out there,
4 but -- on behalf of An Garda Síochána, but you want to
5 avoid a row with another person as a result of putting 14:21
6 a particular message out there?

7 A. Yes.

8 608 Q. Okay. So this could very well be an instance of, where
9 people in An Garda Síochána might want to put a message
10 out about Sergeant McCabe but not attribute it to An 14:21
11 Garda Síochána?

12 A. That potentially could happen, but it has never
13 happened with my knowledge.

14 609 Q. Okay. Well, Superintendent Taylor, for his part, says
15 it did happen with your knowledge? 14:21

16 A. Well, I don't agree.

17 610 Q. But you do agree that you are aware of off-the-record
18 briefings and sometimes you participate in them?

19 A. Yeah, well, off-the-record briefings are relatively
20 standard practice in lots of different areas of 14:21
21 communications and public relations.

22 CHAIRMAN: Are they really? Are you seriously telling
23 me that the police force of the State would actually go
24 to a journalist and say something to them off the
25 record on the basis that the journalist would then have 14:22
26 to assert journalistic privilege, perhaps at the price
27 of going to jail in consequence of it, and the Garda
28 Síochána would be able to actually deny that any such
29 comment came from them? Are you actually seriously

1 telling me that?

2 A. Em, I'm not saying we deny the comment came from us,
3 Chair.

4 CHAIRMAN: No, just please focus on the question --

5 A. Yes. 14:22

6 CHAIRMAN: -- because you've picked a bit of it now as
7 not exactly helpful. Are you really telling me that
8 the Garda Síochána goes to journalists and makes
9 off-the-record comments on the basis that the
10 journalist will then have to assert journalistic 14:22
11 privilege? Are you seriously telling me that?

12 A. Em, well, it's not done with the intention that they
13 will have to assert journalistic privilege.

14 CHAIRMAN: You know as well as I do there's
15 journalistic privilege, you know as well as I do that, 14:22
16 barring exceptional circumstances, it applies to
17 off-the-record comments, which means that the source is
18 not to be revealed. Are you saying An Garda Síochána
19 actually does that?

20 A. I'm saying in certain circumstances we provide 14:23
21 background information on matters.

22 CHAIRMAN: All right, you're not prepared to answer my
23 question then.

24 A. Well, sorry, Chair, if I am not answering your question
25 directly, I'm trying to. I am obviously not meeting 14:23
26 your requirements. We provide information on a
27 background basis. It's not done in the nature of to
28 handcuff journalists in relation to --

29 CHAIRMAN: Well, that is a very important question

1 asked by Ms. Leader. Does the Garda Press Office do
2 that?

3 A. Not -- it's very -- it's not regular, no.

4 CHAIRMAN: It doesn't matter if it is regular. Does it
5 do it or does it not, yes or no? 14:23

6 A. On occasion it does, yes.

7 611 Q. MS. LEADER: I want to finish off by asking you
8 directly, did the Garda Press Office provide
9 information off the record in relation to Sergeant
10 McCabe? 14:23

11 A. No.

12 612 Q. And you're happy with that?

13 A. Yes.

14 MS. LEADER: If you would answer any questions anybody
15 else might have. 14:24

16 A. Thank you.

17 MR. McDOWELL: Mr. McLindon, Michael McDowell is my
18 name, and I'm one of Sergeant McCabe's barristers here.
19 Just in relation to the --

20 CHAIRMAN: I will just take a break. 14:24

21 MR. McDOWELL: Sorry, Judge.

22

23 AFTER A SHORT ADJOURNMENT THE HEARING RESUMED

24 AS FOLLOWS:

25 14:30

26 CHAIRMAN: You will appreciate, Mr. McDowell, if
27 possible, I would like to get Mr. McLindon away for the
28 weekend. Will you be very long?

29 MR. McDOWELL: In fact, Judge, I have changed my mind,

1 I don't want to ask him a question.

2 CHAIRMAN: You're entitled to change your mind.

3 Mr. O'Higgins, how long will you take?

4 MR. MICHAEL O'HIGGINS: This is a witness, Judge,

5 who -- 14:30

6 CHAIRMAN: I just asked you how long will you take.

7 MR. MICHAEL O'HIGGINS: About 45 minutes.

8 CHAIRMAN: Thank you. Is there any other questions?

9 MR. LEHANE: Mr. Chairman, I have about five minutes.

10 CHAIRMAN: Thank you. 14:31

11 MR. MÍCHEÁL O'HIGGINS: I have a few questions as well.

12 CHAIRMAN: And how long do you think you will take?

13 MR. MÍCHEÁL O'HIGGINS: Not long. Maybe five, ten

14 minutes.

15 CHAIRMAN: Okay. Thank you. So Mr. O'Higgins. 14:31

16

17 MR. MCLINDON WAS CROSS-EXAMINED BY MR. MICHAEL

18 O'HIGGINS:

19

20 613 Q. MR. MICHAEL O'HIGGINS: Good afternoon, Mr. McLindon. 14:31

21 Michael O'Higgins is my name, I'm counsel on behalf of

22 Superintendent David Taylor. Now, your position that

23 you took up in September 2013 had not been filled for

24 the previous 18 months, isn't that so?

25 A. Approximately so, yes. 14:31

26 614 Q. And in the 14 months previous to you taking up the

27 post, Superintendent Taylor was the Garda head of the

28 Press Office, he had taken over from superintendent

29 Gilligan, isn't that so?

1 A. Correct, yes.

2 615 Q. Now, how did you -- how was your working relationship
3 with Superintendent Taylor?

4 A. We had a good working relationship. I felt that we
5 worked well together. He a very good grasp and 14:32
6 knowledge of the organisation and he was very good in
7 helping me understand what is a different organisation
8 that I had ever worked in before, with its own
9 peculiarities and culture. He appeared to have a very
10 good working relationship with the media. Certainly, 14:32
11 any media people who I talked to when I came into the
12 organisation as part of my familiarisation process felt
13 that Superintendent Taylor was doing a good job as the
14 Garda Press Officer.

15 616 Q. Was he welcoming towards you? 14:32

16 A. Em, I don't know necessarily if he was welcoming
17 initially, and I didn't take that necessarily
18 personally. I think he felt that there may not
19 necessarily have been a need for a director of
20 communications, that he was sufficiently filling that 14:32
21 role. Again, I didn't take that personally. I had
22 gone into new organisations before where you have to
23 prove yourself. So I felt that my role in that was to
24 kind of prove myself to Superintendent Taylor, that I
25 had a purpose and a function and that if we worked 14:33
26 together it would be for the benefit of the
27 organisation, and I think after a while we both saw the
28 benefits of that approach.

29 617 Q. Well, would it be a fair summary to say then that your

1 impression was that there was perhaps an initial degree
2 of resistance towards you, but that neutralised and
3 flourished into a good professional working
4 relationship?

5 A. Yes. 14:33

6 618 Q. Was he open with you?

7 A. Generally, yes.

8 619 Q. I mean, you mentioned, and we might look at it in just
9 a little bit of detail in your statement, that you felt
10 that Commissioner Callinan saw you as a civilian, and 14:33
11 might, for that reason, have been a bit more cautious
12 or wary with you in his dealings. I take it that was
13 not a feature of your relationship with Superintendent
14 Taylor once the initial phase had settled down?

15 A. Yes, I think that's fair, yes. 14:34

16 620 Q. And would it be the case, and I'm trying to ask the
17 questions as openly as possible and not in a leading
18 manner because to try and make the answers more
19 efficient, but was it your impression that when an
20 event occurred which Superintendent Taylor thought was 14:34
21 important, he would relay it to you?

22 A. Yes, he would.

23 621 Q. Now, on his relationship with Commissioner Callinan, I
24 just want -- I wonder could we open your statement at
25 page 1564, going on to page 1565, please. And if we go 14:34
26 to the final paragraph on that page, you note:

27

28 "The formal -- whatever the formal structure, the
29 reality was that the Garda press officer has a direct

1 line to the Commissioner." Isn't that right?

2 A. Yes, at that time, yes.

3 622 Q. And you say on the next page then:

4

5 "Within a short time of joining, it was apparent to --" 14:35

6 you "-- that Superintendent Taylor and Commissioner

7 Callinan enjoyed a close working relationship."

8

9 Isn't that right?

10 A. That's correct. 14:35

11 623 Q. And you instance the Friday meetings for the Sunday

12 papers?

13 A. Correct.

14 624 Q. You would note on urgent matters he would report

15 directly to the Commissioner? 14:35

16 A. Yes.

17 625 Q. But always reverting back to you if there was anything

18 to say?

19 A. Yes. Or he would keep me -- certainly keep me informed

20 of particular queries. 14:35

21 626 Q. And you formed the view, the impression, that

22 Commissioner Callinan was more inclined to listen to

23 advice from uniform members rather than civilians; that

24 was a cultural thing, isn't that right?

25 A. Correct. 14:36

26 627 Q. Now, first of all, my instructions, I should indicate,

27 are that my client did enjoy a good working

28 relationship with Commissioner Callinan and also

29 enjoyed a good working relationship with yourself. But

1 as you yourself pointed out to me in your initial
2 responses, you are director of communications, isn't
3 that right?

4 A. Correct.

5 628 Q. On a ranking system, you are the equivalent of a chief 14:36
6 superintendent, higher up the scale than my client?

7 A. Correct.

8 629 Q. And if a person listening to your evidence were to form
9 an impression that you were acting in a passive role or
10 inertly in your position, I suggest that would be a 14:36
11 false impression; that you weren't passive, you're not
12 inert, you were the director of communications and you
13 were holding the reins, would that be fair?

14 A. Well, I suppose you have to take into account that I
15 had just joined the organisation in September, so I was 14:37
16 still effectively within a probation period. As a
17 civil servant, you're in a probation period of a
18 one-year process. Obviously then there was an
19 established relationship there between the Commissioner
20 and Superintendent Taylor. I said, coming into the 14:37
21 organisation, in fact I said it to Commissioner
22 Callinan during my interview, that one of the key
23 things that I wanted to do was to establish myself
24 within the organisation, but that process takes time.
25 I felt that if I went into an organisation as a 14:37
26 civilian and started effectively, if you like, throwing
27 my weight around, that there would be an adverse
28 reaction to that within the organisation, which is
29 heavily uniformed and officer-based.

1 630 Q. I understand that fully. But would you agree with me
2 that to establish your presence firmly within any
3 organisation, you can achieve that without throwing
4 your weight around?

5 A. Yes, I agree, and I felt that I did that over a period 14:38
6 of time by providing professional communications advice
7 to the Commissioner and senior officers.

8 631 Q. I mean, I suppose the point I'm anxious to emphasise is
9 this: you're not, I will use this phrase, you are not
10 a cat's paw, you're not anybody's cat's paw, isn't that 14:38
11 right?

12 A. Sorry, I don't understand the phrase.

13 632 Q. You're independent in your thinking, you know what your
14 functions are, you know what your obligations and
15 responsibilities are and you are ready to discharge 14:38
16 them, isn't that right?

17 A. Correct.

18 633 Q. You're not a person who simply goes with the flow?

19 A. Well, it's my job to provide, I suppose, if you like,
20 independent communication advice to a commissioner or 14:38
21 senior officers. After that, it's a matter for that
22 officer or that commissioner to accept, reject or
23 modify that advice.

24 634 Q. And you're a person, I would suggest, that would be
25 involved in a fairly micro level with all the live 14:39
26 issues of the day?

27 A. Not necessarily, no. I would be involved in strategic
28 issues. But if there was, for instance, an arrest in
29 Cavan today for a drugs seizure, I would not be aware

1 of that. There's no need for me to be aware of that
2 unless it was a multimillion euro drugs seizure.

3 635 Q. And you're not suggesting, I take it, by reference to
4 the culture of the force and Commissioner Callinan's
5 natural bias towards uniform members, you're not 14:39
6 suggesting that you were squeezed out or that you were
7 out on a limb or that you were out of the loop
8 generally or anything of that sort, isn't that so?

9 A. No, I'm not suggesting that.

10 636 Q. I didn't think so. Now, there was a document produced 14:40
11 earlier which indicated that at a meeting which was set
12 up to consider the strategic approach of the
13 Commissioner and the force to the forthcoming PAC
14 inquiries, and Sergeant McCabe's difficulties in 2006
15 were noted, isn't that right? 14:40

16 A. That appears to be the case, yes.

17 637 Q. Well, you seem to be qualifying the answer. It appears
18 to be the case, it seems to me to be absolutely the
19 case; is there any doubt about it?

20 A. Well, certainly given the information, all I can say is 14:40
21 that, yes, it certainly does appear to be the case, but
22 I don't -- I didn't mark the fact that Sergeant
23 McCabe -- this is information related to Sergeant
24 McCabe, so -- but certainly based on the information
25 and other notes of other persons who were present at 14:40
26 the meeting, that does appear to be the case, yes.

27 638 Q. And I take it the shorthand note "Sergeant McCabe 2006"
28 would be fully adequate for you to know the full
29 context of what that meant?

1 A. Based on that note. But that wasn't my note. But yes,
2 based on that note, yes.

3 639 Q. And may I equally take it that the two words or three
4 words "Sergeant McCabe 2006" would be enough to put the
5 context of the information together, that that suggests 14:41
6 prior knowledge?

7 A. Sorry, prior knowledge of?

8 640 Q. Well, if you look at the note and it says "Sergeant
9 McCabe 2006 start", whatever the phrase was, and you
10 understood that to mean -- that to be a reference to 14:41
11 Sergeant McCabe being the subject of an investigation
12 and a file to the DPP with regard to an alleged sexual
13 assault on a minor, isn't that so?

14 A. Well, I don't recall that level of detail being
15 discussed at that meeting. 14:41

16 641 Q. No, I'm not suggesting for the present that it was.
17 But what I am suggesting is: those three words were
18 enough for you to impart that level of information?

19 A. I'm sorry, I don't understand the question.

20 642 Q. Well, I am sorry, I will do it again. The note -- 14:42
21 perhaps we'd better put it up on screen.
22 MS. LEADER: 1282.
23 MR. MICHAEL O'HIGGINS: It's 208. If we can go down.
24 It isn't this witness's note, it's the superintendent's
25 note I'm looking for. 1282, I beg your pardon. 14:42
26 MS. LEADER: The assistant commissioner's note is 1246.
27 MR. MICHAEL O'HIGGINS: I beg your pardon, 1246.
28 MS. LEADER: The typed version.
29 MR. MICHAEL O'HIGGINS: Typed version, please.

1 A. Yes.

2 643 Q. Is the typed version of that perhaps on the next page,
3 is it?

4 A. It's 1246A.

5 MS. LEADER: A, yes. 14:43

6 644 Q. MR. MICHAEL O'HIGGINS: Just while we're waiting for it
7 to -- there it is now, please. Now, do you see "start
8 Sergeant McCabe 2006".

9 A. Yes.

10 645 Q. There are three words there, and, as someone looking at 14:43
11 that note, you would be able to know that that is a
12 reference to the fact that Sergeant McCabe was
13 investigated in respect to an alleged sexual assault
14 and the subject of a file to the Director of Public
15 Prosecutions and you would have been able to extract 14:44
16 that at the time of the meeting, which was the 21st
17 January 2014, if you were reviewing that note the next
18 day, isn't that so?

19 A. Well, no, because as far as I can recall, that level of
20 detail was not discussed at that meeting. 14:44

21 646 Q. Again, we're at cross-purposes.

22 A. Sorry.

23 647 Q. That reference is enough for you to know that that is
24 to what it refers, the events to which it refers?

25 A. Yes. But are you talking about now, having seen this 14:44
26 note, because certainly it's not my note, or are you
27 talking about at the time.

28 648 Q. I'm talking about at the time.

29 A. No, because I wasn't aware of the detail of that at the

1 time, because, as far as I was aware, it wasn't
2 discussed at the time, at that particular time.

3 649 Q. Well, maybe I will skip through everything, and just
4 tell us in your own words when you became aware that
5 Sergeant McCabe had been investigated in 2006 in 14:45
6 respect of an alleged sexual assault, roughly?
7 A. Roughly, it was -- roughly it was in and around that
8 time, but I --

9 650 Q. Yeah. Well, who told you?
10 A. It was a rumour that was going around or information 14:45
11 that was going around Garda HQ at the time.

12 651 Q. But you work in the Garda Press Office, isn't that
13 right?
14 A. Correct.

15 652 Q. And the Garda Press Office is anxious to get material 14:45
16 out accurately?
17 A. Correct.

18 653 Q. So rumours are not something that you would let rest;
19 you would presumably follow it up?
20 A. Well, there was -- the rumours were basically that 14:45
21 there had been an allegation, that it had been
22 investigated.

23 654 Q. Well, who did you follow up those rumours with?
24 A. Well, sorry, just so I could finish. The rumours were
25 that there was an allegation that it had been 14:45
26 investigated and that there was nothing to it. So as
27 far as I was concerned, there was nothing to be done
28 about it.

29 655 Q. So let me understand this. You heard that rumour and

1 you made no inquiry of anybody?

2 A. No, I did not make any inquiry of anybody.

3 656 Q. Of anybody? Did you even say to Superintendent Taylor,
4 this man, Sergeant McCabe, who is getting a lot of
5 press coverage and is someone who is damaging, to adopt 14:46
6 your phraseology, the corporate image of An Garda
7 Síochána, and I have heard a rumour that he was the
8 subject of a sexual abuse allegation, what's that
9 about, is it your evidence that you never made that
10 inquiry of Superintendent Taylor or anybody else? 14:46

11 A. Well, first of all, I don't think, and I stand to be
12 corrected on this, I don't think I said that Sergeant
13 McCabe was damaging the organisation. I can't recall
14 having a conversation with Superintendent Taylor in
15 relation to it, because, as I say, as far as I was 14:46
16 concerned, there was nothing in that matter. Now, if
17 people want to go and talk rumour and talk gossip, that
18 is a matter for them, but I try not to engage in that.
19 And if someone says to me that an individual has
20 been -- that it's been looked into and there's nothing 14:47
21 to do it, then I will leave the matter rest.

22 657 Q. Well, that would depend, I suppose, on the person
23 telling you. If they told you about something of that
24 nature and dismissed it as there being nothing in it,
25 perhaps if it was a very senior member of the guards 14:47
26 you might be inclined to accept that, but can you even
27 tell us from where you heard this rumour?

28 A. No, it was just generally circulating around Garda HQ.

29 658 Q. So there was more than one person talking about it?

1 A. That's my recollection, yes.

2 659 Q. would it be the case that it was the sort of thing that
3 everybody was talking about?

4 A. I don't know about everybody, but certainly I think you
5 could say that there was a good few people talking 14:47
6 about it.

7 660 Q. There was an awful lot of people talking about it?

8 A. I think --

9 661 Q. And as they repeated the rumour, you just simply
10 digested it and made no comment or inquiry, good, bad 14:48
11 or indifferent?

12 A. No.

13 662 Q. Does that strike you as odd?

14 A. Well, as I said, as far as I was aware, the information
15 that had been told to me, and I can't recall who told 14:48
16 it to me, was that the allegation was groundless, so I
17 did not -- there was nothing for me, as far as I could
18 see, to do in relation to it.

19 663 Q. When it came up at the meeting on the 21st January, did
20 anybody say that was groundless? 14:48

21 A. I don't recall, because as far as I recall the detail
22 of it wasn't discussed.

23 664 Q. Well, something was discussed.

24 A. Yes, I just can't recall exactly the nature of that
25 discussion. 14:48

26 665 Q. Well, I mean, it is some time ago, and it would be
27 unreasonable of me to expect you to have it on the tip
28 of your tongue, or anywhere near that, but could I just
29 ask you just to think for a moment, put yourself back

1 there on the 21st January and see, from your
2 recollection, whether you can pull anything. Rather
3 than just tell me you don't remember, just think about
4 it for a moment. Can you think of anything, any
5 reason, why that might be a topic for discussion? 14:49

6 A. Well, the only reason I can think it was a topic for
7 discussion was that it was starting to circulate into
8 the public domain about Sergeant McCabe and that it may
9 become -- may be brought up by a member of PAC --

10 666 Q. Yeah. 14:49

11 A. -- without mentioning Sergeant McCabe's name, but that
12 issue may be brought up. That's the only reason I can
13 think of.

14 667 Q. Can I just highlight something to you there. We've
15 had, I'm not sure how many witnesses, three now, maybe 14:49
16 four, who allegedly -- or who are alleging that they
17 were told things about Sergeant McCabe, and in each
18 case it's been put to the witnesses that it was them
19 that introduced the concept of Sergeant McCabe, not the
20 guards, not the Commissioner. Is your evidence 14:50
21 essentially going the same direction, that this is a
22 reference to what the politicians might say and not
23 what the guards were talking about?

24 A. Well, I think it's fair to say that An Garda
25 Síochána -- that we were having a discussion about 14:50
26 this. But my recollection was, we were having a
27 discussion about this because we were trying to prepare
28 for all eventualities in relation to PAC. I don't
29 think it was an intention to discuss it in relation to

1 putting it into the public domain or bringing it to the
2 fore in PAC.

3 668 Q. But do you see that your emphasis is falling on the
4 politicians talking about it and not the guards? Do
5 you see your answer going in that direction? 14:50

6 A. Well, again, all I can say is that that was the nature
7 of that discussion, because we were preparing for PAC,
8 so therefore you're preparing for what questions may
9 come from politicians who are members of PAC and what,
10 as an organisation, what the organisation's response to 14:51
11 those questions might be.

12 669 Q. Why, if there was a concern that the politicians might
13 raise this, would the note reflect that the origin of
14 it was in 2006? I don't see an obvious connection
15 between the two. 14:51

16 A. I don't know, to be honest with you.

17 670 Q. Does it make any sense to you?

18 A. It seems strange to me that there was a discussion of
19 that nature, but I wasn't in charge of the meeting, I
20 was just taking a note in relation to it and my 14:51
21 focus --

22 671 Q. You were there, you were director of communications,
23 you were there formulating strategy and strategically
24 how the guards were going to communicate their
25 position? 14:51

26 A. Yes.

27 672 Q. Did the question of Sergeant McCabe's motivation for
28 making complaints arise during these discussions?

29 A. Em, I can't recall exactly, but I would think it would

1 be fair to say from the notes that potentially was
2 discussed, but just because something was discussed at
3 a meeting did not necessarily mean that we were going
4 to actually discuss that within the confines of PAC,
5 and I don't think necessarily -- well, apart from the 14:52
6 "disgusting" comment, which was not planned as far as I
7 was concerned, that that was not the intention going in
8 to PAC, that we would get into that, but just in case
9 that issue arose.

10 673 Q. So do I infer from your answer -- my question, 14:52
11 incidentally, wasn't directed to what would be
12 discussed at PAC at all. Do I infer from your answer
13 that his motivation was discussed?

14 A. I don't recall if his motivation was discussed, no.

15 674 Q. Well, would it seem likely when the Commissioner, whose 14:52
16 nose was clearly out of joint that he was being called
17 to account on the basis of allegations generated by
18 Sergeant McCabe that the reason why Sergeant McCabe
19 might be doing this, would that be a topic for
20 discussion, a likely topic? 14:53

21 A. It was a potential topic for discussion, but I can't
22 recall if it was, that motivation was discussed in
23 relation to Sergeant McCabe.

24 675 Q. Well, you see, a few moments ago you introduced, as I 14:53
25 understood it, as an actual recollection as opposed to
26 a surmise, that there was some concern that politicians
27 might bring up Sergeant McCabe. Well, if you have that
28 particular recollection, do you have any other
29 recollection about his motivation for doing this?

1 A. In terms of what was discussed, in terms of what was
2 discussed --

3 676 Q. In terms of why he was -- I mean, I use this in a
4 neutral term, a neutral way: Sergeant McCabe had an
5 agenda, the agenda was that there were things within An 14:53
6 Garda Síochána he was unhappy with and he wanted to
7 highlight them. Now, was there any discussion as to
8 what was driving that agenda?

9 A. Well, I think that is why the 2006 was referenced and I
10 think in my notes there was a reference to 2007/2008, 14:54
11 so you could be quite correct, that that was a
12 discussion based on motivation, et cetera.

13 677 Q. Okay.

14 A. I just don't recall the exact nature of that
15 discussion. 14:54

16 678 Q. Let's look at that then. How was the 2006 event
17 informing his motivation?

18 A. I can't recall that.

19 679 Q. Well, just, I mean, again, I don't want to be
20 unreasonable, some time has passed, but I would like 14:54
21 you to be reasonable with me and not rush in and say "I
22 just don't remember". Please just pause for a moment
23 and think. Because you have deduced, either as an
24 inevitable inference or from a recollection, that his
25 motivation in making these events was connected with 14:54
26 the 2006 events. Is that correct?

27 A. Well, I have thought about it and I've thought about it
28 coming in to here and on several occasions since --

29 680 Q. Yes.

1 A. -- in preparing for this, and obviously in making my
2 original statement, so I'm not just saying this off the
3 cuff --

4 681 Q. I understand.

5 A. -- when I say those things. I don't recall the nature 14:55
6 of the discussion in relation to Sergeant McCabe.

7 682 Q. Well, let me suggest a possibility. We have heard of
8 attempts to suggest that Sergeant McCabe had abused
9 minors, do you understand that?

10 A. Yes. 14:55

11 683 Q. That would be a form of negative briefing against
12 Sergeant McCabe, do you understand?

13 A. Yes.

14 684 Q. But there are other forms of negative briefing which
15 bear some comparison with that, but which are also 14:56
16 different in some respects, and one possible motivation
17 might be that Sergeant McCabe had been the subject of a
18 Garda investigation with respect to a particular nasty
19 offence and must have been more difficult for him,
20 because he was a member of An Garda Síochána, do you 14:56
21 follow that?

22 A. Yes.

23 685 Q. And we are also aware, I wasn't present for this
24 evidence and I hope I am not in any way misquoting it,
25 but we're also aware that he was very anxious, after 14:56
26 the Director had come back with the directions of no
27 prosecution, that the complainant's family would be
28 apprised with the specific terms of the direction, do
29 you understand that?

1 A. Yes.

2 686 Q. And apparently - I don't need to go in to follow on
3 this - that was not done, and that that might be
4 another reason why Sergeant McCabe was put out with An
5 Garda Síochána, for want of a better description. Does 14:57
6 that make sense?

7 A. Well, I can understand what are you saying, yes.

8 687 Q. Yeah. Was anybody saying in terms, look, this man was
9 the subject of an investigation in 2006, he didn't like
10 it, he didn't like it that he was left with mud on his 14:57
11 shoe, he's very angry about it and this is informing
12 his latest activities? Did anyone say anything like
13 that?

14 A. Not that I can recall specifically, no.

15 688 Q. Well, when you say "not that I can recall", if you will 14:57
16 excuse my comment, that's a rather equivocal response.
17 Could someone have said that?

18 A. Well, they could have, yes.

19 689 Q. Yeah. Why do you think they could have said that?

20 A. Well, they could have said it based on the notes, the 14:58
21 reference to 2006, 2007, 2008, et cetera. So they
22 could have said that, yes.

23 690 Q. Well, it is -- I mean, I'm going to deal with it in a
24 little bit more detail. I mean, Sergeant McCabe was a
25 very big story, isn't that right? 14:58

26 A. Correct.

27 691 Q. And it was -- he was causing, potentially, ongoing
28 reputational damage to An Garda Síochána, isn't that
29 so?

1 A. Correct.

2 692 Q. And this is, in terms of the work you do, a very big
3 issue, isn't that right?

4 A. Yes, that's correct. Can I just clarify a remark I
5 just made there two seconds ago? I wouldn't want to 14:59
6 personalise that to Sergeant McCabe, causing
7 reputational damage to the organisation. That would
8 not be fair to Sergeant McCabe. But it was the
9 allegations --

10 693 Q. I understand. 14:59

11 A. -- and the handling of those allegations that were
12 causing reputational damage to the organisation.

13 694 Q. I understand fully the distinction. It's not him per
14 se; it's the allegations that are being aired?

15 A. Yes. 14:59

16 695 Q. So this is a very big part of your job. You're not
17 actually in it that long. I would have thought that
18 the areas which I'm asking questions about and which
19 Ms. Leader was asking questions about, are matters
20 which would be to the fore in your mind? 14:59

21 A. Yes, they -- but you've also got to take into account
22 that you -- we had a succession of those meetings
23 preparing for PAC, we were under constant media
24 spotlight, every day there was a new story emerging.
25 It was a very difficult, all-consuming, stressful time. 15:00

26 696 Q. Yes.

27 A. So the ability to recall every single comment at every
28 single meeting, I'm afraid, is beyond me in that
29 capacity.

1 697 Q. well, I would be the first to endorse that would be
2 wholly unrealistic, but I'm actually going to the other
3 extreme: it seems to me you have no memory bank at
4 all.

5 A. well, I have to disagree. I have taken notes, I have 15:00
6 provided a statement, I have provided emails to the
7 Tribunal.

8 698 Q. well, how is it that your note made no reference to
9 '06?

10 A. Em, I think it does. I don't have it in front of me. 15:00
11 If I could be allowed to have a look at it.

12 699 Q. If we could put it up, "'06 start". well, we will see
13 what you did say, I beg your pardon. 1282.

14 A. Yes. "2006 first incident".

15 700 Q. "Personal injuries claim 2007", is that right? 15:01
16 MR. MÍCHEÁL O'HIGGINS: Before that happens, Judge, I
17 do think the question should be withdrawn.

18 MR. MICHAEL O'HIGGINS: If I can just see what is on
19 the screen for a moment, please.

20 CHAIRMAN: Let's keep it nice and calm. I am not sure 15:01
21 where the question is going, Mr. O'Higgins, and maybe
22 you don't want to say for reasons but --

23 MR. MICHAEL O'HIGGINS: Sorry, I see it there. "2006
24 first incident", isn't that right?

25 A. Correct. 15:01
26 CHAIRMAN: what are we talking about now?

27 MR. MICHAEL O'HIGGINS: I am incorrect. His note did
28 recall "2006 first incident", then it says -- I beg
29 your pardon, just to the right of that --

1 CHAIRMAN: It says "sergeant serving". Sorry, is there
2 a problem, Mr. O'Higgins?
3 MR. MICHAEL O'HIGGINS: No, there's not.
4 MR. MÍCHEÁL O'HIGGINS: I was simply suggesting that
5 the question -- 15:02
6 CHAIRMAN: I am sorry, it is the other Mr. O'Higgins.
7 MR. MÍCHEÁL O'HIGGINS: Sorry, Chairman, I was
8 suggesting simply that the question should be
9 withdrawn. It was built on the premise that the note
10 didn't make any reference to 2006. 15:02
11 MR. MICHAEL O'HIGGINS: It is withdrawn. It is
12 accepted.
13 CHAIRMAN: It does say that. I have noted it. And the
14 personal injuries claim, I don't know what that was.
15 Was that the bullying claim, was it? 15:02
16 MR. MICHAEL O'HIGGINS: I have no idea. Can you
17 enlighten us as to what --
18 MR. MCDOWELL: I think it was the bullying claim,
19 Judge.
20 CHAIRMAN: It wasn't the altercation in the hotel, 15:02
21 anyway. Right, it was, there was a bullying claim.
22 701 Q. MR. MICHAEL O'HIGGINS: Can you enlighten us as to
23 whether you have a single memory of any incident, any
24 discussion with any colleagues, at a meeting or
25 otherwise, as to whether Sergeant McCabe's driving of 15:02
26 the agenda might be informed by the treatment, as he
27 perceived it, he received arising out of the complaint
28 in 2006?
29 A. Well, I think there was a -- again, there wasn't -- as

1 far as I can recall, it wasn't discussed at those
2 meetings, but there was a general talk that that was
3 part of Sergeant McCabe bringing forward the penalty
4 points issues, but it was a -- I wouldn't be able to
5 say officer X had that view or officer Y had that view. 15:03
6 And it wasn't necessarily, I would call it, a
7 generally-held view. It was a view held by certain
8 people. But I can't, to be honest with you, recall the
9 individuals.

10 702 Q. Well, let's, before we get analysing how widely held 15:03
11 the view was, let's isolate just one individual who
12 held it. Give us a name, please.

13 A. I don't have a name, I'm afraid.

14 703 Q. Does that strike you as odd?

15 A. Not particularly, because there was lots of 15:03
16 conversations. As you said, it was a significant major
17 topic for the organisation, it was the topic for the
18 organisation. There was lots of conversations going on
19 about it and around it, there was lots of people in the
20 organisation talking about it. 15:04

21 704 Q. Well, let's, as a working premise, take a starting
22 point, that the people who are generating this
23 discussion were not people who would be deemed to be
24 well-informed, let's look at it coming from the bottom
25 up, so to speak. would that not have been something 15:04
26 you would have been anxious to bring to Commissioner
27 Callinan's attention, that this is what people are
28 saying?

29 A. My impression was, and as you say I was relatively new

1 to the organisation, but my impression was that it was
2 relatively well-known at the upper echelons of the
3 organisation, because that's the way kind of the rumour
4 mill works in Garda HQ, that it goes up the chain, if
5 you like.

15:05

6 705 Q. Yes. But the notes of the meeting would seem to
7 indicate that the rumour mill doesn't just float, it
8 specifically attaches, we know, to that particular
9 meeting.

10 A. Well, again, I can't recall the specifics of it. And
11 whether you call them rumours or whether you call them
12 incidents that actually happened. It certainly appears
13 from my notes and notes of others who were in
14 attendance at that meeting that certainly matters
15 relating to Sergeant McCabe were discussed at that
16 meeting, yes.

15:05

17 706 Q. I mean, as director of communications of the Garda
18 Press Office, it is your testimony that you never
19 attempted to inquire of these rumours, to see whether
20 they had any substance, where they emanated, and to
21 consider legitimately whether, in fact, there was a
22 case to be made that Sergeant McCabe was informed by
23 virtue of his disappointment over what had occurred?

15:05

24 A. Sorry, I don't understand the last part of your
25 question.

15:06

26 707 Q. Sorry, I will put the question in more simple terms.
27 Obviously An Garda Síochána wanted to know what was
28 driving the agenda, isn't that right?

29 A. Yes. That would be fair point, yes.

1 708 Q. Yeah. And would it not be fair to at least discuss the
2 matter, this man is driven by the fact that he's
3 embittered as a result of him being the subject of a
4 police investigation, would it be legitimate to discuss
5 that?

15:06

6 A. Sorry, are you saying, I'm just not quite
7 understanding, are you saying legitimate to discuss
8 that in a meeting as in a pre-PAC meeting or discuss
9 that directly with Sergeant McCabe?

10 709 Q. Any or both?

15:06

11 CHAIRMAN: Well, if I could just intervene,
12 Mr. McLindon, it may help.

13 A. Yes. Sorry, Chair.

14 CHAIRMAN: I don't know whether you were around for
15 Italia 90, but there used to be a football manager in
16 this country who had a similar name to my own, and he
17 referred to a particular journalist as being a bitter
18 little man.

15:07

19 A. Yes.

20 CHAIRMAN: Now, that is on the public record, I'm not
21 telling you probably anything you don't know. But what
22 Mr. O'Higgins is asking you is: was that the whole
23 attitude of the Garda organisation, he's a bitter
24 little man in consequence of A, B and C, or whatever it
25 was? Would it be fair to put it that way,
26 Mr. O'Higgins?

15:07

27 MR. MICHAEL O'HIGGINS: Well, it's that plus this --

28 CHAIRMAN: Maybe just answer that first and then you
29 can put in a plus, so that is a simple way of putting

15:07

1 it.

2 A. Yeah, I think that that'd be -- that would be the view
3 held among some, but again, I couldn't say if that was
4 the view held generally across the organisation.

5 710 Q. MR. MICHAEL O'HIGGINS: All right. Well, take that as 15:07
6 a starting point, there is a view in existence that
7 part of his agenda is driven by the fact that he is
8 embittered. Now, An Garda Síochána have to deal with
9 the issues which are raised by Sergeant McCabe, isn't
10 that right? 15:08

11 A. Yes.

12 711 Q. And they have to understand them, isn't that right?

13 A. Yes.

14 712 Q. Would it not be legitimate to discuss whether or not
15 his agenda was driven by that? 15:08

16 A. Yes, potentially, and I think you could say that
17 potentially, if you look at those notes, my notes, that
18 that could be part of that. But I suppose if you look
19 at the notes later on, sickness and absence policy,
20 visits to the family home, you could also say that then 15:08
21 what measures are being taken to ensure that Sergeant
22 McCabe is being looked after.

23 713 Q. Yes.

24 A. In case there was a question again from members of PAC
25 in relation to that, without identifying any 15:08
26 individuals.

27 714 Q. You see, you accept that, but you seem to be accepting
28 it more or less on the basis of drawing inferences as
29 to what is more or less inevitable. You don't seem to

1 be accepting it on the basis you remember that actually
2 happened.

3 A. No --

4 715 Q. Is that fair comment?

5 A. Well, I don't recall the exact nature of that 15:09
6 conversation and I don't want to provide misleading
7 information to the Tribunal. I don't recall.

8 716 Q. Could I suggest to you that although I'm putting to
9 you, and putting it to you genuinely, that that is a
10 discussion which An Garda Síochána management could 15:09
11 genuinely enter upon and not be doing anything wrong,
12 I'm suggesting that, nonetheless, it's a hot potato to
13 concede that such discussions took place, and had they
14 taken place they would be forged in your mind clearly
15 and perpetually; do you follow what I am putting to 15:09
16 you?

17 A. Well, I don't recall the exact nature of that
18 conversation. I'm sorry I can't be more helpful.

19 717 Q. Well, I will put it to you like this: It's as plain, I
20 respectfully suggest, it's as plain as day that that 15:10
21 kind of discussion, and probably other discussions of a
22 similar, perhaps more dark nature, took place. They
23 did take place, you remember them very clearly, but you
24 are reluctant to speak about them because you are
25 concerned that it will implicate yourself in them; does 15:10
26 that make any sense?

27 A. No.

28 718 Q. All right.

29 CHAIRMAN: Well, perhaps another way of putting it -

1 forgive the interruption, Mr. O'Higgins, it may help -
2 is this: I don't know whether the statement of
3 Superintendent Taylor is to be construed as saying you
4 were part of, and I'm going to use the word, it means
5 to breathe together the conspiracy against Sergeant 15:10
6 McCabe, but it certainly is saying that you were aware
7 of it and that it was going on around you, and it may
8 be that you felt appalled by the whole thing, I don't
9 know, but your answer seems to be to that, well, I
10 can't be appalled by something I don't know about, and 15:11
11 the close relationship between the Commissioner and
12 David Taylor and the fact that I was a garda might make
13 it understandable that perhaps I didn't know, that
14 seems to be your answer to that. But what is being put
15 to you squarely by Mr. O'Higgins is, he is saying, 15:11
16 look, you were part of all of this and maybe you would
17 be so kind as to address that.

18 A. Yes, Chair, well that is a summation of my position
19 that you have outlined there. I was not aware of any
20 of those discussions, I was not aware -- particularly 15:11
21 not aware of any briefings and anything else like that,
22 and I would have absolutely been appalled if that was
23 the attitude being adopted by the Garda Commissioner.
24 I joined An Garda Síochána because of my high regard
25 for the organisation. I felt I could make a difference 15:11
26 within the organisation. If I had arrived into an
27 organisation three or four months into that time and
28 found that the head of the organisation was engaged in
29 significant briefings against a Garda member using

1 allegations of a sexual nature, I would have been
2 absolutely appalled.

3 719 Q. MR. MICHAEL O'HIGGINS: Well, I'm going to be putting
4 to you in very stark terms what my client's
5 instructions are in due course, but they're in line 15:12
6 certainly with what the Chairman suggests; that far
7 from learning of this after the event, you were very,
8 very aware of it during the currency. But we will come
9 to that in due course.

10 CHAIRMAN: Does it go so far, Mr. O'Higgins, as to say 15:12
11 that Mr. McLindon was actually part of it, was involved
12 in it?

13 MR. MICHAEL O'HIGGINS: No, he was not present when the
14 Commissioner gave my client instructions, but my client
15 relayed to Mr. McLindon what those instructions were, 15:12
16 and I will be putting it in very clear terms in due
17 course.

18 CHAIRMAN: So there was an occasion when he actually
19 came out of the Commissioner's office, went into
20 Mr. McLindon's office? 15:13

21 MR. MICHAEL O'HIGGINS: And told him what the position
22 was.

23 CHAIRMAN: And said, the Commissioner has told me to do
24 the following.

25 MR. MICHAEL O'HIGGINS: Yes, absolutely. And I will be 15:13
26 putting it in specific terms.

27 CHAIRMAN: Right. Yes.

28 720 Q. MR. MICHAEL O'HIGGINS: But just before I get to that,
29 I want to clarify something in my own mind. What level

1 of interaction did you have with journalists?

2 A. At the time I didn't have a significant level of
3 interaction with journalists because I was
4 familiarising myself with the role. I would have met
5 some journalists for a cup of coffee, just again to -- 15:13
6 because I wouldn't have had a huge working relationship
7 with crime correspondents before I joined An Garda
8 Síochána, so just to kind of figure out exactly how
9 they work and what their requirements were from us as a
10 press organisation. 15:13

11 721 Q. I notice that the press release which was drafted by
12 you dated March 2014, to whom would that press release
13 have been circulated?

14 A. That would have been circulated to all members of the
15 media. It's on our -- if it was gone out through our 15:14
16 press release, it goes to, I think it's about 800
17 members of the media on that press list.

18 CHAIRMAN: This is 3004 you're referring to?

19 MR. MICHAEL O'HIGGINS: 14.

20 CHAIRMAN: I know. The page number is 3004, is that 15:14
21 the one?

22 MR. MICHAEL O'HIGGINS: 2999-3000. It was just
23 circulated after lunch, Chairman.

24 722 Q. It was the press release put out with respect to the
25 Commissioner's clarification of the use of the word 15:14
26 "disgusting", isn't that right?

27 A. Yes, I don't have it in front of me, unfortunately, but
28 yes.

29 723 Q. So that would go to all news desks, all crime corps,

1 all -- any journalist who is on the list, isn't that
2 right?

3 A. That's correct.

4 724 Q. And your mobile telephone number is on it?

5 A. That's correct. 15:14

6 725 Q. So, as of March 2014, the journalists were given your
7 mobile telephone number?

8 A. Yes, and they probably had it earlier than that.

9 726 Q. I don't doubt that. And they also had your extension
10 line in the office, isn't that right? 15:15

11 A. Correct.

12 727 Q. Did you have any discussions with any journalists about
13 Sergeant McCabe?

14 A. Not of a detailed nature, no.

15 728 Q. Well, we will get to the detail in a moment. Did you 15:15
16 have any discussions with any journalists?

17 A. In relation to Sergeant McCabe's --

18 729 Q. Yeah.

19 A. Well, in relation to Sergeant McCabe's allegations in
20 relation to the FCPN issues, yes. 15:15

21 730 Q. Well, we will just start with Sergeant McCabe. Did you
22 have any discussions with journalists?

23 A. Generally, no, because the journalists, as far as I
24 could -- the journalists who spoke to me anyway,
25 weren't actually necessarily that interested in 15:15
26 Sergeant McCabe's issues because they were more
27 concerned with whether his allegations that he was
28 bringing forward were correct or not.

29 731 Q. I see. So you're drawing a distinction between a call

1 from a journalist who says "tell me about Sergeant
2 McCabe" and a journalist phoning about the penalty
3 points issue?

4 A. Yes.

5 732 Q. Let's take that distinction out of it. How many 15:16
6 journalists did you talk to about
7 Sergeant-McCabe-related issues?

8 A. I can't recall, because I would have received a number
9 of phone calls, but --

10 733 Q. A lot? 15:16

11 A. Over a period of time, if you are talking about -- it
12 depends what particular area of time you're -- or
13 length of time you're talking about.

14 734 Q. '13, late '13 to '14?

15 A. Well, late '13, not so much, because again, I was only 15:16
16 familiarising myself with the role. Into 2014 I would
17 have been speaking to journalists quite regularly as
18 the FCPN issue cropped up.

19 735 Q. Did any journalist raise the sexual assault allegation?

20 A. Not insofar as that it was -- no, not that I recall, 15:17
21 no. No, not that I recall, no.

22 736 Q. Well, again, it may be my comment, but you seem
23 somewhat equivocal. Do you have an actual recollection
24 one way or the other?

25 CHAIRMAN: Well, Paul Williams certainly did. 15:17

26 MR. MICHAEL O'HIGGINS: Yes. Although -- did
27 Mr. Williams speak to you?

28 A. No.

29 737 Q. Or to Superintendent Taylor?

1 A. To Superintendent Taylor --

2 CHAIRMAN: There is nothing to suggest that

3 Mr. Williams spoke to Mr. McPartlin.

4 A. I can't recall who, but maybe one or two journalists 15:17

5 would have mentioned the background to Sergeant McCabe,

6 but considering I already knew it, it wasn't relevant

7 to me.

8 738 Q. MR. MICHAEL O'HIGGINS: What did you say to them about

9 it?

10 A. I said to them what I knew in relation to the DPP and 15:17

11 that there wasn't anything in it and that it was

12 groundless, and that is all I knew, and that I wasn't

13 interested in that, I was interested in --

14 739 Q. Well, did you tell him that?

15 A. Well, I don't necessarily think -- from my 15:17

16 recollection, I don't necessarily think I had to tell

17 them that because they already knew that.

18 740 Q. Well, you see --

19 CHAIRMAN: I am sorry, just before you go on, I just

20 need to be clear. You don't have a specific 15:18

21 recollection of any journalist in any way talking to

22 you, on the phone or otherwise, and saying, look, what

23 about this thing about Sergeant McCabe and child sex

24 abuse, or anything of that kind of generic ballpark?

25 A. No, no. 15:18

26 CHAIRMAN: But you think that if it could have been

27 mentioned because of the wide nature of the circulation

28 of the echos going around about this --

29 A. Yes.

1 CHAIRMAN: -- in the event that it had been raised, and
2 this is only speculation on your part, you would have
3 said, well, look, that was cleared up, it went to the
4 DPP and he said this -- it was she actually, she said
5 there was nothing to it, or whatever? 15:18

6 A. Yes, Chair.

7 741 Q. MR. MICHAEL O'HIGGINS: Can I just ask, arising from
8 that clarification, I mean initially I understood your
9 answer to be that you had no recollection of anybody;
10 then it appeared to me, I may have misheard you, that 15:18
11 you may have had discussions, one or two?

12 A. Well, I wouldn't call them discussions. I would say it
13 was mentioned, but it wasn't --

14 742 Q. Mentioned by one or two?

15 A. One or two, but it wasn't -- 15:18

16 743 Q. And you apparently gave no comment at all because in
17 the course of them discussing it, they ran around a
18 circle outlining what it was, concluding there was
19 nothing it, and you said nothing?

20 CHAIRMAN: No, I don't think so, Mr. O'Higgins. I 15:19
21 think what he said was -- well, for a start, I
22 appreciate we're trying to recover memory here, but I
23 think Mr. McLindon's belief in relation to this is, if
24 that happened, he would have said, look, the matter
25 went to the DPP, as far as I'm concerned that is the 15:19
26 end of it, or something to that effect.

27 A. Yes, Chair.

28 744 Q. MR. MICHAEL O'HIGGINS: Well, I understood you to say
29 that you didn't need to say anything to them because

1 748 Q. No.

2 A. Unless there's anyone specific that I can't recall, but
3 none of the crime correspondents, for instance, I would
4 have gone to college with.

5 749 Q. I would like -- do you know all the crime 15:21
6 correspondents now?

7 A. Yes.

8 750 Q. Have you met them all?

9 A. I'd meet them, yes.

10 751 Q. Regularly? 15:21

11 A. Well, I'd meet them at press briefings and media
12 briefings. We do quite regular media briefings and
13 press briefings and they're the main people who attend.

14 752 Q. I'd like to run through briefly with you how the Garda 15:21
15 Press Office works, or at least how I understand it
16 works. In the first instance, the front line in the
17 Garda Press Office is to provide information, isn't
18 that right?

19 A. Correct.

20 753 Q. And when we turn on the radio in the morning and we 15:21
21 hear there's a fatal road traffic accident down in
22 Tipperary, that is information that typically will have
23 been released by the Garda Press Office?

24 A. Correct.

25 754 Q. Other information which would be released by the Garda 15:22
26 Press Office would be that a particular unit of An
27 Garda Síochána, it could be the SDU, it could be the
28 Criminal Assets Bureau, executed a series of warrants
29 at specific address, arrests had been made, items had

1 been seized, and so forth, isn't that right?

2 A. Correct.

3 755 Q. Again, it is a purely information distribution

4 exercise, isn't that right?

5 A. Correct. 15:22

6 756 Q. Next, you might have a specific event, like a murder of

7 perhaps an elderly person living alone, or some other

8 murder that would attract particular attention, isn't

9 that right?

10 A. Correct, yes. 15:23

11 757 Q. And in those instances, in the first couple of days,

12 you would have what I would describe as rolling press

13 conferences, isn't that right?

14 A. Correct, yes.

15 758 Q. And again, they are information-distribution exercises 15:23

16 where the media are informed that the pathologist has

17 arrived, the information is obviously given out very

18 sparingly because there are trial issues down the line,

19 but it is the imparting of information, isn't that

20 right? 15:23

21 A. Correct.

22 759 Q. Now, what those features all have in common, and that

23 is, they are all what I would describe as

24 above-the-water-line Garda Press Office activities,

25 isn't that right? 15:23

26 A. Correct.

27 760 Q. Now, I want to ask you about another aspect of the

28 Garda Press Office, where there are one-to-one

29 briefings with journalists. First of all, I would like

1 to confirm and invite you to comment on this, that is
2 not new; that has been going on for decades?

3 A. Correct.

4 761 Q. And some of the briefings are what is known as
5 off-the-record briefings or unattributable briefings, 15:24
6 isn't that right?

7 A. On occasion, yes.

8 762 Q. Yes. Is there a distinction between an off-the-record
9 briefing or an unattributable briefing, or are they, in
10 practice, the same thing? 15:24

11 A. Well, I haven't really heard the phrase
12 "unattributable", to be honest with you.

13 763 Q. I mean, you were explaining to us, and I invite you to
14 enlarge upon it, they are not uncommon in large
15 organisations, isn't that right? 15:24

16 A. That'd be correct, yes.

17 764 Q. And before I ask a couple of questions about it, in
18 your own words would you tell us how off-the-record
19 briefings work and why they are in place?

20 A. Well, it depends on the -- it depends on the 15:25
21 circumstances. You might want to impart information on
22 a background basis that -- I'm just trying to think of
23 an example, to be honest with you, Chair, so if I might
24 just take a second, if that is okay.

25 CHAIRMAN: Please do. 15:25

26 A. Say, for instance, if you're in the middle of a, and
27 I'm taking it outside the Garda element, but if you
28 were in the middle of an industrial relations dispute
29 and there are ongoing discussions with trade unions,

1 you may want to inform correspondents of the progress
2 of those discussions and if they are going well, but,
3 you know, you don't want to get into a situation where
4 you're saying that publicly with a public face in case
5 it upsets the trade unions. 15:26

6 765 Q. MR. MICHAEL O'HIGGINS: All right. Perhaps if I could
7 give an example within the Garda context. We have
8 regrettably been plagued in recent years by what have
9 been referred to as gangland feuds, isn't that right?

10 A. Correct. 15:26

11 766 Q. And there have been a number of very well reported
12 feuds, with a body count arising on each side of the
13 divide, isn't that right?

14 A. That's correct, unfortunately.

15 767 Q. And it would not be uncommon after the latest atrocity 15:26
16 that a newspaper might report which side was striking
17 against the other and perhaps give some information as
18 to who had perpetrated the offence and why and why the
19 particular victim had been selected. That's something
20 that would occur in an off-the-record briefing, isn't 15:26
21 that right?

22 A. No.

23 768 Q. It's not?

24 A. No.

25 769 Q. Where does that information come from when you read it 15:27
26 in the newspaper?

27 A. Well, crime correspondents have very good sources
28 within An Garda Síochána and they are able to use those
29 sources and that's -- from their perspective, that is a

1 legitimate exercise, to gain information that I, as
2 director of communications, would prefer was not in the
3 public domain because it involves sensitive personal
4 data and victims of crimes.

5 770 Q. What off-the-record information have you imparted in 15:27
6 your time?

7 CHAIRMAN: Well, now, Mr. O'Higgins.

8 771 Q. MR. MICHAEL O'HIGGINS: Well, can you give us the type
9 of information?

10 CHAIRMAN: Well, I mean, the European Convention on 15:27
11 Human Rights as interpreted by the European Court of
12 Human Rights is perfectly clear. The exceptions to
13 journalistic privilege are extremely limited, and I am
14 not going to make any decision as to whether someone
15 is -- 15:28

16 MR. MICHAEL O'HIGGINS: I won't press it, Chairman.

17 CHAIRMAN: No, no, no, a witness is obliged to answer a
18 question without looking into the detail of it in
19 considerable detail, and it can't do that because it's
20 a balancing exercise and the exceptions are very 15:28
21 limited. I mean, you're asking him just to let's
22 divulge all the secrets you've ever told the press. I
23 mean --

24 MR. MICHAEL O'HIGGINS: Well, I won't pursue it.

25 772 Q. You have given off-the-record briefings, isn't that so? 15:28

26 A. I have given off-the-record briefings throughout my
27 career in public relations.

28 773 Q. I'm not suggesting that there's anything necessarily
29 wrong with it. The purpose of an off-the-record

1 briefing, I would suggest to you, is as follows: it
2 allows one party to put a version of events out without
3 having to be identified with it, isn't that so?
4 A. Potentially. Again, it depends on the circumstances,
5 but potentially. 15:29
6 774 Q. That is the usual advantage to be gained; you get your
7 side out without having to stand over it publicly?
8 A. Well, without it being publicly, if you like, publicly
9 attributable to the organisation in question, yes.
10 775 Q. That's the advantage. So, in terms of a story, you get 15:29
11 to influence if without having to put your head above
12 the parapet?
13 A. Again, depending on the circumstances, yes.
14 776 Q. That, I would suggest, is most, if not all,
15 circumstances, isn't that so? 15:29
16 A. Again, it would depend on the circumstances.
17 777 Q. I want to put to you my client's instructions with
18 regard to his interaction with you and the nature of
19 the relationship he enjoyed with you and the
20 information he shared with you, and it is his 15:30
21 instruction that he shared what he knew with you
22 consistently throughout his dealings with you. Now, I
23 am putting that as a general proposition. I think as a
24 general proposition, you wouldn't demur from it?
25 A. In general, no, I wouldn't. 15:30
26 778 Q. Specifically, he instructs that when you took up the
27 post, he gave you a full briefing of all of the issues
28 which were boiling or simmering away, including the
29 Sergeant McCabe whistleblower issue. First of all, did

1 he give you any briefing on the Sergeant McCabe issue?
2 A. He gave me a briefing on issues in general, and that
3 would have included the fact that there was starting to
4 come through in the media an issue around penalty
5 points. But I don't recall him referencing Sergeant 15:31
6 McCabe by name.

7 779 Q. Well, am I correct in thinking that Assistant
8 Commissioner O'Mahony appointment was the 31st October
9 2012?

10 A. It was before my time, I'm afraid. 15:31

11 780 Q. And I understand he reported to the Commissioner in the
12 last week of March, perhaps the 28th March 2013?

13 A. That could well have been the case, but again, it was
14 before my time.

15 781 Q. And you arrived in September? 15:31

16 A. September 2013.

17 782 Q. And the PAC meetings were - we've had them up on
18 screen - they were happening in late 2012/early 20 --
19 sorry, late 2013/early 2014, is that correct?

20 A. There was one technical meeting with the traffic bureau 15:32
21 in December 2013 and then the main meetings began in
22 early January.

23 783 Q. And would it be fair to say that Sergeant McCabe's
24 earlier set of complaints were what one might say were
25 confined to local issues; in other words, issues that 15:32
26 had happened in the Cavan-Monaghan division, but this
27 was a horse of a different colour in the sense it was a
28 national issue.

29 A. Yes. Well, I don't know the detail of the previous

1 issues, but certainly the allegations that Sergeant
2 McCabe was bringing forward in relation to FCPN was a
3 national issue.

4 784 Q. And what did precisely, as best as you can recollect,
5 what did Superintendent Taylor tell you all about it? 15:32

6 A. My recollection is that he informed me that there was
7 allegations that basically penalty points -- that Garda
8 members had struck off penalty points outside of
9 procedure, that there was allegations. I can't recall
10 did he give an opinion on whether the allegations were 15:33
11 correct or not. As far as I was concerned, it was a
12 top-line briefing on the issues that the organisation
13 was facing.

14 785 Q. But what did he say about Sergeant McCabe's motivation
15 for making or highlighting these matters? 15:33

16 A. I don't recall at that time Superintendent Taylor
17 bringing forward anything in relation to Sergeant
18 McCabe's motivations.

19 786 Q. Well, just think about this now. You're new in the
20 job, you're working your way in, this is a significant 15:33
21 issue coming down the tracks, it's beginning to
22 formulate at your end on a formal basis in
23 December/January '13/'14; do you think it is possible
24 that you could have had discussions with
25 Superintendent Taylor about this matter where his 15:34
26 motivation was not discussed?

27 A. Well, it's entirely possible that we could have had a
28 conversation at some stage where his motivation was --

29 787 Q. Right. what did he say?

1 A. Well, sorry, can I just -- if I can just finish. It's
2 entirely possible that motivation could have been
3 discussed, but, to be honest with you, my concern was
4 not Sergeant McCabe's motivation, my concern was, was
5 Sergeant McCabe's allegations in relation to FCPN 15:34
6 correct or not and were we in a position to defend the
7 organisation and protect the reputation of the
8 organisation in relation to the FCPN allegations.

9 788 Q. But I take it, we will talk for a moment generically, I
10 take it you're not making the case that if a person is 15:34
11 complaining about how something functions, that their
12 motivation for making the complaint is irrelevant?

13 A. No, I'm not making that case in general, but that's
14 not -- it's not -- their motivation is not -- from my
15 point of view in terms of communicating information and 15:35
16 issues, their motivation is not really of relevance to
17 me. What is of relevance to me in trying to defend the
18 organisation is: are their actual allegations correct
19 or not?

20 789 Q. But surely you cannot determine whether a person's 15:35
21 motivation is relevant without first ascertaining what
22 their motivation was?

23 A. Well, again, again, all I can say is, from my
24 perspective, and this is my perspective, is that
25 motivation is not particularly relevant, what they are 15:35
26 bringing forward is the allegation --

27 790 Q. The question I asked you, and I'm sorry to interrupt
28 you, but the question I asked you was: You've agreed
29 with me in some instances a person's motivation can be

1 relevant, and I'm asking you how can you determine
2 whether it is one of those instances or not without
3 ascertaining firstly what their motivation was?

4 A. well, what I said was, their motivation may be relevant
5 in the general terms in terms of how the organisation 15:36
6 handled them, but they're not relevant to me from a
7 communications perspective. what is relevant to me
8 from a communications perspective is, are the
9 allegations correct, false or somewhere in between? If
10 I know that information, then I can help defend the 15:36
11 organisation, or at least advise on how best to protect
12 and enhance the reputation of the organisation.

13 791 Q. So it never occurred to you that if the man was
14 embittered, as the rumour machine seemed to suggest,
15 that that is a factor, one way or another, which you 15:36
16 should consider or even discuss with Superintendent
17 Taylor?

18 A. I may well have discussed it, but it wasn't from a
19 consideration point of view in terms of what that meant
20 for our PR strategy, that wasn't a consideration. 15:37

21 792 Q. All right. well, we will leave the strategy for a
22 moment. You may well have; did you?

23 A. I don't recall, but it's entirely possible, as Sergeant
24 McCabe's name filtered through into the media --

25 793 Q. You see, I would suggest two things: First of all, 15:37
26 it's obviously, I would respectfully suggest, clear
27 that a person with even the smallest level of
28 curiosity, never mind a director of communications in a
29 press office, would inquire about that, and, number

1 two, given where we are today and given that where we
2 are today didn't just happen last week, that you would
3 remember it, and this is another example, I suggest, of
4 an empty memory bank?

5 CHAIRMAN: Well, I'm not sure that reiteration of empty 15:37
6 memory bank is actually helping at this stage.

7 MR. MICHAEL O'HIGGINS: I take your point.

8 CHAIRMAN: What Mr. O'Higgins is basically asking you
9 is, and I go back and it's -- if something is being
10 said that is unpleasant about, let us say, the 15:38
11 organisation you are working for, the person that you
12 are working for, obviously there's two approaches, the
13 first and the obvious approach is to see is it true or
14 is it not. Perhaps another approach is: what is
15 motivating this person? And, you know, there can be 15:38
16 two responses: destroy the facts because they're not
17 correct, or destroy the person if the facts are
18 correct. Now, as I get Mr. O'Higgins's drift, you were
19 being briefed that the Garda organisation was out to
20 destroy the person on the basis that, forgive me for 15:38
21 using the phrase again but it does stick, he was a
22 bitter little man, as in the Jack Charlton comment, and
23 I don't know if you can remember conversations with
24 David Taylor to that effect? Maybe that's the best way
25 of putting it, I don't know. 15:38

26 MR. MICHAEL O'HIGGINS: Yes.

27 A. Well, certainly I would imagine, and I don't recollect
28 them in detail, I'm afraid, Chair, but I imagine that
29 we did talk about Sergeant McCabe and the issues that

1 he was having and that he had had, but they weren't
2 influencing me in relation to my role as the director
3 of communications in terms of advising, which is my key
4 role, which is advising on the communications strategy
5 for the organisation to the Garda Commissioner. 15:39

6 794 Q. You see, you said to us that you were unaware of any
7 policy in operation about briefing negatively against
8 Sergeant McCabe, isn't that right?

9 A. Correct.

10 795 Q. And I am just curious as to how you can make that 15:39
11 statement when, in the very next breath, you
12 acknowledge you may have had discussions with
13 Superintendent Taylor about his views about Sergeant
14 McCabe and his motivation but don't remember any of
15 them? 15:39

16 A. Well, I don't remember them in detail, but I would
17 imagine that we did discuss it. I didn't note down
18 those kind of conversations, they were casual
19 conversations.

20 796 Q. I'm not suggesting you should note them down. But do 15:40
21 you think it's odd, in the position you're in here
22 today, you're giving an answer saying, I imagine, I
23 imagine there must have been a discussion, does that
24 strike you as odd?

25 A. Em, no, I have to say no, because it was -- every day 15:40
26 there was more revelations, more issues. It was a
27 fairly stressful time, there was lots of meetings going
28 on, there was lots of issues to be resolved, there was
29 lots of statements to be drafted, everything else like

1 that, it was an credibly busy, stressful time, and I
2 can't recall specific conversations, no.

3 797 Q. You see, your training is to separate wheat from chaff,
4 do you know what I mean by that?

5 A. Yes. 15:41

6 798 Q. You're not someone who can take it in the round. On
7 the contrary, your training, it's a little bit like a
8 lawyer's training or a journalist's training, is to sit
9 down and say, what have we got here that is established
10 and what have we got here that is not established and 15:41
11 what are we left with? That is your training, isn't
12 that right?

13 A. Yes, in part.

14 799 Q. But certainly the impression your evidence is creating
15 here is, there are all sorts of things that might have 15:41
16 been said, could have been said, may have been said,
17 but you have no specific recollection of any of them or
18 any analysis of them. Does that make any sense?

19 A. Well, it makes sense to me because I was in the middle
20 of a significant major media maelstrom where, you know, 15:41
21 things were changing on a daily and sometimes on an
22 hourly basis. You're having lots of conversations with
23 lots of different people on these issues, and, as I
24 said, you know, they weren't formal meetings so you
25 didn't have them minuted, or anything else like that, 15:42
26 so it makes sense to me.

27 800 Q. When things are changing rapidly like that, don't you
28 have to stay on top of it --

29 A. Absolutely.

1 801 Q. -- and keep asking questions as to what the latest
2 state of play is?
3 A. Yes. But the main --
4 802 Q. Because you get left behind if you don't do that?
5 A. Yes, but -- 15:42
6 803 Q. How did you function without making those inquiries?
7 A. But I go back to my previous answers in relation to
8 that. My focus again was on: were the allegations
9 correct or not? Could we defend the allegations made
10 by Sergeant McCabe in relation to the penalty points 15:42
11 issue? That was my focus.
12 804 Q. I want to suggest to you that Superintendent Taylor
13 told you in categorical terms that the Garda
14 Commissioner, Commissioner Callinan, had instructed him
15 to draw to journalists' attention the allegation of 15:42
16 sexual assault, that there had been an investigation
17 and that no prosecution was directed, but that he was
18 disillusioned or embittered by that, and that was what
19 was partly driving his agenda, he told you that in
20 crystal-clear terms? 15:43
21 A. No.
22 805 Q. CHAIRMAN: Have you an occasion, Mr. O'Higgins? Is
23 there specificity about a particular occasion leaving
24 the Commissioner's office having --
25 MR. MICHAEL O'HIGGINS: No. It was an on -- it was a 15:43
26 rolling instruction that was in place.
27 CHAIRMAN: I understood Superintendent Taylor to deny
28 that there was any conversation with Mr. Williams as to
29 any direction from the Director of Public Prosecutions.

1 MR. MICHAEL O'HIGGINS: That is specifically so.

2 CHAIRMAN: But nonetheless, it was to be mentioned to
3 journalists even though he wouldn't mention it, denies
4 mentioning it to Mr. O'Higgins.

5 MR. MICHAEL O'HIGGINS: I'm going to deal with the 15:43
6 Mr. Williams thing in just one moment and maybe we can
7 tease that out then.

8 CHAIRMAN: Yes.

9 806 Q. MR. MICHAEL O'HIGGINS: But I'm suggesting to you that
10 insofar as Superintendent Taylor had a riding 15:44
11 instruction from Commissioner Callinan, he imparted
12 that to you in clear terms?

13 A. No.

14 807 Q. You have mentioned instances that the Commissioner
15 spoke in your presence about Sergeant McCabe, and I 15:44
16 understood you to say he was not sparing in his
17 comments, is that right?

18 A. Em, I wouldn't necessarily use the phrase "not
19 sparing", but certainly, as I said previously,
20 Commissioner Callinan had a very strong view in terms 15:44
21 of, his view at the time was that Sergeant McCabe had
22 not cooperated with the O'Mahony investigation.

23 808 Q. When Mr. Williams contacted the Press Office, the first
24 person my client spoke to was you, isn't that right?

25 A. I'm not too sure if that was the case, but I know he 15:45
26 brought it to me fairly quickly after he got it.

27 809 Q. Sorry, in fact, when I say the first person, I'm not
28 absolutely sure you were necessarily the first person.
29 He brought it to your attention, isn't that right?

1 A. He did, and that was the correct thing to do.

2 810 Q. And again just to be clear about this, because you say
3 words in your statement to the effect that you didn't
4 get the impression that my client had generated the
5 Paul Williams interest in Ms. D. Just to be clear 15:45
6 about that, he had nothing to do with it, good, bad or
7 indifferent. In fact, I believe there was evidence
8 here previously that some superintendent in Cavan or
9 Monaghan set it up or encouraged it. But his first
10 knowledge of it was when the phone rang in the Press 15:45
11 Office, same as yours, isn't that so?

12 A. That was my understanding of it, yes.

13 811 Q. And was Superintendent Taylor saying that Mr. Williams
14 intended to write a story which would put Sergeant
15 McCabe in a bad light? 15:46

16 A. I don't recall him saying those exact words, no.

17 812 Q. Well, think about it now, because earlier you were
18 saying in response to what you had been told that the
19 article wouldn't appear because it would be a libel?

20 A. Yes. 15:46

21 813 Q. So what do you think was told to you that left you with
22 the impression that if it was printed it would be a
23 libel?

24 A. Well, I would have thought that because he was going,
25 Mr. Williams - this is again relayed to me by 15:46
26 Superintendent Taylor - that because Mr. Williams was
27 going up to interview Ms. D, I would have thought there
28 was potential for Ms. D to reference Sergeant McCabe,
29 and my view on that was that that was -- that there

1 would be no reference to Sergeant McCabe in that
2 article because of the libel laws.

3 814 Q. Well, just on that point, just to be clear about this,
4 a Joe public picking up the article and reading it,
5 that there was an unnamed woman complaining that a 15:47
6 complaint she made against a guard wasn't properly
7 investigated, Joe public wouldn't make much of that,
8 isn't that right?

9 A. No, I wouldn't have thought so, no.

10 815 Q. But you would immediately pick up on what it was about, 15:47
11 isn't that right?

12 A. I would -- well, I suppose I would, because I was aware
13 of the media query, I suppose --

14 816 Q. Yes, but you and anyone else who was well-informed
15 would very quickly read between the lines and see what 15:47
16 it was about, isn't that so?

17 A. I suppose it's very difficult for me to give an opinion
18 on that. I'm not trying to -- it's very difficult for
19 me to give an opinion on that, because I was aware of
20 the situation, so I was aware of it, so I couldn't 15:48
21 looked at that, if you like, in a -- from the view of
22 the -- to use your phrase, the Joe public's view, I
23 couldn't give an opinion on that.

24 817 Q. You see, I have to suggest to you it's significant that
25 when Mr. Williams rang, that Superintendent Taylor was 15:48
26 anxious to bring it to your attention, because I
27 suggest that what Mr. Williams was doing, i.e. writing
28 a negative story about Sergeant McCabe, was consistent
29 with what he had already told you the Garda Press

1 Office was happy to promote?

2 A. No, I don't think so. Like, it was a surprise to me
3 that Paul Williams had put forward or was going to do
4 this interview. That was the first that I had heard of
5 it. As far as I was aware, Mr. Williams hadn't covered 15:48
6 much of this issue up until now, so I was surprised
7 that Paul Williams was ringing us up, ringing up the
8 Press Office in relation to this matter.

9 CHAIRMAN: I think Mr. O'Higgins is probably putting it
10 in this term: That it's like this - our agenda is to 15:49
11 undermine Sergeant McCabe, we have been fishing all
12 night, or for the last week, and oh, look, there's
13 something in our net, it's Paul Williams type thing,
14 isn't that a great idea, isn't that wonderful news type
15 stuff, and I don't know, can you help us as to the 15:49
16 context or emotion of that?

17 A. Yeah, well, the impression that I got from
18 Superintendent Taylor, that this was a surprise to him,
19 that Paul Williams was going to be advancing this
20 interview or that he was undertaking or going -- or had 15:49
21 undertaken this interview, that the process that Paul
22 Williams was engaged in was news to him, that was the
23 impression I got.

24 CHAIRMAN: Could I just ask, Mr. O'Higgins, in the
25 event it's been very helpful, obviously, that you put 15:49
26 your client's case, which was that after having a
27 discussion with Commissioner Callinan in clear terms,
28 that Mr. McPartlin was told that he, namely
29 Superintendent Taylor, had been instructed by Martin

1 Callinan to draw journalists' attention that there had
2 been an allegation of sexual assault, that the DPP
3 directed no prosecution, and that, in consequence of
4 all of that, Sergeant McCabe was embittered and was
5 partly driven, at least partly driven by that agenda. 15:50
6 Do you have any instructions as to what the alleged
7 reaction was of Mr. McPartlin? I mean, it could be
8 anything from, well, that is wonderful, or you must be
9 off your head.

10 818 Q. MR. MICHAEL O'HIGGINS: No, I know you deny it was said 15:50
11 to you, but I'm suggesting it was said to you and I'm
12 suggesting there was no adverse reaction from you
13 whatsoever.

14 A. No, my reaction to it was, was, I didn't think that
15 that was going to be a story that would name Sergeant 15:50
16 McCabe.

17 CHAIRMAN: No, don't worry about it.

18 A. Sorry, Chair.

19 CHAIRMAN: We're on a different thing now. Forget
20 about Paul Williams for a second. 15:50

21 819 Q. MR. MICHAEL O'HIGGINS: The Chairman has asked me to
22 refresh you, to go back, that when my client told you
23 what Commissioner Callinan wanted -- the manner in
24 which Commissioner Callinan wanted the matter handled,
25 you say you were never told that? 15:51

26 A. That's correct.

27 820 Q. But it is my case that you were. But the Chairman has
28 inquired as to whether I have any instructions as to
29 what your reaction was, and I don't, other than there

1 was no adverse reaction from you when you were told.
2 A. Well, I will refer to a previous answer, I wasn't told,
3 and, if I had have been told, I would have been
4 absolutely appalled about the suggestion of such a --
5 it's anathema to me to be involved -- as a public 15:51
6 relations professional, to be involved -- would be
7 involved in such a smear campaign.
8 CHAIRMAN: Would one not expect some kind of a
9 reaction, Mr. O'Higgins? I mean, it's not every day
10 that one is told by one's -- the person who is 15:51
11 answering to one that a person who is an officer of the
12 police force of the State is going to be destroyed by
13 that person. One might expect some kind of a reaction
14 from Mr. McLindon.
15 MR. MICHAEL O'HIGGINS: Perhaps so, Chairman. I can't 15:52
16 put the matter further.
17 CHAIRMAN: But it might help if we had some such
18 instruction. I don't know whether --
19 MR. MICHAEL O'HIGGINS: Well, I will certainly make
20 inquiries over the weekend, but I don't have it on -- 15:52
21 CHAIRMAN: Is it possible for your solicitor to make an
22 inquiry in relation to that?
23 MR. MICHAEL O'HIGGINS: Yes, it is. We will do that.
24 CHAIRMAN: Because it strikes me as being, at the
25 moment, very odd. 15:52
26 MR. MICHAEL O'HIGGINS: We will do that, we will do
27 that.
28 MR. MÍCHEÁL O'HIGGINS: I wonder, Chairman, as part of
29 that exercise, could I respectfully ask that it be put

1 to the witness, once the opportunity arises to get the
2 instruction, when this conversation is said to have
3 taken place.

4 CHAIRMAN: Yes. Well, that would help, too. But in
5 any event, yes. 15:52

6 MR. MICHAEL O'HIGGINS: My solicitor will make
7 inquiries in that regard.

8 CHAIRMAN: But, I mean, everyone else who allegedly had
9 such a thing said to them has reacted in some kind of
10 way, either internally/externally, by saying something 15:52
11 or by walking away or terminating the conversation or
12 changing the subject, or whatever it was, but there's
13 nothing about that here.

14 MR. MICHAEL O'HIGGINS: Chairman, we will take
15 instructions on it. 15:53

16 CHAIRMAN: Because one appreciates how serious this
17 allegation is against Mr. McLindon.

18 MR. MICHAEL O'HIGGINS: One does, one does. I mean,
19 I'm putting it on my client's instructions. I have no
20 alternative. 15:53

21 CHAIRMAN: No, I know that, I know that. I appreciate
22 that. But, I mean, just so it's just floated and he
23 says nothing, he doesn't reach for a bottle of water or
24 for a bottle of whiskey.

25 MR. MICHAEL O'HIGGINS: Well, could I just say, 15:53
26 Chairman, we received the instruction. In the event
27 that there wasn't a supplementary inquiry of my client,
28 that's our omission, not necessarily his, but we will
29 make the inquiry now.

1 CHAIRMAN: Yes.

2 821 Q. MR. MICHAEL O'HIGGINS: Could I ask you to look at page
3 1635, please. Can you talk us through what that
4 document means?

5 A. Yes. This was a media query that we received allegedly 15:54
6 of a so-called meeting between a Garda -- a new Garda
7 whistleblower allegedly meeting - can I say the name,
8 Chair?

9 CHAIRMAN: I would prefer you wouldn't, if you wouldn't
10 mind. Let's just call him Garda B, or whatever. 15:54

11 A. It's a private citizen who may have been involved in
12 issues, I think that's why he was saying that's why
13 someone might have --

14 CHAIRMAN: Well, then let's not put it up. I am sorry,
15 maybe you would just give me the page reference again 15:55
16 and if you wouldn't mind not moving anything,
17 Mr. Kavanagh, so I can just get it up, please,
18 Mr. O'Higgins. What page number are we on?

19 MR. MICHAEL O'HIGGINS: 1635, Chairman.

20 CHAIRMAN: Just let me have a quick look at it if you 15:55
21 wouldn't mind, please.

22 MR. MICHAEL O'HIGGINS: We read it from the bottom --

23 CHAIRMAN: If you just give me a moment, Mr. O'Higgins.

24 MR. MICHAEL O'HIGGINS: Of course, Chairman.

25 CHAIRMAN: Right, let's not put -- actually, let's -- 15:55
26 if you read it out, please, without putting it on the
27 screen, and if there's a point to the question --

28 MR. MICHAEL O'HIGGINS: I don't need the identities of
29 any parties. I mean, it starts with sending in a

1 photograph at the bottom of the page at 17:29, isn't
2 that right.

3 A. Yes.

4 822 Q. And my client sends it to you at 17:34?

5 A. Yes. 15:56

6 823 Q. And it's reference to the photograph possibly
7 highlighting a new Garda whistleblower, is all I need
8 to say to you, isn't that right?

9 A. Yes.

10 824 Q. And you reply at 17:37? 15:56

11 A. Yes.

12 825 Q. And then there's 17:41, you ask -- he says:
13
14 "One of the males looks familiar."
15 15:56

16 Asks you to bring it to the attention of the
17 Commissioner.

18 A. Yes.

19 826 Q. And you acknowledge that will be done, at 17:42?

20 A. Yes. 15:56

21 827 Q. Does that not suggest that Superintendent Taylor was
22 working very closely with you on the issue of
23 whistleblowers?

24 A. Yes.

25 828 Q. But yet when it came to indicating that Sergeant McCabe 15:56
26 may well be driven by an agenda because he felt hard
27 done by, he didn't share that with you?

28 A. Well, that's a query that could potentially open up a
29 new front, if you like, on the whistleblower issue. So

1 that's a query that would -- potentially has a
2 significant impact on the reputation of the
3 organisation. Superintendent Taylor absolutely did the
4 right thing in bringing that to my attention and then
5 we had to follow the process of bringing that to the 15:57
6 attention of the Commissioner, and then, when we did
7 so, it actually turned out that it wasn't actually a
8 whistleblower, it was a garda going about their normal
9 business.

10 829 Q. I appreciate that, but is it not indicative of, as far 15:57
11 as a whistleblower is concerned, he's working hand in
12 glove with you?

13 CHAIRMAN: It may be, but obviously there is a
14 legitimate aspect to whistleblowers.

15 MR. MICHAEL O'HIGGINS: Of course. 15:57

16 CHAIRMAN: And there is an illegitimate aspect, and it
17 may be that some whistleblowers have agendas of their
18 own and it may be that some whistleblowers are really
19 public-minded people.

20 MR. MICHAEL O'HIGGINS: Very good. 15:58

21 CHAIRMAN: So can we draw any inference from --

22 MR. MICHAEL O'HIGGINS: I won't press the matter any
23 further.

24 CHAIRMAN: Yes, I'm not sure one really could,
25 Mr. O'Higgins. 15:58

26 MR. MICHAEL O'HIGGINS: It's only a straw in the wind,
27 Judge, and it may be a small straw and the wind may be
28 very light. That is all I will say.

29 830 Q. I want to ask you some questions about Commissioner

1 Callinan and Sergeant McCabe. Superintendent Taylor
2 says that Commissioner Callinan was almost obsessed
3 with Sergeant McCabe and that Superintendent Taylor was
4 to watch every television programme, every newspaper
5 and to bring it to his attention. Does that ring any 15:58
6 bells with you?

7 A. It doesn't necessarily ring any bells, that
8 specificity, but certainly that wouldn't surprise me
9 either.

10 831 Q. And can I ask you when the Commissioner Callinan -- I 15:59
11 mean, as you say yourself, in fairness, you're there to
12 give advice, but people can heed it or elect not to
13 heed it, isn't that right?

14 A. That's correct.

15 832 Q. And understandably, you felt at the PAC the approach 15:59
16 was to keep the dust down?

17 A. Sorry, can you just repeat that question to me again?

18 833 Q. Your strategy at the Public Accounts Committee was to
19 keep the dust down, so to speak? You know what I mean
20 by that? 15:59

21 A. Are you talking about kind of damage limitation,
22 effectively?

23 834 Q. Yes. Not be confrontational or not say things that
24 would --

25 A. Yes. 15:59

26 CHAIRMAN: Let's not escalate everything, it's
27 escalated enough.

28 A. Yes, Chair.

29 MR. MICHAEL O'HIGGINS: Or say something colourful that

1 might come back to bite you.

2 A. Yes. And also, as I said previously, I would have
3 preferred -- I would have strongly preferred if we had
4 paid tribute to the whistleblowers for bringing forward
5 the information. 16:00

6 835 Q. Yes. Can I ask you a question, and Commissioner
7 Callinan had been, as you were explaining to us, I
8 think he had been in the witness box for almost five
9 hours, is that right?

10 A. That is my recollection, yes. 16:00

11 836 Q. Without a break?

12 A. Without a break.

13 837 Q. It's a long time?

14 A. Yes.

15 838 Q. Towards the end of that -- 16:00

16 CHAIRMAN: It's kind of merciless, really, because one
17 might need to go to the toilet, for instance.

18 MR. MICHAEL O'HIGGINS: Yes, that is true.

19 839 Q. Towards the end of it, he came out with the outbreak of
20 "disgusting"? 16:00

21 A. Yes.

22 840 Q. That was bad news, as far as you were concerned?

23 A. Yes.

24 841 Q. Can I ask you, at the time that that was said, did you
25 make any connection with what he had said and the 2006 16:00
26 allegation?

27 A. No. My understanding of what the Commissioner was
28 saying was that what he found disgusting was the way
29 the --

1 CHAIRMAN: We have been through it before, but the
2 subtleties of comments are very often lost in the
3 public discourse.

4 A. Yes.

5 CHAIRMAN: One can say it is -- well, look, let's not 16:01
6 go into it, but I know the distinction and I know --

7 MR. MICHAEL O'HIGGINS: Could I say this, Mr. McLindon:
8 You instanced a statement, I think, which was issued on
9 the 16th March, I just want to get the date right --
10 the 20th March, perhaps, cleared on the 20th March, 16:01
11 four days after he had resigned and eight days after it
12 was drafted, in which he explained why he had used the
13 word "disgusting", isn't that so?

14 A. Well, sorry, I think that's four days before he
15 resigns, or retires, as it was technically. 16:01

16 842 Q. Well, I don't want to spend -- getting bogged down on
17 our valuable time, but this statement says it was
18 created on the 12th March 2014, it was described as
19 being cleared on the 20th March and I think was it
20 released on the 20th March, is that right? 16:02

21 A. Well, you wouldn't have put out a statement from
22 Commissioner Callinan unless he was in situ.

23 843 Q. So he resigned on the 16th, isn't that right?
24 CHAIRMAN: He didn't. He resigned on the 24th.

25 MR. MICHAEL O'HIGGINS: 24th, sorry, I beg your pardon. 16:02
26 So this was four days before he resigned?

27 A. Yes.

28 844 Q. So, and again I don't want to spend any more time on
29 this than it deserves, but it took him from the 24th of

1 -- or 23rd January to the 20th March to acknowledge
2 that the words were not the best words and there was
3 another explanation?

4 A. Yes.

5 MS. LEADER: I think it was actually sent out on the 16:02
6 12th, if you look at page 3004, which was just
7 circulated. There are two different statements.

8 A. Yes, there was a statement in relation to -- the 12th
9 March one was in relation to the Garda Inspectorate.

10 845 Q. MR. MICHAEL O'HIGGINS: All right, we will work on the 16:03
11 12th, we will work on the 12th. It took from the 24th
12 January to the 12th March for him to be persuaded that
13 it would be better to make a public statement
14 explaining "disgusting", isn't that right?

15 A. That's correct. 16:03

16 846 Q. And I don't mean this in any disparaging way, it's part
17 of your job to try and put the best explanation on
18 something, in much the same way it's part of my job on
19 behalf of my client, isn't that right?

20 A. That's correct. 16:03

21 847 Q. But leaving all that aside, how, months later, this
22 interpretation was placed on it, did it occur to you on
23 the 23rd January, when he had used that word, that it
24 was a subliminal reference, or otherwise, to the 2006
25 events? 16:03

26 A. Sorry, could you repeat that question to me?

27 CHAIRMAN: In other words, in using the word
28 "disgusting", which is a kind of a strong word
29 indicating repulsion as, for instance, I don't know,

1 finding a dead mouse in your fridge or something like
2 that.

3 A. Yes.

4 CHAIRMAN: It seems to indicate a powerful emotion.
5 And if that is to be interpreted not in reference to 16:04
6 procedure but in reference to people, did it occur to
7 you that perhaps there was a resonance there referable
8 to child sex abuse or something of that variety, that
9 is what you are being asked?

10 A. No, I didn't take it in that. 16:04

11 CHAIRMAN: You didn't take it in that?

12 A. In that vein, no.

13 CHAIRMAN: Do you want to take a break? I am going to
14 let Mr. McLindon take a break. I'm just going to stay
15 here, Mr. O'Higgins. I'm sure you have instructions 16:05
16 to -- Mr. O'Higgins, will you be much longer?

17 MR. MICHAEL O'HIGGINS: No, I won't. Just on the last
18 lap. And the matter you have asked for clarification,
19 I will be putting that to the witness.

20 CHAIRMAN: And, Mr. O'Higgins, you will be -- 16:05

21 MR. MÍCHEÁL O'HIGGINS: Chairman, I had said up to ten
22 minutes. I think that is still accurate.

23 CHAIRMAN: That is grand.

24 MR. LEHANE: Sorry, Chairman, I have questions.

25 CHAIRMAN: No, that is fine, I'm sure they are not very 16:05
26 long. I doubt it.

27

28 [Short pause in proceedings]

29

1 848 Q. MR. MICHAEL O'HIGGINS: Hello, Mr. McLindon. I just
2 have four things to finish with. One of them is just a
3 very quick matter. As far as the Paul Williams story
4 is concerned, do you know did Deputy Commissioner
5 Nóirín O'Sullivan have knowledge of that article before 16:07
6 it was published?

7 A. Em, I don't know for definite, but certainly
8 Superintendent Taylor told me that he was going to
9 communicate with Nóirín O'Sullivan. That was again in
10 line with policy and procedure. 16:07

11 849 Q. But do you know when he spoke to Deputy Commissioner
12 O'Sullivan what the response was?

13 A. No.

14 850 Q. All right, I won't press it. Now I want to deal with
15 the issue which the Chairman has raised about your 16:07
16 reaction when this was imparted to you. Mr. Taylor's
17 instructions are that approximately two to three weeks
18 after you were in your new position, you got a full
19 briefing on all major and live issues, of which
20 Sergeant McCabe was one, and this briefing occurred in 16:08
21 his office. Okay? Do you have any recollection of a
22 briefing occurring in his office?

23 A. No.

24 851 Q. You had already been given a briefing document on your
25 arrival with regard to the workings of the office, and 16:08
26 so forth?

27 A. That's correct, yes.

28 852 Q. He indicated to you what Commissioner Callinan's
29 direction was with respect to Sergeant McCabe. He says

1 your reaction was matter of fact, sanguine, noted that
2 that was the position adopted, you didn't show any
3 outward sign of being shocked or appalled. Does that
4 have any resonance for you, one way or the other?

5 A. No.

16:09

6 853 Q. You didn't raise any questions, you didn't attempt to
7 end the meeting, and the matter moved on to other
8 issues. Does that have any resonance for you?

9 A. No.

10 854 Q. All right.

16:09

11 CHAIRMAN: In fact, sorry, Mr. O'Higgins, in the event
12 that someone had said something like that to you,
13 you're working in a police organisation and it's
14 announced to you by the person who is reporting to you
15 that the Garda Commissioner has, well, it's apparently
16 over your head, instructed him to destroy a serving
17 officer, how would you have reacted?

16:09

18 A. I would have been -- I would have been appalled and
19 highly concerned and I would have felt the need to do
20 something in relation to that in terms of reporting
21 that, whatever way that restructure I could report
22 within, but I would have been seriously concerned, it
23 would have been completely anathema to me as a
24 communications professional and completely against my
25 ethical mindset.

16:09

16:10

26 855 Q. MR. MICHAEL O'HIGGINS: Now, there are just two other
27 matters I want to deal with. Assistant Commissioner
28 O'Mahony had been given the brief of investigating the
29 allegations which were raised by virtue of a protected

1 disclosure, isn't that right?

2 A. That is my understanding, yes.

3 856 Q. And the protected disclosure regime involves a level of
4 confidentiality with regard to the complainant, isn't
5 that so? 16:10

6 A. Yes. I think my, I stand to be corrected on this, but
7 I suppose it's a slightly different regime. At the
8 time it was the confidential recipient procedure rather
9 than the protected disclosure procedure.

10 857 Q. Now, as Assistant Commissioner O'Mahony explains in his 16:10
11 statement, obviously they looked at the Pulse entries
12 and it became very quickly apparent to them that the
13 two people who were accessing the relevant Pulse files
14 were Sergeant McCabe and Garda John Wilson, do you
15 follow me? 16:11

16 A. I follow, yes.

17 858 Q. And moreover, it was reported that Garda John Wilson
18 had told a garda sergeant that he had downloaded
19 material from the Pulse system and had disseminated it
20 and was entitled to do so because it didn't infringe 16:11
21 Section 62 of the Garda Síochána Act 2005 and that
22 Sergeant McCabe had also done this. So even though the
23 identity of the protected disclosure was confidential,
24 there were strong indications as to what the origin
25 was, do you follow me? 16:11

26 A. I follow you, yes.

27 859 Q. But as Assistant Commissioner O'Mahony explained, and
28 indeed as you partly explained in your answer earlier,
29 out of respect for the confidence, the confidentiality

1 863 Q. Did it occur to you that Garda management was acting in
2 any way unfairly?
3 A. Well, em, being new to the organisation and not being
4 fully familiar with all the policies and procedures,
5 notwithstanding, you know, making sure that 16:13
6 confidentiality within the confidential recipient
7 element was respected, I could understand the
8 Commissioner's concerns if he felt that there was an
9 explicit direction to a Garda member to comply with a
10 lawful order and then that Garda member had not 16:13
11 complied with that lawful order, and that was the
12 position of Commissioner Callinan at the time.

13 864 Q. All right.
14 CHAIRMAN: As I understand the narrative on this,
15 Mr. O'Higgins, was, certainly that was what 16:14
16 Commissioner Callinan felt, but he may have been
17 incorrect. At one point, certainly, Mr. McLindon was
18 prepared to accept that as being correct, as it seemed
19 to be based on the O'Mahony report, but as he looked
20 into the matter further as time went on, he began to 16:14
21 feel that maybe the basis for saying that was less than
22 certain, and I think that's what you have told me.

23 A. Yes, Chair.

24 865 Q. MR. MICHAEL O'HIGGINS: Now, I just want to turn to a
25 final issue. Now, on the day that Commissioner 16:14
26 Callinan resigned, on the morning, he rang my client to
27 inform him of what had occurred and my client instructs
28 me that you were the first person he spoke to
29 thereafter.

1 A. Yes, I believe that Superintendent Taylor was basically
2 upstairs, and there's a small kitchen in the Press
3 Office, he was upstairs, he took the phone call. I had
4 just literally come into the office having been in
5 Manchester the day before, Greater Manchester Police, I 16:15
6 think it was early enough anyway, between 9:00 and
7 9:30, Superintendent Taylor came down and basically
8 said something along the lines, it may have been
9 stronger than this, but you won't believe what is after
10 happening. 16:15

11 866 Q. I know this is a big question in one line, but I hope
12 you know what I mean by it: Do office politics feature
13 much in your work environment?

14 A. Em, the Garda organisation is a highly political, with
15 a small 'p', organisation, yes. 16:15

16 867 Q. Yes. It's only small 'p' I'm talking about.

17 A. Yes, small, yes.

18 868 Q. Do you recall anything that happened later that same
19 day, an action performed by Superintendent Taylor --

20 A. Eh... 16:16

21 869 Q. -- as a result of a request received from Commissioner
22 Callinan, who had earlier resigned that day?

23 A. Superintendent Taylor, I believe, provided Mr. Paul
24 Reynolds of RTÉ with certain -- with a letter, I think,
25 from -- that had been -- that Commissioner Callinan had 16:16
26 written.

27 870 Q. I think you were present when he received the call?

28 A. No, I wasn't present when he received the call from the
29 Commissioner, no.

1 871 Q. Did he tell you before he leaked this letter that he
2 had been requested to do so by Commissioner Callinan?
3 A. No, he told me afterwards.
4 872 Q. Afterwards?
5 CHAIRMAN: Is it a leak or is it a letter -- 16:16
6 MR. MICHAEL O'HIGGINS: A leak.
7 CHAIRMAN: -- because I understood that --
8 MR. MICHAEL O'HIGGINS: The letter in question was --
9 CHAIRMAN: I understood that it was a phone call, get
10 Paul Reynolds and then -- 16:17
11 MR. MICHAEL O'HIGGINS: That is a different call.
12 CHAIRMAN: Is it?
13 MR. MICHAEL O'HIGGINS: That call, just to clarify,
14 Chairman, was, speak to Paul Reynolds to indicate I've
15 resigned, I'm out. 16:17
16 CHAIRMAN: Yes.
17 MR. MICHAEL O'HIGGINS: This is a different call --
18 CHAIRMAN: Okay.
19 MR. MICHAEL O'HIGGINS: -- later in the day, where
20 Commissioner Callinan, I don't suppose one could use 16:17
21 the word "directed" because he was no longer in
22 employment, but asked my client to leak a letter to
23 Paul Reynolds. The letter was a letter that had been
24 sent a couple of weeks previously to the Department of
25 Justice alerting the Department that a number of phone 16:17
26 calls to Garda stations had been recorded as a result
27 of certain telephone systems that had been installed,
28 isn't that so?
29 A. That's my understanding, yes.

1 873 Q. And that letter or the leaking of that letter, which
2 had been sitting on the Minister's desk for some time,
3 was not -- the leaking of that letter, for obvious
4 reasons, didn't go down well with the Department of
5 Justice, because it had been sitting on their desk with 16:18
6 no action taken, isn't that right?

7 A. Well, I can't speak to their reaction, the Department.
8 CHAIRMAN: I suppose the Department of Justice is
9 represented, Mr. McCann is here, but I don't know --
10 I'm not going to make any finding as to whether the 16:18
11 Department of Justice was proactive or reactive but --
12 MR. MICHAEL O'HIGGINS: Well, I will just tease it
13 through. I don't have a lot more on this,
14 Mr. Chairman.

15 CHAIRMAN: Well, one can put it in neutral terms. Was 16:18
16 there a letter leaked? Was it about gardaí apparently
17 recording things in Garda stations? And, you know,
18 whether anybody in the Department was over the moon or
19 under the moon is neither here nor there.

20 874 Q. MR. MICHAEL O'HIGGINS: Let me put it from a Garda 16:18
21 perspective. It would appear that the leak was driven
22 by Commissioner Callinan, who was anxious to put the
23 spotlight on the Department of Justice on the day,
24 would that be fair?

25 A. I can't speak to Commissioner Callinan's conversation. 16:19

26 875 Q. Wouldn't that seem -- no, but let me just tease this
27 through now. I'm not asking you to say definitively.
28 CHAIRMAN: Again, Mr. O'Higgins, it's difficult for
29 Mr. McLindon to say what was on Commissioner Callinan's

1 mind.

2 MR. MICHAEL O'HIGGINS: I understand that, Judge.

3 CHAIRMAN: Because he didn't have an interaction. On

4 the other hand --

5 MR. MICHAEL O'HIGGINS: Let me -- 16:19

6 CHAIRMAN: On the other hand, if it's something to do

7 with David Taylor and him doing something and

8 Mr. McLindon is aware of it or is talked to about it by

9 your client, that is fine.

10 MR. MICHAEL O'HIGGINS: I have only, Chairman, a few 16:19

11 questions, and I do think the relevance will become

12 clear.

13 CHAIRMAN: Fine. I'm not stopping you, Mr. O'Higgins,

14 even though 45 minutes has turned into two hours.

15 MR. MICHAEL O'HIGGINS: I'm sorry about that. 16:19

16 876 Q. Does it look like that the motive for leaking the

17 letter might have been to steal a march on the

18 Department of Justice; as a press officer, did that

19 cross your mind?

20 A. I suppose it would have crossed my mind, yes. 16:20

21 877 Q. Were you shocked?

22 A. I was --

23 878 Q. Were you appalled?

24 A. I was --

25 879 Q. Did you do anything about it? 16:20

26 A. I was surprised.

27 880 Q. Did you do anything about it?

28 A. No, I didn't.

29 881 Q. Did you ever go to anybody and say what had happened?

1 A. No, I didn't.

2 882 Q. No, you didn't. Is it the case that Deputy
3 Commissioner O'Sullivan, who was now taking up the
4 reins on an interim basis, received a lot of flak from
5 the Department of Justice about the leaking of that 16:20
6 letter?

7 A. I'm not too sure about that now, to be honest with you.

8 883 Q. Well, my instructions are that, in the aftermath, she
9 was very annoyed.

10 A. I recollect, I recollect her being concerned, all 16:20
11 right, yes.

12 CHAIRMAN: Well, I suppose I'm hearing now about leaks
13 that people mean to happen and leaks that people don't
14 mean to happen, and I would presume that whether the
15 rights or wrongs of any leaks or abuse of journalists 16:21
16 and their obligation of confidence, if it's leaks that
17 people don't mean to happen, they would be annoyed
18 about it.

19 MR. MICHAEL O'HIGGINS: Well, I think it was a
20 deliberate leak on my client's part. I don't think 16:21
21 there was anything accidental about it.

22 CHAIRMAN: I don't know, is that what -- am I supposed
23 to take something from that? Am I supposed to think
24 good things about him in consequence of that,
25 Mr. O'Higgins or -- 16:21

26 MR. MICHAEL O'HIGGINS: No, no, no, you're not. You're
27 not being invited to do that, Mr. Chairman.

28 884 Q. You mentioned in your statement that my client had a
29 close working relationship with Commissioner Callinan,

1 isn't that so?

2 A. Yes.

3 885 Q. Could it be that he would be perceived as Commissioner
4 Callinan's man --

5 A. Em... 16:21

6 886 Q. -- by a new entrant?

7 A. Yes.

8 887 Q. On office politics, might a new person coming in want
9 their own person in my client's position?

10 A. I suppose it depends on what they -- how they view how 16:22
11 effective that person is. I suppose all I can say in
12 relation to that is that, kind of, my understanding of
13 it is, it's kind of traditional in An Garda Síochána
14 that when people take up senior roles, they kind of
15 bring certain people who they worked with over a period 16:22
16 of time, with them, through the process, and I don't
17 think it's unreasonable, either at Commissioner or CEO
18 level or anything else like that, for people to decide
19 that they want people around them that they have a good
20 working relationship with. 16:22

21 888 Q. If it's established that Superintendent Taylor was
22 briefing negatively in the manner described and if it
23 is established or it was even going to be suggested
24 that that was done with the direction and approval of
25 Commissioner Callinan, would he be a huge liability to 16:22
26 keep in that position?

27 CHAIRMAN: In other words, if Nóirín O'Sullivan knew --

28 MR. MICHAEL O'HIGGINS: Yes, was aware.

29 CHAIRMAN: -- that he had been instructed on behalf of

1 Commissioner Callinan --

2 MR. MICHAEL O'HIGGINS: Yes.

3 CHAIRMAN: -- to do something that was, to put it
4 mildly --

5 MR. MICHAEL O'HIGGINS: Embarrassing at the most 16:23
6 minimal level. Was he a potential liability.

7 CHAIRMAN: I wouldn't say embarrassing, I would just
8 say wrong.

9 MR. MICHAEL O'HIGGINS: Wrong.

10 CHAIRMAN: Well, you probably won't have much 16:23
11 difficulty agreeing with that?

12 A. No, I don't. Yes, I agree.

13 CHAIRMAN: But as to whether that was the motivation,
14 can you help? That's basically Mr. O'Higgins's
15 question. 16:23

16 A. Em...

17 CHAIRMAN: As to whether that, that was the motivation.

18 A. Just so I am clear, that was the -- are you asking is
19 that the motivation for Nóirín O'Sullivan when she took
20 over as Interim Commissioner for transferring 16:23
21 Superintendent Taylor?

22 889 Q. MR. MICHAEL O'HIGGINS: Yes, that he could be perceived
23 as a liability.

24 A. All I can say in relation to that is that I met
25 Commissioner O'Sullivan in May, I have the date in my 16:23
26 diary, I can provide that to the Tribunal, 19th or 20th
27 May, to do a handover before I went on annual leave for
28 a couple of weeks, because the Commissioner is my line
29 manager. It was to talk about a wide variety of

1 issues, it wasn't to talk about any individual in
2 question. During the conversation, Commissioner
3 O'Sullivan asked me for my opinion on whether
4 Superintendent Taylor -- she was considering
5 transferring Superintendent Taylor from the Press 16:24
6 Office because she felt that he would benefit from an
7 operational role, which he hadn't had as a
8 superintendent. I said that I had a good working
9 relationship with Superintendent Taylor and that I
10 would be happy if he remained as press officer. 16:24

11 890 Q. Yes.

12 A. And then -- and we didn't, sorry, just to finish, we
13 didn't come to a conclusion on that matter, and the
14 Commissioner didn't give me her final position on the
15 matter. My understanding leaving the meeting was that 16:24
16 it would be finalised when I came back from leave in
17 two weeks' time. In the middle of my leave, I received
18 a phone call from Superintendent Taylor to inform me
19 that he had been transferred.

20 MR. MICHAEL O'HIGGINS: Thank you very much. 16:25

21 CHAIRMAN: Just before you go to the other
22 Mr. O'Higgins, that he had been transferred, and how
23 did he feel about that?

24 A. Eh, he -- the impression that I got from him was that
25 he wasn't necessarily happy about being transferred 16:25
26 because he was very happy and he had expressed that to
27 me previously, that he was quite happy to stay on as
28 press officer under Commissioner O'Sullivan, but at the
29 same time the way he kind of -- I can't remember the

1 exact way he put it, but it was kind of, well, that's
2 the nature of An Garda Síochána; when the Commissioner
3 says you have to move, you have to move.

4 CHAIRMAN: Mr. O'Higgins. Sorry, Mr. Lehane, would you
5 like to go first? 16:25

6 MR. LEHANE: That might make more sense.

7 CHAIRMAN: Yes, it probably would. And we are
8 really -- the time is really -- I will rise at 4:30 for
9 ten minutes just to deal with stenography matters, but
10 I really do want to finish Mr. McLindon today. 16:26

11

12 MR. MCLINDON WAS CROSS-EXAMINED BY MR. LEHANE:

13

14 891 Q. MR. LEHANE: Mr. McLindon, I appear for Deputy John
15 McGuinness, and my name is Darren Lehane. I want to 16:26
16 ask you some questions in relation to two matters that
17 relate to my client. The first matter relates to the
18 PAC meeting on the 23rd January and the second matter
19 relates to what was discussed in Dundalk on the
20 following day. So if I can turn to the PAC meeting 16:26
21 first. They were fairly robust exchanges between
22 Mr. Callinan and the Committee, isn't that right?

23 A. That would be fair to say, yes.

24 892 Q. And would it be correct for me to describe Mr.
25 Callinan's demeanour as angry and frustrated towards 16:26
26 the end of the hearing?

27 A. I wouldn't necessarily angry, but certainly I would say
28 frustrated, yes.

29 893 Q. which led him to use the word "disgusting"?

1 A. Well, again, I can't speak to what was going through
2 his mind.

3 CHAIRMAN: It's possible, Mr. McLindon, but
4 Commissioner Callinan will certainly be here to
5 indicate how he felt about things.

16:27

6 MR. LEHANE: Yes.

7 894 Q. Now, just in relation to the mechanics of the meeting,
8 you sat behind Commissioner Callinan during the course
9 of the hearing, didn't you?

10 A. Yes.

16:27

11 895 Q. So you were only a few feet from him. Superintendent
12 Taylor was sitting next to you and I think Deputy
13 Commissioner O'Sullivan was directly in front of you,
14 is that right?

15 A. Yes.

16:27

16 896 Q. And when the hearing was finished, you saw John
17 McGuinness approach the Commissioner, isn't that right?

18 A. That's correct.

19 897 Q. And Deputy Commissioner O'Sullivan and Mr. Taylor were
20 all still there, isn't that right?

16:27

21 A. I can't recall necessarily who was around the
22 Commissioner and Deputy McGuinness.

23 898 Q. Yes. But you were still in close proximity to the
24 Commissioner at that stage, were you?

25 A. I was at the start of -- at the start of their
26 conversation, but not -- or as they met, but I wasn't
27 for the rest of it. As far as I can recall, I was out
28 talking to the media in the lobby area just outside.

16:27

29 899 Q. Yeah. And if I can focus on the start of their

1 conversation. My client, Deputy McGuinness, has given
2 evidence to the Chairman that when he approached
3 Commissioner Callinan, Commissioner Callinan was in
4 conversation with persons around him?

5 A. That could well be the case, but I don't recall, to be 16:28
6 honest with you.

7 900 Q. Okay. But you're not disputing Deputy McGuinness's
8 account, if that is his evidence?

9 A. It could be the case, but I can't recall one hundred
10 percent. 16:28

11 901 Q. And your evidence is you can't remember anything that
12 was said between Deputy McGuinness and Commissioner
13 Callinan, isn't that right?

14 A. That's correct.

15 902 Q. Okay. And just for the sake of clarity in relation to 16:28
16 this famous horse story involving Mr. Wilson, had you
17 ever heard that before?

18 A. I had heard a version -- kind of a very small version
19 of it, if you like, in kind of general conversation,
20 but I hadn't heard the detail of it as outlined by 16:29
21 Deputy McGuinness earlier this week.

22 903 Q. But again, you're not disputing Mr. McGuinness's
23 evidence -- or you're not in a position to dispute
24 Mr. McGuinness's evidence that he heard it?

25 A. No, I'm not, no. 16:29

26 904 Q. Okay. If I can move now to the events of the following
27 day in Dundalk. When Commissioner Callinan received
28 the call, did Commissioner Callinan tell the room, if I
29 can describe it in those terms, that he had telephoned

1 Mr. McGuinness the previous evening?

2 A. I don't recall him mentioning that. I think he said
3 something along the lines of that he had been in
4 contact with Deputy McGuinness, but I don't know if he
5 actually said it was phone conversations or whether it 16:29
6 had been gone through the Committee, the secretariat to
7 the Committee, I can't recall.

8 905 Q. So were you aware that Mr. Callinan had initiated the
9 contact with Deputy McGuinness?

10 A. The impression I got was that it had been an initiative 16:29
11 of Commissioner Callinan, yes.

12 906 Q. And did Commissioner Callinan, when he took soundings
13 from those of you who were in the room in relation to
14 the purpose of the meeting, did the discussion that
15 ensued in any way focus on what he was going to say to 16:30
16 Deputy McGuinness?

17 A. It focused on the fact that he was going to outline the
18 organisation's position in relation to the concern that
19 he had about the impact that it would have on his
20 ability to direct and control the organisation and also 16:30
21 then the risk of personal data being released into the
22 public domain by the PAC.

23 907 Q. Okay. And his purpose was to dissuade Sergeant
24 McCabe -- or the Committee from taking evidence from
25 Sergeant McCabe, isn't that right? 16:30

26 A. Primarily, but also possibly then to maybe, if you
27 like, kick the can down the road a little bit with the
28 whole process.

29 908 Q. Now, during the course of your evidence, you've seen

1 the draft letter that was prepared internally to be
2 sent to PAC outlining the various concerns, haven't
3 you?

4 A. No, I haven't seen that, no.

5 909 Q. Were you aware that a draft letter was prepared? 16:31

6 A. I was aware that there was correspondence between the
7 Commissioner and the PAC in relation to the concerns
8 that the organisation had.

9 910 Q. Do you think it's strange that if there was this
10 correspondence between the Garda Commissioner and the 16:31
11 PAC, that the Commissioner would go to a meeting with
12 the Chairman of the Committee on his mind?

13 A. In hindsight, yes. At the time I suppose we were in
14 the middle of a maelstrom and we were in a very
15 difficult position, so all options, I suppose, had to 16:32
16 be considered. But in hindsight, yes, I would agree
17 with that.

18 911 Q. That it was strange. And just finally, were you here
19 for Deputy McGuinness's evidence?

20 A. No. 16:32

21 912 Q. During the course of Deputy McGuinness's evidence a
22 series of text messages were opened to the Tribunal
23 between the Commissioner, Commissioner Callinan, and
24 the former Secretary General of the Department of
25 Justice, Mr. Purcell, and I won't open them given the 16:32
26 time constraints that I am operating under, but are you
27 aware that after the meeting between Mr. McGuinness and
28 Commissioner Callinan, that Mr. Purcell texted
29 Mr. Callinan to ask him how he got on at the meeting?

1 A. No, I was not aware.

2 CHAIRMAN: Well, it was different to that. It was:
3 fabulous performance this afternoon, or something to
4 that effect. Not: how did you get on?

5 MR. LEHANE: There were a number of texts, 16:32
6 Mr. Chairman.

7 CHAIRMAN: No, I have read them.

8 MR. LEHANE: Yes. No, that's in relation to the
9 Committee. I'm asking after the meeting with
10 Mr. McGuinness. 16:32

11 CHAIRMAN: Yes. You know, I take the view that just as
12 barristers are entitled to complain about judges as
13 bitterly as they like in the coffee room, people are
14 entitled to say things to each other in text. It
15 doesn't necessarily indicate a state of mind. 16:33

16 MR. LEHANE: well, Mr. Chairman, the reason I am -- if
17 I perhaps ask the next question and then I will address
18 the relevance of my question.

19 CHAIRMAN: Yes.

20 913 Q. MR. LEHANE: Were you aware that there was contact 16:33
21 between Mr. Callinan and the Secretary General of the
22 Department of Justice in relation to the possibility of
23 meeting him?

24 A. No.

25 914 Q. Meeting Mr. McGuinness? 16:33

26 A. No, I wouldn't be kind of privy to that kind of
27 correspondence, by text or phone call or any other
28 means.

29 915 Q. Would you be in a position to offer any view as to

1 whether you would regard it as strange that the
2 Commissioner would be keeping the Secretary General of
3 the Department of Justice in the loop?

4 A. If you are talking about in general, no, I don't think
5 so, because that happens on a very regular basis around 16:33
6 lots of different issues in order to potentially inform
7 the Minister if the Minister is required to either
8 address the issue in the Dáil or at a media event.

9 MR. LEHANE: Okay. Thank you, Mr. McLindon.

10 And, Chairman, just in relation to that, the reason I 16:33
11 was asking that question, Mr. Purcell sent two texts,
12 one after the Committee hearing and the second after
13 Mr. McGuinness's meeting with the Commissioner, and you
14 will see, Chairman, that he says: I know you're en
15 route to Dundalk, and I'm paraphrasing here, but how 16:34
16 did you get on with JMcG. And I wanted to ask the
17 witness whether or not he was aware of it, given that
18 the Commissioner, at the meeting, seemed to open it to
19 the room, should I meet this guy, is it a good idea to
20 do it? 16:34

21 CHAIRMAN: In other words, was the Department of
22 Justice in the loop in relation to strategy or --

23 MR. LEHANE: That is exactly it.

24 CHAIRMAN: -- or helping to formulate a strategy?

25 MR. LEHANE: Absolutely. 16:34

26 CHAIRMAN: Okay. No, I see your point. At the moment,
27 though, it's not quite getting there, I think.

28 MR. LEHANE: Sorry?

29 CHAIRMAN: I couldn't -- I am not sure I am in a

1 position to -- I can't reach a conclusion on it anyway,
2 but I see what the idea you're floating is.

3 MR. LEHANE: well, Mr. Purcell will be giving evidence
4 on Monday.

5 CHAIRMAN: Mr. O'Higgins, and again I'm not trying to 16:34
6 put pressure on you, but if you can give me a definite
7 time, can you, do you think?

8 MR. MÍCHEÁL O'HIGGINS: I hope to stay within the
9 estimate.

10 CHAIRMAN: Yes, all right. 16:35

11

12 MR. MCLINDON WAS CROSS-EXAMINED BY MR. MÍCHEÁL

13 O'HIGGINS:

14

15 916 Q. MR. MÍCHEÁL O'HIGGINS: Can I start I think 16:35
16 chronologically, Mr. McLindon, with the Crimecall
17 production meeting --

18 A. Yes.

19 917 Q. -- which is now in the reference to the conversation 16:35
20 between Commissioner Callinan -- that is said to have
21 happened between Commissioner Callinan and

22 Mr. Boucher-Hayes, the RTÉ journalist. I am trying to
23 just nail down some facts for the Chairman's benefit.

24 Am I correct in my understanding that there were two
25 meetings, in fact, a production meeting and a later 16:35
26 meeting on the 17th December 2013 --

27 A. That's correct.

28 918 Q. -- in relation to the Crimecall programme?

29 A. That's correct, yes.

1 919 Q. Is that right? All right. So the first one was, am I
2 correct in saying, a production meeting. Were you at
3 that?
4 A. Yes, that would be a standard meeting before the
5 morning of every programme, to go through the kind 16:36
6 of -- what the programme was going to cover and for
7 people to prepare for that, so that was a standard.
8 The only reason I was in attendance was because the
9 Commissioner was appearing on the programme later that
10 night. 16:36
11 920 Q. Yes. And at that meeting, am I correct in my
12 understanding, an issue had arisen in that RTÉ
13 presenters were apparently insisting that the
14 Commissioner might be asked something about the
15 Smithwick Tribunal? 16:36
16 A. Yes.
17 921 Q. Which had been recently published?
18 A. Yes.
19 922 Q. I think the position of An Garda Síochána and yourself,
20 broadly speaking, was that wouldn't be in keeping with 16:36
21 the normal tone of the Christmas Crimecall
22 presentation?
23 A. Yes.
24 923 Q. All right. Am I correct in my understanding that that
25 issue, even though you might have thought it was 16:37
26 resolved at the production meeting, it, in fact, hadn't
27 been resolved, is that right?
28 A. That's correct. As myself and Superintendent Taylor
29 were travelling over to the programme that evening for

1 the live broadcast, an issue arose where it appeared
2 that the presenters were not happy with the position
3 that we had reached at the end of the production
4 meeting.

5 924 Q. Yes.

16:37

6 A. And they had brought that to the attention -- or my
7 understanding was they had brought it to the attention
8 of the production company, the independent production
9 company and also the head of RTÉ Factual. So another
10 meeting was required when we arrived at the RTÉ

16:37

11 building between myself, representatives of Garda
12 community relations, who have the control, if you like,
13 so to speak, of Crimecall or are responsible for the
14 Crimecall programme, the presenters, the production
15 company and, as far as I can recall, the head of RTÉ
16 Factual.

16:38

17 925 Q. Right. And from your -- were you at that second
18 meeting?

19 A. I was.

20 926 Q. Was Mr. Boucher-Hayes?

16:38

21 A. He was, as far as I can recall, yes.

22 927 Q. Do you remember was Gráinne Seoige, who I think was the
23 co-presenter?

24 A. Yes, as far as I can recall, yes.

25 928 Q. And was it that meeting that was heated?

16:38

26 A. There was, I suppose, strong views on both sides.

27 929 Q. Yes.

28 A. I had a certain position, and I wasn't moving off that
29 position in terms of the appropriateness of that

1 question to be asked of the Garda Commissioner in that
2 particular format of an interview, and we reached an
3 amicable and constructive agreement in relation to
4 that.

5 930 Q. Right. And you've indicated in your statement that 16:38
6 subsequently the Commissioner attended the filming and
7 was greeted by RTÉ executives and you recall the
8 Commissioner speaking to Mr. Boucher-Hayes on the way
9 from the green room to the Crimecall studio, but you
10 weren't, in fact, party to that conversation? 16:39

11 A. No.

12 931 Q. All right. And just in terms of how polarised or not
13 it was, was the position of An Garda Síochána's side of
14 the house that if RTÉ insisted on questions being asked
15 about the Smithwick Tribunal report, that, in fact, 16:39
16 Commissioner Callinan would, in fact, not appear on the
17 programme, was that the -- was it as stark as that?

18 A. Yes, that was my position.

19 932 Q. And that wasn't going down terribly well, was it, with,
20 broadly speaking, the RTÉ side of the house? 16:39

21 A. No, it wasn't. But once we a discussion and we came to
22 an amicable agreement in terms of we would go ahead
23 with the Crimecall interview as originally scheduled,
24 but in fairness to all parties we would then look at
25 the format of the interview in future years. 16:40

26 933 Q. Right. Can I move then to Dundalk then and the 23rd
27 January 2014?

28 A. Yes.

29 934 Q. And it is the case, is it not, you've already given

1 evidence that you're not sure who rang who, but that
2 Commissioner Callinan, I think you used the expression,
3 opened it to the room or made some remark to the room
4 or remarks raising this issue as to whether -- the
5 possibility of him going down to meet with the head,
6 the chair of the PAC in Dublin? 16:40

7 A. Yes.

8 935 Q. And I think you've indicated that so far as the
9 impression you obtained from what was said was that it
10 was twofold. The purpose was to have another go at
11 persuading the chair not to call Sergeant McCabe in
12 evidence, is that right? 16:40

13 A. That's correct.

14 936 Q. And with the secondary position, if that was to go
15 ahead, that at least it would be in private? 16:41

16 A. Yes.

17 937 Q. Right. And is that something -- were you aware that
18 that was amongst -- leaving aside Commissioner
19 Callinan, was that a position amongst other people
20 within An Garda Síochána, that that would be a last
21 hope? 16:41

22 A. Well certainly, there was certainly a feeling that this
23 was a very difficult situation and we had to try and do
24 something to try and avoid that happening within the
25 limits of what we could do. 16:41

26 938 Q. Yes. And was it the view of those present that it
27 would be a good idea to try and find some sort of
28 mechanism to ensure that it wouldn't be held in
29 private -- public, excuse me?

1 A. Generally, yes. As I said, there wasn't a huge level
2 of discussion on it because of the time constraints
3 that everyone was under, particularly the Commissioner,
4 but there was no one basically disagreeing with that, I
5 would say.

16:42

6 939 Q. Right. So the view was it would be a good idea for
7 that meeting to go ahead, to see if the train could be
8 turned around?

9 A. Yes.

10 940 Q. Now just in terms of the timing then of the press
11 conference that took place, that was scheduled to take
12 place, can you assist the Tribunal with that?

16:42

13 Mr. Taylor -- excuse me, Superintendent Taylor, as I
14 understand it from the papers, was of the view that the
15 press conference was held up by dint of and as a result
16 of Commissioner Callinan having to go down to Dublin to
17 meet with the PAC chair, do you agree with that?

16:42

18 A. No. My recollection of it is that the press conference
19 was scheduled to take place at about 3:00pm, we put out
20 a notice the day before to invite the media to come to
21 Dundalk Garda station at 3:00pm. It may have been
22 slightly delayed given the phone calls but we started
23 in and around, I would say, 3:10, 3:15. Those kind of
24 media briefings generally last somewhere in the region
25 of ten to 15 minutes. At 3:28 we released a statement
26 from the Press Office which basically outlined what
27 Commissioner Callinan said at the press briefing.
28 It would be very unusual for us to put out such remarks
29 unless it was under embargo. So, my recollection of

16:42

16:43

1 that is that the press conference went ahead and then
2 Commissioner Callinan departed for his meeting with
3 Deputy McGuinness.

4 941 Q. Yes. Now, are you aware that the press conference and
5 the Commissioner's remarks at it, were carried in the 16:43
6 headlines on RTÉ news at four o'clock, as I understand
7 it during the course of the Mooney Goes Wild Programme
8 on RTÉ?

9 A. Well, I suppose, that would make sense insofar as we
10 had held the press briefing in time for the journalists 16:44
11 present to make a four o'clock deadline and we put out
12 a lot of information in the terms of the comments of
13 Commissioner Callinan at 3:28, so the media would have
14 had time to report on it by four o'clock, yes.

15 942 Q. Right. So you're clearcut that even putting it at its 16:44
16 latest, the press conference had occurred, been and
17 dusted, some time before four o'clock?

18 A. I would be fairly certain that it would have happened
19 in around 3:10, 3:15.

20 943 Q. Thank you. If I could ask you then to just turn to an 16:44
21 issue that --

22 CHAIRMAN: Mr. O'Higgins, it helps me in what way? And
23 where is it going?

24 MR. MÍCHEÁL O'HIGGINS: In this way -- the relevance of
25 that, I'm sorry I didn't spell that out. 16:44

26 CHAIRMAN: Well, I know that the meeting in the hotel
27 was in around the six mark, isn't that right?

28 MR. MÍCHEÁL O'HIGGINS: Five. A little bit after five.

29 CHAIRMAN: Okay. That is fine. Yeah.

1 MR. MÍCHEÁL O'HIGGINS: Yes.

2 CHAIRMAN: And we have had timings, it would take an
3 hour and 20 minutes to get down, so there was no delay
4 after that, he didn't wait until four o'clock to leave,
5 he would have left in around the half three mark and 16:45
6 been there in around the five mark, is that the point?
7 MR. MÍCHEÁL O'HIGGINS, yes.

8 CHAIRMAN: Sure. But let's suppose that is so, I mean
9 the timing of that is going to help me in any way, is
10 it? 16:45

11 MR. MÍCHEÁL O'HIGGINS: well, it's relevant to this:
12 To the claim by Superintendent Taylor, it seems, the
13 incorrect claim by Superintendent Taylor that the press
14 conference was delayed and didn't occur until the
15 Commissioner came back from Dublin back to Dundalk. 16:45

16 CHAIRMAN: I see your point now, thank you.

17 944 Q. MR. MÍCHEÁL O'HIGGINS: Just turning then, mention has
18 already been made, Mr. McLindon, of the email that you
19 sent yourself, do you recall that?

20 A. Yes. 16:45

21 945 Q. And this related obviously to the much disputed
22 question as to whether Sergeant McCabe did or did not
23 breach data protection laws, isn't that so, broadly
24 speaking?

25 A. Broadly speaking, yes. 16:46

26 946 Q. I think you have indicated that represented of a, you
27 may not have used these words, but a momentary snapshot
28 thought that you had?

29 A. Yes.

1 947 Q. And ultimately it is agreed you didn't send any press
2 release or issue any press release --

3 A. No.

4 948 Q. -- or even draft any press release --

5 A. No. 16:46

6 949 Q. -- reflective of that wording?

7 A. No. And in fact we didn't, as far as I can recall, we
8 never actually received any kind of press query of that
9 nature anyway.

10 950 Q. Yes. In relation to the minutes that were gone into of 16:46
11 the pre PAC minutes, you recall those?

12 A. Yes.

13 951 Q. Ms. Leader brought you through those, and the one from
14 yourself, your own minutes and then one from an
15 assistant commissioner, can I just ask you in relation 16:46
16 to that, insofar as it has been suggested -- perhaps it
17 hasn't even been suggested, but insofar as it might be
18 suggested that somehow those minutes reflect a
19 discussion in the room at which you were present of an
20 intention to -- either a decision or a determination to 16:47
21 smear Sergeant McCabe, what do you say were any such
22 suggestion to be made?

23 A. That there was no suggestion at that meeting that I can
24 recall of doing any such thing.

25 952 Q. Right. would you have participated in any such 16:47
26 exercise?

27 A. No.

28 953 Q. In relation to the product, as it were, of those
29 discussions in the pre PAC meetings, you I think

1 drafted a number -- we went through a number of drafts
2 but finalised what you were putting forward as the
3 opening statement for Commissioner Callinan to make at
4 the PAC meeting itself?

5 A. Yes. 16:47

6 954 Q. Am I correct in my understanding from your recollection
7 of what was in that document, that you prepared, did it
8 include any suggestion that Sergeant McCabe was
9 motivated out of an improper motivation for bringing
10 forward the penalty points? 16:48

11 A. No.

12 955 Q. Or did it include any suggestion of a smear campaign of
13 any sort?

14 A. No.

15 956 Q. Can I ask you then in relation to the Paul Williams 16:48
16 article, articles, of which mention has been made, you
17 have told the Tribunal that Superintendent Taylor told
18 you that Mr. Williams had called him, it seems, some
19 time before or after he was in Ms. D's house?

20 A. Yes. 16:48

21 CHAIRMAN: Or during.

22 MR. MÍCHEÁL O'HIGGINS: Or during the time.

23 CHAIRMAN: That is another version of it.

24 957 Q. MR. MÍCHEÁL O'HIGGINS: When he was in Ms. D's house. 16:48
25 I think you indicated to the Tribunal that what you
26 could pick up from what was said to you by
27 Superintendent Taylor, this was a surprise to
28 Superintendent Taylor, it was news to him effectively.

29 A. Yes.

1 958 Q. Can we just -- was there any suggestion from
2 Superintendent Taylor that he was involved in any way
3 in setting up that meeting?
4 A. No.

5 959 Q. The issue that was being dealt with, am I correct in 16:49
6 thinking, was Ms. D's concern or complaint that the
7 2006 allegation had not been properly investigated?
8 A. Well, that was the output of the article, yes.

9 960 Q. Sorry, that is what my question. That was the gist of
10 the article, in terms of what Ms. D was complaining 16:49
11 about?
12 A. Yes.

13 CHAIRMAN: There was another intention, however, in
14 going up.

15 MR. MÍCHEÁL O'HIGGINS: Pardon? Judge, sorry. 16:49
16 CHAIRMAN: There was another intention, however, in
17 going up. Mr. Williams said that he wasn't going to
18 actually publish it as an actual allegation, but that
19 was in his mind as one of the possibilities in going
20 up. 16:49
21 MR. MÍCHEÁL O'HIGGINS: Yes.

22 CHAIRMAN: And he changed his mind and said the story
23 should now be there is a complaint about how good this
24 investigation was.

25 MR. MÍCHEÁL O'HIGGINS: Yes. But in the context of it 16:50
26 having been organised by the D family not through
27 Mr. McLindon's office in any sense.

28 CHAIRMAN: No. But there was a chief superintendent
29 involved as well.

1 MR. MÍCHEÁL O'HIGGINS: That is so. And the Tribunal
2 has heard his evidence --

3 CHAIRMAN: I have.

4 MR. MÍCHEÁL O'HIGGINS: -- in relation to that, which I
5 suggest to you, Chairman, does not in any sense involve 16:50
6 a suggestion the Press Office were involved good, bad
7 or indifferent.

8 CHAIRMAN: I haven't been told that.

9 961 Q. MR. MÍCHEÁL O'HIGGINS: Just returning then to that
10 theme, Mr. McLindon. That allegation or complaint by 16:50
11 Ms. D that her allegation had not been properly
12 investigated, was that something that would be a
13 welcome news story for An Garda Síochána?

14 A. No.

15 962 Q. I think you've indicated that the second issue was that 16:50
16 there might -- you felt that the libel laws would mean
17 that Mr. Williams -- it would be unlikely and
18 irresponsible that anybody would be named specifically?

19 A. Yes.

20 963 Q. From your perspective was there anything you could do 16:51
21 to intervene in relation to preventing Paul Williams
22 meeting with Ms. D or inhibit him from actually
23 reporting on the meeting that may have taken place, if
24 it was in the past tense?

25 A. Absolutely not. It would be highly inappropriate for 16:51
26 me to do that.

27 964 Q. Just for the avoidance of any doubt about the issue,
28 did you or anybody of whom you're aware in the Press
29 Office ask superintendent John Reilly to contact Paul

1 Williams or put Paul Williams in touch with Ms. D or
2 her family?

3 A. No. No one from my office or that I am aware of,
4 certainly not from me or anybody else in my office made
5 or set up a meeting with between Paul Williams and 16:52
6 Ms. D.

7 965 Q. Yes. Were you aware in any respect of anything -- were
8 you aware of anything that would enable one to say
9 Garda Headquarters were effectively happy that Paul
10 Williams was meeting Ms. D and following up on her 16:52
11 complaint as to an inadequate investigation?

12 A. No.

13 CHAIRMAN: well, the evidence has been that according
14 to Superintendent Taylor and what he said in
15 consequence of the Paul Williams visit, whether in the 16:52
16 future, in the past or actually taking place, was that
17 Mr. McLindon got the impression from him that he,
18 Superintendent Taylor, thought that this might have
19 potential benefit for the organisation. That is what
20 he said. 16:52

21 MR. MÍCHEÁL O'HIGGINS: I beg your pardon, sorry,
22 Judge?

23 CHAIRMAN: Maybe you will just have a look at the
24 transcript. I am too exhausted to repeat it.

25 MR. MÍCHEÁL O'HIGGINS: well, you will appreciate, 16:52
26 Chairman --

27 MR. MCDOWELL: You're correct, Judge.

28 CHAIRMAN: I know I am correct. Yes. I am not always
29 correct.

1 MR. MÍCHEÁL O'HIGGINS: I am asking you just to repeat
2 it, sorry, I didn't catch what you said, Chairman.
3 CHAIRMAN: Oh God. Well, on one occasion he seemed
4 surprise, Superintendent Taylor said "Paul Williams was
5 going up to interview Ms. D and my impression was that 16:53
6 he thought this might have potential benefit for the
7 organisation".
8 MR. MÍCHEÁL O'HIGGINS: Right.
9 CHAIRMAN: That is what the witness said. Not to you.
10 But maybe some time today. It's been a long day. 16:53
11 MR. MÍCHEÁL O'HIGGINS: Yes. And, Chairman, you have
12 heard what Mr. McLindon has said, this was not
13 something organised by Garda Headquarters to his
14 knowledge, good, bad or indifferent.
15 CHAIRMAN: I have Paul Williams' evidence on that, I 16:53
16 have Chief Superintendent O'Reilly's evidence on that,
17 I have Ms. D's evidence on that, I have Mr. D's
18 evidence on that, I have Mrs. D's evidence on that,
19 unless I can raise an inference out of all of that to
20 that effect that is the evidence, you know. 16:54
21 966 Q. MR. MÍCHEÁL O'HIGGINS: I will deal with it this way:
22 Were you aware of anybody else, Mr. McLindon, in Garda
23 Headquarters, that came to your ears, who was happy
24 that there was to be a meeting or there had been a
25 meeting between Paul Williams and Ms. D and articles 16:54
26 followed?
27 A. No.
28 967 Q. Now just then moving then and we can be --
29 CHAIRMAN: Moving swiftly on.

1 968 Q. MR. MÍCHEÁL O'HIGGINS: We can deal with this fairly
2 quickly. Superintendent Taylor's overall charge, as
3 you're aware, which has been looked into and
4 investigated most thoroughly by this Tribunal, is that
5 An Garda Síochána, that Commissioner Callinan and 16:54
6 subsequently Commissioner O'Sullivan, organised it to
7 get him to conduct a smear campaign against Sergeant
8 McCabe, all right?
9 CHAIRMAN: Well, I'm not sure you're putting the
10 Commissioner O'Sullivan thing correctly. That was 16:55
11 certainly in the first statement, but it's been very,
12 very much watered down since then, to mere awareness of
13 what was going on. That is the Taylor allegation now
14 as it stands. It was different when it started off.
15 MR. MÍCHEÁL O'HIGGINS: Yes. 16:55
16 969 Q. Did you, in your role as director of communications,
17 when you did come in, did you have journalists coming
18 up to you saying what is the story about the smear
19 campaign?
20 A. No. 16:55
21 970 Q. You've indicated --
22 CHAIRMAN: In other words, Mr. O'Higgins, were
23 journalists inquiring, look, are you trying to smear
24 this fella?
25 MR. MÍCHEÁL O'HIGGINS: Yes. 16:55
26 CHAIRMAN: Yes.
27 A. No.
28 CHAIRMAN: Was that --
29 A. No, Chairman.

1 CHAIRMAN: No.

2 971 Q. MR. MÍCHEÁL O'HIGGINS: Finally can I ask you this,
3 Mr. McLindon: Are you beholden to any culture, police
4 culture that might be said to have existed, to stand
5 over or conceal in any way any smear campaign against a 16:56
6 serving officer?

7 A. Absolutely not. I am bound by professional and ethical
8 obligations to provide as independent communication
9 advice as I can. And certainly, as I have said
10 previously, a smear campaign is completely anathema to 16:56
11 that.

12 972 Q. Thank you.

13

14 MS. LEADER: Yes, there are a few questions.

15 16:56

16 WITNESS WAS RE-EXAMINED BY MS. LEADER AS FOLLOWS:

17 973 Q. MS. LEADER: Superintendent Taylor, was aware that two
18 other journalists were calling to the D family in 2014,
19 those being Debbie McCann and Eavan Murray and he said,
20 he knew they went up there and he presumed they were -- 16:57
21 he assumed that they were going to write an article,
22 did he tell you about that?

23 A. No.

24 974 Q. Did you ever hear about it from either of the two
25 Commissioners? 16:57

26 A. No.

27 975 Q. Superintendent Taylor said he is almost positive, he
28 believes that he would have texted, contacted the
29 former Commissioner Callinan at the time about calling

1 up, you didn't hear anything about it?

2 A. I didn't hear. But that was his, the form, so that
3 could well have happened, yes.

4 976 Q. It could have happened?

5 A. It could have happened, but I wouldn't have knowledge 16:57
6 of texts necessarily being exchanged between the
7 Commissioner and Superintendent Taylor.

8 977 Q. I suppose in view of you being contacted about the Paul
9 Williams visit and the story that was going to be
10 written, are you surprised that you weren't told about 16:58
11 the Debbie McCann and Eavan Murray visit?

12 A. Yes.

13 978 Q. Thanks very much.

14

15 WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN, 16:58
16 AS FOLLOWS:

17 979 Q. CHAIRMAN: Just a few questions for you, if you don't
18 mind, Mr. McLindon. First of all, there may be a
19 misunderstanding here, because what you are being asked
20 about is not whether you participated in a series of 16:58
21 events, the net effect of which was to get the
22 messenger, as opposed to deal with the message on a
23 factual basis, but what you know about it. Now there's
24 a number of possibilities that arise. Firstly, that
25 there was no such campaign at all. Are you in a 16:58
26 position to tell me one way or another anything to do
27 with that?

28 A. I can say from my perspective that as far as I can see
29 there was no campaign.

1 980 Q. CHAIRMAN: And then the second thing is that perhaps
2 there was a campaign but that it was one run between
3 David Taylor and Commissioner Callinan and given the
4 very close nature of their relationship and you being a
5 newcomer to the organisation, you knew absolutely 16:59
6 nothing about it and were deliberately kept out of the
7 loop?

8 A. That's a possibility, chair, yes.

9 981 Q. CHAIRMAN: The third possibility is that emotions were
10 spilling over in relation to Sergeant McCabe and that 16:59
11 perhaps there were inappropriate remarks, but it was
12 the kind of human interaction that you will perhaps
13 expect in people under pressure and doesn't necessarily
14 mean anything beyond the expression of their views or
15 emotions? 16:59

16 A. That's a possibility, chair. I didn't hear any kind of
17 specific remarks in terms of some of the remarks that
18 have been outlined earlier in the week in terms of
19 evidence. That would have stuck with me if those
20 phrases had been used by Commissioner Callinan. 17:00

21 982 Q. CHAIRMAN: Yes. Okay. You have been accused of being
22 a cat's paw, which I understand, from the relevant
23 fairytale, means someone who is persuaded to take
24 chestnuts out of the fire --

25 MR. MICHAEL O'HIGGINS: Sorry, I would like to clarify, 17:00
26 I put it to him that he wasn't a cat's paw, not that he
27 was.

28 CHAIRMAN: Well, I don't think you know what a cat's
29 paw actually is, Mr. O'Higgins. The cat's paw from the

1 legend of a monkey and a cat, and the monkey makes the
2 cat take the chestnuts out of the fire so the monkey
3 can eat them, but the monkey is the one who ends up
4 with the burned paws. There is a poem by Daniel
5 O'Connell apparently about that.

17:00

6 983 Q. Now, were you in any sense, do you think, being used to
7 do anything at the behest of anyone, perhaps
8 unwittingly, in relation to Sergeant McCabe that was
9 less than completely honest, less than completely above
10 board?

17:01

11 A. No, I don't think so, chair. At all times I tried to
12 provide independent advice to the Commissioner in terms
13 of what I thought was the best direction or approach by
14 the organisation. So I don't feel I was being used in
15 that manner. I always had a professional working
16 relationship with Commissioner Callinan. He might not
17 necessarily have accepted always my advice but he was
18 never unprofessional, dismissive or rude or anything
19 like that to me.

17:01

20 984 Q. CHAIRMAN: One tends to wonder, Mr. McLindon, that if
21 they were all under such strain in relation to penalty
22 points, loss of revenue, whistleblowers, etcetera, why
23 there was no explosion of emotion within Garda
24 Headquarters. As Ms. Leader put to you, if there was
25 an explosion of emotion on the television why was there
26 no explosion of emotion in the atmosphere of office
27 politics where people know they can get away with
28 things and it is just grist to the mill, it doesn't
29 mean very much? Are you saying there was no explosion

17:01

17:01

1 of emotion by anyone or inappropriate things said?
2 A. Well, I'd say, look, I think everyone was under
3 significant pressure at the time, myself included, it
4 was a very pressurised environment, people were very
5 frustrated, we were constantly on the back foot from a 17:02
6 public relations point of view and from an
7 organisational and reputational point of view, so I
8 think people were frustrated, but I only ever discussed
9 those kind of matters in formal meetings and maybe
10 within a formal meeting setting explosions of emotions 17:02
11 didn't manifest themselves. Maybe in more private
12 settings they did, chair, but I wasn't witness to that.

13 985 Q. CHAIRMAN: But you know the whole Ms. D in 2006 did
14 come up at one of those meetings.

15 A. That appears to be the case, chair, yes. 17:02

16 986 Q. CHAIRMAN: I mean, just looking at it from the point of
17 view of a complete outsider, you come in to do a new
18 job, you're supposed to be the boss of David Taylor,
19 but David Taylor is bypassing you the whole time and
20 going in and out of the Commissioner's office and 17:03
21 they're having all these great chats apparently and the
22 only thing -- the only time you ever get to see him is
23 at the twice-monthly meetings where things are on an
24 agenda and things are supposed to be discussed in a
25 formal way, I mean if that is so it must have been very 17:03
26 frustrating for you?

27 A. It was slightly frustrating, but I had to recognise
28 that was kind of the situation that was present when I
29 came into the organisation and that's -- as far as I

1 could see that's the way Commissioner Callinan wanted
2 to operate. And if that is the way my, effectively my
3 boss wants to operate well then I have to respect that
4 and over time change that process. But I can't -- I
5 don't think I can come in from day one and tell the 17:03
6 Garda Commissioner that he's wrong in the way he's
7 doing his business. I don't think --

8 987 Q. CHAIRMAN: So what you are saying is you were going to
9 play the long game?

10 A. Yes, chair. 17:04

11 988 Q. CHAIRMAN: Were you ever a journalist, Mr. McLindon?

12 A. I was, yes. For nine years, approximately.

13 989 Q. CHAIRMAN: And what kind of area did you cover and for
14 what media outlets?

15 A. I was -- well, I started off my career as a provincial 17:04
16 journalist then I went into editing a business
17 magazine, then I edited an internet magazine and then I
18 was a freelance journalist working across business and
19 technology for the likes of, say, business and finance.

20 990 Q. CHAIRMAN: So it was a kind of business journalism type 17:04
21 of career?

22 A. Business and technology, primarily, yes, chair.

23 991 Q. CHAIRMAN: Let's suppose journalists were actually used
24 in any context, take a business context, for instance,
25 in the event that there were, let's say a, takeover 17:04
26 which is the kind of thing, or proposed takeover, which
27 is the kind of thing that generates pages in the
28 financial press, and you as a journalist were
29 approached and told a very, very unpleasant but also

1 demonstrably untrue story by somebody, with a view to
2 having it published, so that their takeover bid would
3 lose strength, first of all can I ask you how would you
4 react to that?

5 A. Well, you'd be very -- depending on the level of 17:05
6 contact you had with the person who was giving you the
7 information, if they were a trusted source of
8 information to you and then suddenly they're providing
9 you with false information then that's going to
10 completely upset any relationship you have with that 17:05
11 source.

12 992 Q. CHAIRMAN: Sure.

13 A. And then second of all, well, if it is demonstrably
14 untrue well you're not going to do anything with that
15 information, I would have thought. 17:05

16 993 Q. CHAIRMAN: I appreciate you wouldn't publish it, but if
17 it be the case that people are coming up to you on an
18 apparently confidential basis and telling you
19 completely negative and completely untrue things, such
20 as so and so is a child sex abuser -- 17:06

21 A. Yes.

22 994 Q. CHAIRMAN: -- do you feel bound by journalistic
23 confidence in that respect? In other words, that
24 you're being used not as a genuine source of informing
25 the public, but of a source of disinforming the public 17:06
26 and destroying someone's character?

27 A. I suppose this would be my personal opinion, chair, and
28 other journalists may have different views and the NUJ
29 may have a different view, it is a long time since I

1 was -- I'm still a member of the NUJ, but it's a long
2 time since I was involved in journalism. But certainly
3 I wouldn't regard that I would have any means or
4 necessarily would have to protect that source if that
5 source is providing me with incorrect information; 17:06
6 effectively they are not a source, that would be my
7 view. A source is someone who provides you with
8 information that you can work with, it may not always
9 be correct but there may be something in it that you
10 can work with it, or maybe they gave you the 17:07
11 information and they genuinely felt it was true, but if
12 they did it in such a way to use you for their own
13 advantage and to put you at jeopardy of potentially
14 publishing false information then I would not regard
15 that person as a source for me to protect any longer. 17:07

16 995 Q. CHAIRMAN: And in terms of that, the public interest is
17 obviously a very important aspect of it,
18 Mr. McLindon --

19 A. Yes, chair.

20 996 Q. CHAIRMAN: -- could that ever be in the public 17:07
21 interest, that a journalist should be abused as a tool
22 of calumny?

23 A. Absolutely not, chair.

24 CHAIRMAN: It's been a long day, thank you very much,
25 Mr. McLindon. 17:07

26 A. Thank you chair.

27

28 THE HEARING THEN ADJOURNED UNTIL MONDAY, 16TH APRIL
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