

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER  
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER  
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND  
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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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, 4TH MAY 2018 - DAY 69

69

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Services certify the  
following to be a  
verbatim transcript of  
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in the above-named  
action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 4TH MAY  
2 2018:

3  
4 MR. MCGUINNESS: Chairman, the first witness this  
5 morning is Superintendent Michael Flynn. 09:06

6  
7 SUPERINTENDENT MICHAEL FLYNN, HAVING BEEN SWORN, WAS  
8 DIRECTLY EXAMINED BY MR. MCGUINNESS:

9 SUPERINTENDENT FLYNN: Garda Telecommunications,  
10 Mr. Chairman. 09:06

11 1 Q. MR. MCGUINNESS: Superintendent, could you just briefly  
12 tell us, how long have you been in An Garda Síochána?

13 A. I joined An Garda Síochána as, what is called a  
14 Regulation 14 recruit. So I was recruited because I  
15 had technical qualifications specifically to work in 09:07  
16 the Garda Telecommunications Section and that took  
17 place in 1991.

18 2 Q. Yes. And what were your qualifications up to that  
19 point or at that point?

20 A. At that point, I had Technician Diploma in Electronic 09:07  
21 Engineering and a number of City & Guilds  
22 qualifications.

23 3 Q. Yes. And are you the superintendent in charge of the  
24 Telecommunications Unit?

25 A. That's correct, I am now. 09:07

26 4 Q. Yes. And what does that involve?

27 A. Well, I suppose telecommunications has a national  
28 remit. So we have technicians based in every division  
29 nationally. We'd also have a regional structure where

1 we have regional sergeants with additional technicians  
2 and then the national element of telecommunications  
3 then is run from Garda Headquarters where, you know  
4 what I mean, things are procured, issued and controlled  
5 from there. 09:07

6 5 Q. Yes. And you are in charge of that?  
7 A. That's correct.

8 6 Q. And I think you have given evidence to the Fennelly  
9 Commission and in a number of courts over the years?  
10 A. That's correct. I was actually liaison to the Fennelly 09:08  
11 Commission from 2014 to 2017.

12 7 Q. Yes. And you would be familiar, obviously, with the  
13 issues that arose there, but in particular in relation  
14 to former Commissioner Callinan's phone, I take it?  
15 A. That's correct. 09:08

16 8 Q. And we will come to that in due course. But in  
17 connection with this, I think did you become aware of a  
18 scoping inquiry being conducted by Mr. Justice  
19 Iarfhlaith O'Neill in late 2016?  
20 A. I was. I received a request just to provide material, 09:08  
21 relevant material that we had, that we gathered as part  
22 of the Logan Inquiry.

23 9 Q. Yes. Just to put it in context, Superintendent Taylor  
24 had made a protected disclosure, presumably you hadn't  
25 seen that as such, you wouldn't -- you weren't given 09:08  
26 that?  
27 A. No, I've never seen it.

28 10 Q. Yes. But perhaps we could just look at one small  
29 section of it, volume 1, page 8. It should come on the

1 screen now.

2 A. I have it there, Mr. Chairman.

3 11 Q. Yes. He describes various text messages in paragraph  
4 2, if we go down the page then, a huge number of  
5 interactions took place between himself, the  
6 Commissioner and Deputy Commissioner.

09:09

7  
8 "My telephones have been seized and taken from me and  
9 are in the custody of An Garda Síochána. I understand  
10 that in the course of my interviews under caution that  
11 the phone had been forensically examined and so these  
12 text messages should be available on my devices. I did  
13 not delete any text messages sent by me or received by  
14 me which involved the Commissioner and Deputy  
15 Commissioner O'Sullivan."

09:09

09:09

16  
17 Just on its face, and I appreciate you haven't seen  
18 that before but, he was apparently saying that there  
19 were text messages on the phones that had been seized  
20 from him. Now, I think you became aware as a much  
21 earlier stage that phones had been seized from him in  
22 the course of a Garda investigation?

09:10

23 A. I suppose in two ways, Mr. Chairman. In one way,  
24 Superintendent Taylor would have contacted me to tell  
25 me his phone had been seized and sought a replacement  
26 for it, which we would have provided from  
27 Telecommunications. But then a request was received  
28 then to have the mobile phones examined in what we  
29 refer to as the Electronic Media Examination Unit in

09:10

1 Telecommunications and these are specially trained  
2 technicians who carry out forensic examinations of  
3 devices that are seized in the course of  
4 investigations. So I would have received a request to  
5 carry that examination out and passed it to the 09:10  
6 inspector in charge of the unit and they would have  
7 actioned that. The process is, when they receive a  
8 device is, they take a snapshot of that device as it is  
9 once they have received it and that snapshot then can  
10 be used to re-examine that at any time again in the 09:11  
11 future. It creates, I suppose, a proof of what was on  
12 the device when it was brought into them. And from  
13 then on then they carry out the examination, they  
14 compile an electronic of that examination and pass it  
15 directly back to the investigation team. 09:11

16 12 Q. Yes. And I think that is colloquially referred to as  
17 downloading or dumping the phone, is it?

18 A. You normally download your examination, yes.

19 13 Q. Yes. But obviously you or your unit were responsible  
20 for reissuing phones to Superintendent Taylor as and 09:11  
21 when he required them?

22 A. That's correct. It would be normal policy or procedure  
23 that if somebody required a phone, that, you know,  
24 they'd make a request and then the request would be  
25 actioned. If they were based outside Headquarters in 09:11  
26 some rural division the phone would be actually posted  
27 down to the divisional technician to be issued there.

28 14 Q. Perhaps we could look at Commissioner O'Sullivan's  
29 response to Mr. Justice O'Neill's request and this is



1 contained in Volume 3 at page 717. And this is in the  
2 context of her reply to Mr. Justice O'Neill in relation  
3 to this issue, and it's headed there:

4  
5 "Telephone device in possession of An Garda Síochána. 09:12

6  
7 I note that both Superintendent Taylor in his  
8 disclosure and through his assertions to Sergeant  
9 McCabe refers to telephones that have been seized and  
10 taken from him and are in the custody of An Garda 09:12  
11 Síochána. "

12  
13 Just to pause there. I take it you haven't seen  
14 Sergeant McCabe's protected disclosure either?

15 A. No, Mr. Chairman, I haven't. 09:12

16 15 Q. You didn't know what he was asserting that  
17 Superintendent Taylor told him?

18 A. No. I never saw the disclosure. Other than what was  
19 in the media, I had no knowledge of it.

20 16 Q. Okay. 09:13

21  
22 "Superintendent Taylor further states he understands  
23 these phones have been forensically examined and the  
24 text messages should be available on the devices. I  
25 can confirm that in the course of a criminal 09:13  
26 investigation phones previously issued to  
27 Superintendent Taylor came into the possession of An  
28 Garda Síochána. As part of that investigation two  
29 phones were technically examined. Attached for your

1 information are reports of Sergeant Niall Duffy and  
2 Superintendent Michael Flynn, Telecommunications  
3 Sections. I note from your correspondence of the 2nd  
4 November wherein you indicate that the data recorded on  
5 the phone, and now contained in the four reports 09:13  
6 prepared by Sergeant Duffy, is of direct relevance to  
7 the subject matter of your review. You will note from  
8 the enclosed reports that the relevant time pertaining  
9 to these devices cover the period September to December  
10 '14, December '14 to February '15." 09:13

11  
12 And then it continues, but the Commissioner is  
13 referring to, inter alia, a report from you. And I  
14 think you had prepared a report for her information  
15 providing details relating to those two phones that had 09:14  
16 been seized and forensically examined?

17 A. I would have provided a report based on, I suppose, the  
18 interaction, the request coming in and the reports that  
19 were generated from the examination of the devices.

20 17 Q. Yes. Okay. And could we look at that report? That is 09:14  
21 at page 730 of the same book. And these relate --  
22 sorry, it says:

23  
24 "These reports were generated by Sergeant Duffy during  
25 his examination of two Nokia Lumia mobile phones. 09:14  
26 Files N1 to N3 are the reports into the examination of  
27 the first device."

28  
29 And it gives an IMEI number there. And that, I think,

1 represents the Nokia that had been issued to  
2 Superintendent Taylor from your unit on the 9th  
3 September 2014.

4 A. That's correct, Mr. Chairman.

5 18 Q. Okay. And the second phone to which the files relate, 09:15  
6 they relate to a similar Nokia Lumia Model 925 and  
7 again that was a phone issued by your Department to  
8 Superintendent Taylor on or about 18th December when  
9 the first phone had been seized, as it were, by Chief  
10 Superintendent Clerkin? 09:15

11 A. That's correct.

12 19 Q. And --

13 CHAIRMAN: Just if you give me the year.

14 20 Q. MR. McGUI NNESS: Sorry, that is 2015. Well, sorry, the  
15 first seizure was in December 2014, and the second 09:15  
16 phone was issued and then seized in February 2015,  
17 isn't that correct?

18 A. That's correct.

19 21 Q. Yes. And you were aware of that at the time because  
20 the requests for the downloading of the phones came in 09:15  
21 and Sergeant Duffy had carried out this exercise and  
22 made those files available to the investigation team  
23 led by Chief Superintendent Clerkin?

24 A. That's correct.

25 CHAIRMAN: And if I can just stop, just to make sure 09:16  
26 that I am right. I think the relevance of this is,  
27 it's way after the time when Superintendent Taylor was  
28 in the Garda Press Office. So he was there from July  
29 1st, 2012 to May 31st, 2014, and these relate to phones

1 given from September 2014 and from December 2015.

2 MR. McGUI NNESS: Yes.

3 CHAIRMAN: Yes.

4 22 Q. MR. McGUI NNESS: And the last paragraph of your report,  
5 I mean, I suppose I should just note that you got the 09:16  
6 files, you forwarded them to the Private Secretary to  
7 the Commissioner, she appears to have sent them to  
8 Mr. Justice O'Neill, but the final paragraph says:

9  
10 "Our records would indicate that the mobile phone Nokia 09:16  
11 Lumia model --"

12  
13 And that is the September issue one.

14  
15 "-- was issued to Superintendent Taylor in or about 5th 09:17  
16 of September. This was due to a reported fault with  
17 the phone, another Nokia but a model 820 with a  
18 different IMEI, which had been previously issued to him  
19 in or around 31st October 2013. It's the belief of  
20 Inspector Moroney, Telecommunications, that that phone 09:17  
21 was not returned to Telecommunications when replaced."

22  
23 Now, can I just ask you, firstly, one question in  
24 general about the IMEI number in general, we are not  
25 going to be reciting them throughout the course of your 09:17  
26 evidence at all, but what is the importance of an IMEI  
27 number?

28 A. I suppose an IMEI number was developed by the GSM  
29 Association internationally to be able to uniquely

1 identify a mobile phone handset. And the way it's  
2 structured is that the first two digits are the  
3 reporting agency or the issuing agency of the IMEI. So  
4 in the case of the IMEIs that are before the Tribunal,  
5 01 would refer to primarily Apple devices that were 09:18  
6 issued through a US authority, and the 35 number would  
7 relate to European allocated models. The next section  
8 of the IMEI, the next six digits actually defines the  
9 make and model of the handset. So if it's a Nokia  
10 Lumia 925, that is all defined in the next six digits. 09:18  
11 They can be converted into the make and model. The  
12 next six then after that are the unique serial number  
13 of that make and model handset. And the last digit  
14 then is called the check digit, which is referred to as  
15 Luhn's algorithm, which is effectively a check digit to 09:18  
16 make sure there is no errors in the previous 14 digits.  
17 For the purposes of comparison it's best to ignore the  
18 Luhn's algorithm and just remove it.

19 23 Q. You just ignore that.

20 A. The final digit, just ignore it. And then, it's clear 09:18  
21 then that you are talking about the same two devices  
22 because the check digit can change in some of the  
23 reports.

24 24 Q. Yes.

25 A. It can be a number between 0 and 9, so it can change 09:19  
26 periodically.

27 25 Q. Yes. But effectively, that number is the electronic  
28 and unique identity of the phone, the handset itself?

29 A. That's correct. It's coded into the handset so it's

1 with the handset for life.

2 26 Q. Yes. Now, just the issue of replacement there --

3 CHAIRMAN: Sorry, Mr. McGuinness, do you mind me

4 stopping you because I suppose amateur's knowledge is

5 getting in the way here. I was just wondering about 09:19

6 this whole thing of you get a new phone but you take

7 the SIM from one to the other and I am just wondering

8 does that make any difference; you take out the SIM

9 card and put it in a new phone, maybe could I be helped

10 on that just to see if it's going to bring us anywhere. 09:19

11 MR. MCGUINNESS: Yes. I was going to deal with that

12 obviously.

13 27 Q. At this stage, superintendent, could you just explain?

14 A phone, as I understand it, needs a SIM to communicate

15 with the telecommunications network, is that right? 09:19

16 A. That's correct. In modern mobile telephony networks

17 the SIM card is the interface with the network. So,

18 whereas in the past a lot of power and a lot of

19 information was stored on the SIM card, now the SIM

20 card is really just a link into the network. It stores 09:20

21 very little information.

22 28 Q. Yes.

23 A. So the actual handset, given its capacity and its power

24 and its memory space, can store a lot more information.

25 29 Q. Yes. 09:20

26 A. But the SIM card has no impact on the IMEI, IMEI will

27 remain the same no matter what SIM card you install in

28 the phone.

29 30 Q. Yes. And obviously one can, physical circumstances

1           permitting, change a SIM from one phone to another and  
2           it has no effect on the IMEI.

3           A.    That's correct, it has no effect.  And we'd have had  
4           occasion to replace a SIM card if -- some of them would  
5           go faulty.  If we were replacing a phone to a newer           09:20  
6           model the SIM cards were getting smaller, so we went  
7           from a full size SIM card, which everyone is familiar  
8           with, to what is called a nano SIM card now, so that  
9           would require the SIM card to be changed.  But again,  
10          would have no effect on the IMEI of the handset.           09:21

11    31   Q.    Yes.  And I think technically speaking, SIM cards have  
12          their own unique identification number?

13          A.    That's correct.  They have, an ICC ID is the serial  
14          number of the SIM card, that is printed on the SIM card  
15          and it's stored then in the electronics of the SIM card           09:21  
16          as well.

17    32   Q.    Yes.  And then a phone number attaching to a phone,  
18          that isn't embedded in the phone, isn't that right?

19          A.    That's correct.  The phone number is called, it's  
20          referred to as an MSISDN by the mobile operators and           09:21  
21          it's effectively an easy way for somebody to  
22          communicate, it's an easy, rememberable number, where  
23          if you had to remember a string of 14 or 15 digits to  
24          make communications it would make communications very  
25          difficult, so the network carries out translations from           09:21  
26          the phone number to the root, to the correct mobile  
27          phone.

28    33   Q.    And in some of the reports that is referred to CTN, a  
29          cellular telephone number, isn't that correct?

1 A. That's correct.

2 34 Q. And we will come back to the issue of providers in a  
3 few minutes, but in terms of the last line of this  
4 report here, Inspector Moroney, he will be giving  
5 evidence himself, but he certainly -- you are reporting 09:22  
6 his belief there that Superintendent Taylor's previous  
7 phone wasn't returned. Now, is that something that  
8 would be normal or not, or what was the practice at  
9 that time? We are talking about October 2013.

10 A. At that point, there was no defined policy where 09:22  
11 somebody had to return a device to receive a new  
12 device, you know what I mean. So, somebody could come,  
13 seek a replacement of a phone, receive the handset and  
14 then have to acquire it because there may be  
15 information stored on it, there could be SMS messages 09:22  
16 stored that they need to refer or there could be  
17 photographs that they want to download.

18 35 Q. Yes. But in terms of the procedure then for getting a  
19 new phone, I mean, would the member, even of  
20 Superintendent Taylor's rank, have to present himself 09:23  
21 with the old phone and say, I need a new phone for a  
22 given reason?

23 A. The normal thing would be that the member would make  
24 the request first because again, because we are short  
25 staffed, we have low numbers in Telecommunications, 09:23  
26 it's not a drop-in service as such. The member would  
27 have to make an appointment with the Telecommunications  
28 staff to meet them at a certain time and date. It  
29 would be key that the member would attend because a lot



1 of information is now stored on our Pulse network, so  
2 in relation to a smartphone, the member would have to  
3 there to enter their own private details, like the  
4 registered number and their password to access Pulse.  
5 Once they did that then the phone would download a copy 09:23  
6 of their emails, their contacts and their calendar  
7 entries from the Pulse service.

8 36 Q. Yes. But that has got nothing to do with transferring  
9 data from the old phone, is that right?

10 A. No. Like, photographs, SMSs, they wouldn't be touched 09:23  
11 by this process. SMSs wouldn't be stored on Pulse,  
12 photographs wouldn't be stored on Pulse. So all that  
13 would be transferred when the new phone was configured  
14 and the password entered would be the member's Pulse  
15 profile with their emails, their contacts and their 09:24  
16 calendar events.

17 37 Q. Yes. But in terms of texts and Superintendent Taylor's  
18 assertion that the texts that he had been sending or  
19 receiving, whatever their content, relating to the  
20 commissioners and Sergeant McCabe, are texts 09:24  
21 transferred, in your unit, from a member's old phone to  
22 a new phone?

23 A. Not presently, because there is too much information on  
24 a phone. To download a smartphone can take a number of  
25 days and then to re-enter that information onto another 09:24  
26 smartphone could take another number of days, so we  
27 just don't have the time or the effort to do it. So  
28 what happens is, really, the member is left with the  
29 device if they need to access something.

1 38 Q. Right. So is any data transferred from an old phone to  
2 a new phone?

3 A. Other than what is stored on Pulse and what is pushed  
4 out to the phone when they connect to the Pulse  
5 servers, no. Not that I am aware of anyway, no. 09:25

6 39 Q. Okay. All right.

7 CHAIRMAN: So the net result of that seems to be it's  
8 pretty normal for a garda to keep his old phone or her  
9 old phone, like for family photographs or anything else  
10 or indeed voice recordings or whatever that is on it, 09:25  
11 so they can download them in their own time to their  
12 own computer at home?

13 A. That's correct, Mr. Chairman. That was the norm. Now  
14 not everybody took the old phone away, some of them  
15 left it in telecommunications, but -- 09:25

16 CHAIRMAN: Okay. So it's pretty hit-and-miss?

17 A. It was, yeah.

18 40 Q. MR. McGUINESS: In any event, you made a statement  
19 then to the Tribunal I think on the 13th March, and  
20 just for the benefit of my colleagues, that is in 09:25  
21 volume 16 at page 4190. And I think you set out your  
22 qualifications there, but in the third paragraph you  
23 are bringing to the attention of the Tribunal that:  
24

25 "As the bill payer, An Garda Síochána has the ability 09:26  
26 to access data for outgoing contacts (calls and text  
27 billing events) for all Garda mobile phones for a  
28 period of the previous 24 months. So, for example, on  
29 today's date we can currently access mobile phone

1 outgoing call data in searchable format back to the  
2 13th March 2015."

3

4 And I think that's an in-house Garda system, is that  
5 correct?

09:26

6 A. No, Mr. Chairman, the --

7 41 Q. Or is that from the records themselves?

8 A. The two-year period I am referring to is the data  
9 retention period that is defined in the 2011 Act.

10 42 Q. Yes.

09:26

11 A. In Telecommunications, we would have access on our live  
12 system of the last year's worth of billing but could  
13 request then further information for the next 12  
14 months --

15 43 Q. Yes.

09:26

16 A. -- up to the maximum two-year period. And that's all  
17 we could get from Three or Vodafone in the case of  
18 Garda mobile phones.

19 44 Q. Yes.

20 A. But I suppose in relation to this, we discovered that  
21 Three had stored and archived printed bills of the  
22 Garda accounts for a seven-year period.

09:27

23 45 Q. Yes.

24 A. So we made a request for those then as part of this.

25 46 Q. Yes. But I am just trying to distinguish between the  
26 two things. The first is, you have the capacity to  
27 run, as it were, a live search internally from your own  
28 system on mobile phone calls made by mobile phones  
29 belonging to An Garda Síochána for a 12-month period?

09:27

1 A. That's correct, Mr. Chairman. And that information  
2 would be analysed for financial purposes quarterly.

3 47 Q. Yes. And then you can request billing information from  
4 your service provider for the previous 12 months?

5 A. That's correct. 09:27

6 48 Q. But they are not -- just to be clear about that, they  
7 are not applications for anyone's data under the 2011  
8 Act, they are not subject to that process?

9 A. No, they are billing events. So, it's calls that were  
10 made from the device, texts that were sent from the 09:28  
11 device, just the actual event because it has a  
12 financial event for An Garda Síochána so the financial  
13 aspect is managed by a system in Garda Headquarters.

14 49 Q. Yes. You say then:  
15 09:28

16 "In relation to landlines, Garda Telecommunications  
17 itself retains data of all incoming and outgoing calls  
18 at Garda Headquarters and other major centres up to  
19 seven years. So, for example, at the time, where the  
20 data is available, we can access in searchable format 09:28  
21 all landline calls from the connected centres dating  
22 back to the time of installation of the local server."

23 CHAIRMAN: Mr. McGuinness, before you go on to that, I  
24 want to make sure that I understand. So what is  
25 actually kept is what a lot of people would be familiar 09:28  
26 with from criminal cases; in other words, A rings B at  
27 a particular time, it lasts so many seconds, that is  
28 all, and that is effectively what you are being charged  
29 for.

1 A. That's correct, Mr. Chairman. And it's only outgoing  
2 events from the device, it's not incoming events to the  
3 device.

4 CHAIRMAN: Sure. And if you get the other device you  
5 can marry the two up together and you can have a chart 09:29  
6 as to who is contacting whom at what time particular  
7 time and you can go further than that, you can show  
8 also what mast it's being bumped off and if there is  
9 movement you can show movement from place to place,  
10 from mast to mast, as phone calls are made one after 09:29  
11 the other.

12 A. That would be correct in criminal cases, but in  
13 relation to billing events you wouldn't get the  
14 location that the call or text took place.

15 CHAIRMAN: All right. So, what you are not getting is, 09:29  
16 you are not keeping and nowhere are texts actually  
17 stored by the Gardaí, they are on the phone, or they  
18 are on the server, that is to say the telecoms company,  
19 like Three or whatever it is, but they are not in Garda  
20 Headquarters? 09:29

21 A. That's correct. We don't store the content of any  
22 transaction.

23 CHAIRMAN: Yes.

24 50 Q. MR. McGUINESS: So in relation to the landline and the  
25 data there referred to in the fourth paragraph, again 09:30  
26 that is just data relating to the fact of the call, its  
27 duration and its direction, I suppose, is that right?

28 A. That's correct.

29 51 Q. Yes. And obviously there is no content recorded at all

1 as far as that data is concerned?

2 A. No. Other than 999 calls into Garda centre control  
3 rooms, there is no other telephony recorded.

4 52 Q. Yes. And then in the next paragraph you describe what  
5 you have already referred to briefly, that you became 09:30  
6 aware that Three Ireland archived their mobile phone  
7 billing data for auditing purposes. And I think you  
8 have seen correspondence from Three Ireland which  
9 explain that they keep it for the purpose of the  
10 Companies Acts, the Revenue Taxes Acts and for other 09:30  
11 purposes, and that's the billing data relating to An  
12 Garda Síochána that we are talking about, isn't that  
13 correct?

14 A. That's correct. We asked the question and they  
15 informed us that they did retain this data for a 09:31  
16 seven-year period.

17 53 Q. Yes. And you say that you "also became aware that this  
18 information was available to An Garda Síochána as we  
19 are the customer and owner of these official mobile  
20 phone accounts." So this is An Garda Síochána having 09:31  
21 these accounts with Three Ireland, paying the bills for  
22 the phones that they own, and are the phones provided  
23 by Three Ireland to An Garda Síochána?

24 A. All the Three phones would have been identified as  
25 being provided by Three, except there was one in one of 09:31  
26 our reports that Three couldn't verify, was a handset  
27 that they had supplied, but all the others were.

28 54 Q. Yes. So you are entitled to get the bill that you pay  
29 for the phone that you own from the service provider

1           you have engaged to provide the services?

2           A.    That is the information they gave us, so we made a  
3           request then to receive that billing.

4   55   Q.    And you say:

5  
6           "Thi s information is contained in four major accounts,  
7           each containing up to 500 mobile phone bills.  
8           Inspector Moroney, Telecommunications, and [you]  
9           identified the account containing the billing  
10          information for the three mobile phones of Commissioner 09:32  
11          Nóirín O' Sullivan, former Commissioner Martin Callinan  
12          and Superintendent David Taylor. It's not possible for  
13          Three Ireland to extract an individual phone bill  
14          associated with a major account. They can only supply  
15          the data for all bills associated with that account in 09:32  
16          the form of hard copy printouts."

17  
18          And I think you detail in the next paragraph that:

19  
20          "On the 1st March 2017, the billing information for 09:32  
21          account 264114641 was requested from Three Ireland by  
22          Inspector Moroney and delivered to [you] on 6th march  
23          2017."

24  
25          So presumably that is one of the four accounts you have 09:32  
26          previously referred to?

27          A.    That's correct. It was delivered in, I suppose, 24  
28          boxes that are the same boxes that reams of paper are  
29          delivered to, you know what I mean, with multiple reams

1 in a box, like a fairly substantial box, and each box  
2 contained a month's worth of printouts for the accounts  
3 on that account -- or the mobile phone numbers on that  
4 account.

5 56 Q. Yes. And you say:

09:33

6  
7 "This bill contained billing information on 426  
8 official Garda mobile telephones for the period 28th  
9 May 2012 to the 27th May 2014. It was contained in 24  
10 boxes, each contained billing information for one  
11 month."

09:33

12  
13 And then you describe going through the boxes,  
14 extracting the bills for each of the three persons;  
15 former Commissioner Callinan, for his number,  
16 Commissioner O'Sullivan and for Superintendent Taylor.  
17 And you've set out in a table there the various invoice  
18 dates which were in the different boxes. And you have  
19 made those available to the Tribunal, isn't that  
20 correct?

09:33

21 A. That's correct.

22 57 Q. Okay. And you have provided them to Assistant  
23 Commissioner Corcoran and he provided them to the  
24 Tribunal then?

25 A. That's correct.

09:34

26 58 Q. And that report then finishes by noting that you have  
27 requested billing information for the period to bring  
28 it up to the end of May, and you got that, I think?

29 A. And delivered that as well.



1 59 Q. Yes.

2 A. The bills start on the 28th of the month generally and  
3 finish on the 27th of the month, so they don't actually  
4 follow the full calendar month, so there was a gap then  
5 at the end of the last bill, for the last few days of 09:34  
6 the period under the terms of reference.

7 60 Q. Yes. And I think at page 4214, that's the letter  
8 providing them to the Tribunal, but it also provides a  
9 disc setting out the landline telephone records. And I  
10 think they relate to Commissioner Callinan's landline 09:35  
11 and, is it, Nóirín O'Sullivan's, Commissioner  
12 O'Sullivan's landline also, is that right?

13 A. From what I can recall there, 62055 was Commissioner  
14 O'Sullivan's landline when she was Deputy Commissioner  
15 Operations. 09:35

16 61 Q. As Deputy Commissioner, yes.

17 A. And 2010 was the Commissioner's number then.

18 62 Q. Yes. Now, the Tribunal wrote to the Commissioner and  
19 to the former Commissioner looking for details of  
20 phones, inspection facilities, etcetera, all relevant 09:36  
21 inquiries, and the first letter is at 4192. And I  
22 don't know if you saw that letter yourself, but you  
23 were probably made aware of what was required in it?

24 A. Yes. I am not sure if I saw the actual letter, but I  
25 would certainly be aware that the request had been made 09:36  
26 by the Tribunal --

27 63 Q. The request to Commissioner O'Sullivan is at page 4194,  
28 and it's in similar terms. And it's also asking for  
29 records in relation to Superintendent Taylor, and also

1 requesting the surrender of handsets, in particular in  
2 relation to Superintendent Taylor which the Tribunal  
3 had been informed were in the possession of An Garda  
4 Síochána. But Assistant Commissioner Corcoran replied  
5 at page 4196, and I think you had some input into the 09:37  
6 reply, and if I could just --

7 A. That's correct.

8 64 Q. -- be clear about what that input was. In the first  
9 instance, at the bottom of the page 4196, it's details  
10 of Commissioner Callinan's phones and presumably you 09:37  
11 were involved in that and you provided a report which  
12 is at tab C and we will come to that in due course, is  
13 that right?

14 A. That's right.

15 65 Q. Details of his email addresses are set out at page 09:38  
16 4197, and was that your responsibility or  
17 Superintendent Ryan's?

18 A. It would be Superintendent Ryan's responsibility.

19 66 Q. Yes. There is information then in relation to the SIM  
20 card at the bottom of page 4197 under the heading: 09:38  
21  
22 "Three: Information in relation to SIM cards."  
23  
24 And did you provide that information?

25 A. We would have extracted that from our systems as well, 09:38  
26 that's correct, yes.

27 67 Q. Yes. The Tribunal saw on Wednesday a list of potential  
28 questions that Superintendent Ferris had been involved  
29 in preparing for the Commissioner in, I think, October

1 2015, but one of them -- one of the questions  
2 highlighted was relating to the loss or destruction of  
3 Mr. Callinan's SIM card. You obviously became aware of  
4 that in and around the time of preparing for the  
5 Fennelly Commission, isn't that right? 09:39

6 A. I would have become aware of that element during the  
7 reporting on the initial findings of the Fennelly  
8 Commission.

9 68 Q. Yes.

10 A. They issued an interim report and it was mentioned in 09:39  
11 that, that the SIM card had been removed from the  
12 device.

13 69 Q. Yes. Now, we will come to it later, but you do refer  
14 to the SIM card as having been deactivated, is that  
15 right? 09:39

16 A. That's correct. I suppose, Inspector Moroney primarily  
17 would look -- we issue bulletins, staff bulletins and  
18 on that it will list the people who have retired from  
19 the organisation. At times we will only know that a  
20 member with a mobile phone is retired at that point. 09:39  
21 So Inspector Moroney would look down through the list,  
22 if there was any mobile phones there he would send a  
23 text to the member to tell them their phone was going  
24 to be deactivated and then it would be remotely turned  
25 off through the mobile operator. 09:40

26 70 Q. That doesn't obviously affect the ability of the phone  
27 to operate, but it's dependent upon the SIM card being  
28 active, is that right?

29 A. What it does is it disables the account. So, in that

1 case, 8282300 would have ceased to either receive or  
2 make calls.

3 71 Q. Yes. And is that done in Garda Headquarters or is it  
4 done through Three?

5 A. It's done through Three. 09:40

6 72 Q. Okay. In any event, can we --

7 CHAIRMAN: Sorry, please excuse my difficulty in just  
8 ensuring that I understand properly. Is a SIM card  
9 removed in Garda Headquarters, is that what you are  
10 saying, Mr. McGuinness? That doesn't -- anybody can do 09:40  
11 that, I would have thought.

12 MR. MCGUINNESS: No, anyone can remove a SIM card, but  
13 deactivating it remotely can be done, isn't that  
14 correct, Superintendent Flynn?

15 CHAIRMAN: That is just taking someone off service, is 09:40  
16 that the idea?

17 A. That's correct. That is what we are talking about  
18 here. Is that, we didn't have the phone or the SIM  
19 card so Three were instructed to remotely disable the  
20 SIM card. 09:41

21 CHAIRMAN: I get you now. So they just took that  
22 particular device off service?

23 A. That's correct.

24 CHAIRMAN: So it had no service for that SIM card.

25 A. That's correct. 09:41

26 CHAIRMAN: And even if you put that SIM card into  
27 another phone it wouldn't work either.

28 A. That's correct.

29 CHAIRMAN: All right.

1 73 Q. MR. McGUINESS: And in terms of storing information it  
2 doesn't store information?  
3 A. Like I said, not any more. All the processing is on  
4 the actual smartphone now rather than the SIM card. It  
5 stores a small bit of information but nothing really of 09:41  
6 interest.

7 74 Q. And in terms of what physically happened former  
8 Commissioner Callinan's SIM card have you any evidence  
9 or knowledge of that?

10 A. No. We have no knowledge because at that point 09:41  
11 Commissioner Callinan had retired and his liaison with  
12 the Fennelly Commission was directly with the Fennelly  
13 Commission, it wasn't through us in Garda Headquarters.

14 75 Q. Yes. In any event, in terms of texts they would not  
15 have been stored on the SIM card and if they were 09:41  
16 anywhere on the phone they might be recoverable from  
17 the phone?

18 A. They would be stored on the actual phone handset rather  
19 than the SIM card.

20 CHAIRMAN: I thought, now I may be wrong about this, 09:42  
21 but relying on Superintendent Flynn's expertise, I  
22 thought you could actually instruct your phone to store  
23 onto SIM card? Certainly that was possible in the  
24 past.

25 A. That is correct, Mr. Chairman, you could force material 09:42  
26 on to it, but the SIM card wouldn't store enough  
27 messages now. When you look at what is stored on a  
28 smartphone, like there could be --

29 CHAIRMAN: I get you, the capacity for storage as

1 between the SIM card and the actual device itself, I  
2 don't know, it's maybe one to a thousand or one to a  
3 million, I have no idea what the actual ratio is, but I  
4 know there certainly used to be a command whereby, for  
5 instance, you could, if you had a photograph or you had 09:42  
6 a document that came to your phone, you could command  
7 it to be stored on to the SIM card; is that not right?  
8 A. That was right in the past, but I'm not sure if that is  
9 the case now. I don't think -- I wouldn't be sure if  
10 it's the case that you can actually force material onto 09:43  
11 the SIM card any more.  
12 CHAIRMAN: It's not a question of forcing, it's just --  
13 it's how you export the material, and you could export  
14 to SIM card, certainly with some devices, I don't know  
15 when that ended. 09:43  
16 76 Q. MR. McGUINESS: well, Superintendent Flynn, just in  
17 terms of your experience, contacts are maybe stored on  
18 a SIM card, isn't that correct, and are frequently  
19 automatically stored on a SIM card?  
20 A. In the past, definitely it was automatic that they were 09:43  
21 stored on the SIM card, because all the processing took  
22 place in around the SIM card but I think with the  
23 advent of smartphones and then with the advent of our  
24 own Pulse system where we remotely stored people's  
25 contacts in the Pulse servers, so if they did lose the 09:43  
26 device or misplace it we could get them back up and  
27 running fairly quickly.  
28 77 Q. And some people choose to store their contacts both on  
29 their phone and their SIM card, or perhaps not on their

1 phone and just on their SIM card, have you experienced  
2 that?

3 A. Not recently. They more or less have the option within  
4 An Garda Síochána to store the contacts on the phone or  
5 on the Pulse server. 09:44

6 78 Q. On page 4198 then you refer to the details of  
7 Superintendent Taylor's phones at tab D. And that was  
8 something that was compiled by you then. Perhaps we  
9 could look at those tabs. You weren't involved in  
10 providing details of the computers used, is that 09:44  
11 correct?

12 A. That's correct. Again, it would be superintendent  
13 Ryan.

14 79 Q. Superintendent Ryan can deal with that. If we go then  
15 perhaps to page 4206, and this deals with the phones 09:44  
16 that had been issued to Commissioner O'Sullivan. And  
17 just to be clear, I think you understood the task to be  
18 to identify the phones during the period when  
19 Superintendent Taylor was Press Officer; in other  
20 words, sort of the two-year period from the middle of 09:45  
21 May 2012 to the end of May 2014?

22 A. That's correct. We used the dates that were in the  
23 terms of reference to highlight the devices that were  
24 in use during that period.

25 80 Q. Yes. And just looking at page 4207, it's perhaps 09:45  
26 easier to look at the model and the first phone  
27 associated with the first number is an iPhone and that  
28 has the same IMEI number and the same SIM number  
29 throughout, isn't that correct?

1 A. That's correct.

2 CHAIRMAN: Is the IMEI there, Mr. McGuinness, on that  
3 particular chart? It is. So it's one, two, three four  
4 across --

5 MR. MCGUINNESS: Fourth column across. 09:46

6 CHAIRMAN: -- and the manufacturer Apple and the model,  
7 the date of issue, etcetera.

8 MR. MCGUINNESS: Yes.

9 81 Q. Now, just one query, the second column "Report Date",  
10 what does that signify? 09:46

11 A. Periodically Inspector Moroney would receive reports  
12 from Three that would show the linkage between what  
13 handsets were in use with what Garda accounts and it's  
14 extracted from those reports.

15 82 Q. Okay. So is that a normal form of reporting, it wasn't 09:46  
16 done specially in relation to the Commissioner's  
17 phones?

18 A. No, this is a normal reporting that we receive. The  
19 extraction would have been the special -- you know, the  
20 request was made to extract the material from that to 09:46  
21 identify those handsets.

22 83 Q. Yes, yes. And I think you became aware that, or did 09:47  
23 you become aware that the Tribunal wrote to the  
24 Commissioner or the Chief State Solicitor's Office on  
25 behalf of the Commissioner noting that as of the 3rd of  
26 June no phones had been handed over in respect of the  
27 Commissioner, did you become aware of that?

28 A. I was aware there was a request for handsets from the  
29 Tribunal.



1 CHAIRMAN: And that is the 3rd of June '17.

2 MR. MCGUINNESS: '17 yes.

3 84 Q. And this phone was handed over on 17th June by letter  
4 to the Tribunal, but with a statement from the  
5 Commissioner saying that she hadn't been using it, is 09:47  
6 that right, or do you know?

7 A. From what I understand it was discovered and handed to  
8 the Tribunal.

9 85 Q. Yes.

10 A. And that, it appeared from the billing that largely it 09:47  
11 was, it was forwarded to her other number. So any  
12 calls that were made to that number would have been  
13 automatically forwarded to her other number and it  
14 certainly appears in some of the billing that it's, you  
15 know, call forwarded to, in the billing reference. 09:48

16 86 Q. Yes. It appears to have been handed down, used by her  
17 son, I think, as a hand-me-down phone?

18 A. That is what I have heard, that's correct.

19 87 Q. And the second phone number there, the first Nokia, a  
20 6700 Classic, that appears to have been associated with 09:48  
21 that number and with a SIM card, but that phone hasn't  
22 been found, is that correct?

23 A. I think that's correct. As far as I know there is no  
24 other handset recovered other than the Apple iPhone.

25 88 Q. Yes. So that Nokia 6700 hasn't been recovered. But I 09:48  
26 note that the SIM card associated with it became  
27 associated with the next Nokia model, the C5, is that  
28 right?

29 A. That's correct.

1 89 Q. That would seem to imply that it was transferred to  
2 that phone?

3 A. That would be the norm; if there was nothing wrong with  
4 the SIM card and it fitted the new handset it would be  
5 just automatically moved over. 09:49

6 90 Q. So that third phone then, and that's got the IMEI  
7 number in the last -- working up from the bottom, the  
8 same IMEI number for that period?

9 A. That's correct.

10 91 Q. And turning over the page, that continued to be 09:49  
11 associated with that phone, it would appear, until  
12 perhaps April of 2013?

13 A. Looking at it there, I think the next report was the  
14 10th June 2013 when there is a new phone handset then  
15 associated with the account. 09:49

16 92 Q. Yes. Now, that Nokia C500, that hasn't been found  
17 either, is that correct?

18 A. I don't believe so, no.

19 93 Q. And you then refer to the HTC Desire, and that appears  
20 to have been issued on or about the 10th June of 2013? 09:50

21 A. Yeah, that would have been the point when it appeared  
22 on the report.

23 94 Q. I see. So it may have been issued at a prior -- it's  
24 its first appearance on a report?

25 A. That's correct. 09:50

26 95 Q. That is an HTC Desire associated with a new SIM card?

27 A. That's correct.

28 96 Q. Isn't that correct?

29 A. Yeah.

1 97 Q. And then there is a Nokia referred to, which are in  
2 fact two different Nokias, at the bottom, is that  
3 correct?

4 A. That's correct.

5 98 Q. And the same SIM card associated with the HTC appears 09:50  
6 to have been used then in, first, one Nokia and then in  
7 the last Nokia on the page in the table, is that right?

8 A. That's right.

9 99 Q. Okay. And am I correct in saying that neither of the  
10 two Nokias, nor has the HTC been located and recovered 09:51  
11 and transmitted to the Tribunal?

12 A. That's correct.

13 100 Q. Okay. So that's a total of six phones issued to the  
14 Commissioner in the period and only one is recovered --

15 A. That's correct. 09:51

16 101 Q. -- and handed over. And I think you became aware, and  
17 the Commissioner informed us by letter, that she was --  
18 she had been using a Samsung Galaxy that had been  
19 issued in early 2016 and a second Samsung Galaxy used  
20 successfully by her and she offered those to the 09:51  
21 Tribunal, I think you are aware of that?

22 A. I am aware of that.

23 102 Q. And they were, as it were, provided to the Tribunal.  
24 CHAIRMAN: When you are saying, the period,  
25 Mr. McGuinness, the period, is it -- 09:51

26 MR. MCGUINNESS: It's a later period, and I suppose I  
27 should open the -- I will open the correspondence --  
28 CHAIRMAN: No, it's not that. Is it, are we talking  
29 about 1 July '12 to 31 May '14 in relation to those six

1 phones? Is that what we are doing?

2 MR. McGUI NNESS: Yes.

3 CHAIRMAN: It is. Okay. So that is the period we are  
4 talking about for the six phones, okay.

5 103 Q. MR. McGUI NNESS: I mean, some people might think it's 09:52  
6 strange or unusual that a succession of phones that  
7 were issued aren't now available to the Tribunal. Can  
8 you just help us in regard to that issue? Firstly, I  
9 think we will hear evidence of different searches, but  
10 is there any special policy in relation to the 09:52  
11 retention of phones of commissioners or deputy  
12 commissioners?

13 A. Not currently in the organisation. At that point in  
14 time, there was no requirement on someone to hand back  
15 a phone to seek a replacement phone. And as I have 09:52  
16 said, there were cases where the member would want to  
17 hold on to the phone for their own particular reasons,  
18 be it, you know, the time of date and calls, particular  
19 SMS messages or photographs, so stuff that they wanted  
20 to hold on to. So we had no, I suppose, policy at the 09:53  
21 time to compel the member to leave the phone with us.  
22 The devices up to that point were seen as obsolete when  
23 they were swapped because a mobile phone by its nature  
24 has a limited lifetime. Once it's in use for a year,  
25 year-and-a-half, the battery starts to degrade, the 09:53  
26 software starts to degrade to the point that it has to  
27 be replaced. So we would have considered them to be  
28 obsolete. And in the past, in around 2002 we used to  
29 donate obsolete phones to Temple Street children's

1 Hospital and then from 2006 on to the Jack and Jill  
2 Foundation because they could raise funds for the  
3 charities by harvesting some of the precious metals  
4 that are stored on, or that are in the devices from  
5 manufacturers. So they were always treated, I suppose, 09:53  
6 as not an evidential or security device but as a  
7 financial asset that had reached obsolescence and was  
8 disposed of.

9 104 Q. Yes. But were there circulars either requiring or  
10 inviting people to return them to the 09:54  
11 Telecommunications Unit for the purpose of gifting them  
12 in that way?

13 A. There were reports, they weren't actually circulars,  
14 but I am aware that every divisional office was written  
15 to. That, after the Commissioner had approved the Jack 09:54  
16 and Jill process there were liaison inspectors set up  
17 nationally in each division. That was sent to all  
18 divisional offices nationally, they were instructed on  
19 what to do, what to do with the device, factory re-set  
20 them, put them in these boxes and then arrange a 09:54  
21 collection from Jack and Jill at periodic times.

22 105 Q. And would the devices be examined to see whether they  
23 were viable or whether there was material on them or  
24 would they be deleted or scrubbed?

25 A. They would be factory re-set before they would go in 09:54  
26 the box. We would have the same process, if somebody  
27 had been issued a new phone that was viable for reissue  
28 and dropped the phone and broke the display within a  
29 short period of time, before we would send that device

1 out for repair we would factory re-set it as well.

2 106 Q. Okay. Looking at page 4208 and going back to the HTC,  
3 the SIM associated -- or sorry, the IMEI number  
4 associated with that features later in some reports  
5 from Three and in some of your own reports, isn't that 09:55  
6 correct?

7 A. That's correct.

8 107 Q. And I think as far back as 2013, you had been receiving  
9 a report which suggested that that IMEI was associated  
10 with a number of other phones? 09:55

11 A. We had noticed, as part of our examination of material  
12 we had noticed, I think it was in November 2017, that  
13 there appeared to be multiple entries for the same  
14 handset at the same time. Our understanding of this  
15 report is that they carry out a scan of the network and 09:56  
16 that scan then links, say, my phone handset to my phone  
17 number.

18 108 Q. Yes.

19 A. But in these reports we noticed that there was a number  
20 of cases where there was three phone numbers associated 09:56  
21 with the one handset at the one time. So we felt there  
22 was an error in this information and we would have  
23 raised it with Three at the time and they weren't  
24 really in a position to explain it and would have felt  
25 themselves that it was -- it shouldn't be the case that 09:56  
26 there's multiple entries at the one time.

27 109 Q. But I think in one of the reports that we come to, I  
28 think it's suggested that this HTC might have been  
29 returned to telecoms and was being used as a test

1 device, is that right?

2 A. That is what we felt initially, because it certainly  
3 looked like -- you know what I mean, the only reason  
4 there would be multiple SIMs in a device is if a  
5 technician was using it to set up accounts prior to 09:56  
6 people arriving in Headquarters to collect a new or  
7 replacement device. So that is what we considered at  
8 the time but when we looked further into the data it  
9 would appear to be as a result of an error rather than  
10 being a test device that was being used on multiple 09:57  
11 occasions, it would certainly be the case that there's  
12 some anomaly in the linkages being made in the Three  
13 report.

14 110 Q. We will come back to that a little bit later, but can  
15 we go on to the phones issued to former Commissioner 09:57  
16 Callinan, page 4209. And just to go through this, the  
17 first phone issued there, going to page 4210, was  
18 associated with the first phone number in the top  
19 left-hand column, isn't that correct?

20 A. That's correct. 09:57

21 111 Q. And that's, that was a Nokia C500, and that's the first  
22 phone?

23 A. In the reporting period.

24 112 Q. Yes.

25 A. Yes. 09:58

26 113 Q. And then the second phone is the Nokia Lumia 520?

27 A. That's correct.

28 114 Q. And that is then -- there is a date of 26/7/2013 there,  
29 and that phone was apparently returned and repaired and

1 then issued to Superintendent Howard, is that correct?

2 A. That's correct. From what we can establish within a  
3 short period of time, that the screen had been damaged  
4 on the device. So it was sent out for repair and it  
5 was -- because it was in very good condition, it was 09:58  
6 held then there -- in Telecommunications for reissue.

7 115 Q. Yes. And I think that was identified as having, in  
8 fact, been reissued to Superintendent Howard. He,  
9 coincidentally at this time, was then the liaison  
10 officer in charge of the Tribunal liaison office, isn't 09:58  
11 that correct?

12 A. That's correct.

13 116 Q. And he did surrender that phone to the Tribunal?

14 A. He did. We identified that reissue within our own  
15 records and were able to -- that was reported by 09:59  
16 Sergeant Kieran Downey to Inspector Moroney, who  
17 reported it to me, and then I informed Superintendent  
18 Howard that, you know, that was the case, and, from  
19 what I am aware, he made the Tribunal aware of that  
20 then at that stage. 09:59

21 117 Q. Yes. But the first --

22 CHAIRMAN: And that would have been factory re-set,  
23 obviously, prior to, because it was being repaired?

24 MR. McGUI NNESS: Yes. well, I think, Chairman, you  
25 probably obviously know that that was examined by the 09:59  
26 FSNI and there will be a report in -- there is a report  
27 in relation to that, SM6.

28 CHAIRMAN: Yes.

29 118 Q. MR. McGUI NNESS: But that first phone, the Nokia C500,



1           that hasn't been located?

2           A.    No.

3 119 Q.    The next phone is under the Superintendent Howard  
4           phone, again it's another Nokia 520 issued to the  
5           Commissioner, and he appears to have put his SIM from   09:59  
6           the first Nokia 520 into that other Nokia 520, from --

7           A.    That's correct.

8 120 Q.    -- the report, is that right?

9           A.    That's correct.

10 121 Q.    Now, that Nokia 520 hasn't been located either?           10:00

11          A.    No.

12 122 Q.    The next Nokia down, the SIM card goes into that, which  
13          is now a Nokia Lumia 925, so that is the fourth phone  
14          issued to former Commissioner Callinan in respect of  
15          this phone number at the top left-hand corner, isn't   10:00  
16          that correct?

17          A.    That's correct.

18 123 Q.    And that was, in fact - I think you are in a position  
19          to verify this - that was the last Nokia Lumia issued  
20          to Commissioner Callinan at that point in time in   10:00  
21          December 2013?

22          A.    That's correct.

23 124 Q.    And that was the phone that he came to remain in  
24          possession of up until the time he ceased to be  
25          Commissioner in March 2014?                           10:00

26          A.    That's correct.

27 125 Q.    And that's the phone he surrendered to the Fennelly  
28          Commission?

29          A.    The -- I am not sure -- I know that was the last phone

1 he had, but his interaction with the Fennelly  
2 Commission was direct with them. That phone would have  
3 never come through us for onward transmission to the  
4 Commission, so --

5 126 Q. Yes. But you have recorded there correctly the IMEI 10:01  
6 identifying number of that phone?

7 A. That's correct.

8 127 Q. Which shows, as far as we are concerned, and the FSNI,  
9 that it is the phone that he surrendered to the  
10 Fennelly Commission. The other number associated with 10:01  
11 former Commissioner Callinan is the Nokia 6700 Classic,  
12 and there is a separate SIM card associated with that,  
13 and there is only ever one SIM card associated with  
14 that number going over the page to 4211. And correct  
15 me if I am wrong, but I think you can confirm that 10:02  
16 phone hasn't been located?

17 A. That's correct.

18 128 Q. And it hasn't been located either by the  
19 Telecommunications Unit or by Commissioner Callinan?

20 A. As far as I'm aware, we would have carried out searches 10:02  
21 within our own environment within Garda Headquarters to  
22 see if there were any devices there, and it wasn't  
23 found there.

24 129 Q. So that is the fifth phone. The next phone number  
25 associated with the Commissioner, and we have been told 10:02  
26 that he appears to have used that for data only. Can  
27 you just explain that?

28 A. From what I understand, that Commissioner Callinan had  
29 one device for calls and texts, and then for his Garda

1 email service he used a separate device, that he wanted  
2 separation between his official email and then the  
3 device that he would use for calls and texts. I think  
4 it was a matter of preference rather than a matter of  
5 any technical requirement. 10:03

6 130 Q. Yes. We will see later from a report provided by Three  
7 that when they were asked to search for that phone  
8 using the IMEI number, that it showed up as being  
9 associated with a different mobile phone number, and I  
10 think you saw that? 10:03

11 A. I did, that's correct.

12 131 Q. And we have been informed, in fact, that that was a  
13 mobile phone number associated with Commissioner  
14 Callinan's daughter. Had you any knowledge of that?

15 A. No, other than Three had produced a number in their 10:03  
16 report. I suppose it's important to state that the  
17 IMEI information we would receive from Three only  
18 relates to Garda accounts, so we wouldn't see any IMEIs  
19 in relation to any private accounts, so that number  
20 wouldn't have been uncovered in our searches of the 10:03  
21 material we had.

22 132 Q. Yes, yes.

23 A. But I would be aware that Three reported that in their  
24 documentation, but I wouldn't be aware of who the owner  
25 of the phone was. 10:04

26 133 Q. Yes, yes. In any event, just summarising the position  
27 thus far: In relation to the six phones shown on the  
28 table going over the two pages, two were recovered, one  
29 the Superintendent Howard fixed reissued phone and the

1 one that the Commissioner surrendered to the Fennelly  
2 Commission?

3 A. That's correct.

4 134 Q. So that is two out of six, with another being  
5 identified as having been possessed by somebody else at 10:04  
6 a later point?

7 A. That's correct.

8 CHAIRMAN: Is that right? Am I getting the maths  
9 wrong? So, Mr. McGuinness, number six associated with  
10 his daughter, the SIM card was perhaps moved over to 10:04  
11 that, and that particular device that was used for  
12 email traffic only, that wasn't recovered?

13 MR. MCGUINNESS: No, we have been informed lately that  
14 searches I think conducted by or on behalf of  
15 superintendent -- former Commissioner Callinan haven't 10:05  
16 resulted in the recovery of the phone. Some of My  
17 Friends behind me are nodding in agreement.

18 135 Q. Turning then to Superintendent Taylor's phones at page  
19 4212, there is only one phone number associated with  
20 Superintendent Taylor, and if we could look at page 10:05  
21 4213. One can look at the first phone there, the HTC  
22 Desire, the report dates go down as far as the 6th  
23 November 2012. Now, that doesn't mean, as you have  
24 told us, that it went in or out of service on that  
25 date, but that was the last reported report that was 10:06  
26 received in relation to it?

27 A. That's correct.

28 136 Q. And there is only one SIM associated with that, and  
29 that phone, as I understand it, hasn't been recovered

1 or surrendered to the Tribunal by Superintendent  
2 Taylor?

3 A. That's correct.

4 137 Q. The next phone, which is the first Lumia 800 there,  
5 that has one SIM number associated with it, which is 10:06  
6 carried into the next Nokia Lumia 820, that would  
7 appear to suggest that that was replaced by that other  
8 Nokia, would that be correct?

9 A. That's correct.

10 138 Q. Okay. Now, that Nokia Lumia 800 hasn't been recovered? 10:06  
11 A. Not as far as I am aware, no.

12 139 Q. Yes. And the last Nokia there, the Lumia 820, I think  
13 that is the phone, going by its IMEI number, which is  
14 referred to in your report of November, which is the  
15 first report of yours that we have looked at, isn't 10:07  
16 that correct?

17 A. That's correct.

18 140 Q. And that's the one that Inspector Moroney, as you have  
19 recorded, believed wasn't returned to the  
20 Telecommunications Unit? 10:07  
21 A. That is what was reported to me, yes.

22 141 Q. Yes. And I think it's correct to state that that  
23 hasn't been located by An Garda Síochána?

24 A. That's correct.

25 142 Q. But as far as Superintendent Taylor is concerned, I 10:07  
26 think it has been confirmed that it was believed that  
27 that was at home and searches were made for it, and I  
28 think he has been unable to find that. Ms. Burns has  
29 confirmed that that is correct.

1 CHAIRMAN: Yes.

2 143 Q. MR. MCGUINNESS: So could I just move on then to deal  
3 with, I suppose, a summary of the position --

4 CHAIRMAN: well, in the David Taylor, you have kindly  
5 provided a summary. With Commissioner O'Sullivan, it's 10:08  
6 one out of six; Commissioner Callinan, it's two out of  
7 seven. And with David Taylor, what is the situation,  
8 Mr. McGuinness?

9 MR. MCGUINNESS: well, it's none out of those three.

10 CHAIRMAN: It's none of the three. 10:08

11 MR. MCGUINNESS: So it's a total of 15 relevant phones  
12 for the period, with only three recovered or accounted  
13 for.

14 CHAIRMAN: Yes.

15 MR. MCGUINNESS: Now, obviously in relation to 10:08  
16 Superintendent Taylor -- well, I suppose I should -- I  
17 have already said it in relation to Commissioner  
18 O'Sullivan, she offered, and we received, the two  
19 additional Samsung Galaxies, and we have the three  
20 subsequent Superintendent Taylor phones, but none of 10:08  
21 these three are specified in the report. So --

22 CHAIRMAN: I think it's 16 relevant phones,  
23 Mr. McGuinness.

24 MR. MCGUINNESS: well, it's 15 as per the reports.

25 CHAIRMAN: Is it one out of six for Commissioner 10:09  
26 O'Sullivan?

27 MR. MCGUINNESS: It's one of out six.

28 CHAIRMAN: And two out of seven for Commissioner  
29 Callinan?

1 MR. McGUI NNESS: Two out of six for Commissioner  
2 Callinan.  
3 CHAIRMAN: But the one associated with his daughter is  
4 therefore not being included in that?  
5 MR. McGUI NNESS: well, that is the sixth one that was 10:09  
6 issued to him.  
7 CHAIRMAN: Right. And then naught out of three for  
8 Superintendent Taylor?  
9 MR. McGUI NNESS: Yes.  
10 CHAIRMAN: Yes. Thank you. 10:09  
11 144 Q. MR. McGUI NNESS: We have looked at the furnishing of  
12 the paper bills. Were you consulted about the iPad  
13 issued to Commissioner O'Sullivan or not?  
14 A. No, the iPads would be issued through our IT section.  
15 145 Q. Yes. The Tribunal wrote a letter containing a large 10:10  
16 number of queries relating to different issues, and  
17 perhaps we'd just look at that at page 4222. And were  
18 you consulted in relation to these inquiries?  
19 A. I was. I suppose it would be worth stating that when  
20 the Tribunal liaison office was set up, there was 10:11  
21 weekly meetings which I would have attended because  
22 there was a lot of information required around devices,  
23 and that, so I would be aware of the queries as they  
24 came in, but I think with this query I would have sent  
25 it to Inspector Moroney just to get material for reply 10:11  
26 for it.  
27 146 Q. Yes. A reply was furnished, and we'd look at that,  
28 perhaps, at page 4225 onwards. The first paragraphs  
29 relating to paragraphs 1 to 6 regarding Superintendent

1 Taylor's HTC Desire, we don't need to concern ourselves  
2 with that, but the -- paragraph 7 indicates that that  
3 phone was used by him as Press Officer, and that is  
4 consistent with the reports that you have previously  
5 given evidence about, isn't that correct? 10:12

6 A. That's correct.

7 147 Q. The next ones relate to the Lumia at paragraph 10  
8 there, and this was an attempt to identify who issued  
9 the phone to him, but at paragraph 11 it's said:  
10 10:12

11 "I am advised An Garda Síochána does not hold any copy  
12 record of access to any text sent from this phone."  
13

14 And we are referred to Chief Superintendent Clerkin.  
15 And I think that is the position in relation to all of 10:12  
16 the phones we have spoken about, that there is, and can  
17 be, no record of the texts kept in the  
18 Telecommunications department or elsewhere, isn't that  
19 right?

20 A. The only record is the billing event that a text was 10:12  
21 sent but not the actual content of the SMS.

22 148 Q. Yes. Now, Chief Superintendent Clerkin furnished the  
23 Tribunal with a report relating to phones, and can I  
24 just ask you about that. It's at -- it commences at  
25 page 4230. And these relate to the seized phones, and 10:13  
26 insofar as they describe the extraction of material  
27 from them, that was done in your unit by Sergeant  
28 Duffy?

29 A. That's correct.



1 149 Q. And there is great detail gone into there. But at page  
2 4232, there is a query raised because it had been  
3 raised by Superintendent Taylor about possible  
4 tampering, I suppose is the only way to put it, of  
5 material on the phones, and this describes the 10:14  
6 examination in detail. And are you satisfied that the  
7 examination and extraction of material from the phones  
8 didn't result in any tampering of any material that was  
9 on them?

10 A. I certainly would be satisfied that the work of the 10:14  
11 electronic media examination unit is up to  
12 international standards, that they take an image of the  
13 device before they start any examination and that image  
14 is always retained as a gold standard copy that can be  
15 re-examined then by anyone again, be it the defence, or 10:14  
16 FSNI in this case, that that snapshot can be  
17 re-examined, and it's clear -- it will be clear from an  
18 examination that there was no tampering.

19 CHAIRMAN: So you keep a control, in other words; is it  
20 like when you download a computer, what you do is you 10:15  
21 download one for the defence, a disk, one for -- that  
22 will never be touched, and then there is the one that  
23 you examine, so -- but in this instance the control you  
24 have is to actually download the material without  
25 examining it in any way and have that available for 10:15  
26 later examination should any query arise, is that the  
27 process?

28 A. That's correct.

29 150 Q. MR. McGUI NNESS: At paragraph 4233, there is a number

1 of queries answered that were raised by the Tribunal.  
2 The first, at number 21 in the middle of the page, is:  
3  
4 "Please confirm which, if any, phones were produced to  
5 Superintendent Taylor in the course of any questioning 10:15  
6 by him."  
7  
8 And the answers are provided there, and they are the  
9 two seized phones that were examined, isn't that  
10 correct? They were produced to him during the course 10:16  
11 of the --  
12 A. I don't know if they were produced, but certainly they  
13 are the devices that would have been reported as the  
14 devices that were seized.  
15 151 Q. Yes. And then at paragraph 22 it says: 10:16  
16  
17 "Please confirm what texts or communications  
18 Superintendent Taylor was questioned about, indicating  
19 the time, date and content of any such texts and origin  
20 insofar as any phone handset is concerned." 10:16  
21  
22 And this related to an assertion by Superintendent  
23 Taylor's solicitors that he had been questioned by  
24 members about texts which were texts from the relevant  
25 period that we are concerned with during his period as 10:16  
26 Press Officer, and were you aware of that?  
27 A. No.  
28 152 Q. All right. But in any event, Chief Superintendent  
29 Clerklin then, he sets out, over the next number of

1 pages, details of all the contacts and the texts that  
2 he is reporting to the Tribunal about which  
3 Superintendent Taylor was questioned, and presumably  
4 you'd no direct knowledge of that yourself?

5 A. No, as I said, when the reports were created from the 10:17  
6 examination of the devices, they would have been given  
7 straight back to the investigation team, they wouldn't  
8 have passed back through my office for reissue, so it  
9 would go from the examiner to whoever the liaison  
10 person was in the investigation team who would receive 10:17  
11 the information, but any analysis of that information  
12 then would be carried out by the investigation team  
13 rather than personnel in the electronic media  
14 examination unit.

15 153 Q. Yes. And just at the top of page -- I mean, the report 10:17  
16 of those -- the questioning of the texts goes on for a  
17 number of pages, but staying on page 4233 at the very  
18 top, going back to the examination, it's reported  
19 there:

20  
21 "The device examination did not add to, alter or  
22 corrupt or erase any content from the device."  
23

24 And that is one of the prime purposes of conducting an  
25 examination; you want to do nothing to alter or corrupt 10:18  
26 or tamper with anything on the device you are  
27 examining, isn't that correct?

28 A. That's correct. It's vital that the examination  
29 process, you know, is acceptable in courts, in criminal

1 processes, that, you know what I mean, and the Garda  
2 Síochána Ombudsman Commission will also request us at  
3 different times to carry out these examinations, and  
4 it's vital if any material is produced, you know what I  
5 mean, can be accepted as what was on the device at the 10:18  
6 time of examination.

7 154 Q. Yes. And on page 4240 of the reply sent to the  
8 Tribunal, there is a question in relation to one of the  
9 earlier Nokia Lumias which wasn't recovered by the  
10 investigation team. But the question being answered 10:19  
11 here is whether there's any content of texts  
12 recoverable, and the answer is no.

13 A. No.

14 155 Q. Okay. And there is a question, number 18 on page 4241,  
15 about any copies and what the billing records show, and 10:19  
16 the billing records show no content, that is the  
17 final --

18 A. That's correct.

19 156 Q. That's correct also.

20 CHAIRMAN: And, sorry, that is exactly what you'd 10:20  
21 expect in relation to the last thing?

22 MR. McGUI NNESS: Yes.

23 CHAIRMAN: I mean, they never do, so...

24 A. That's correct, Mr. Chairman.

25 157 Q. MR. McGUI NNESS: And I think you attended a meeting 10:20  
26 with the Tribunal and you collated further information  
27 for the benefit of the Tribunal, which is contained in  
28 a letter commencing at page 4242. And at the top of  
29 page 4243, you are confirming, at that point in time,

1 of all the handsets of interest identified from the  
2 table, 15 in all, only three accounted for to date.  
3 The next paragraph refers to the Superintendent Howard  
4 phone and the HTC Desire there in the third paragraph,  
5 I think that's erroneously referring to the HTC by 10:21  
6 reference to the wrong commissioner; it was  
7 Commissioner O'Sullivan that had been issued to, isn't  
8 that correct?

9 A. That's correct. And again, that was the confusion  
10 around the multiple mobile phone numbers being 10:21  
11 associated with the one handset at the one time.

12 158 Q. Yes, yes. And just to be clear, from the point of view  
13 of the transcript, the IMEI therein referred to is not  
14 in the tab C relating to Commissioner Callinan, it's in  
15 tab B relating to Commissioner O'Sullivan? 10:21

16 A. That's correct.

17 159 Q. And that belief about the HTC handset, that didn't  
18 prove to be accurate, is that right, or --

19 A. That's right. Like, a full search would have taken  
20 place within the Telecommunications area to see if the 10:21  
21 handset was there and it was -- it wasn't found.

22 160 Q. Okay. The second-last paragraph on this page refers to  
23 a protocol regarding the issue of handsets which was  
24 attached to a statement of yours which came with this  
25 report, isn't that correct? 10:22

26 A. I would assume that that is the HQ circular was  
27 attached, the HQ circular 05/2012.

28 161 Q. Yes. In the final paragraph here, it's in the second  
29 line:

1  
2  
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4  
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29

"Text messages did not transfer from any of the handsets to Pulse in this way."

That is obviously correct, is it?

10:22

A. That's correct.

162 Q. Okay. The issue of the recording of the Commissioner's landlines is addressed at page 4244, and I think you had a great deal of knowledge and involvement in relation to the NICE system, for recording different landlines for different purposes, which came under scrutiny in Fennelly. But the Commissioner's landlines were never recorded, is that correct?

10:23

A. That's correct.

163 Q. The statement that you made then, which you -- which is referred to in this, is at page 4246, and I think you are summarising the position there. We don't need to go into the details of the phones, but it's still 6, 6 and 3, isn't that right?

10:23

A. That's correct.

10:23

164 Q. And then the final paragraph seems to indicate that you have instructed Inspector Moroney to try and identify if the SIMs can be traced or which might assist in the tracing of the handsets, is that right, and any records relating to it?

10:24

A. Any records, or if a handset became active with another account, you know, subsequent to the reporting period that we'd already reported on.

165 Q. Yes. And the last instruction there is relating to

1 Inspector Moroney, to ask him to establish if it -- was  
2 voicemail ever activated on the Commissioner's landline  
3 and the Press Office, and he carried out those  
4 inquiries, is that correct?

5 A. That's correct. 10:24

6 166 Q. You also provided a report to Superintendent Howard for  
7 transmission to the Tribunal at page 4247.

8 CHAIRMAN: vis-á-vis voicemail, I think there is  
9 nothing there, isn't that right, Mr. McGuinness?

10 MR. MCGUINNESS: Nothing there. 10:24

11 CHAIRMAN: So, I mean, I suppose in a manned office you  
12 wouldn't expect it, you wouldn't expect messages to be  
13 going to voicemail?

14 A. No, it's actually contrary to policy to have  
15 voicemail -- 10:25

16 CHAIRMAN: Is it?

17 A. -- on certain numbers, because, you know, the public  
18 demand a human response rather than a recording, so the  
19 use of voicemail is quite limited in An Garda Síochána  
20 at the moment. 10:25

21 CHAIRMAN: Yes.

22 167 Q. MR. MCGUINNESS: This report then from you, commencing  
23 at page 4247, you refer in the second paragraph to a  
24 circular which was issued by HQ called 05/2012, and you  
25 provided a copy of that. 10:25

26 A. That's correct.

27 168 Q. But that, I think, as you have agreed, doesn't relate  
28 to the return of the phones that we are talking about?

29 A. That's correct, it only refers to the return of

1 permanently-issued handsets that were issued to -- you  
2 know, I suppose we had two types of mobile phones in An  
3 Garda Síochána: we have personal issued to inspectors  
4 and above, and then we have divisional pool phones that  
5 are issued to chiefs for use within their own division 10:26  
6 at their discretion. The personal issue mobile phones  
7 were referred to in that policy, that they should be  
8 returned to Telecommunications if the member retired,  
9 if the member transferred out of the organisation or  
10 resigned in any way. 10:26

11 169 Q. Okay. And at the bottom of the page you say:  
12  
13 "A search of records indicate that there was a scheme  
14 to dispose of fax/printer cartridges/scrap mobile  
15 phones since 27/8/2002 in conjunction with the 10:26  
16 Children's Hospital, Temple Street."  
17 A. That's correct.

18 170 Q. But was that subsisting at the time that we are  
19 concerned with here, from 2012 onwards?  
20 A. Temple Street Hospital was the first scheme that we 10:26  
21 had. The second scheme was the Jack and Jill scheme  
22 from about 2006 onwards.

23 171 Q. Well, did that replace the Temple Street scheme?  
24 A. It did. But we don't know when that ended. It just  
25 seemed to, you know, stop over time rather than have 10:27  
26 any end point.

27 172 Q. Yes.  
28 A. But I don't believe it's coincident with the period  
29 from 2012 on, if that makes sense.



1 173 Q. Yes.

2 A. My impression is that that process ended before 2012.

3 174 Q. Yes. Well, you see at the top of page 4248, you say at  
4 the end of the first paragraph:  
5  
6 "As far as we can tell, this process ran until  
7 mid-2012."  
8 A. That's the Jack and Jill element.

9 175 Q. The Jack and Jill.

10 A. That was the second element. But as you said, we can  
11 find no specific time where it ended. It just seemed  
12 to, you know, fade over time.

13 176 Q. Yes.

14 A. You know, it didn't -- there is definitely no  
15 communications or correspondence saying the Jack and  
16 Jill disposal scheme has now ended.

17 177 Q. Yes, I understand that. But just as far as the  
18 Tribunal is concerned, you can't give any evidence to  
19 support the proposition that any of the 12 missing  
20 phones, as it were, went to Jack and Jill, there is no  
21 evidence of that?

22 A. Definitely no evidence, no, and there was no log kept  
23 of the phones that were disposed of in that process.

24 178 Q. Yes.

25 CHAIRMAN: But if a phone did come back, you'd log it  
26 as coming back?

27 A. There would be a record kept in the telephony section  
28 of certain transactions like that. But if it was an  
29 obsolete device that was, you know, clearly beyond use,

1 they'd just factory re-set it and throw it into the  
2 Jack and Jill box. There would be no processing around  
3 that.

4 CHAIRMAN: No, no, I get you. But the point is, in the  
5 event that you get things back from people, you log 10:28  
6 what you get back from people?

7 A. In some cases. I wouldn't say in every case,  
8 Mr. Chairman.

9 CHAIRMAN: Not invariably, no. Okay.

10 179 Q. MR. McGUINESS: In the middle paragraph here of the 10:28  
11 page, you are identifying the key elements, if we could  
12 scroll down the page.

13  
14 "... the account for financial purposes."  
15  
16 And then: 10:29

17  
18 "To ensure no data was left on the device which  
19 compromised Garda security."  
20  
21 And you say: 10:29

22  
23 "Where a mobile phone was replaced, the SIM card was  
24 swapped with a new device and the data transferred over  
25 where possible." 10:29  
26

27 Now, that, on one reading, perhaps seems to allow for  
28 the possibility of texts or photographs being perhaps  
29 transferred onto a new phone from the old phone?

1 A. The -- I wouldn't think the SIM card would have the  
2 capacity to hold photographs, but if SMSS were stored  
3 on it, it could create that possibility. But I do  
4 feel, with the advent of smartphones, it's unlikely  
5 that the SIM card was used as a storage mechanism, when 10:29  
6 people were maybe more likely to store material on  
7 removable hard drives that could fit it -- that was  
8 micro SD cards that could be installed on the side of  
9 the phone and you could store photographs on that and  
10 move from phone to phone and things like that. 10:30

11 180 Q. Yes.

12 CHAIRMAN: The alternative way would be you'd download  
13 from one phone to the other, but that is a  
14 time-consuming process, and quite often it doesn't seem  
15 to work? 10:30

16 A. That's correct, Mr. Chairman, there is -- or there are  
17 software packages, you know, in relation to particular  
18 makes and models of phones. Like, Apple phones are a  
19 prime example where you can store material from the  
20 phone in your Apple ID account, but, you know what I 10:30  
21 mean, they are difficult to operate, I think is the  
22 best way to describe them.

23 181 Q. MR. MCGUINNESS: Yes. well, that's cloud storage  
24 really, isn't it?

25 A. That's correct. 10:30

26 182 Q. At the end of 4248 you are saying here:

27

28 "On 10th March 2017 all technicians were instructed by  
29 me as follows:

1 To ensure that no mobile phones are disposed of when  
2 replaced or returned; that if a member is seeking a  
3 replacement device or one has been provided for issue  
4 to them, to make them aware of the attached order to  
5 preserve evidence, and ensure that where the member 10:30  
6 does not return the phone, that they note and keep a  
7 record of this, to include the IMEI of the phone. If a  
8 member does return a phone, they are instructed to  
9 ensure that it is safely and securely stored in case it  
10 is required. In addition, where phones are faulty, 10:31  
11 i.e. broken screens, they are to be safely and securely  
12 stored in case they are required to not -- to be  
13 factory re-set and sent for repair. "

14  
15 But can I ask you this question: Are you aware of the 10:31  
16 position that pertains in other police forces in other  
17 jurisdictions about the retention of phones by,  
18 particularly, officers of high rank or top rank?

19 A. Yeah, we have had some discussions with other police  
20 forces where some of them have a policy of retention, 10:31  
21 some have a policy of actual complete destruction.  
22 Like, I suppose some of the advice we have got with the  
23 techniques now available to access deleted material on  
24 smartphones, that the advice would be that not to  
25 engage in charity processes, and, you know what I mean, 10:31  
26 disposing of them in that regard.

27 183 Q. Yes.

28 A. The -- we are aware from media reports that certain  
29 security agencies in the UK would retain phones for

1 senior officers, you know, but, like, there is no  
2 definite policy that we are aware of across all the  
3 police forces.

4 184 Q. Obviously, from the point of view of the Tribunal, it  
5 made a preservation order as of the date of 10:32  
6 establishment of the Tribunal, or within a day or two  
7 of it, requiring the preservation of all evidence. But  
8 can you say that none of the phones which haven't been  
9 located were ever in the possession of An Garda  
10 Síochána as of the date of that preservation order, to 10:32  
11 your knowledge?

12 A. To my knowledge, and as a result of the searches, I'd  
13 feel they weren't in the possession of the  
14 Telecommunications section. I suppose it's important  
15 to point out, the email I sent then was to reinforce 10:32  
16 the preservation order from the Tribunal, which had  
17 already been issued to every member of An Garda  
18 Síochána, so it wasn't a case of the technicians  
19 weren't aware of this, but it was just to give them  
20 some clarity of instruction that this is what this 10:33  
21 means when you are issuing a new phone, not to dispose  
22 of any material, just to keep material or note where  
23 the phone is; that if the member decided to hold the  
24 handset, that a clear record of that would be held by  
25 the technician. 10:33

26 185 Q. Yes. But are you in discussions with a view to  
27 developing a policy regarding the recording of and/or  
28 preservation and retention of phones, such as former  
29 commissioners' phones or current commissioners' phones?

1 A. We are. We have reviewed our policy in this matter and  
2 we have drafted, I suppose, a new policy. That new  
3 policy, at the moment, would require all members to  
4 surrender the device, either at replacement or if they  
5 are leaving the organisation. It would also mention 10:33  
6 the preservation order from the Tribunal, because that  
7 is the authority, I suppose, we are using to preserve  
8 all those devices intact at the moment, because part of  
9 our consideration in drafting that policy is whether it  
10 would be legal and proportionate for us to hold a 10:34  
11 mobile phone with a member's operational and official  
12 material plus their personal and private material on  
13 it, and to hold that, you know, in storage for a named  
14 period of time. So it's something we are seeking  
15 advice on. Our draft policy is in a position where, 10:34  
16 with our new policy framework, we have to seek human  
17 rights proofing, ethics proofing and legal proofing,  
18 and we are in that process at the minute, that the  
19 draft policy is being written and it has to go through  
20 these particular areas to ensure we are in compliance 10:34  
21 with our own ethics policy, legislation and then human  
22 rights policy. So, once that process is completed,  
23 that will be issued to the organisation.

24 186 Q. I think in common with all other superintendents and  
25 officers of rank, you were written to by the Tribunal 10:35  
26 and you made your own personal statement, as it were,  
27 relevant to the terms of reference, and perhaps we  
28 could look at that, at page 4311. And I think you  
29 record there at the third paragraph, you have searched

1 your own email account and you have no mention of  
2 Sergeant McCabe, you don't ever recall being negatively  
3 briefed about him. And is your first knowledge of the  
4 allegations made against him, do they derive from the  
5 Prime Time broadcast? 10:35

6 A. It's specifically around the Tusla allegation, that is  
7 the first mention I heard of that, was when I saw the  
8 broadcast from Prime Time.

9 187 Q. I think you weren't connected with the O'Higgins  
10 Commission inquiries or report at any stage, is that 10:36  
11 correct?

12 A. That's correct.

13 188 Q. I think you'd no contact with media, Tusla, HSE or any  
14 State agencies in connection with any matter relating  
15 to Sergeant McCabe? 10:36

16 A. That's correct.

17 189 Q. I think you commented on some of the correspondence  
18 that we had with Three Ireland, and I am not going to  
19 take you into the detail of that, but I think you  
20 indicated for the benefit of the Tribunal that they had 10:36  
21 provided a number of different variations of IMEI,  
22 including the Luhn's algorithm variations, isn't that  
23 correct?

24 A. That's correct. And there was a few incidents where,  
25 instead of reporting an IMEI 01, the reporting started 10:37  
26 at 1.

27 190 Q. Yes.

28 A. So it actually truncated the IMEI, but it is the same  
29 IMEI without the zero.

1 191 Q. Yes. And they, for their part, identified a number of  
2 devices that were associated with former Commissioner  
3 O'Sullivan's number, isn't that correct?  
4 A. That's correct.

5 192 Q. And I think you were asked to provide details of who 10:37  
6 those IMEI handsets had been issued to, and you did?  
7 A. Who the mobile phone accounts were issued to.

8 193 Q. Who the mobile phone accounts had been issued to?  
9 A. And then subsequently what IMEIs were associated with  
10 those accounts -- 10:37

11 194 Q. Yes.  
12 A. -- during the period 2012 to 2014 and the ones that are  
13 associated with those accounts today.

14 195 Q. Yes. And I think in your last report, which was  
15 contained at page 4489, you provided a list of the IMEI 10:37  
16 numbers that were said to be associated with phone  
17 numbers identified by the Three correspondence, and I  
18 think you can confirm that none of those handsets  
19 referable to the IMEI numbers were any of the handsets  
20 of Commissioner O'Sullivan? 10:38

21 A. That's correct.

22 196 Q. Okay.  
23 A. Other than the reported anomaly that we have identified  
24 where there was multiple accounts associated with the  
25 one handset, there was no association with Commissioner 10:38  
26 O'Sullivan's handset.

27 197 Q. Yes. Okay. Perhaps you'd answer any questions that  
28 anyone else might have, Superintendent Flynn.  
29 MR. GORDON: I have no questions, Chairman.



1 MR. FERRY: Chairman, just one or two short matters.

2

3 THE WITNESS WAS CROSS-EXAMINED BY MR. FERRY:

4

5 198 Q. MR. FERRY: Superintendent Flynn, John Ferry, I am one 10:39  
6 of the lawyers representing Superintendent Taylor.  
7 Just going back to the Jack and Jill process that was  
8 available, there was a lot of information there given  
9 about return of phones, but did you say that some were  
10 logged and others were not, or that none of them were 10:39  
11 logged upon being disposed in the Jack and Jill boxes?

12 A. There was no log kept of what went into the Jack and  
13 Jill box.

14 199 Q. So they were then returned by some process to Jack and  
15 Jill and that was the end of the matter? 10:39

16 A. My understanding is, the liaison inspector would ring  
17 Jack and Jill when the box was nearing, you know, being  
18 full, and Jack and Jill would send someone out to  
19 collect it then.

20 200 Q. And just, I noted there in the document that you were 10:39  
21 referred to, your own report of the 4th December 2017  
22 that Mr. McGuinness had just on the screen there  
23 shortly, it was at page 4311, if it could be brought  
24 back up for you there, Superintendent. Just, I just  
25 noted there, and Mr. McGuinness, in fairness to him, 10:40  
26 referred you to this paragraph, but in the third  
27 paragraph I note that you make reference to something  
28 that was mentioned here on Wednesday by Superintendent  
29 Ferris, and I note that you are saying that you found

1 "no mention of Sergeant McCabe other than what was  
2 reported in the media and contained intermittently in  
3 the Press Office clip-book which is sent to me on a  
4 daily basis."

10:40

5  
6 Do you recall what was being referred to in relation to  
7 Sergeant McCabe in the clip-book?

8 A. The clip-book just contains scans of particular  
9 newspaper articles, so material that is relevant to An  
10 Garda Síochána would be reported in the clip-book. I  
11 suppose the reason I was receiving it was because of  
12 the work I was doing, liaising with the Fennelly  
13 Commission, there was a question as to what reporting  
14 had been done around voice recording in the media, so  
15 some of those articles that were relevant to that I  
16 would have extracted and provided to Judge Fennelly.  
17 So, like, they are really reports that were in  
18 newspaper reports. There was nothing else. There was  
19 no narrative added other than here is the images of the  
20 articles.

10:40

10:41

10:41

21 201 Q. And, I mean, I don't know if you do, but in the period  
22 of early 2014, do you recall there being clips relating  
23 to Sergeant McCabe, or have you a specific memory of  
24 that period?

25 CHAIRMAN: I suppose there must have been, Mr. Ferry.  
26 I mean, that's the, I suppose --

10:41

27 202 Q. MR. FERRY: Do you have any specific --

28 A. That would have been around the time of the PAC  
29 hearing, so, like, I'd assume there was newspaper

1 articles around that. I wouldn't have received the  
2 clip-book in that period, though. It was only after  
3 the establishment of the Fennelly Commission I went on  
4 to that distribution list.

5 203 Q. Okay. Okay. So you weren't always on the clip-book 10:42  
6 list?

7 A. No, it would have been probably April 2014 when I would  
8 have received the first kind of clip-book emails.

9 204 Q. And as far as you are aware, anything in the media 10:42  
10 about Sergeant McCabe would have been contained in that  
11 clip-book?

12 A. Again, I can't give direct evidence prior to April, but  
13 I would assume, you know, based on what I have seen  
14 since then, that any article that relates to An Garda  
15 Síochána is normally in the clip-book, so if it relates 10:42  
16 to An Garda Síochána, I would assume it would have been  
17 contained in the clip-book.

18 205 Q. And are those articles divided into categories or 10:42  
19 subcategories in the clip-book, or are they just all  
20 together in one document?

21 A. No, it's just a continuous document, you know, with  
22 article after article, and they are not categorised  
23 into, here is a number of articles around one  
24 particular event and the next. They are all just  
25 streamed in one, you know, one document. 10:42

26 MR. FERRY: That is fine. Thank you, Superintendent.

27 CHAIRMAN: Just, Mr. Ferry, there was just two things.  
28 First of all, it is the case, isn't it, that your  
29 client now says whatever he was reported as saying in

1 the past or whatever he may have said in the past, that  
2 he never got any texts from Commissioner Callinan,  
3 never sent any texts to either him or to Commissioner  
4 O'Sullivan, and did not receive any emails from  
5 Commissioner Callinan, never sent any emails to 10:43  
6 Commissioner O'Sullivan concerning any campaign to  
7 undermine the public credibility of Sergeant McCabe  
8 through allegations of sex abuse or anything else,  
9 isn't that the position?

10 MR. FERRY: well, if you are saying -- are you asking 10:43  
11 me that there were no texts at all sent from  
12 Superintendent Taylor to the Commissioner's --

13 CHAIRMAN: No, no, no. There had to be, obviously,  
14 because he was the Press Officer. I mean, his position  
15 now is that any texts concerning denigrating in any way 10:43  
16 Sergeant McCabe, any emails concerning denigrating in  
17 any way Sergeant McCabe, exchanged between him and  
18 Commissioner Callinan or Deputy Commissioner  
19 O'Sullivan, his current position is those never  
20 existed, they never happened; isn't that correct? 10:44

21 MR. FERRY: I would need to take instructions on that,  
22 I would need to clarify that for you, Chairman.

23 CHAIRMAN: That is very, very important. Maybe if you  
24 have the chance, would you mind doing that, because if  
25 you wouldn't mind just staying on for a wee while after 10:44  
26 we are finished, please. And then there was a second  
27 matter as well. The allegation made that there was  
28 tampering in the division headed up by Superintendent  
29 Flynn, is that being maintained by your client,

1 Mr. Ferry?  
2 MR. FERRY: No, as far as I understand, that is not  
3 being maintained.  
4 CHAIRMAN: All right. So it's being withdrawn?  
5 MR. FERRY: Yes. Well, as far as I understand. 10:45  
6 CHAIRMAN: You might just take a specific instruction  
7 on that if you wouldn't mind, please.  
8 MR. FERRY: Yes, Chairman.  
9 CHAIRMAN: Thank you very much, Mr. Ferry, for that.  
10 Mr. Ó Muircheartaigh, do you have any questions? 10:45  
11 MR. Ó MUI RCHEARTAIGH: No.  
12  
13 THE WITNESS WAS CROSS-EXAMINED BY MR. DONAL MCGUINNESS:  
14 206 Q. MR. DONAL MCGUINNESS: Superintendent, Donal 10:45  
15 McGuinness, representing Garda Síochána. We have met  
16 on a number of times and discussed issues in connection  
17 with telephones. Just a couple of questions if you  
18 don't mind. In relation to the Garda, An Garda  
19 Síochána generally and operationally, the data that is  
20 held on mobile phone handsets that is of interest to 10:45  
21 the guards is emails, Pulse data and calendar entries  
22 and contacts, is that a fair summary of the information  
23 that is ordinarily held on phones that is relevant from  
24 an operational point of view?  
25 A. I suppose that would refer to what would be classified 10:46  
26 as the official material on the device.  
27 207 Q. Yes.  
28 A. There could be SMSs or photographs that are relevant to  
29 the person or the holder of the phone, but in general

1 terms the key elements are the parts that are connected  
2 to our Pulse server.

3 208 Q. Yes. And they are all connected, so that information  
4 is stored centrally, if you like, aside from the  
5 handset and can be retrieved from the servers that are 10:46  
6 held by or maintained by An Garda Síochána?

7 A. That's correct.

8 209 Q. So essentially the only information that isn't  
9 available and held centrally are the text messages,  
10 photographs and perhaps conversations and various apps, 10:46  
11 like WhatsApp, is that correct?

12 A. That's correct.

13 210 Q. And the content of those text messages and apps, or  
14 whatever, might well involve interpersonal contacts  
15 between the member concerned, family members, partners, 10:46  
16 children, etcetera?

17 A. That's correct. We would allow some personal usage of  
18 the device and, you know, the member could use that for  
19 family reasons, whatever, you know what I mean? There  
20 are, matters have been raised with us in relation to 10:47  
21 new policy that they could also contain privileged  
22 information, that if it was medical information from  
23 their doctor, if it was, you know, their interactions  
24 with a solicitor, so these are things we are  
25 considering now in the overall policy. 10:47

26 211 Q. Yes. And it's those issues, those privacy issues, if  
27 you like, that are very central to the establishment of  
28 your policy and I would imagine in relation to the  
29 implementation of any policy, members would have to

1 sign up to it if and when it is established?

2 A. That is a key element of it, that the member would be  
3 aware when they have the handset that this is what  
4 could happen to the handset in the future, this is what  
5 will happen. It's not something that we could deploy 10:48  
6 retrospectively, it would have to be from the date of  
7 issue of the policy and the date issue of a new device  
8 that the member is made fully aware of their  
9 obligations with that device.

10 CHAIRMAN: Sure. I know you are referring there to the 10:48  
11 human rights obligation and the various decisions, but  
12 all that has to happen is that the Garda identifies my  
13 doctor is such-and-such or my wife's doctor is  
14 such-and-such and we had interactions at a particular  
15 time, so we can take those out. I don't see there is 10:48  
16 any huge problem about that.

17 A. I suppose, part of the discussion is: Do we ask the  
18 member to remove the private data or do we --

19 CHAIRMAN: well, I think it has to be verified. There  
20 has to be a verification process, certainly, but I 10:48  
21 mean, they can't sterilise an entire device by simply  
22 claiming I had a gallstone removed so you are not  
23 looking at my phone.

24 A. I would agree. Like, this whole policy has to fit into  
25 our obligations under the Garda Síochána Act and our 10:48  
26 obligations under the legislation that, you know what I  
27 mean, carry out --

28 CHAIRMAN: Yes. But there has to be a reason about it  
29 too. I mean, it can't be stymied just because there is

1 private use by someone saying, right, you are not  
2 looking at anything. That doesn't make any sense. But  
3 anyway, carry on.

4 212 Q. MR. DONAL MCGUINNESS: In relation to the preservation  
5 order that was delivered by the Tribunal, to the best 10:49  
6 of your knowledge has there been any phones lost or  
7 destroyed in Garda Headquarters since the imposition of  
8 that preservation order?

9 A. No. To the best of my knowledge, no phone has been  
10 disposed of since the preservation order was put in 10:49  
11 place.

12 213 Q. And just to clarify a number of things arising from  
13 your evidence. Obsolete items, obsolete phones when  
14 they are returned, am I correct that your evidence is  
15 when they are returned, if they are obsolete, they 10:49  
16 wouldn't ordinarily be logged as having been returned?

17 A. Certainly during the period we are discussing from 2012  
18 to 2014, that was the case, but you know, things are  
19 different now in that, because of the preservation  
20 order and because the requirement to store all this 10:50  
21 material and to know where the material is if we are  
22 asked, there is a lot more logs being kept now, there  
23 is a lot more information. We would have supplied  
24 storage safes to all our divisional workshops  
25 nationally that they could store phones, they could 10:50  
26 phones securely that they come into possession of --  
27 you know, during the course of their interaction with  
28 members, whether replacing phones or issuing new  
29 phones.



1 214 Q. But insofar as the period in question is concerned,  
2 there would be no reason, there would be no reason to  
3 record obsolete items being returned because they were  
4 never going to be reissued again, is that correct?

5 A. That's correct. It would be only -- if a device was 10:50  
6 assessed that it could be reused or it had to be sent  
7 for repair it would be logged then and the logging of  
8 that -- you know, item being sent for repair, but as  
9 Mr. McGuinness said it would have been factory re-set  
10 and then sent out for repair, and there is a good 10:50  
11 chance when it was repaired that the repair agent would  
12 install the latest version of software on it as well  
13 before it was returned which, again, would override the  
14 information further.

15 215 Q. And am I also right in saying that there is a quick 10:51  
16 rate of obsolescence when it comes to smartphones?

17 A. We are noticing, I suppose, that after a year, a  
18 year-and-a-half, the battery function is the first  
19 thing to go, it starts to degrade, the phone holds the  
20 charge and won't operate for as long and then we start 10:51  
21 seeing glitches in software, and things like that.  
22 That normally comes the point where we have to replace  
23 the device then for the member.

24 216 Q. There was a mention of texts being stored by servers in  
25 Three and I am not sure that that piece of evidence was 10:51  
26 correct, is it the case or is it not the case that  
27 texts are stored centrally in the Three servers, to the  
28 best of your knowledge?

29 A. My understanding is that the content of an SMS message

1 is only stored by Three until it's delivered. So it  
2 will be sent from the sender's phone to a server, the  
3 server then will try and communicate with the receiver  
4 but once it transmits that information to the receiver  
5 then the information is gone from their servers. 10:52

6 CHAIRMAN: Is that right, in fact? Because I thought  
7 the European standard was, and I may be wrong about it,  
8 that telecommunications data had to be kept for a year  
9 for investigative purposes, for criminal law, by the  
10 servers, by the phone companies? 10:52

11 A. My understanding is that is in relation to the metadata  
12 rather than the actual content.

13 CHAIRMAN: It's simply the metadata then?

14 A. That is my understanding. They don't hold content  
15 beyond the time it takes to transmit it. 10:52

16 CHAIRMAN: So the metadata is the time, the mast it  
17 bounced off, how long, what device communicated with  
18 what device and then that is it, but texts are not  
19 stored centrally?

20 A. That is my understanding. 10:52

21 CHAIRMAN: All right. Thanks.

22 217 Q. MR. DONAL MCGUINNESS: And could I just ask you to have  
23 a look at page 4232, and the last paragraph of this  
24 relates to a matter that has just been raised with  
25 Mr. Taylor's counsel. There were three phones: Two 10:53  
26 phones seized from Superintendent Taylor and one phone  
27 was surrendered by Superintendent Taylor. In relation  
28 to the phones that were examined, how satisfied are you  
29 that it can be objectively proven that there was no

1 tampering of any kind with the phone in relation to the  
2 download of any material that was extracted from those  
3 phones?

4 A. I suppose again my understanding is that the image that  
5 is taken of the device prior to examination is your 10:53  
6 gold standard, that that can be checked and rechecked,  
7 and it would be very clear from that image if there was  
8 any tampering that took place then in the outputted  
9 report from the device.

10 CHAIRMAN: Anyway, your evidence is, you just don't do 10:54  
11 that? I presume that is what you are telling me.

12 A. That's correct. Because the process is, we develop  
13 evidence from electronic devices and that evidence has  
14 to stand up to the tests in criminal cases, so we have  
15 to maintain an international standard. 10:54

16 CHAIRMAN: Sure. I mean, look, whether it's for the  
17 purpose of a criminal defence, whether it's genuine or  
18 whether it's simply paranoia, I presume that your  
19 division is not engaged in fitting up people by putting  
20 in false text messages, or whatever, into their phones? 10:54

21 A. Absolutely, Mr. Chairman, we wouldn't have any  
22 involvement. In many -- I suppose all cases we are  
23 independent of the investigative process. We just  
24 develop the evidence and provide it back to the  
25 investigation team. That is our only action with -- 10:54

26 CHAIRMAN: And you are pretty much at a remove from  
27 that anyway?

28 A. Absolutely.

29 MR. DONAL McGUI NNESS: Thank you, superintendent.

1 MR. McGUI NNESS: Nothing further, Chairman.

2 CHAIRMAN: Yes. Do you think -- I beg your pardon --

3 MR. GORDON: Could I ask a question on a point of  
4 clarification?

5 CHAIRMAN: Please do.

10:55

6

7 THE WITNESS WAS CROSS-EXAMINED BY MR. GORDON:

8 218 Q. MR. GORDON: I think it's perhaps arising from a  
9 question that Mr. McGuinness just asked you, that there  
10 is no suggestion here that there is unavailable  
11 evidence by reason of the fact that somebody has  
12 claimed privacy rights over a device or data on a  
13 device?

10:55

14 A. Sorry, does this relate to the policy?

15 CHAIRMAN: No. In other words, has anyone raised any  
16 claim of privilege? Because if they did, it would have  
17 to come to me anyway and I would have to look at it.  
18 Nobody has, I don't think.

10:55

19 A. No. That was more in general in relation to the  
20 development of our new policy going forward, that these  
21 are things that we are considering, but nobody has  
22 raised specific issues of I am not providing  
23 information to the Tribunal based on privilege or  
24 privacy or anything that I am aware of.

10:55

25 219 Q. MR. GORDON: I think you, Chairman, may have raised a  
26 concern about these CRH considerations as we understand  
27 them in present-day terms, but the absence of evidence  
28 here is clearly because the device is gone or the  
29 information is simply not retrievable, is that the

10:56

1 position?

2 A. That's correct.

3 220 Q. I see.

4 CHAIRMAN: Okay. would you mind just hanging on for a  
5 wee bit, superintendent. 10:56

6 A. I will, Mr. Chairman.

7 CHAIRMAN: And you have put in an awful lot of work and  
8 we very much appreciate it. Thank you.

9

10 THE WITNESS THEN WITHDREW 10:56

11

12 MR. MARRINAN: The next witness, sir, is Inspector Liam  
13 Moroney, please. His statement is to be found at page  
14 4370.

15

16 INSPECTOR LIAM MORONEY, HAVING BEEN SWORN, WAS DIRECTLY  
17 EXAMINED BY MR. MARRINAN: 10:56

18 221 Q. MR. MARRINAN: I think, inspector, you are attached to  
19 the telecommunications section in Garda Headquarters,  
20 isn't that right? 10:57

21 A. That's correct, Chairman.

22 222 Q. And I think that you report directly to the last  
23 witness, Superintendent Michael Flynn?

24 A. That's correct, Chairman.

25 223 Q. And I think during the course of the currency of this  
26 Tribunal, you have worked closely with Superintendent  
27 Flynn in obtaining various records and phone bills,  
28 isn't that right? 10:57

29 A. That's correct.

1 224 Q. I think that you have worked with Sergeant Downey in  
2 relation to doing a lot of the donkey work in relation  
3 to analysing phone material, isn't that right?  
4 A. Yes, Sergeant Downey reports to me.  
5 225 Q. And I think the reports of the last witness, 10:57  
6 Superintendent Flynn, are to some extent based on the  
7 information that you provided to him, isn't that right?  
8 A. Yes, that's correct, Chairman. We would have fed those  
9 reports up through the line.  
10 226 Q. Now, of particular interest to the Tribunal is a 10:58  
11 meeting on the 5th September 2014 in your office when  
12 Superintendent Taylor presented a faulty Nokia Lumia  
13 phone to you, do you recall that?  
14 A. Yes, I do recall it.  
15 227 Q. Just advise the Chairman what you recall of that. 10:58  
16 A. I would probably have got a call from him earlier, I  
17 can't say precisely, but he probably would have called  
18 my office to say that his phone was faulty and was I  
19 around, and could he call over.  
20 CHAIRMAN: Just hang on one second. Can I ask the 10:58  
21 solicitor for David Taylor, would you like me to break  
22 for ten minutes? Yes. All right. I will do that,  
23 certainly. Because I think there is somebody outside  
24 making phone calls, etcetera. Let's do that,  
25 Mr. Marrinan. 10:59  
26  
27  
28  
29

1 AFTER A SHORT ADJOURNMENT THE HEARING RESUMED AS  
2 FOLLOWS:

3 CHAIRMAN: Let's wait just one minute, Mr. Marrinan.

4 MR. MARRINAN: Yes.

5 CHAIRMAN: Do you want to say anything, Mr. Ferry? 11:16

6 MR. FERRY: I am just awaiting clear instructions in  
7 relation to that matter.

8 CHAIRMAN: All right. Well, let's carry on with what  
9 we have got.

10 MR. FERRY: Thank you, Chairman. 11:16

11 CHAIRMAN: And you know those are on the table anyway.

12 MR. FERRY: Yes, Chairman.

13 CHAIRMAN: Right.

14 MR. MARRINAN: Inspector Moroney, please.

15 228 Q. Inspector, we are dealing with the 5th September 2014, 11:17  
16 when Superintendent Taylor called to your office. I  
17 think he had a faulty Nokia Lumia 820 phone, is that  
18 right?

19 A. That's correct.

20 229 Q. I think that you noted that the IMEI number ended with 11:17  
21 the number 6847, is that right?

22 A. Can I?

23 230 Q. You can refer to your statement, of course. It's at  
24 page 4370, which is in volume 16.

25 A. What page please? 11:17

26 231 Q. 4370?

27 A. 4370. Yeah, that's correct.

28 232 Q. Yeah. And I think that you examined the phone and you  
29 discovered a fault in it, is that right?

1 A. Yes.

2 233 Q. And I think that you decided to issue Superintendent  
3 Taylor with a new phone, is that right?

4 A. That's correct.

5 234 Q. And the phone that you issued him with was a Nokia 11:18  
6 Lumia 925, is that right?

7 A. That's correct.

8 235 Q. And that had an IMEI number ending in 2281, is that  
9 right?

10 A. That's correct. 11:18

11 236 Q. And that was designed to be a permanent replacement for  
12 his previous phone, is that right?

13 A. That's correct.

14 237 Q. And you activated his Garda email account and  
15 synchronised it with the Microsoft exchange server to 11:18  
16 restore all his emails, contacts and calendar for the  
17 new phone, is that right?

18 A. That's correct.

19 238 Q. I think to the best of your recollection  
20 Superintendent Taylor didn't request you to transfer 11:19  
21 any of the content from the old phone to the new phone?

22 A. To the best of my recollection, yes.

23 239 Q. I think initially Superintendent Taylor -- and this was  
24 the reason why you made this statement, was in response  
25 to a suggestion that had been made by Superintendent 11:19  
26 Taylor that in fact all his data had been transferred  
27 from his old phone to his new phone, including -- or  
28 from his old phone to his new phone, including text  
29 messages, you're aware of that?



1 A. Well, I'm not aware that that was the insinuation.

2 240 Q. Well, that was the suggestion that was being made, but  
3 apparently that suggestion is no longer being made, do  
4 you understand?

5 A. Yes. 11:19

6 241 Q. So it would appear that your evidence in this regard  
7 isn't in dispute. In any event, he left with the old  
8 phone, is that right?

9 A. Yes.

10 242 Q. And you didn't take possession of it? 11:20

11 A. No. I wouldn't take possession of it. It would have  
12 to be offered to me. I wouldn't take it off him.

13 243 Q. Now I think that you were also involved then in, this  
14 is at page 4342, you received on the 13th September  
15 last year, a SIM card which belonged to retired 11:20  
16 Assistant Commissioner John O'Mahoney, isn't that  
17 right?

18 A. That's correct.

19 244 Q. And you had previously suspended that SIM card from the  
20 Three network on the 14th July of 2017, is that right? 11:20

21 A. That's correct.

22 245 Q. You were in a position to confirm at that time that the  
23 SIM card that had been suspended had not been used or  
24 inserted in to any device since it came into your  
25 possession and then on the 14th November 2017 you 11:21  
26 received an email from Superintendent Michael Flynn  
27 requesting that that SIM card be handed over to the  
28 Disclosures Tribunal and it was forwarded on the 15th  
29 November 2017 to Sinéad Green, who made it available to

1 the Tribunal, isn't that right?

2 A. That's correct.

3 MR. MARRINAN: would you answer any questions, please?

4 MR. GORDON: No questions, Chairman.

5 CHAIRMAN: Yes. And Mr. Ferry, you confirm that any 11:21  
6 allegation made in the past by Superintendent Taylor  
7 that when his phone was being replaced by Inspector  
8 Moroney that he requested a transfer of data from the  
9 old phone to the new phone and that this data transfer  
10 was effected by Inspector Moroney. 11:22

11 MR. FERRY: well, Chairman, if you did allow me some  
12 time I would await on that to be clarified. I  
13 understand that to be the case, but I'm waiting for  
14 that to be clarified.

15 CHAIRMAN: All right. well, it certainly is not being 11:22  
16 said against you now. These things really, really need  
17 to be cleared up. I mean, the rule in Browne v.  
18 Dunn -- I'm sorry I have the old drum out and I am  
19 banging it again, those things, I really need to nail  
20 them down otherwise the Tribunal just gets floating off 11:22  
21 like a plastic bag in the wind, Mr. Ferry, and if you  
22 can in due course I would be very grateful, thank you.

23 MR. FERRY: Yes.

24 CHAIRMAN: Thank you. Mr. Ó Muircheartaigh? Any  
25 questions by the Garda? 11:22

26 MR. MÍCHEÁL O' HIGGINS: No questions, Chairman.

27 CHAIRMAN: All right. I just wanted to say the same  
28 thing to you: You have done a tremendous amount of  
29 work, inspector, and thank you very much for your help.

1 MR. FERRY: Mr. Chairman, I just have clarified those  
2 instructions.  
3 CHAIRMAN: Yes.  
4 MR. FERRY: So, Superintendent Taylor's instructions is  
5 that he has never said the phones were tampered with by 11:23  
6 Superintendent Flynn.  
7 CHAIRMAN: well, by Superintendent Flynn or by anyone?  
8 MR. FERRY: well --  
9 CHAIRMAN: Anybody?  
10 MR. FERRY: Anybody in that department. His concern 11:23  
11 arose in relation --  
12 CHAIRMAN: well, can we just say by anybody or is he  
13 still saying the Garda tampered with his phone,  
14 somebody in the Garda tampered with his phone?  
15 MR. FERRY: No, his concern arose and his evidence will 11:23  
16 be that a whatsapp invitation went live on a phone at a  
17 particular time and that alarmed him and he was unaware  
18 as to how that occurred and that was the only issue  
19 that he had in relation to any issue that was unusual  
20 in relation to his phone. 11:23  
21 CHAIRMAN: I mean, you know, unfortunately those kind  
22 of things happen all the time, I think I got two of  
23 those only two days ago and somebody from Australia  
24 keeps ringing me as well, I don't know why.  
25 MR. FERRY: Yes, yes. 11:24  
26 CHAIRMAN: These things happen a lot. I'm surprised he  
27 was surprised.  
28 MR. FERRY: well, there will be evidence given by  
29 Superintendent Taylor in relation to that, Chairman.

1 CHAIRMAN: But anyway, he's not accusing the Garda of  
2 tampering with evidence or his phone?  
3 MR. FERRY: No. And in relation to the other query  
4 that you had in relation to the text and emails  
5 interactions with the former commissioners, Martin 11:24  
6 Callinan and Nóirín O'Sullivan, his instructions are  
7 that his electronic interactions with both of them was  
8 by way of updating them as to what was going on and he  
9 says there was never any reference to any allegations  
10 of sexual abuse or any campaign and his exchanges were 11:24  
11 text message and mainly, mainly related to the  
12 monitoring of media coverage regarding Sergeant McCabe  
13 and his interactions with the media regarding Sergeant  
14 McCabe. And, for example, he instructs that he would  
15 update them if a journalist was inquiring about 11:25  
16 Sergeant McCabe or the issue, for example, where Paul  
17 Williams was going to write an article which was  
18 negative towards Sergeant McCabe and matters of this  
19 type were passed onto the commissioners by him, but  
20 there was no text in relation to allegations of sexual 11:25  
21 abuse or a campaign.  
22 CHAIRMAN: I see. Okay. Thank you very much for  
23 clarifying that.  
24 MR. FERRY: Thank you for allowing me the time.  
25 CHAIRMAN: No, no, it is good to have that done. Thank 11:25  
26 you. It means there is some work done. Thank you.  
27 All right. I think you're finished, inspector, thank  
28 you very much.  
29 A. Thank you.

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THE WITNESS THEN WITHDREW

CHAIRMAN: Mr. McGuinness, I know this has been an early day and I know that because of other duties I have been unable to be here for much of the week. Maybe you would help by giving an outline of what is happening next week then, please.

11:26

MR. MCGUINNESS: Yes, Chairman. You will recall obviously on wednesday we had a large slate of Garda witnesses from the Press Office and we adjourned the balance of those until next week and we have distributed them between Tuesday and Wednesday next in addition to the witnesses scheduled for that date. So obviously you granted representation on Wednesday to a number of individuals in relation to journalists and their organisations and obviously they have been given the materials if they want to attend and ask any of the Press Office members anything in relation to their evidence or their interactions with any journalists, that they would be free to do that obviously, but the other witnesses remain there, Superintendent Clerkin, Sergeant Hanley and Detective Sergeant Colgan, for Tuesday, in addition to the Press Office people, as I say, split between Tuesday and Wednesday. We have also retained the other witnesses for Wednesday, Superintendent Ryan, Sergeant Monaghan and Garda Doreen, but we have moved two of next Wednesday's intended witnesses back to Friday, that is former Chief

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1 Superintendent Peter Kirwan and Detective  
2 Superintendent Brunton, together with a witness from  
3 Three Ireland who is going to be Mr. Conor O'Callaghan.  
4 And on the Thursday we are intending to schedule the  
5 two FSNI witnesses, Ms. Elaine Strachan and Mr. Mark 11:27  
6 McConnell. So that is four days evidence next week,  
7 Monday being the Bank Holiday.

8 CHAIRMAN: Next Monday being the Bank Holiday. Do we  
9 have a witness list for the following week or an  
10 indication? 11:27

11 MR. McGUI NNESS: That hasn't been published as yet but  
12 it is intended to commence with Superintendent Taylor  
13 and I think the parties have been circulated with a  
14 witness list, but I think it is still intended to  
15 commence with Superintendent Taylor on the following 11:28  
16 Monday 14th, assuming we stick to our schedule next  
17 week.

18 CHAIRMAN: Yes. And I think, as you say,  
19 Mr. McGuinness, in the event that any of the media  
20 organisations or individual journalists want to ask 11:28  
21 questions that is their entitlement under In Re Haughey  
22 but we can't force them if they don't want to, but they  
23 have ample notice and ample time.

24 MR. McGUI NNESS: Yes. Thank you Chairman.

25 CHAIRMAN: So it's 10:00 on Monday, isn't it? 11:28

26 MR. McGUI NNESS: 10:00 on Tuesday.

27 CHAIRMAN: I beg your pardon, 10:00 on Tuesday morning.

28 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 8TH MAY 2018  
29 AT 10:00AM

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