

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, 18TH MAY 2018 - DAY 78

78

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

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I N D E X

W I T N E S S

P A G E

MR. MARTIN CALLINAN

DIRECTLY EXAMINED BY MR. MARRINAN 6

1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 18TH MAY
2 2018

3
4 MR. MARRINAN: The only witness, sir, that we have
5 listed for today is Martin Callinan, please.

09:59

6
7 MR. MARTIN CALLINAN, HAVING BEEN SWORN, WAS DIRECTLY
8 EXAMINED BY MR. MARRINAN AS FOLLOWS:

9
10 1 Q. MR. MARRINAN: Now, Mr. Callinan, I think you retired
11 from An Garda Síochána on 25th March of 2014, is that
12 right?

10:00

13 A. That's correct, Chairman, yes.

14 2 Q. I think that that was after a very long and
15 distinguished career in An Garda Síochána. Could you
16 just give the Chairman a summary of your career up
17 until the time that you retired?

10:00

18 A. Certainly. Chairman, I joined An Garda Síochána on
19 23rd May 1973 and, following my period in Templemore, I
20 was allocated to Waterford Garda station. I served in
21 the various ranks at Garda, Sergeant, Inspector,
22 Superintendent, as a uniformed and a plainclothes
23 detective. At the rank of Chief Superintendent I was
24 appointed to the Security and Intelligence section of
25 An Garda Síochána. Following that period, I was
26 appointed Assistant Commissioner to the National
27 Support Services, dealing with all of the national
28 specialists units in An Garda Síochána. And in 2007 I
29 was appointed Deputy Commissioner in charge of

10:01

10:01

1 strategic resource management and later operations in
2 charge of policing and security. And finally, on 28th
3 December 2010 I was appointed Commissioner of An Garda
4 Síochána, until my retirement on 25th March '14.

5 3 Q. And when did you first hear of Maurice McCabe? 10:02

6 A. I suppose, without looking at records, it's quite
7 difficult to say, but I certainly read about him during
8 the 2010 period when the Byrne/McGinn report was
9 completed. I had the opportunity to look at that. And
10 from that particular report, I think I became familiar 10:02
11 with Sergeant Maurice McCabe.

12 4 Q. Yes, this was an executive summary that was sent to you
13 by Assistant Commissioner Derek Byrne, dealing with his
14 investigation in relation to complaints that had been
15 made by Sergeant McCabe, is that right? 10:03

16 A. That's correct, Chairman, yes.

17 5 Q. Mr. Callinan, there are volumes of documents there in
18 front of you, there's also the screen. I'll be
19 referring to a number of documents. And we also have
20 transcripts, which I'll be referring to quite 10:03
21 extensively in terms of what other witnesses have
22 already said in evidence at the Tribunal. I'm hoping
23 insofar as possible to avoid getting bogged down in
24 documents; do you understand?

25 A. I do, sir. 10:03

26 6 Q. And I'm sure that you've been following the proceedings
27 at the Tribunal, have you?

28 A. Yes, I have, Chairman.

29 7 Q. Have you had the benefit of reading transcripts?

1 A. Quite a substantial volume of transcripts, Chairman,
2 yes.

3 8 Q. So you're familiar with the issues that the Tribunal is
4 looking into, isn't that right?

5 A. I am certainly, Chairman, yes. 10:04

6 9 Q. Could I just ask you this in a very general way in
7 relation to your attitude towards Sergeant Maurice
8 McCabe over the relevant timespan; you first became
9 aware of him in 2010 when you read the executive
10 summary that had been sent in by Derek Byrne, is that 10:04
11 right?

12 A. That's correct, Chairman, yes.

13 10 Q. And you were familiar with the fact that there had been
14 an allegation made against him in 2006 of sexual
15 assault, is that right? 10:04

16 A. Yes, Chairman.

17 11 Q. Did you have access to the file?

18 A. No. I could've got the file if I looked for it,
19 Chairman, certainly.

20 12 Q. Do you have any recollection of ever asking for the 10:05
21 file?

22 A. No. My awareness from reading the report was that an
23 allegation had been made, a file had been submitted
24 following an investigation and the DPP had adjudicated
25 on the matter. So I didn't concern myself with that 10:05
26 afterwards.

27 13 Q. Well, if we could just have perhaps, in the first
28 instance, just look at the letter from the DPP. It's
29 at page 698, which is volume 2. It'll be brought up on

1 the screen if you prefer it. It just might be an
2 opportune time to look at the operative part of this.
3 Because having considered the file, the professional
4 officer and the Director of Public Prosecutions made
5 the following observations - have you got it there? 10:06

6 A. Thank you Chairman, yes.

7 14 Q. "I agree with you and the Guards that the evidence does
8 not warrant prosecution. There are no admissions. The
9 incident as described by the injured party is vague.
10 It appears that it is only when she was 11/12 that she 10:06
11 decided that whatever occurred was sexual in nature.
12 Even if there wasn't a doubt over her credibility, the
13 incident that she describes does not constitute a
14 sexual assault, or indeed an assault. Further, the
15 account given to her cousin differs in a number of 10:07
16 respects to that given to her parents and the Guards.
17 There is no basis for a prosecution."

18 A. Yes.

19 15 Q. Had you read that prior to me opening it to you there
20 now? 10:07

21 A. Not until I got the papers, Chairman, in relation to
22 the Tribunal. I hadn't seen it previously.

23 16 Q. That's a fairly unequivocal direction from the DPP and
24 an observation on the state of the evidence, isn't that
25 right? 10:07

26 A. That is correct, Chairman, I would agree with that.

27 17 Q. Effectively, the idea that there was a basis for a
28 sexual assault has been utterly dismissed in that
29 direction, would you agree with that?

1 A. I would, Chairman, yes.

2 18 Q. Was it ever brought to your attention that the DPP had
3 dismissed the accusation in the manner as set out in
4 that letter?

5 A. As I say, Chairman, other than reading what I read in 10:08
6 the Byrne/McGinn report, I didn't concern myself with
7 it.

8 19 Q. So in any event, Sergeant McCabe was occupying and the
9 complaints that he was occupying -- that he was making
10 was occupying a great deal of time in the senior ranks, 10:08
11 isn't that right?

12 A. I suppose to try and put it in perspective, Chairman,
13 the complaints that were being made at the time I
14 would've hoped were being properly addressed. And
15 beyond that, certainly there was a lot of attention in 10:08
16 the media drawn to the complaints of Sergeant McCabe,
17 particularly in and around the appearance before the
18 Public Accounts Committee, but these were matters that
19 had to be dealt with in the context of the other
20 business that we were conducting at the time. 10:09

21 20 Q. Of course. But in terms of the time that was occupied
22 by Assistant Commissioner Derek Byrne and Chief
23 Superintendent McGinn, that was a very extensive
24 inquiry, isn't that right?

25 A. Oh, absolutely, Chairman, yes. No doubt at all about 10:09
26 that.

27 21 Q. And subsequent to that, Sergeant McCabe had complaints
28 in relation to that inquiry, hadn't he?

29 A. He had, Chairman, yes.

1 22 Q. And that had to be looked into, isn't that right?
2 A. Yes. The former Commissioner appointed a Deputy
3 Commissioner. Because the complaint was against the
4 Assistant Commissioner Derek Byrne, the Deputy
5 Commissioner was appointed then to examine and 10:10
6 investigate those allegations, and also to review the
7 Byrne/McGinn report, if I can refer to it as that.
8 23 Q. And he subsequently reported in relation to the matter,
9 isn't that right?
10 A. He did, Chairman, yes. 10:10
11 24 Q. And then the issue of the fixed charge penalty notices
12 entered into the equation, isn't that right?
13 A. Correct, Chairman, yes.
14 25 Q. It's a matter we might refer to more extensively later
15 on, but I think that Assistant Commissioner John 10:10
16 O'Mahony was appointed to investigate that, is that
17 right?
18 A. He was, Chairman, yes.
19 26 Q. Was it known at the time that Sergeant McCabe and Garda
20 Wilson were the persons who were agitating this 10:11
21 particular issue in the media?
22 A. Well, the documents that were provided to me, Chairman,
23 consisted of two lists, list A and list B, and they
24 contained a total of 189 separate allegations that were
25 unattributed. My understanding was there was a 10:11
26 confidentiality issue in relation to Sergeant McCabe.
27 And the letter, the accompanying letter I got did not
28 disclose who the author of the documents were.
29 27 Q. Well, that's not really the question I asked you. I

1 asked you was it known at the time that it was Sergeant
2 McCabe --

3 A. No.

4 28 Q. -- and Garda Wilson?

5 A. No. There was a suspicion that it possibly was, but it 10:12
6 wasn't known until the investigation started, the
7 inquiries from the Assistant Commissioner started. And
8 it became apparent that there were, I think, eight or
9 so fatal traffic accidents being examined by the
10 Assistant Commissioner and his team and it was apparent 10:12
11 that Sergeant McCabe had been making inquiries in
12 relation to those particular matters. So certainly
13 there was a very strong indication at that stage.

14 29 Q. So your evidence is that whilst it wasn't known
15 definitively, there was a strong suspicion that -- 10:12

16 A. There was certainly a suspicion that Sergeant McCabe
17 was the author in relation to that particular aspect of
18 the allegations. Of course, there were many, many more
19 as well and there was a wide variety.

20 30 Q. If you just look at volume 8 there, page 1915. Sorry, 10:13
21 1914, if you wouldn't mind looking at that?

22 A. 1914, thank you.

23 31 Q. You'll see there during the course -- sorry, this is a
24 statement to the Tribunal from retired Assistant
25 Commissioner O'Mahony. 10:14
26

27 "During the course of my examination it became clear to
28 me that there was a developing possibility that the
29 anonymous author or authors may have been Sergeant

1 McCabe and/or Garda John Wilson. My view in that
2 regard was formed... "

3
4 And then he sets out the basis for his view being
5 formed. Do you see that? 10:14

6 A. Yes.

7 32 Q. Did he have -- did he discuss that with you?

8 A. I would certainly have been aware of it, yes.

9 33 Q. No, did he discuss that with you?

10 A. I don't have a specific recollection, but I'm quite 10:14
11 sure that there was a discussion. I've no doubt there
12 was a discussion, but I can't bring it back to mind
13 precisely. My recollection is, during the Assistant
14 Commissioner's interim report this was mentioned, that
15 went to the Minister. It's quite a while since I saw 10:14
16 those documents, but I think I'm correct, Chairman.

17 34 Q. If you just move to page 1916.

18 A. Yes.

19 35 Q. You see there at paragraph 3:

20 10:15
21 "I was aware that on 14th December 2012 that
22 then-Commissioner Callinan issued a direction to
23 Sergeant Maurice McCabe and to Garda Wilson to desist
24 from accessing Pulse and disclosing to third parties
25 sensitive personal data regarding the cancellation of 10:15
26 fixed charge notices by members of An Garda Síochána.
27 Sergeant McCabe was informed of this direction
28 personally by his chief superintendent on the same
29 date. "

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Do you see that?

A. I do.

36 Q. I know a position is taken by you in your interview with our investigators, which I'll come to in due course, that Sergeant McCabe was entitled to anonymity and an assertion that it wasn't generally known that it was Sergeant McCabe who was behind a lot of the dissemination of material that had been accessed on Pulse, but it would appear that, from what you have been told by Assistant Commissioner O'Mahony, that there was a high degree of probability that it was Sergeant McCabe, I think you've agreed with that? 10:16

A. Well, not quite. But I did agree that there was a suspicion certainly in the context of what he had identified to that point, i.e. the fatal traffic accidents, that the author was Sergeant McCabe. And yes, of course there was a possibility, without a shadow of doubt there was a possibility that the rest of the allegations were from Sergeant McCabe as well. And perhaps others, maybe not necessarily Sergeant McCabe. 10:16

37 Q. And I suppose by issuing the direction on 14th December 2012 to Sergeant McCabe you were letting him know that you suspected that he was doing it? 10:17

A. I think there has to be a distinction drawn here, Chairman, between my state of knowledge in December '12 and my state of knowledge when I received the correspondence from the Department towards the end of

1 late October of '12. There had been an incident where
2 the former Garda John Wilson had been confronted by a
3 sergeant in Cavan Garda Station, printing off Pulse
4 documents from the Pulse machine, when a sergeant
5 interrupted him and asked him what he was doing - he 10:18
6 wasn't, of course, stationed at that station at the
7 time - and he indicated to the sergeant that he was
8 working with the TD Clare Daly and that they were
9 reporting wrongful cancellations of penalty points and
10 that he was working with Sergeant McCabe in that 10:18
11 regard. And that was the reason why I sent the
12 direction to him to desist from doing -- to both of
13 them to desist from what they were doing, drawing down
14 sensitive material from the Pulse system and
15 distributing that, those documents to third parties. 10:18
16 And it is the case that some of those materials were
17 appearing in the public domain at the time.

18
19 So if you like, that was my attempt to prevent the
20 further unauthorised disclosure of that type of 10:19
21 material.

22 38 Q. But insofar as there is any issue of anonymity that's
23 been put forward, it was in name only, because the
24 reality of the situation was at that stage you were
25 aware of the fact that Sergeant McCabe was behind this 10:19
26 and you were letting him know that you knew he was
27 behind it, because you issued the direction to him,
28 isn't that right?

29 A. That is correct. I was satisfied from what I was told

1 that both Sergeant McCabe and former Garda John Wilson
2 were disseminating the material to a third party. And
3 clearly I had an obligation to try and stop that,
4 prevent it from happening.

5 39 Q. Yes, and I'm not in any way criticising you for doing 10:20
6 that, but you see - and I'm not going to go into it in
7 any sort of detail - but there's a suggestion that
8 Sergeant McCabe didn't cooperate with the O'Mahony
9 investigation, because arising out of that direction he
10 was effectively invited to contact Assistant 10:20
11 Commissioner O'Mahony if he had any more concerns.
12 You're familiar with that, Aren't you?

13 A. I am, Chairman, yes.

14 40 Q. Yes. And the reason is put forward as to why he wasn't 10:20
15 approached directly in relation to the issue was
16 because he enjoyed anonymity. Do you understand?

17 A. Yes.

18 41 Q. Well, that doesn't appear to make an awful lot of sense
19 when the direction itself is the clearest indication
20 that you know that it's he who is behind this. Do you 10:21
21 understand the point I'm making?

22 A. Well, I apologise if I am not making myself clear,
23 Chairman. It wasn't the case in 2012 that there was an
24 awareness that the documentation that came from the
25 Department was attributed to either of those two 10:21
26 parties. But it did become clear during the
27 investigation that that was the point.

28 42 Q. Now, I think that in relation to the issues that we're
29 investigating, I think that you became aware of a

1 protected disclosure that had been made by
2 Superintendent Taylor, isn't that right?

3 A. Yes, Chairman, yes.

4 43 Q. And if you just look at volume 2 - and I don't see any
5 need to go into these in any sort of detail - but I 10:22
6 think that you were written to by Mr. Justice
7 Iarfhlaith O'Neill - you'll find that at page 574. And
8 he wrote to you on the 26th October 2016 regarding a
9 review of certain protected disclosures, isn't that
10 right? 10:22

11 A. That's correct, Chairman, yes.

12 44 Q. And he was inviting a response from you in relation to
13 those protected disclosures. And then you reply to him
14 on 28th October 2016 - it's at page 577 of the
15 material. You set out some concerns that you had and 10:23
16 at the last paragraph on that page you say:

17
18 "In these circumstances, you might kindly set out
19 precisely the allegations to which you wish me to
20 respond." 10:23

21
22 And you give an example of why this is necessary can be
23 ascertained from an examination of the various
24 descriptions of your meetings with Deputy John
25 McGuinness on 24th January 2014. 10:23

26
27 "There are a variety of descriptions of what occurred
28 at that meeting, none of which are correct. I am
29 refrained from becoming involved in these matters in

1 the expectation that the truth will be ascertained by
2 others charged with investigation."

3 A. Yes.

4 45 Q. I think that then Mr. Justice Iarfhlaith O'Neill wrote
5 to you on 31st October 2016, and his letter is at page 10:23
6 579. And at paragraph 1 he points out to you, to try
7 and allay some of your fears, that:

8
9 "There cannot be any findings of facts in relation to
10 any of the allegations made." 10:24

11
12 And then he points out:

13
14 "This review may be at an early stage in a process of
15 investigation into these allegations. What can be 10:24
16 achieved in this review is to ascertain the nature and
17 extent of disputed facts and, with that knowledge, to
18 be in a position to select the most suitable forum of
19 forensic inquiry necessary to ascertain the truth.
20 Thus, what I had hoped to elicit from you is whether 10:24
21 you dispute all the allegations made against you or
22 whether you do not dispute some of them. A full
23 defence to them, as might arise in a forensic inquiry,
24 is not required at this stage."

25
26 He then points out over the page at page 580:

27
28 "These allegations as set out in these four documents
29 are, in my opinion, capable of being addressed by you

1 and responded to by indicating whether you deny all of
2 them or whether you do not dispute some of them or
3 whether you wish to put forward some alternative
4 explanation to them."

10:25

5
6 You then reply. Your reply is at the following page at
7 581, on 6th November 2016.

8 A. Thank you.

9 46 Q. You point out in paragraph 3 there:

10
11 "I am advised that I should not enter into any process
12 until the very serious allegations to which I am
13 requested to respond have been set out in appropriate
14 detail, that the relevant underlying alleged facts have
15 been set out in similar detail and that I have been
16 given reasonable opportunity and facilities to conduct
17 any necessary investigation and inquiries to enable me
18 to rebut same."

10:25

10:25

19
20 I think one of the concerns that you had at the time,
21 Mr. Callinan, was that the protected disclosure that
22 had been made by Superintendent Taylor was very vague
23 and was bereft of any detail, is that right?

10:26

24 A. That's correct Chairman, yes.

25 47 Q. And why did that cause you the concern that it caused
26 at the time?

10:26

27 A. Simply, Chairman, because I didn't know what was being
28 alleged against me and I found it difficult to respond
29 to allegations which certainly didn't become clear to

1 me until Mr. McGuinness decided to submit his statement
2 to the Tribunal. That's the first opportunity I had of
3 becoming aware of what these vile allegations that he
4 had referred to in public meant. I had no idea what he
5 was talking about.

10:27

6 48 Q. That refers to the issue in relation to Mr. McGuinness
7 and then in relation to Superintendent Taylor, as
8 indicated, and is a matter that you complain of later
9 on in the statements that you provided to the Tribunal.
10 But it is very difficult to answer an allegation when
11 there are no details in it, isn't that right?

10:27

12 A. That's correct, Chairman, yes. That's what I was
13 trying to get across, yes.

14 49 Q. In any event, Mr. Justice O'Neill then writes to you,
15 at page 582 of the materials, on 10th November 2016.
16 He points out in the last paragraph:

10:27

17
18 "I do not accept that the materials sent to you could
19 be considered voluminous. The Section 41 reports
20 contain 21 A4 pages and the two protected disclosures
21 contain 11 A4 pages. Given the time you had, namely
22 since 26th October 2016, to consider the contents of
23 these four documents, I do not believe that the volume
24 of the material could reasonably be considered to be
25 onerous.

10:27

10:28

26
27 As stressed by me in earlier correspondence, all that
28 is required of you at this stage is to state whether
29 you dispute the allegations contained in these

1 documents. I am quite satisfied that the allegations
2 in these documents against you are stated with
3 sufficient clarity to enable you to fully understand
4 the content of these allegations so as to enable you to
5 respond to them by stating whether you dispute all of 10:28
6 these allegations or some of them."

7
8 Now, I think you reply to that on 16th November, and
9 that's at page 584 of the material.

10 A. Thank you. 10:28

11 50 Q. In the second paragraph you say:

12
13 "In my letter of 6th November 2016 I informed you that
14 I had been advised that I should not enter into any
15 process until the very serious allegations to which I 10:29
16 was requested to respond had been set out in
17 appropriate detail, that the relevant underlying
18 alleged facts have been set out in similar detail, that
19 I have been given a reasonable opportunity and
20 facilities to conduct any necessary investigations and 10:29
21 inquiries to enable me to rebut same."

22
23 And then in the second last paragraph you say:

24
25 "Notwithstanding the foregoing, and in light of your 10:29
26 clear desire for me to take a position on the
27 allegations, I confirm, insofar as is possible given
28 the limited detail, that the allegations are denied."
29

1 Is that right?

2 A. Yes, Chairman.

3 51 Q. And then the following page at 585, Mr. Justice
4 Iarfhlaith O'Neill replies on 18th November 2016:

5 10:30

6 "It is now clear that there is a complete conflict
7 between the allegations contained in the two protected
8 disclosures and the two Section 41 reports and the
9 responses to these allegations of yourself and
10 Commissioner O'Sullivan. I enclose Commissioner
11 O'Sullivan's response."

12 10:30

13 He then goes on to say:

14 10:30

15 "Manifestly, this review cannot ascertain where the
16 truth lies. For that purpose, it seems to be necessary
17 that some form of inquiry takes place. I would welcome
18 your views on what type of inquiry that should be, and
19 I would also ask you to set out the specific topics you
20 would want included in such an inquiry."

21 10:30

22 You responded to that on 23rd November 2016. It's a
23 detailed letter that you sent out -- set out, but I
24 think the case that you're making is that there
25 shouldn't be any form of inquiry at this juncture,
26 because these were matters that should've been raised
27 before Mr. Justice O'Higgins during the course of his
28 Commission of Investigation, is that right?

29 A. And that is my affirmation, Judge, absolutely.

1 52 Q. You say at the last paragraph on page 586:
2 "The matters described by Superintendent David Taylor
3 in his letter of 30th September 2016 have apparent
4 timescale between July 2012 and June 2014. I wish to
5 emphasise again that insofar as any of the matters 10:31
6 raised in this letter refer to any impropriety on my
7 part, I emphatically deny same.
8
9 If Superintendent Taylor perceived wrongdoing as a
10 serving member of An Garda Síochána, or at all, at all 10:31
11 relevant times, it was his duty not to involve himself
12 in any wrongdoing and, further, to make known and
13 promptly report any wrongdoing which he perceived to
14 have occurred or likely to occur. He did not make any
15 report as far as I am aware. 10:32
16
17 Furthermore, if he wished to avail of the protected
18 disclosure process regarding perceived wrongdoing in
19 relation to matters which were within the remit of the
20 O'Higgins Commission of Investigation prior to the 10:32
21 establishment of that Commission, it was incumbent on
22 him to notify Judge O'Higgins and to partake in the
23 Commission of Investigation."
24
25 Isn't that right? I think you then point out that the 10:32
26 meeting with Deputy McGuinness took place on 24th
27 January 2014 and that the O'Higgins Commission of
28 Investigation had been established on 3rd February
29 2015, and you assert:

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"Deputy McGuinness, in his capacity as the Chairman of the Public Accounts Committee, was inextricably linked to the matters raised by Sergeant McCabe in the context of documentation provided by Sergeant McCabe in 2013 relating to allegations of wrongful cancellation of fixed charge penalty notices. On the advice of the Attorney General's office, an issue had been raised with him formally about the wrongful possession of documents by the Public Accounts Committee, the contents of which were protected under the Data Protection Acts.

10:33
10:33

As a public representative, Deputy McGuinness had a clear duty to make his involvement known to Mr. Justice O'Higgins for the purpose of the Commission of the investigation. There is no indication in the correspondence of the public utterances of Deputy McGuinness that I have seen or heard that he did so."

10:33
10:33

And that was a major concern that you had at the time, isn't that right?

A. Correct, Judge. Absolutely.

53 Q. Then in the final paragraph you say:

"Having regard to all of the matters and procedures which have taken place to date and with particular regard to the foregoing, I have been advised that any possible matter arising from the two protected

10:33

1 disclosures should have been raised at the Commission
2 of Investigation carried out by Mr. Justice O'Higgins
3 and that the failure to do so is a bar to any further
4 form of inquiry involving matters which ought to have
5 been raised. "

10:34

6
7 So that was certainly the position that you had
8 adopted. And in any event, this Tribunal was
9 established in February of last year. And you made
10 your first statement to the Tribunal on 13th March
11 2017, and that's in the same volume that you have there
12 at page 640. I will be returning to many of these
13 matters that are in your statement, but I just think
14 it's important that we just go through this. I don't
15 want to appear to be hurrying in relation to it, if
16 there's any matter that you want to stop me on and
17 point out some fact, but --

10:34

10:35

18 A. I'm obliged, Chairman. Thank you.

19 54 Q. This is the statement. You set out an introduction.
20 And in the second paragraph there you say:

10:35

21
22 "However, it is a source of ongoing concern to me that
23 these terms of reference are based on allegations that
24 have been made against me in extremely vague and broad
25 terms. Specifically, it has been alleged that I
26 directed or orchestrated a campaign against Sergeant
27 Maurice McCabe, although little detail has been given
28 by those making such allegations as to how it is I said
29 I did so" -- "how it is said that I did so", I'm sorry.

10:35

1 A. Thank you.

2 55 Q. "In the circumstances where very little by way of
3 specific detail has been set out in relation to the
4 allegations, it is difficult to do any more at this
5 stage than refute them by way of denial. Where
6 possible, or relevant, I provide specific details in
7 relation to incidents that seem to me to be of
8 relevance at this point."

10:36

9
10 You then go down to deal with the protected disclosure
11 made by Superintendent David Taylor and Sergeant
12 Maurice McCabe. Effectively, Sergeant Maurice McCabe
13 was making no complaint against you, he was just simply
14 reiterating the complaint that had been made by
15 Superintendent David Taylor, isn't that right

10:36

16 A. That's correct, Chairman, yes.

17 56 Q. So I'll refer to it as the protected disclosure of
18 Superintendent Taylor and I won't include reference to
19 Sergeant McCabe.

20 A. Thank you, Chairman.

10:37

21 57 Q. You point out at the end of page 640:

22
23 "I wish to state categorically that I did not direct
24 Superintendent Taylor to brief the media to the effect
25 that Sergeant McCabe was motivated by malice or
26 revenge. Nor did I direct Superintendent Taylor to
27 encourage the media to write negatively about Sergeant
28 McCabe. It is incorrect to allege that I instructed
29 Superintendent Taylor to encourage the media to report

10:37

1 that Sergeant McCabe was, therefore, driven by his own
2 improper agendas."

3
4 You then go through the next paragraph. And then the
5 following paragraph: 10:37

6
7 "I note in Superintendent Taylor's protected disclosure
8 that he alleges that there was a campaign at the
9 highest level in An Garda Síochána involving me as the
10 Commissioner and the then-Commissioner Nóirín 10:38
11 O'Sullivan to discredit Sergeant McCabe. I absolutely
12 refute that allegation. I have no knowledge of any
13 such campaign, nor have I ever received any report of
14 such a campaign within An Garda Síochána."

15 10:38
16 You then point out under (b):

17
18 "To investigate the allegations of Superintendent
19 Taylor in his protected disclosure that he was directed
20 to draw journalists' attention to an allegation of 10:38
21 criminal misconduct made against Sergeant McCabe and
22 that this was the root cause of his agenda, namely
23 revenge against the Gardaí."

24
25 It says: 10:38

26
27 "I specifically wish to state that I did not direct
28 Superintendent Taylor to draw journalists' attention to
29 the complaint of criminal misconduct made against

1 Sergeant McCabe, nor did I direct him to suggest to
2 journalists or others that this was the root cause of
3 his agenda. It is striking that the allegation made by
4 Superintendent Taylor is made without any reference to
5 any surrounding detail, context or the circumstances in 10:39
6 which the purported direction was made. Given the
7 extraordinary nature of this allegation that I gave
8 such a direction, it is remarkable that the account he
9 has given is devoid of any such detail and puts me in a
10 position of being able to do little more than simply 10:39
11 deny it, which I do fully."
12

13 So that's your response in your initial statement that
14 you made to the Tribunal --

15 A. That's correct, Chairman. 10:39

16 58 Q. -- in March of last year. I'm only just going to touch
17 on this briefly at this juncture, but you had appointed
18 Superintendent Taylor as Press Officer, isn't that
19 right?

20 A. I had, Chairman, yes. 10:39

21 59 Q. How long had you known him?

22 A. I didn't know him particularly well, Chairman, but I
23 knew his background. I knew he'd been involved in
24 Special Branch, I knew he was working in Liaison and
25 Protection and I knew he did an important job over 10:40
26 there and I knew he would be familiar with the national
27 and international scene, and it was on that basis that
28 I appointed him. I had met him certainly probably
29 within 12 months, very briefly I had met him at an

1 airport on my way home. We were at a security meeting.

2 60 Q. So why did you appoint him?

3 A. Because I thought he was suitable for the job.

4 61 Q. Well, what qualifications do you think that a Press
5 Officer needs? 10:40

6 A. Well, Press Officers are traditionally superintendents
7 in An Garda Síochána, and it is the case that they
8 familiarise themselves with the role. And beyond that,
9 there was no specific requirement in that particular
10 role to have PR experience, as such. 10:41

11 62 Q. So he was put into the role as Press Officer because it
12 was a superintendent rank and he was a superintendent,
13 is that what you're saying?

14 A. Well, that was certainly an ingredient, Chairman. But
15 I relied on his experience as a superintendent and his 10:41
16 experience within the various ranks and the acumen that
17 he would've developed in the various roles that he
18 occupied, and I thought that would be beneficial to
19 him.

20 63 Q. I think the Commissioner has a close working 10:41
21 relationship with the Press Officer, isn't that right?

22 A. A close working professional relationship, yes.

23 64 Q. Yes. And did you enjoy a close working relationship
24 with Superintendent Taylor?

25 A. Yes, I would believe that I had a close professional 10:41
26 relationship with him, yes.

27 65 Q. Did you become friends?

28 A. No.

29 66 Q. He seems to have been desperately upset - and I don't

1 think that's putting it too strongly - at the manner in
2 which you were treated leading up to your retirement,
3 isn't that right?

4 A. Yes, Chairman, I agree.

5 67 Q. Did you get any sense during the two-year period that 10:42
6 he was Press Officer and working with you that he bore
7 some sort of a grudge against you?

8 A. No. No, Chairman.

9 68 Q. Or that there was perhaps some underlying frailty in
10 the relationship between the two of you? 10:42

11 A. No, I didn't get that sense at all, Chairman.

12 69 Q. Well, how did you receive the protected disclosure when
13 you heard of it?

14 A. I was shocked. I was shocked that that would happen.
15 Because there was no justification for it in any way, 10:43
16 shape or form.

17 70 Q. I'm sure you've reflected on this to a very great
18 extent, but can you see any rationale for it?

19 A. Well, I have an opinion on the reason, Judge, but I
20 certainly could not see any rationale from my 10:43
21 perspective. And certainly what has emerged in the
22 evidence from Superintendent Taylor is beyond my
23 comprehension in terms of the relationship that I
24 thought we had and believed we had and the manner in
25 which he was conducting his business on behalf of An 10:43
26 Garda Síochána.

27 71 Q. Well, just feel free to express the opinion that you
28 have in relation to his motivation for this.

29 A. Well, if it's appropriate, Judge, I am of the view and

1 the belief that Superintendent Taylor, because of the
2 grudge he bore against Commissioner Nóirín O'Sullivan,
3 that he embarked on this story. Because he had said to
4 me when he called to my home following his arrest, and
5 prior to that indeed, that he had a huge grievance 10:44
6 about being shifted from the Press Office to the
7 Traffic Department, which he saw as a sideways move.
8 And he had a perception - at least this is what he told
9 me - that he had a perception that people would say it
10 is a sideways move and he wasn't good at what he was 10:44
11 doing or whatever other reason was in his mind, but
12 that it would be viewed by his colleagues certainly as
13 being a sideways move and detrimental to his career.

14
15 He was extremely disappointed and angry that the 10:45
16 Commissioner had moved him. And then subsequently,
17 after his arrest and suspension, he told me that he
18 believed Commissioner O'Sullivan was the person who was
19 responsible for having him arrested and that he would
20 bring her down. That was the expression he used. 10:45

21 72 Q. But Mr. Callinan, you're the primary target.

22 A. Sorry, I was going to -- yeah, sorry. So on that
23 basis, I believe that the superintendent decided, in
24 order for this story to work, that he had to involve me
25 in the process. That's my belief. Because there is no 10:45
26 other explanation why he would say what he is saying,
27 that he would come in here to this Tribunal and give
28 the type of evidence that he gave.

29 73 Q. If we could just go back to your statement at page 641.

1 Dealing in relation to the distribution and use by
2 Tusla of a file that had been created in Tusla, you
3 say:

4
5 "I am not aware of the creation, distribution and use 10:46
6 by Tusla of a file containing false allegations of
7 sexual abuse against Sergeant McCabe that were sent to
8 Gardaí in 2013. Therefore, the implication that I used
9 such information to discredit Sergeant McCabe in some
10 way is wholly unfounded." 10:47

11 A. Yes.

12 74 Q. That's a complete denial of any knowledge that there
13 was a file in Tusla in 2013 on Sergeant McCabe, is that
14 right?

15 A. I had no knowledge whatsoever. 10:47

16 75 Q. And you've no information to give the Tribunal in
17 relation to that?

18 A. No, Chairman.

19 76 Q. And you're not privy to a letter that was sent by Keara
20 McGlone to Superintendent Cunningham in August of 2013, 10:47
21 are you?

22 A. No, I'm not, Chairman.

23 77 Q. Have you seen that letter?

24 A. I've seen it in the papers sent to me from the
25 Tribunal, Chairman. 10:47

26 78 Q. And are you happy that it's something that you weren't
27 in any way, shape or form involved with?

28 A. I am, Chairman, yes.

29 79 Q. You know Superintendent Cunningham, don't you?

1 A. I do, Chairman.

2 80 Q. How well do you know him?

3 A. I would have a working knowledge of him. I would've
4 met him on a number of occasions. I think the first
5 time I met Superintendent Cunningham he was a sergeant. 10:48
6 I was involved in the location for the victims'
7 remains, that process. The former Tánaiste Mr. John
8 Wilson, God be good to him, and Sir Kenneth Bloomfield
9 on the other side, were the International Commission
10 for the Location of Victims' Remains. These were 10:48
11 people who had disappeared over the years and the IRA
12 associated with it. So Superintendent Cunningham, then
13 a sergeant, took charge of a scene where two bodies
14 were recovered up in Monaghan at that time and that's
15 where I got to meet him. 10:49

16 81 Q. As of, we'll take the period of time from December
17 2012, at that time did you have any communication with
18 Superintendent Cunningham concerning Sergeant McCabe?

19 A. No, Chairman.

20 82 Q. In his executive summary Derek Byrne had indicated to 10:49
21 you that there may be some issue in relation to
22 Sergeant McCabe and a dissatisfaction that he had in
23 relation to the DPP's directions and it being
24 disseminated to the Ms. D family. Do you recall that?

25 A. I briefly recall that, yes, yeah. Yeah. I did read 10:50
26 the executive summary.

27 83 Q. What was your feeling at the time in relation to
28 Sergeant McCabe and the complaints that he was making
29 in relation to, for instance, the fixed charge penalty

1 notices? In some way did you link that to the
2 allegation of sexual assault back in 2006?

3 A. Not particularly, Judge. I was aware that there was a
4 reference in the executive summary to that particular
5 incident. And beyond that, I didn't concern myself 10:50
6 with it. Because my view is you deal with the matters
7 that you have to deal with, and Sergeant McCabe was
8 making very serious allegations and complaints and they
9 were required to be dealt with and I proceeded with it
10 on that basis. 10:50

11 84 Q. I'll come in more detail to this later on, but in terms
12 of the complaints in relation to the fixed charge
13 penalty notices and the investigation of Assistant
14 Commissioner O'Mahony, I mean, the 2006 allegation had
15 absolutely nothing to do with any issue in An Garda 10:51
16 Síochána in 2012, isn't that right?

17 A. Correct, Chairman, yes.

18 85 Q. And had nothing to do with any issue in An Garda
19 Síochána in 2013 or 2014?

20 A. Absolutely correct, Chairman. 10:51

21 86 Q. As far as Sergeant McCabe was concerned, it appears
22 that the matter was dead and buried and confined to the
23 past. And indeed, as of 2013, in August of 2013 the
24 same can be said of the D family. It shouldn't have
25 been mentioned in despatches even, should it? 10:52

26 A. I wouldn't see any particular reason for it to have
27 been mentioned.

28 87 Q. I mean, I'm just -- were you, in any sense, linking the
29 2006 and the 2007 investigation, were you linking that

1 to some improper motive that Sergeant McCabe had for
2 making his allegations in relation to the fixed charge
3 penalty notices?

4 A. No, I wasn't, Chairman, no. But I did read, of course
5 I read in the executive summary the observation of the 10:52
6 Assistant Commissioner. It's there in black and white.
7 But I certainly wasn't linking it, or nor did I believe
8 that it was the conduit for Sergeant McCabe to make the
9 complaints he was making.

10 88 Q. Well, it clearly wasn't a conduit. But I mean, did you 10:53
11 think that this was influencing Sergeant McCabe in some
12 way in making false and spurious accusations against
13 his colleagues?

14 A. It's very, very difficult to tell whether that was a
15 motivation. But regardless of whether it was or it 10:53
16 wasn't, I had the issues to deal with and that's what I
17 concerned myself with.

18 89 Q. Well, I suppose one of the issues you had to deal with
19 was the question that was being posed, and indeed we
20 heard yesterday from former Minister Alan Shatter it 10:53
21 was an issue that he concerned himself with in posing
22 the question: why is Sergeant McCabe doing this --

23 A. Yes.

24 90 Q. -- what's behind it if it's untrue? Did you consider 10:54
25 that the 2006 allegation was in some way behind
26 Sergeant McCabe making false accusations against his
27 colleagues?

28 A. Yeah, I suppose, Chairman, the Minister at the time
29 asked me, in the course of a conversation about other

1 matters, is there anything in the background of
2 Sergeant McCabe that he should be aware of. I was
3 very, very conscious of my obligations under Section 41
4 of the Garda Síochána Act to inform the Minister of
5 facts within my knowledge that he would need to be 10:54
6 aware of. So he's specifically asking me now is there
7 anything in the background of Sergeant McCabe that he
8 needed to be aware of in the context of all of these
9 complaints.

10
11 In that sense, I had mentioned to him that there had
12 been an allegation back in 2006 against Sergeant McCabe
13 being involved in inappropriate contact with a child,
14 that the matter was fully investigated and the DPP had
15 ruled there'd be no prosecution. It was something that 10:55
16 came and passed very, very quickly. We did not discuss
17 the matter. As I said, I was obliged to inform him of
18 that situation. He was aware, I think, of most of the
19 background material in the context of Sergeant McCabe
20 at that time. And that was simply the position. 10:55

21 91 Q. In a statement, at page 1677 of the material, and in
22 his evidence yesterday to the Tribunal Mr. Shatter
23 said:

24
25 "The Minister informed me that no other such allegation 10:56
26 had been made and speculated that the sergeant may have
27 been upset by what had occurred."
28

29 So you're perhaps suggesting there to Minister Shatter

1 that Sergeant McCabe may have been upset by the earlier
2 allegation --

3 A. Mm-hmm.

4 92 Q. -- and that this might be his motivation for making his
5 complaints, is that right? 10:56

6 A. well, I think all I was doing was placing the facts in
7 front of the Minister at the time as I knew them. You
8 know, it's a matter of interpretation as to what
9 precisely that meant.

10 93 Q. Could you just articulate a little bit more in terms of 10:57
11 how you would have perceived at this time - this is
12 2012 into 2013 - how you would have perceived that the
13 allegation that had been made in 2006 by Ms. D could
14 have influenced Sergeant McCabe in his activities in
15 2010, '11 and '12 in bringing the fixed charge penalty 10:57
16 notice system to the attention of politicians?

17 A. I mean, I cannot actually speak for Sergeant McCabe.
18 whether or not that was a motivating factor for him, I
19 don't know. I don't know whether it was, but --

20 94 Q. well, you see -- 10:58

21 A. Sorry.

22 95 Q. -- in order to think that something might be relevant
23 to something else, there has to be some sort of a link
24 between the two of them.

25 A. I wasn't making the link, Chairman, if that's the 10:58
26 question I'm being asked.

27 96 Q. well, this is what I'm asking you.

28 A. Sorry, yes. No, no.

29 97 Q. I mean, it's either relevant or it's not. It's

1 relevant if it creates a link between the two and, in
2 other words, could explain why he's bringing these
3 matters into the public arena. I mean, he's either
4 properly motivated or he's ill-motivated. And we've
5 heard different evidence in relation to this, but 10:58
6 certainly Assistant Commissioner Byrne and Chief
7 Superintendent Terry McGinn gave evidence to
8 Mr. Justice O'Higgins at the O'Higgins Commission that
9 they saw no mala fides in Sergeant McCabe and his
10 complaints. 10:59

11 A. Nor did I, Chairman. I think the sergeant was quite
12 entitled to make any allegations he saw fit,
13 absolutely, the same as any other member of An Garda
14 Síochána or any member of the public. And I certainly
15 wasn't linking any mala fides to Sergeant McCabe. Far 10:59
16 from it.

17 98 Q. Well, then what has the 2006 allegation got to do with
18 anything in terms of Sergeant McCabe in 2013/2014?

19 A. Other than, as I say, Chairman, I was asked a direct
20 question by the Minister of the day was there anything 10:59
21 in the background that he needed to be aware of. And
22 that was a matter that I was aware of and I felt that I
23 had a statutory duty to respond to the Commissioner --
24 or to, I beg your pardon, to the Minister and inform
25 him of that fact. It wasn't something that I dwelt on. 11:00
26 I certainly didn't convey to the Minister that, you
27 know, this is the catalyst for Sergeant McCabe to go
28 running off, making all sorts of complaints. I
29 certainly didn't convey that message, absolutely not.

1 So it was something that was mentioned and it wasn't
2 mentioned again and, as far as I'm concerned, we never
3 discussed it again.

4 99 Q. But you see, the problem is that not long afterwards,
5 in the pre-PAC meetings in January 2014, the 2006 11:00
6 allegation raises its ugly head again.

7 A. I saw that in the notes, yes, Chairman, yeah.

8 100 Q. I'll return to that in more detail later on. But, I
9 mean, what's it's being discussed for at all?

10 A. I'm not saying it was discussed, Chairman. But I did 11:00
11 see the reference in the notes, absolutely.

12 101 Q. Ah, well, sure, if there's a reference to it and it's
13 in the notes - we'll open it up in due course - one
14 imagines that it's going to be discussed. We have
15 evidence from Mr. McLindon, who says that the reference 11:01
16 up to 2006 is probably a reference to the 2006
17 allegation by Ms. D.

18 A. And I would accept that totally, Judge. I'm not trying
19 to deny that that isn't the case. And I read
20 Mr. McLindon's evidence. But, you know, that seemed to 11:01
21 follow certainly in, was it Assistant Commissioner
22 Nolan's notes?

23 102 Q. Yeah.

24 A. It seemed to follow a chain of years, 2006/2007/2008.
25 And it may be that somebody was -- I don't recall the 11:01
26 specifics of it, but it may very well be the case that
27 somebody was recounting issues either being raised or
28 in and around Sergeant McCabe at the time. But there
29 certainly wasn't any discussion on the alleged sexual

1 assault. That, I am absolutely 100% positive there was
2 no discussion around that. It may have been mentioned
3 - and you cannot stop people from mentioning things at
4 meetings.

5 103 Q. Well, as I say, I'm going to return to that and open 11:02
6 the relevant documents to you in due course.

7 A. Yes.

8 104 Q. But would you accept as a proposition that in principle
9 when one's looking at a story, in this instance that's
10 being told by a whistleblower, that in the first 11:02
11 instance perhaps it's better to examine the story
12 rather than look at the story-teller?

13 A. You can take it, Chairman, as one hundred percent that
14 that is precisely what I was doing when I was apprised
15 of the allegations of Sergeant McCabe. I had no 11:03
16 intention in the wide earthly world of doing down
17 Sergeant McCabe good, bad or indifferent, nor had I the
18 time to do so.

19 105 Q. From reading the material that had been distributed,
20 can you see that there does appear to be a focus in the 11:03
21 PAC meetings, reference to the update on the "two
22 boys", I think, is there, reference to Sergeant McCabe
23 and to Garda Wilson, background information, that there
24 may be an undue focus on the story-teller in this
25 instance? 11:04

26 A. I don't know what the note was referring to, Chairman.
27 I have no doubt both whistleblowers were referenced,
28 but I have no recollection of any discussion in
29 relation to the individuals as opposed to the

1 complaints that were being made in relation to the
2 fixed charge notices.

3 106 Q. All right, I'll come back to that in due course.

4 A. But just to restate, Chairman, if I may, what we were
5 talking about was the substance of the allegations, not 11:04
6 the individuals.

7 107 Q. If we go back to the statement that you were making to
8 the Tribunal at page 642 - and this is a reference to
9 your discussion that we just referred to with Minister
10 Alan Shatter - you say: 11:05
11

12 "In late 2013 I spoke with then-Minister for Justice,
13 Alan Shatter. This was in connection with a report
14 prepared by Assistant Commissioner John O'Mahony, which
15 I believe Minister Shatter received 28th March 2013. 11:05
16 This was in the context of a briefing with the
17 Minister."
18

19 And I think you set out what you have just told the
20 Tribunal there -- 11:05

21 A. Yes.

22 108 Q. -- and there's no need to go there that. Then dealing
23 with terms of reference [i] at the bottom of page 343:
24

25 "I previously explained the position regarding the 11:05
26 mobile phone I used during my time as Commissioner to
27 Mr. Justice Fennelly in the context of the Commission
28 of Investigation he oversaw. For ease of reference,
29 the relevant material is to be found at section 11 of

1 the interim report dated 21 August 2015."

2 In relation to that, I think the phone that you used

3 when you were serving Commissioner was handed over to

4 the Fennelly Commission, is that right?

5 A. It was Judge, yes. 11:06

6 109 Q. But all the messages had been deleted, is that correct?

7 A. I don't know. I didn't delete any messages.

8 110 Q. I'll refer to that in due course. It was examined by

9 the Forensic Science Service in Northern Ireland on

10 behalf of the Tribunal, who were able to extract a 11:07

11 large number of deleted text messages.

12 A. Yes, I saw that, yes.

13 111 Q. But in any event, it's a matter that I'll return to,

14 not in any great detail. You then point out:

15 11:07

16 "I note from a protected disclosure made by another

17 person that Superintendent Taylor informed that

18 person --"

19

20 That is a reference to Sergeant McCabe's protected 11:07

21 disclosure

22

23 " -- was involved in sending hundreds of text messages

24 about Sergeant McCabe to then-Deputy Níolín O'Sullivan

25 and another senior officers in the media. This 11:08

26 disclosure stated that Superintendent Taylor said that

27 I habitually provided the text of the vile messages

28 about him and sent them to Superintendent Taylor's

29 mobile phone."

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we now know from Superintendent Taylor that he denies that he said that, or that it happened. You then go on, down at page 644, halfway down, in relation to the meeting, with former Commissioner -- with yourself and Deputy John McGuinness on 24th January 2014. You say:

11:08

"It remains a source of concern that although Deputy McGuinness has made brief reference in public to my meeting with him on 24th January 2014, he has declined to elaborate on same in public. As such, whilst this meeting has been the source of much public speculation and innuendo, no specific allegations relating to same have ever been made. It is a source of considerable concern and disquiet that I am expected to defend myself against nebulous and non-specific allegations without being made aware of the precise terms of same."

11:08

11:09

I think that you have subsequently received a statement that was made by Mr. McGuinness and --

11:09

A. Yes, Chairman.

112 Q. -- A subsequent interview with the Tribunal investigators, which again I'll return to in some considerable detail. You then refer to your appearance before the Public Accounts Committee meeting. And you point out then at page 646, you say:

11:09

"However, it will be apparent from the foregoing that as of 24th January 2014, the following day I was

1 engaging in quite proper steps to ensure that Sergeant
2 McCabe did not appear before the Public Accounts
3 Committee on foot of the concerns already described.
4 It was in this context that I sought a meeting with
5 Deputy McGuinness. " 11:10

6
7 You then go down, the paragraph in the middle of the
8 page:

9
10 "I travelled from Dundalk to the meeting with Deputy 11:10
11 McGuinness. The meeting lasted for roughly 15/20
12 minutes. Much of the discussion related to the concern
13 I had in respect of data protection issues and my role
14 as Accounting Officer. I sought to emphasise to Deputy
15 McGuinness that I could not see how the Public Accounts 11:10
16 Committee could deal with the material without the
17 members of the public concerned being identified. I
18 also put the substance of the proposals contained in
19 the draft letters to Deputy McGuinness.

20 11:11
21 During the course of the meeting, Deputy McGuinness
22 asked why was Sergeant McCabe raising these issues. He
23 asked if it was because of the file that was sent to
24 the DPP. It was clear that he was already aware prior
25 to our meeting that Sergeant McCabe had been the 11:11
26 subject of a criminal investigation. His query in this
27 regard was not in response to, nor was it prompted by,
28 anything I said. I responded by telling him that if he
29 knew about the file that went to the DPP, he knew what

1 the DPP had decided. He indicated to me that he knew
2 all about the allegation underlying the investigation.
3 I did not at any point, as alleged, seek to discredit
4 Sergeant McCabe or undermine the workings of the Public
5 Accounts Committee. "

11:11

6
7 And you've set out your stall there very clearly, and
8 naturally I'm going to have to return to the evidence
9 of Mr. McGuinness in due course --

10 A. Yes.

11:12

11 113 Q. -- when dealing with your reactions to the allegations
12 in the first instance to the Tribunal.

13 A. Thank you.

14 114 Q. Then you go on at page 648 to specifically deal with
15 the allegation made by Superintendent Taylor. And you
16 refer to a visit to your home, and I think that you've
17 just told us about that.

11:12

18
19 Then on 30th May 2017 you provided the Tribunal with a
20 supplemental statement. It's at page 689. This
21 clearly is in response to new material that had come in
22 to the Tribunal and had been sent to the Tribunal,
23 isn't that right?

11:13

24 A. I believe so, Chairman, yes.

25 115 Q. At paragraph 2 there you say:

11:13

26
27 "Letter sent to the Tribunal by Ms. Anne Harris dated
28 11th March. "

29

1 You'd no knowledge in relation to that. And then the
2 statement of Mr. McGuinness, which had been sent to the
3 Tribunal on 28th March 2017, this is the first time
4 that Mr. McGuinness referred the Tribunal to this issue
5 in relation to his conversation, alleged conversation 11:13
6 with you after the Public Accounts Committee on 23rd
7 January. Now, I think maybe it's important just to
8 point out in paragraph 2 there you point out:

9
10 "I do recall that I inquired from Mr. McGuinness as to 11:14
11 whether former John Wilson would be called to give
12 evidence. Mr. McGuinness replied 'You must be joking.
13 Sure he's a fucking header'. This took me by surprise
14 in the circumstances where Mr. McGuinness had been
15 scathing in his criticism of An Garda Síochána for the 11:14
16 manner in which whistleblowers generally are treated."

17
18 I suppose the point that you would wish to make in
19 relation to this is that at that point in time Mr.
20 McGuinness hadn't informed the Tribunal that there was 11:15
21 any reference to John Wilson at all, isn't that right?

22 A. That's correct, Judge, yes.

23 116 Q. And it is you that's alerting to the Tribunal that
24 there was some discussion in relation to John Wilson?

25 A. Well, I had asked Mr. McGuinness if he was going to 11:15
26 call --

27 117 Q. Yes.

28 A. -- it was fairly direct, if he was going to call the
29 former Garda John Wilson. And that is his response as

1 I've quoted it there in the statement.

2 118 Q. And again it's a matter that has to be returned to in
3 some considerable detail. But just by the way, as
4 we're passing through this, at this juncture you had,
5 was it 1986 that you had gone to Pearse Street Garda 11:15
6 Station as a sergeant?

7 A. Yes, that's correct.

8 119 Q. On promotion?

9 A. That's correct, Chairman, yes.

10 120 Q. And I think John Wilson was a Garda there? 11:15

11 A. He was. He was on one of the units, Chairman, yes.

12 121 Q. And your private secretary, Superintendent Frank Walsh,
13 was also a Garda there at that time, isn't that right?

14 A. I believe so, yes.

15 122 Q. Yeah. We know from text messages that were sent to you 11:16
16 that Garda Wilson was sometimes referred to as Jockey
17 Wilson?

18 A. Yes. That was his nickname, Jockey, yes.

19 123 Q. Were you aware of the story in relation to how he got
20 that nickname? 11:16

21 A. Well, I've read the evidence, Judge, and I read your
22 surprise at me not knowing the particular story. And
23 there are lots of stories in the Guards, we all know
24 that. But I associated the name Jockey Wilson with the
25 Scottish world champion dart player, Jocky Wilson. 11:16
26 That's where I thought the nickname emanated from.

27 124 Q. Well, I've seen Mr. Wilson here at the Tribunal and he
28 doesn't bear any resemblance at all to the darts
29 player, either in stature or otherwise. So why did you

1 make the connection?

2 A. I just thought that that was precisely it, that this
3 was his nickname, Jockey Wilson. I certainly didn't
4 associate it with the horse story that has been
5 proffered here at the Tribunal, I wasn't aware of that. 11:17

6 125 Q. Are you saying you'd never the story?

7 A. I didn't. I heard stories about John Wilson, the
8 former Garda, but I didn't hear that particular story.

9 126 Q. At all in Pearse Street?

10 A. And I know I'm not alone in relation to members of 11:17
11 Pearse Street who didn't hear that story either.

12 127 Q. But in any event, you go on then to deal with that at
13 691, or your interaction with Mr. McGuinness. And then
14 at page 692, this was a letter that had been sent in in
15 relation to Gemma O'Doherty on 18th May 2017. And this 11:18
16 concerned a visit by Ms. O'Doherty to your home --

17 A. Yes.

18 128 Q. -- when you were abroad, isn't that right?

19 A. That's correct, Chairman, yes.

20 129 Q. And arising out of her pursuit of a story in relation 11:18
21 to a fixed charge penalty notice that she was
22 highlighting that had been cancelled in relation to
23 you, isn't that right?

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

25 130 Q. And this was, the visit was in April 2013 -- 11:18
26 A. Correct, Chairman.

27 131 Q. -- I think, isn't that right?

28 A. Yes.

29 132 Q. Other than Garda Wilson and Sergeant McCabe, were there

1 any other members of An Garda Síochána in 2013 giving
2 out Pulse records to the media or to politicians that
3 you were aware of?

4 A. I'm not aware of any others, Chairman.

5 133 Q. Well, was there anybody else who was ordered to desist 11:19
6 from accessing Pulse?

7 A. No, Chairman. Not by me anyway.

8 134 Q. It became clear that Ms. O'Doherty had access to Pulse
9 records, isn't that right?

10 A. Yes, Chairman. 11:19

11 135 Q. So it had to be either Sergeant McCabe or Garda Wilson,
12 isn't that right?

13 A. I think there's a very strong possibility that was the
14 situation, Chairman, yes.

15 136 Q. You took this visit to your home -- you were very angry 11:20
16 about it?

17 A. Well, I was --

18 137 Q. Quite naturally.

19 A. I was certainly angry about it, Chairman, yes. I mean,
20 that's factually correct. 11:20

21 138 Q. Were you also very angry about Ms. O'Doherty
22 highlighting the penalty points issue in relation to
23 you?

24 A. Well, I certainly couldn't be angry with Ms. O'Doherty
25 publishing that story or seeking to publish that story, 11:20
26 because she was factually correct. I recall back in
27 2007 I was attending to an urgent operational matter
28 when I was recorded as exceeding the speed limit. I
29 was working at the time, I was going to meet somebody,

1 it was of particular importance. And when I was
2 recorded speeding in those circumstances, I applied to
3 have the ticket cancelled and it was subsequently
4 cancelled. That is a matter of record, it's on the
5 Pulse system. So there was nothing nefarious involved 11:21
6 in that particular manoeuvre. The fact that
7 Ms. O'Doherty had the detail of that, I don't know how
8 she got it. It's quite possible it came from one of
9 the two, either Sergeant McCabe or indeed John Wilson,
10 I don't know. But she was entitled to publish that 11:21
11 story if she wanted to.

12 139 Q. Well, after her visit to your home, I think she spoke
13 to your wife, isn't that right?

14 A. Yes.

15 140 Q. And I think that the purpose of her visit was to try 11:21
16 and establish whether this was the address of the Garda
17 Commissioner, isn't that right?

18 A. That's what she has indicated, yes.

19 141 Q. And I think in response to that, such was your
20 annoyance and anger, that you contacted Superintendent 11:22
21 Taylor, isn't that right?

22 A. Correct.

23 142 Q. And what did you tell Superintendent Taylor to do?

24 A. Well, first of all I indicated to him that
25 Ms. O'Doherty had called to the house to make that 11:22
26 inquiry and I asked him to contact the newspaper and
27 point out to them that I didn't think it was
28 appropriate for a visit of that nature and that if she
29 had any queries, the Press Office was open from early

1 in the morning to late at night and that that's where
2 those inquiries or queries should be addressed to and
3 not calling to my home. And I know that he did that
4 and he subsequently reported back to me that he had in
5 fact made that phone call. 11:23

6 143 Q. Superintendent Taylor has told us that he, along with
7 Chief Superintendent --

8 A. Assistant Commissioner Twomey I think.

9 144 Q. No, it was Assistant Commissioner Twomey, sorry.
10 Assistant Commissioner Twomey met with senior managers 11:23
11 from INM, is that right?

12 A. I didn't actually recall it until I read it. But I
13 accept it's correct, of course.

14 145 Q. I mean, that's at a very high level now that your
15 annoyance in relation to this is being expressed, isn't 11:23
16 that right?

17 A. Well, it's certainly the case that I was annoyed. And,
18 you know, I don't know the exact detail of how the
19 meeting was arranged, but I do accept Assistant
20 Commissioner Twomey at that time was in charge of the 11:24
21 city and, I suppose, would be responsible for, amongst
22 many other things, the security around my particular
23 residence.

24 146 Q. I mean, people may regard it as a bit of an
25 overreaction to -- 11:24

26 A. They may well do --

27 147 Q. Yes.

28 A. -- but that was my reaction, that I wanted to protest
29 the fact that a journalist was calling to my home at

1 that hour of the night when I was away. And, you know,
2 that was my position, Judge. I'm not denying it,
3 certainly that is the position. And I think I was
4 entitled to make that protest. The Press Office is
5 open from seven in the morning until eleven at night. 11:24

6 148 Q. Well, Ms. O'Doherty has issues in relation to this
7 which are set out in her statement that she provides to
8 the Tribunal, and they're at volume 14 at page 694.
9 But she's legally represented here and issues may be
10 pursued in relation to that, I don't know. But what 11:25
11 I'm primarily concerned about is that this quite
12 clearly caused you to be extremely angry about the
13 incident and then the follow-up in relation to the
14 publication of her article in relation to you and the
15 high degree of probability that it was either Sergeant 11:25
16 McCabe or Garda Wilson who had given her the
17 information may have led you to be annoyed with either
18 of those or both; do you understand?

19 A. I do, certainly. No, that's not the case.

20 149 Q. And that this might have, in 2013, perhaps altered your 11:26
21 view in relation to Sergeant McCabe in particular?

22 A. No, that's not the case, Chairman, no.

23 150 Q. That you may have taken this as a personal affront by
24 Sergeant McCabe and an intrusion into your personal
25 life in the first instance, and also your professional 11:26
26 life as a member of An Garda Síochána, by suggesting
27 there was some impropriety in the cancellation of your
28 penalty points?

29 A. No, not true, Chairman.

1 151 Q. Well, you see, you know, that suggestion could be
2 made --

3 A. It may be a suggestion made, Chairman, yes, but it's
4 not true.

5 152 Q. And it may be a suggestion that's made in circumstances 11:27
6 where what is to follow after the article was written
7 by Ms. O'Doherty leading up to Christmas of 2013 and
8 your interaction with Mr. Boucher-Hayes in RTÉ, right,
9 you appreciate that it's not long after these incidents
10 that people are coming forward and suggesting that you 11:27
11 were trying to blacken the character of Sergeant
12 McCabe; you appreciate that?

13 A. I absolutely appreciate that, Chairman, and I've given
14 my views and my position in relation to the
15 interactions I had with the various parties. And I'm 11:27
16 telling the truth and I'm here to tell the truth and
17 that's -- I will state my position when we come to the
18 relevant --

19 153 Q. Yeah. No, absolutely. And we'll go through them and
20 the allegations individually in due course. But I 11:28
21 mean, the allegations are there, they come from
22 Mr. Boucher-Hayes in RTÉ, they come from Deputy John
23 McGuinness, they come from the Comptroller and Auditor
24 General Mr. Seamus McCarthy, to a lesser extent they
25 come from Mr. Deasy and on one construction they also 11:28
26 come from Mr. Kean. They appear to be independent
27 allegations that are being made. Do you accept the
28 independence of those allegations one from the other?

29 A. They are discussions and interactions I had with --

1 first of all, in relation to Mr. McGuinness, Mr. Deasy
2 and Mr. McCarthy, they are interactions that I had
3 around the morning of the Public Accounts Committee
4 meeting of 23rd January '14 and the following day then
5 when I had the further follow-up meeting with 11:29
6 Mr. McGuinness. So it was that snapshot in time that I
7 had those interaction was those parties. And I've a
8 clear recollection of what I said to those individuals
9 at that particular time. And in relation to
10 Mr. Boucher-Hayes, I also have a clear recollection of 11:29
11 what I spoke to him about in the corridor of RTÉ, a
12 very clear recollection, and I don't agree actually, in
13 linking these parties together, that they corroborate
14 the fact that I was trying to discredit Sergeant
15 McCabe. 11:30

16 154 Q. No, well, I think the question that I asked you,
17 Mr. Callinan, was do you agree that they're all
18 independent?

19 A. Of course they're independent, yes.

20 155 Q. They relate to different conversations that people had 11:30
21 with you?

22 A. They do, yes. Chairman, yes.

23 156 Q. Do you agree that the parties that you were talking to
24 are all independent of each other?

25 A. Different individuals, yes, of course. 11:30

26 157 Q. You're not suggesting that in any way that one may have
27 contaminated the other in what they're saying in
28 relation to you?

29 A. I can't answer that. I simply don't know. I can only

1 tell you what I said down at the committee before the
2 committee and during the committee on 23rd, I can only
3 tell you what I said, what I said to Mr. McGuinness
4 subsequently. And of course, predating that meeting
5 was my conversation with Philip Boucher-Hayes. I can 11:31
6 only give you my version, Judge, that's as much as I
7 can do. But I'm telling the truth and I intend to tell
8 the truth.

9 158 Q. Well, no, I'm just giving you an opportunity to deal
10 with this. Because, you know, perhaps the only view 11:31
11 that one could have of this is that all these
12 allegations from all the witnesses that I've referred
13 to have in fact been made independently of each other,
14 and I'm giving you an opportunity, if you wish to make
15 a suggestion of some sort of collusion between these 11:31
16 people, to say it.

17 A. Chairman, all I can do is tell you what I said to these
18 people, these individuals. I cannot start making
19 accusations against individuals that they're colluding
20 with one another or segments of them. That's not what 11:32
21 I'm here to do. I'm here to give evidence on oath of
22 what I said to the individuals. And how they interpret
23 it is a matter for themselves. But I can't go beyond
24 that, nor do I intend to.

25 159 Q. I think then -- 11:32
26 A. I might just make one observation if I could, Chairman?

27 160 Q. Yes, please do.
28 A. I did find that the RTÉ journalist, Mr. Philip
29 Boucher-Hayes, I found the reference to be quite

1 opaque. But I think we should deal with that later on
2 when we get into the --

3 161 Q. Yes. No, you'll have every opportunity to deal with
4 it, don't worry.

5 A. Perhaps I shouldn't have mentioned it. I apologise if 11:32
6 I'm out of order.

7 162 Q. And then at page 693 of the materials, in the statement
8 that you made to the Tribunal on 30th May you deal with
9 the allegation that had been made in the statement by
10 Mr. Seamus McCarthy, who's the Comptroller and Auditor 11:33
11 General. And that was, his statement was dated 13th
12 March --

13 A. Yeah.

14 163 Q. -- 2017, which he has told the Chairman that he made
15 after hearing the Chairman's opening statement and 11:33
16 after consultation with some of the staff in his office
17 as to whether or not it was the right thing to do. So
18 there we have it in relation to the statements that you
19 provided to the Tribunal. And then you had an
20 interview with the Tribunal investigators on 20th 11:33
21 October 2017, and that's set out in the same volume at
22 page 588.

23 A. Thank you.

24 164 Q. And just for the moment I don't see any need to go
25 through that or to open it, but I may return to it at a 11:34
26 later juncture. Sorry, there's an additional, there's
27 a second supplemental statement that you made before
28 that to the Tribunal, it's at page 694 of the same
29 volume there that you have. And this was the response

1 that you made to the allegation that had been made by
2 Mr. Boucher-Hayes.

3 A. Yes.

4 165 Q. That wasn't available to you when you made your first
5 supplemental statement.

11:35

6 A. No, Chairman.

7 166 Q. And you deal with your interaction there with
8 Mr. Boucher-Hayes, which we will deal with in some
9 detail, and the statement that had been made by
10 Mr. Boucher-Hayes.

11:35

11 A. Yes.

12 167 Q. And you state at page 696, you squarely join issue
13 Mr. Boucher-Hayes when you say:

14

15 "I did not state that Sergeant McCabe had a lot of
16 psychological issues and psychiatric issues and was
17 motivated by a set of grievance against Garda
18 management and that he was famous within An Garda
19 Síochána for this. I did not indicate to Philip
20 Boucher-Hayes that Sergeant McCabe was not to be
21 trusted, nor did I state that there were other things I
22 could tell him about 'horrific things, the worst kind
23 of things'. I do not know what Philip Boucher-Hayes is
24 referring to."

11:35

11:35

25

11:36

26 Now, I think you then also signed a waiver, it's at
27 page 697.

28 A. Yes, Chairman.

29 168 Q. And I'll just read it, because it's important:

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"I wish to confirm that I do not claim and have not claimed any privilege should I be identified as the source of any information, briefing, allegation or belief communicated to journalists in the print, broadcasting or other media, directly or indirectly, relating to Sergeant McCabe. For the avoidance of any doubt, I also confirm hereby that insofar as may be necessary, I waive and abandon any such right to claim privilege in respect of journalistic privilege or have it asserted on my behalf or in relation to me or insofar as it relates to my identity as the source of same.

11:36

11:36

I understand I am giving this confirmation (a) for the purpose of the Tribunal's preliminary inquiries into the matters included within the Tribunal's terms of reference which are attached hereto and (b) for all other purposes of the Tribunal, including the taking of evidence by the Tribunal from myself or any other person, whether in public or private sittings.

11:37

11:37

I also wish to make it clear that this waiver of journalistic privilege is limited to the work of this Tribunal only and may not be and is not to be relied on in any separate proceedings, whether by a party represented before the Tribunal or not."

11:37

And I think you signed that on 20th April 2017, isn't

1 that right?

2 A. Correct, Chairman, yes.

3 169 Q. Now, if you go to Volume 7 there of the materials, if
4 we could have page 1793 up on the screen please. This
5 is a matter of concern to the Tribunal, Mr. Callinan, 11:38
6 the statement that you provided to the Tribunal.

7 A. Yes.

8 170 Q. It's 4th January of 2018, this year, at page 1793.

9 A. Yes.

10 171 Q. You hadn't advised the Tribunal of any interactions 11:39
11 that you had with Mr. Gerard Kean, solicitor,
12 concerning Sergeant McCabe, isn't that right?

13 A. That's correct, Chairman, yes.

14 172 Q. Was that a conscious decision that you made?

15 A. No, certainly not, Chairman. When I was contacted by 11:39
16 the Chief State Solicitor's Office and they informed me
17 that there was a letter submitted by An Garda Síochána
18 in relation to Mr. Gerard Kean and that there was
19 handwriting attached to it, I had absolutely no memory
20 at all of what was being referred to. I asked for the 11:39
21 material to be sent on to me and when it was sent on to
22 me, I dealt with it on the basis that I was responding
23 to the letter itself and I was trying to deal with
24 that. But I had no recall whatsoever at the time.

25 173 Q. This concerned an interaction that you had with 11:40
26 Mr. Kean --

27 A. Correct Chairman.

28 174 Q. -- the day following your meeting in the car park with
29 Mr. McGuinness?

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

2 175 Q. Which was the day after you had appeared before the
3 PAC?

4 A. Yes. Correct, yes.

5 176 Q. And the day before Mr. Kean appeared as a guest on the 11:40
6 Marian Finucane show?

7 A. Correct, Chairman, yes.

8 177 Q. Whatever about forgetting about this interaction and,
9 perhaps, its significance for the Tribunal and not
10 informing the Tribunal, when you say the letter had 11:40
11 been sent by the Garda Commissioner's -- or the Chief
12 State Solicitor's Office to the Tribunal team, let's be
13 very clear about this, Mr. Callinan; these were
14 documents that were buried in thousands of documents
15 that were sent to the Tribunal by way of discovery and 11:41
16 disclosure. Are you aware of that?

17 A. Well, I've read, I read that that is the situation,
18 yes.

19 178 Q. No, I mean, I wouldn't like the impression to be given
20 that in some way these documents were isolated, 11:41
21 identified and the Tribunal's attention were drawn to
22 them, do you understand? These were documents that
23 that were only discovered by the closest examination of
24 thousands, maybe tens of thousands, maybe hundreds of
25 thousands of documents and pages of documents that have 11:42
26 been supplied to the Tribunal. Do you understand?

27 A. I accept that, yes.

28 179 Q. These documents were documents that weren't, even
29 though one of the documents there's a correspondence,

1 it wasn't on the correspondence register.

2 A. Yes.

3 180 Q. Do you understand?

4 A. Yes.

5 181 Q. The other document -- and both documents, even though 11:42
6 they relate to Sergeant McCabe, weren't on the Sergeant
7 McCabe file. Do you understand?

8 A. Yes.

9 182 Q. And no file had been created in relation to the Gerard
10 Kean defamation file. Do you understand? 11:42

11 A. Yes.

12 183 Q. So --

13 A. Well, I'm not sure how that would impact on me. I
14 mean, I wasn't -- I didn't take charge of the
15 administration in the office, that was all handled by 11:43
16 the staff. And I know Superintendent Walsh has given
17 evidence to the Tribunal in relation to that.

18 184 Q. Well, you see, it does in this regard, because you'll
19 be aware of the fact that Mr. Kean has given evidence,
20 which I'll go through shortly, to the Tribunal that he 11:43
21 was told by you to keep the conversation secret and not
22 refer to the fact that he had spoken to you.

23 A. That is not true, Chairman.

24 185 Q. Well, I'm just pointing out to you that there's no
25 official record held at Garda Headquarters of this, 11:43
26 other than the documents themselves, isn't that right?

27 A. Well, my understanding is that -- well, the document,
28 first of all, arrived by courier marked "Private and
29 Confidential" and was brought to me. And what happened

1 it subsequent to the conversation I had with
2 Superintendent Walsh, I don't know. I don't know.
3 That would be a matter for the staff at the office.
4 But the fact is the documentation was there.

5 186 Q. Well, you see, we've heard from Superintendent Frank 11:44
6 Walsh, who said that regardless of how this
7 communication arrived, it ought to have been entered
8 into the correspondence register. Right?

9 A. I would have no difficulty whatsoever with that,
10 Chairman. 11:44

11 187 Q. And it wasn't.

12 A. So I believe, Chairman, yes.

13 188 Q. I mean, is there a sense that you were in some way
14 embarrassed by your interaction with Mr. Kean?

15 A. I suppose on reflection, Chairman, when you look back 11:45
16 at my initial reaction to try to respond, certainly it
17 probably wasn't one of my better days. But when I
18 reflected on the couple of bullet points that I
19 recorded, I realised this is certainly an inappropriate
20 way of dealing with the matter. And when I spoke to 11:45
21 Superintendent Walsh subsequently when we were dealing
22 with other correspondence, he agreed with me. And I
23 agree with his evidence - I've read it - that he knew
24 Mr. Kean for quite a number of years and he offered to
25 go and see him, and he did so. 11:45

26 189 Q. No, well, that's not really what I'm talking about at
27 the moment. I'm talking about -- because you'll
28 appreciate that this third supplemental statement is
29 misleading?

1 A. Well, I don't accept it's misleading --

2 190 Q. Okay.

3 A. -- nor would I ever attempt to mislead the Tribunal,

4 Chairman.

5 191 Q. All right. 11:46

6 A. To be fair, I mean, I was trying to deal with the

7 document that I couldn't remember until it arrived on

8 my doorstep, and then I tried to deal with it. But I

9 was also dealing --

10 192 Q. So when it did arrive on your doorstep and you had 11:46

11 cause then to reflect on it, you recalled your

12 interaction with Mr. Kean, did you?

13 A. Yes.

14 193 Q. And the fact that you'd been on the phone to him on the

15 Saturday? 11:46

16 A. Well, I've read Superintendent Walsh's evidence, so I'm

17 not disputing -- if I didn't mention that I'd been

18 speaking to him earlier, I accept that.

19 194 Q. No, but it's just in relation to -- I'll just read the 11:46

20 statement that you provided to us so that we're clear

21 in relation to this:

22

23 "I have been asked to respond to documents forwarded to

24 me, which I understand are documents forwarded by the

25 Disclosures Tribunal by An Garda Síochána as part of 11:47

26 the discovery process. The documents are listed as

27 follows: 1. Handwritten notes of Martin Callinan; 2.

28 Typed version of the handwritten notes of Martin

29 Callinan referred to at 1; 3. Letter from Mr. Maurice

1 McCabe dated 4th February 2014 to Mr. Kean, solicitor;
2 4. A draft response letter from Mr. Kean to Mr. McCabe,
3 together with a cover letter, both dated 6th February,
4 2014. "

5 A. Yes.

11:47

6 195 Q. "I met Gerard Kean on a couple of occasions at Garda
7 related charity events during my period as Commissioner
8 of An Garda Síochána. I was not in regular contact
9 with him on a social or professional basis. My initial
10 reaction to Mr. Kean's letter, which was marked
11 'Private and Confidential', was to draft some notes
12 reflecting my position on some of the matters that I
13 had already referred to publicly concerning data
14 protection and cooperation with the O'Mahony
15 investigation. However, on further consideration of
16 the matter, I determined that this was an inappropriate
17 letter to receive as Commissioner. I was now faced
18 with how and in what manner I might possibly respond.
19 I discussed the matter with Superintendent Frank Walsh,
20 then private secretary to the Commissioner, and he also
21 agreed that it was inappropriate to get involved. As I
22 recall, Superintendent Walsh indicated that he knew
23 Mr. Kean for a number of years and offered to meet him
24 to indicate that the Commissioner could not get
25 involved. I believe that meeting subsequently took
26 place. I recall speaking with Mr. Kean by telephone
27 within a short period of receiving his letter. I
28 indicated that while I was sure that he would
29 understand that I could not get involved, my position

11:47

11:48

11:48

11:48

1 in relation to the some of the points raised in his
2 draft response was a matter of public record. I did
3 not issue a written response to Mr. Kean in respect of
4 his correspondence to me."

5 A. Yes.

11:49

6 196 Q. There's no reference there at all to your conversations
7 with Mr. Kean on the Saturday before the Marian
8 Finucane show, isn't that right?

9 A. That's correct. And I did not recall the particular
10 sequence of phone calls until I received the further
11 materials from the Tribunal outlining the number of
12 calls that I had made and received from Mr. Kean.

11:49

13 Essentially, Chairman, what happened was - Mr. Kean, as
14 we all know is a very gregarious character - there was
15 a conversation between Superintendent Taylor and myself
16 on Saturday around 12:30 or so and he had indicated to
17 me that Mr. Kean was anxious to speak to me in relation
18 to Assistant Commissioner O'Mahony's investigation.

11:49

19 And he had no further detail. So I rang him within a
20 short period and I spoke to him and he indicated that
21 he was going on the Marian Finucane programme. We
22 spoke for about a quarter of an hour or so and we got
23 cut off. But he had indicated just before we got cut
24 off that he was going on the programme.

11:50

25
26 And I see on the record that there was a text that I
27 sent him. I don't know what that was about, presumably
28 that we could talk about - I'm not sure, I don't know.
29 And I recall from looking at the records that he

11:50

1 contacted me about four o'clock that afternoon. And it
2 was a very short call, I couldn't speak to him, I was
3 out and about at the time and I indicated I'd speak to
4 him later on that day. And I spoke to him, I think,
5 around ten to five or so and we spoke for quite a long 11:51
6 time. And again, a lot of that conversation was social
7 chat about people he knew, VIPs he had met over the
8 years, guards who he'd met and all the rest. And we
9 spent about eight or ten minutes, I would say less than
10 ten minutes, speaking about the Assistant 11:51
11 Commissioner's report.

12
13 I had told him that the report was on the internet, he
14 could look it up and he could see for himself what was
15 said. So he asked me a couple of questions about it 11:51
16 and he asked me two questions about what I had said
17 down at the Public Accounts Committee, one touching on
18 data protection and one about cooperation. And I had
19 indicated to him that if he wished, he could look up
20 all of that material on the internet. I know he had 11:52
21 asked two questions, possibly three questions that I
22 couldn't answer and I told him I would come back to him
23 on that, and I know one was around the amount of people
24 that were employed on the investigation and there was
25 some other issue, I'm not quite sure what it was, I 11:52
26 just couldn't recall it, and I know I spoke to him the
27 following morning. And that's about all I can recall
28 of those series of phone calls.

29 197 Q. well, you see, you seem to have an extremely good

1 recollection of those phone calls. And I'm just
2 wondering why it didn't make its way into the statement
3 that you provided to the Tribunal?

4 A. Because simply at the time I was focusing on the letter
5 and dealing with the letter. 11:52

6 198 Q. But the letter had a historical context. I mean, it
7 arose out of perhaps an obligation that had been
8 created by you in your conversation with Mr. Kean to
9 see him right, because you'd given him the information
10 that he'd used on the Marian Finucane show, isn't that 11:53
11 right?

12 A. Well, I've read very carefully what Mr. Kean has said
13 in that respect and, you know, it is clearly the case
14 if he had stuck to the replies that I gave him in
15 relation to what we were speaking about, he might be in 11:53
16 a -- he might've been in a different position. But
17 that's a matter for himself. He was absolutely
18 entitled to rely on the facts that I produced and the
19 facts that I had given him, without offering an opinion
20 and attaching my endorsement to them, it's as simple as 11:53
21 that. He certainly wasn't a spokesman for An Garda
22 Síochána - if I've something to say in relation to
23 these matters, I'll say it.

24 199 Q. At the time you made your statement, Mr. Kean hadn't
25 provided a statement in relation to this. You haven't 11:54
26 been provided with Mr. Kean's statement, isn't that
27 right?

28 A. No, I had just got the documents itself -- themselves.

29 200 Q. So as far as the Tribunal was concerned, receiving your

1 statement, it would appear that all you had dealt with
2 was a letter that had been sent by Mr. Kean, isn't that
3 right?

4 A. I assume so. I don't know what the Tribunal had at
5 that time, but all I can tell you is that was the 11:54
6 material that was put in front of me and that's how I
7 responded to it.

8 201 Q. If we come to deal then with what Mr. Kean told the
9 Tribunal in relation to this. It's day 64. we'll give
10 you a copy of the transcript [SAME HANDED]. 11:54

11 A. Thanks very much.

12 202 Q. If we could have day 64 up on the screen. Page 19 in
13 the first instance. Just before we come to deal with
14 this, how was it that Mr. Kean, do you believe that
15 Mr. Kean contacted you? Do you recall having any 11:55
16 interaction with Chief Superintendent Diarmuid
17 O'Sullivan?

18 A. No. I did speak to him on the Sunday evening.

19 203 Q. And we know - I will come to the records in a minute,
20 in terms of what transpired - you talked to him the 11:55
21 following day, on the Sunday after Mr. Kean had
22 appeared.

23 A. Yes.

24 204 Q. Do you recall having any interaction with
25 Mr. O'Sullivan? 11:56

26 A. Prior to that?

27 205 Q. Yes.

28 A. No.

29 206 Q. Well, what was your point of contact then with

1 Mr. Kean?

2 A. Through Superintendent Taylor asking me -- he said that
3 Mr. Kean was looking for me. I got the number from him
4 and I rang him, yeah.

5 207 Q. So Mr. O'Sullivan had nothing to do with this at all? 11:56

6 A. He certainly didn't speak to me in advance, no.

7 208 Q. Okay. Well, we'll come to that.

8 A. He did subsequently mention that he was speaking with
9 him.

10 209 Q. Yes. We see here on page 19 Mr. Kean says -- the 11:56
11 question is:
12
13 "You spoke to the head of the force. And why didn't
14 you say that to the people of Ireland on the radio when
15 you appeared?" 11:56
16
17 And he says:
18
19 "Because, to be fair to the Commissioner, he asked me
20 not to mention that we had spoken." 11:56
21
22 what do you say to that?

23 A. Well, that's not true.

24 210 Q. Well, you see, he's quite firm in relation to it. He
25 says: 11:57
26
27 "Yeah, I would gladly have said that, because I would
28 have felt it would've been nice to be able to say 'By
29 the way, I spoke to the Commissioner and he told me

1 one, two, three, four'. But he asked me not to
2 disclose where the information was coming from, and I
3 didn't."

4
5 what do you say in relation to that? 11:57

6 A. well, first of all I say that the information was on
7 the public record. There was no secret in anything
8 that I had mentioned to Mr. Kean. So I don't know
9 where that's coming from. There was nothing that I had
10 said to Mr. Kean to personalise matters about Sergeant 11:57
11 McCabe.

12 211 Q. Page 25, line 8:

13
14 "My understanding is that he -- there was a number of
15 possibilities, but one of them was that maybe that 11:58
16 Sergeant McCabe had accessed files he shouldn't have
17 and/or given out information in relation to those files
18 to third parties, things like that. But I didn't have
19 specifics on it, it was based on the information I
20 received in my telephone conversations with the 11:58
21 Commissioner."

22
23 Do you see there?

24 A. I do.

25 212 Q. Is that right? 11:58

26 A. well, I mean, it's a matter of public record that it
27 was the case at that point in time, everybody was aware
28 that was following the story that Sergeant McCabe had
29 provided materials to the Public Accounts Committee.

1 And it was spoken about at the Public Accounts
2 Committee. So I mean, there's no secret there. This
3 isn't some sort of secret knowledge that I was
4 imparting to Mr. Kean.

5 213 Q. If you go to page 45, line 139:

11:59

6
7 "Is there any other detail that you can recall?

8 A. I don't think there is anything else I can recall
9 other than is in my affidavit. I mean, you know, he
10 certainly stated to me that Sergeant McCabe had not
11 only not cooperated with the investigation, but he was
12 also troublesome, obstructive, difficult. You know,
13 these were -- he left me in no impression -- sorry, he
14 left me in no doubt that Sergeant McCabe was not
15 cooperating and was obstructive."

11:59

11:59

16
17 Did you describe Sergeant McCabe in those terms?

18 A. Absolutely not. Absolutely not. Because he had asked
19 me about the direction that I had sent to Sergeant
20 McCabe and he asked me why did I do it and I said it
21 was designed to prevent the further unauthorised
22 disclosure of documentation and he asked me -- I did
23 indicate to him that that direction did contain an
24 invitation to Sergeant McCabe and indeed to then-Garda
25 Wilson that if they had any further concerns that they
26 could bring those concerns to the assistant
27 commissioner. And he asked did they engage and I said
28 no, they didn't engage. And that is as far as I went.
29 I certainly didn't get into a level of discussion

11:59

12:00

1 around cooperation or non-cooperation. I wouldn't go
2 there. Certainly I would not go there.

3 214 Q. Okay. Can we just look at the phone records that we
4 have? It's at page 1831 of the materials.

5 A. I'm sorry, Mr. Marrinan? 12:00

6 215 Q. 1831.

7 A. Thank you.

8 216 Q. It should be in the same volume that you have there,
9 Mr. Callinan. volume 7.

10 A. Sorry, I beg your pardon. I'm at the transcript. 12:01
11 Yeah. Thank, you Chairman.

12 217 Q. Have you got it?

13 A. Thank you.

14 218 Q. It's a chart we have there, it's the combined mobile
15 phone -- 12:01

16 A. Yes.

17 219 Q. -- contacts between Mr. Kean, yourself and Chief
18 Superintendent Diarmuid O'Sullivan, who has now
19 retired. You will see on the 24th January, which was
20 the Friday, a call at 18:03, lasting five minutes and 12:01
21 16 seconds, from Mr. Kean to Diarmuid O'Sullivan. And
22 then you will see a call the following morning at
23 11:58:25, lasting 13 minutes 18 seconds, from Gerard
24 Kean to Mr. O'Sullivan, do you see there?

25 A. I do. 12:02

26 220 Q. And then we see a call from you at 12:50 to Mr. Kean
27 and it has duration of 16 minutes and 46 seconds, isn't
28 that right?

29 A. That's correct, Chairman, yes.

1 221 Q. Just to come back to, I think, a concession that you
2 made that maybe this wasn't your finest hour, I don't
3 know whether you're referring to this or the drafting
4 of Mr. Kean's defence letter to a letter that had been
5 sent by Sergeant McCabe. I mean, was this 12:02
6 appropriate --

7 A. No.

8 222 Q. -- that you would be talking -- no, this issue, that
9 you would be talking directly to Mr. Kean about issues
10 concerning Sergeant McCabe? 12:03

11 A. Well, you see, the discussion -- where I differ from
12 Mr. Kean here is, he rang and he was seeking
13 information in relation to the investigation. I
14 thought initially that he may have some information
15 that I needed to take action on. But then it 12:03
16 transpired he was seeking some information to go on a
17 programme.

18 223 Q. Well, just hold on a moment. You'd met Mr. Kean once
19 before, is that right?

20 A. Twice, I think. 12:03

21 224 Q. Met twice?

22 A. Mm-hmm.

23 225 Q. You had met him at some charity do I think in Cork?

24 A. I had, yes.

25 226 Q. And he'd invited you to go to a dinner party in Drayton 12:03
26 Manor which is apparently where he lives and you hadn't
27 been able to attend, he had asked yourself and your
28 wife. But other than that you didn't know him
29 socially?

1 A. No.

2 227 Q. I mean, it's difficult to understand or comprehend how
3 it could be that you would be talking directly to a
4 solicitor about issues concerning Sergeant McCabe?

5 A. Well, you see, I wasn't putting anything to Mr. Kean 12:04
6 that wasn't already in the public domain. Nor would I.
7 I certainly wouldn't go there. What he was inquiring
8 about was information around Assistant Commissioner
9 O'Mahony's investigation, which was already in the
10 public domain anyway. And I certainly didn't dig down 12:04
11 further to talk about Sergeant McCabe in any
12 personalised manner.

13 228 Q. Well, according to Mr. Kean you described him as being
14 troublesome, obstructive and difficult?

15 A. No, Chairman. That is not true. That is certainly not 12:05
16 true. And that has not been my experience.

17 229 Q. Well, you know, in hindsight - and hindsight is a
18 wonderful thing, but - do you know think that perhaps
19 this was entirely inappropriate and that you were
20 acting that way because you were anxious at that time 12:05
21 to do down Sergeant McCabe at every opportunity that
22 presented itself?

23 A. No, Chairman. That is not true. That is not true.
24 I've already conceded it wasn't my finest hour, but
25 when my initial reaction was to jot down a couple of 12:05
26 bullet points in the context of what was already in the
27 public domain and you know, there is nothing in there I
28 think that would have an impact Sergeant McCabe's
29 integrity. Mr. Kean, when he was giving his evidence,

1 spoke about me describing him as being obstructive, not
2 cooperating --

3 230 Q. Yeah.

4 A. -- and you know, that's not -- that's not what I said
5 to Mr. Kean. I gave the facts as I knew them. He 12:06
6 inquired about those two items, about the Public
7 Accounts Committee meeting and that was it.

8 231 Q. I mean, you say this query had come through
9 Superintendent Taylor, I mean it's a matter that
10 Superintendent Taylor could have dealt with, isn't it? 12:06

11 A. Yes, absolutely. But he was looking for me in the
12 context of the investigation. That's the message that
13 I got. So of course I was obliged to contact him and
14 find out, you know, what he wanted or what information
15 he had maybe to impart to me. I don't know. 12:07

16 232 Q. What in heaven's name creates that obligation on the
17 Garda Commissioner to contact -- you hear that somebody
18 is trying to contact you and you feel obliged as Garda
19 Commissioner to contact them?

20 A. Well, it was in the context of the investigation, so I 12:07
21 felt that -- after all, Chairman, this man is a
22 solicitor and he may have had information that was
23 relevant to the investigation. I didn't know that.

24 233 Q. In any event, just come back to the chart for Saturday,
25 25/1, after the conversation concluded, you say you 12:07
26 were cut off, I think, you send a text at 13:09, do you
27 see that?

28 A. Yes.

29 234 Q. And then at 16:03, Gerard Kean is ringing Diarmuid

1 O'sullivan, you see that?

2 A. I do.

3 235 Q. He's on the phone for nine minutes and 43 seconds?

4 A. Mm-hmm.

5 236 Q. And then almost immediately at the conclusion of that 12:08
6 call Gerard Kean phones you, isn't that right, at
7 16:14:20?

8 A. That's correct, Chairman, yes.

9 237 Q. And that's for a minute and six seconds, he's talking
10 to you, isn't that right? 12:08

11 A. Yes.

12 238 Q. And then at 16:26 you text Mr. Kean, isn't that right?

13 A. It appears so, yes.

14 239 Q. And then at 16:50 you phone Gerard Kean and the call
15 lasts for nearly 28 minutes? 12:08

16 A. Yes.

17 240 Q. Do you see that?

18 A. I do.

19 241 Q. All right. Well, I mean, that is extensive contact,
20 isn't it? 12:09

21 A. Well, it is. It is when you see it there in front of
22 you, you know. And I mean, this is a couple of years
23 later, I get a letter and I'm asked to respond to the
24 letter, you know, and I tried to deal with it as best I
25 can. But it's only when you see, and when I got this 12:09
26 material, I was able to reconstruct in my own mind
27 those phone calls. But it's very --

28 242 Q. Let's with clear, Mr. Callinan, there's no reference to
29 these conversations in the statement that you provided

1 to the Tribunal --

2 A. Absolutely agreed.

3 243 Q. -- isn't that right?

4 A. Absolutely agreed, Chairman. Because not alone did I
5 not remember the phone calls, I did not actually 12:09
6 remember the correspondence in the first instance. And
7 I do accept and I know, Chairman, you have made
8 reference to the fact that these phone calls taken
9 together last almost an hour, perhaps. But this man is
10 an extensive talker and we were talking at great length 12:10
11 about parties, about celebrities, about guards in Cork,
12 he was all over the place, you know, to be fair. I
13 don't mean that in disrespect. I have good time for
14 the man. But, you know, the reality is what he wanted
15 to speak to me about lasted a number of minutes, that 12:10
16 was it.

17 244 Q. And you take issue with what he says that you wanted to
18 talk to him about; namely, that Sergeant McCabe was
19 troublesome, obstructive and difficult?

20 A. No. 12:10

21 245 Q. That he is incorrect when he says that?

22 A. I never said that. Certainly I did not say that,
23 Chairman.

24 246 Q. Now, before he appears on the Marian Finucane programme
25 on the Sunday morning, you phone him -- 12:10

26 A. Yes.

27 247 Q. -- according to the record, at 9:43 in the morning and
28 you're on the phone for five and a half minutes. I
29 mean, what is the enthusiasm here for talking to

1 Mr. Kean in the build up to his appearance on the
2 Marian Finucane show?

3 A. Yes. He asked me to come back to him with a couple of
4 queries that he had raised. I know one of them was in
5 relation to the amount of people on the investigation 12:11
6 and the other one I think was around the location of
7 the investigation. And there was something else -- I
8 just can't recall, there was certainly something else,
9 but it just won't come back to memory. And I did
10 promise to come back to him on that. So I'm presuming 12:11
11 that that call the following day, the Sunday, was to
12 give him whatever balance of the information I had.
13 But again, it wasn't matters affecting Sergeant McCabe
14 and certainly there wasn't material there, personal
15 matters against Sergeant McCabe. Absolutely not. 12:12

16 248 Q. And then, at 10:30 in the morning, after that call, you
17 send him a text?

18 A. Yeah. I can't recall. I don't know what that's about.

19 249 Q. The suggestion I think is that this might have been a
20 good luck text, good luck on the show, just before he's 12:12
21 going on it?

22 A. I don't think Mr. Kean would need any messages of good
23 luck from me. I've heard and seen him in action many,
24 many times.

25 250 Q. You see, Mr. Callinan, I think I can put this squarely 12:12
26 to you: The suggestion could be made that after
27 Mr. Kean had contacted the Gardaí that he was directed
28 to you and that you spoke enthusiastically about
29 Sergeant McCabe, that you did suggest that he was

1 somebody who was troublesome, obstructive and difficult
2 and you were more than happy that Mr. Kean was going to
3 appear the following day on the Marian Finucane show
4 and put that view out in the public on the public
5 airways; in other words, to promote your view of 12:13
6 Sergeant McCabe at that time, do you understand?

7 A. I do. Is that a question?

8 251 Q. Well, the question is: Do you agree that the telephone
9 records and the interactions that you had over that
10 period of time with Gerard Kean would indicate that 12:13
11 perhaps you had some enthusiasm for him appearing on
12 the Marian Finucane show?

13 A. Well, first of all, Chairman, I had no enthusiasm
14 whatsoever. He certainly wasn't going on representing
15 me or An Garda Síochána, as far as I was concerned. 12:14
16 Certainly not. As I said earlier, Mr. Marrinan, if I
17 had something to say at the time, as the Commissioner,
18 I would certainly have said it. I don't go behind the
19 door about speaking my mind in relation to matters that
20 I take seriously. And I certainly took this particular 12:14
21 element of my work very, very seriously. I don't know
22 why Mr. Kean said some of the things he said to this
23 Tribunal, and attaching me by way of endorsement,
24 because they didn't happen. And I certainly wasn't
25 putting forward a suggestion that he would appear on 12:14
26 any programme and certainly not projecting the guards'
27 perspective. Certainly not. That's not the case.

28 252 Q. The following morning or the morning of the Marian
29 Finucane show, we then see Mr. Kean referred to as a

1 panic call, because Sergeant McCabe had phoned into the
2 programme at 12:43?

3 A. Yes.

4 253 Q. He phoned you. And that call lasted for seven minutes
5 51 seconds, do you recall that, that call? 12:15

6 A. Yes. He rang me and I was out and about and he was
7 upset, he said Sergeant McCabe had rang into the
8 programme and had accused him of in turn accusing
9 Sergeant McCabe of committing criminal offences and not
10 cooperating. I told him I hadn't heard the programme, 12:15
11 that I would listen to it at some point and that was
12 pretty much it. But I mean, the point here is, if
13 Mr. Kean had listened and dealt with the questions he
14 was asking me and the answers that I had given him, I
15 don't think he'd be in any difficulty whatsoever. 12:16

16 254 Q. And then we see that the afternoon 15:54, Diarmuid
17 O'Sullivan phones Mr. Kean?

18 A. Yes.

19 255 Q. And I think Mr. Kean referred to it as perhaps a
20 comfort call that he got and that it's followed almost 12:16
21 immediately after -- in fact, it is immediately after
22 the phone to Mr. Kean, Diarmuid O'Sullivan phones you?

23 A. Yes.

24 256 Q. Do you see that?

25 A. Yes. 12:17

26 257 Q. And he's on the phone for 15 minutes, 25 seconds?

27 A. Yes.

28 258 Q. That would tend to suggest that Diarmuid O'Sullivan
29 actually did have some role to play in all this?

1 A. I don't know whether that is the position or not, but
2 certainly he indicated to me that he knew that I had
3 been speaking with Mr. Kean, we just didn't discuss --
4 we didn't go there. He went on to discuss another
5 matter with me pertaining to an investigation dealing 12:17
6 with a very, very important investigation at the time
7 and he had spoken to me subsequent again about that
8 matter.

9 259 Q. Okay. And that's something that you recall at this
10 juncture, is it? 12:17

11 A. About the conversation with the chief superintendent?
12 Yes. I do recall; it was a very prominent
13 investigation, a very sensitive investigation, and we
14 spoke about it for, I didn't realise it was 15 minutes
15 or 16 minutes almost, but it's something that we 12:18
16 discussed on more than one occasion and that was one of
17 them.

18 260 Q. So in terms of your interaction Mr. Kean on the
19 Saturday and the Sunday --

20 A. Yes. 12:18

21 261 Q. -- are there any other observations that you wish to
22 make in relation to that or matters that you wish to
23 draw the Chairman's attention to?

24 A. Well, I think other than in broad terms, it is the case
25 that I didn't indicate that Sergeant McCabe was 12:18
26 obstructive or troublesome or whatever other words he
27 used, I certainly didn't ask him to go on at the behest
28 of An Garda Síochána or indeed to project what he
29 perceived to be An Garda Síochána's view of life. I

1 answered as best I could in a factual basis the
2 questions he had asked me and nothing then was spoke in
3 terms of derogatory terms about Sergeant McCabe. That
4 is the reality of what happened. And I certainly
5 wouldn't be in the business of trying impart personal 12:19
6 knowledge about any member of the Garda Síochána to
7 anybody, including Sergeant McCabe. And certainly not
8 when they were going on the airwaves and asking them to
9 project a particular point of view. Totally untrue.

10 262 Q. And I think in fairness to you, you'd also advanced the 12:19
11 proposition that this follows on a number of
12 allegations made by Mr. McCarthy and by Mr. McGuinness
13 in relation to suggestions that you had referred to
14 Sergeant McCabe as having been involved in sexual
15 assault. And here you are on the Saturday talking to 12:20
16 Mr. Kean extensively in a fairly intimate situation
17 where he says that you had asked him, even though you
18 deny this, not to refer to this conversation, but he
19 never suggests at any stage that you suggested that
20 Sergeant McCabe had been involved in something like 12:20
21 that?

22 A. Certainly not.

23 263 Q. Yes.

24 A. Absolutely not.

25 264 Q. So I think the next event that happens is page 1773 in 12:20
26 the same volume, Mr. Callinan.

27 A. Thank you.

28 265 Q. This is a letter that comes in by courier on the 6th
29 February 2014.

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"Dear Martin
I enclose copy letter which I have received from
Maurice McCabe. I'm also enclosing draft response. I
have sent these letters to the other person."

12:21

Sorry:

"I have not sent these letters to the other person. I
would be grateful if you --"

12:21

I think that should read "to any other person", I think
that was corrected by Mr. Kean.

"I would be grateful if you could look at the letter
that I have received and my proposed draft response. I
need to be factually correct and any assistance would
be certainly appreciated."

12:21

Then we can see on page 1774 is the letter that he
enclosed that was from Sergeant Maurice McCabe, isn't
that right?

12:22

A. Yes.

266 Q. I think that you probably readily accept that it was
wholly inappropriate for you to draft a response for
Mr. Kean?

12:22

A. I do. I do. I should say, Mr. Kean had a draft. He
had a draft already prepared. He was asking the
question if I would look at it and see if it was

1 factually correct. So it wasn't a question of me
2 drafting the letter for him.

3 267 Q. You sat in your office, and at page 1783, you drafted a
4 response, it's in the first person. I'm not going to
5 go through it, if you accept that it was just wholly 12:23
6 inappropriate --

7 A. I do accept it was inappropriate, yes, absolutely.

8 268 Q. And I'm not going to go through it in those
9 circumstances?

10 A. Okay. 12:23

11 269 Q. You're not going to stand over --

12 A. No, no. No, no. I had no intention of dealing with it
13 in those lines.

14 270 Q. And do you think -- I mean, your judgment at the time
15 was impaired in doing that by something? 12:23

16 A. Well, you see, hindsight is wonderful and sometimes you
17 do things and maybe when you look at and reflect on
18 them maybe, you know, you would have done things
19 differently.

20 271 Q. Do you think in a sense, you know, and being completely 12:23
21 fair to you here, I mean you felt very strongly about
22 Sergeant McCabe giving evidence at the PAC, didn't you?

23 A. Without a shadow of a doubt, I felt very strongly about
24 that.

25 272 Q. And we have your case in relation to that and we will 12:24
26 develop it this afternoon and we will talk further
27 about it, but you very, very strongly about it?

28 A. I did. I had very fixed views that that shouldn't
29 happen.

1 273 Q. It really had nothing to do with Sergeant McCabe, but
2 it was the principle that was involved in a serving
3 member, not because he was breaking ranks, but the
4 manner in which it was being done, isn't that right?
5 A. Correct. 12:24

6 274 Q. And it had, and potentially would have, a profound
7 effect on discipline within the force?
8 A. I believed that would be the case, Chairman, yes.

9 275 Q. And was setting a very bad precedent?
10 A. Well, it was certainly unique. It was unprecedented. 12:24
11 It hadn't happened before.

12 276 Q. And you felt utterly passionate about your view in
13 relation to this?
14 A. I did, Chairman, yes. I sought legal advice on it,
15 just to see how I could deal with the matter, I felt so 12:25
16 strongly about it.

17 277 Q. And we know that Sergeant McCabe did give evidence
18 albeit in private on the 30th January of 2014, do you
19 think in some way that perhaps what you were doing
20 here, and you've accepted it was inappropriate, that it 12:25
21 was reflecting in some way that you didn't feel well
22 disposed to Sergeant McCabe at that time?
23 A. No. That's certainly not the case. No, no. No.

24 278 Q. What was it then that caused you to do something that
25 is wholly inappropriate? 12:25
26 A. Well, you see, I didn't do something that was wholly
27 inappropriate. My initial reaction was to make these
28 notes and then I reflected on what I was doing and I
29 said, you know, this isn't appropriate and I looked at

1 the letter again and trying to assist as to whether or
2 not it was factually correct was one thing but getting
3 involved at that point when I reflected further I said
4 no. I mean, this didn't take a huge length of time to
5 jot down those couple of bullet points, you know. So 12:26
6 that was the position. I stopped. I stopped. And I
7 said, can't go there.

8 279 Q. But with all due respect, did you go there. Because
9 Superintendent Frank Walsh was dispatched down to
10 Mr. Kean's office and we know that verbatim these 12:26
11 points made their way into Mr. Kean's letter --

12 A. Yes.

13 280 Q. -- to Sergeant McCabe?

14 A. I saw that, yes. I saw that.

15 281 Q. Look, I thought you'd accepted that this was entirely 12:26
16 inappropriate. You either do or you don't. Do you
17 think that the Garda Commissioner drafting what is
18 effectively points in the defence of a threatened
19 defamation action, do you think it is appropriate that
20 a Garda Commissioner should be doing that? 12:27

21 A. Well, it's not appropriate, but look at the points that
22 are made. Where is the defence there? You know, the
23 first point I made, this man appears on the radio, it's
24 in the first person, absolutely, appears on television
25 programmes to discuss topical issues and he provides an 12:27
26 opinion and always hope to be fair, you know; what's
27 derogatory, what is upsetting about that particular
28 point, if you choose to go down that road? The second
29 point then talked about the subject of the FCPS going

1 on the public airways, I mean that was exhaustively
2 aired at that stage. And then, I spoke about data
3 protection and what the view of the Data Protection
4 Commissioner was. And the final point I think referred
5 to something like that the Garda Síochána Ombudsman 12:28
6 Commission were now investigating these matters and I'm
7 sure they would deal with any unlawful behave or
8 otherwise. So essentially what's in those points that
9 could prove to be offensive or detrimental to Sergeant
10 McCabe, I don't know. 12:28

11 282 Q. I don't think anybody is suggesting that, Mr. Callinan.
12 A. No, but having --

13 283 Q. Sergeant McCabe was a serving member of An Garda
14 Síochána at the time, isn't that right?

15 A. Absolutely. Absolutely. 12:28

16 284 Q. You owed a duty to him?

17 A. Of course.

18 285 Q. Isn't that right?

19 A. Of course, Chairman, yes.

20 286 Q. Do you think that it was appropriate that Sergeant 12:28
21 McCabe's employer was drafting a letter for a solicitor
22 in threatened legal proceedings? Do you think that was
23 appropriate?

24 A. No, I didn't think it was appropriate and I agreed it
25 wasn't appropriate and I had a discussion with the 12:29
26 superintendent and we both agreed it wasn't
27 appropriate. It was an inappropriate letter to receive
28 in the first instance. That was my point.

29 287 Q. Well, the question that I asked you was: Why do you

1 think it was that you found yourself at your desk,
2 drafting a letter in the first person on behalf of
3 Mr. Kean in response to a letter that had been sent by
4 Sergeant McCabe?

5 A. Because, as I've already said, Chairman, my initial 12:29
6 reaction was to -- what I was asked to do in the first
7 place was to look at the letter to see if it was
8 factually correct and my initial reaction to that was
9 to jot down a couple of points that either I had put in
10 the public domain or were already in the public domain 12:29
11 as a matter of fact and then I said, when I looked at
12 and reflected further I said this is not an appropriate
13 way to go and I stopped. I simply stopped.

14 288 Q. You didn't tell Superintendent Frank Walsh when you
15 were talking to him and dealing with this matter about 12:30
16 the conversation that you had had with Mr. Kean that
17 might have contextualised the letter that Mr. Kean had
18 sent to you?

19 A. It doesn't appear so from -- and I accept
20 Superintendent Walsh's evidence. 12:30

21 289 Q. Well, why were you concealing the earlier conversation
22 that you had with Gerard Kean?

23 A. It wasn't a question of concealing it, Mr. Marrinan,
24 certainly not. If it didn't come up it didn't come up.
25 I was concerned with dealing with the letter as I had 12:31
26 got it, as it was presented. This was a letter from a
27 solicitor that arrived under private and confidential
28 cover. And you know, I've already agreed that it was
29 an inappropriate way, it was an inappropriate letter to

1 get in the first instance and it was an inappropriate
2 way of dealing with it by committing material.

3 290 Q. But why were you leaving Superintendent Walsh in the
4 dark, if it wasn't a concealment? You were looking for
5 his advice, isn't that right? 12:31

6 A. Well, we certainly spoke about it, yes. We both
7 agreed.

8 291 Q. You were looking for his advice?

9 A. Absolutely, yeah.

10 292 Q. He had a legal qualification or he had studied law at 12:31
11 some stage?

12 A. He has, he did, yes, yeah.

13 293 Q. Yes. And he seems to think that you were looking for
14 his advice because of that in relation to it. As far
15 as he was concerned he was just dealing with the letter 12:32
16 that had come in from Mr. Kean looking for some
17 information?

18 A. Yes.

19 294 Q. With no background to this at all. Why didn't you see
20 him write in relation to that? 12:32

21 A. Well, we certainly discussed the fact that I had met
22 him before and he had supported the guards in relation
23 to his charity events and I had met him down there, and
24 then the conversation went to -- the superintendent
25 indicated that he had actually acted for him and he 12:32
26 knew him for quite a number of years and he was
27 prepared to go and meet him and indicate to him that it
28 wasn't suitable that I would get involved. That's the
29 way the conversation went.

1 295 Q. Well, you see, the suggestion might be made that you
2 didn't tell Superintendent Walsh, because you didn't
3 want him to know that you had given the information to
4 Mr. Kean?

5 A. No. That's not true. 12:32

6 296 Q. That you wanted to keep it private between yourself and
7 Mr. Kean and Superintendent Taylor?

8 A. No, that's not true. That's not true.

9 297 Q. And that's the reason that you didn't disclose to
10 Superintendent Walsh that you'd had in the context of 12:33
11 the letter that had come in, was highly relevant and
12 significant piece of information?

13 A. Yes. And I can see the point you're making.

14 298 Q. Yes?

15 A. Absolutely, I can see the point you're making. But the 12:33
16 reality is, that is the way the conversation developed
17 at the time. And I had agreed, I knew that
18 Superintendent Walsh wouldn't be drawn into areas of
19 controversy when he went down to speak to Mr. Kean, he
20 knew him for quite a number of years, and I was 12:33
21 agreeable to that process.

22 299 Q. And you see it might also be suggested that that's the
23 reason why Mr. Kean was careful in the letter that he
24 sent to you not to refer to the earlier conversation
25 that you had had with him? 12:34

26 A. Well, I don't know whether you could -- I mean, I can't
27 obviously answer that, but I would have had no
28 difficulty if the letter contained a sentence to the
29 effect 'I refer to our previous conversation on

1 bom-bom-bom', whatever date it was, and 'can you assist
2 as to, am I factually correct in what I am responding
3 to Sergeant McCabe with?' But I mean I don't have
4 control over any of that, so I don't know.

5 300 Q. But in any event, we know that superintendent Walsh 12:34
6 goes down to the office of Mr. Kean with the draft that
7 you had given him, is that right?

8 A. Yes.

9 301 Q. And Mr. Kean has told the Tribunal that you were very
10 anxious that it would be kept between yourselves? 12:35

11 A. Sorry?

12 302 Q. That this issue would be kept between yourselves and
13 that there would be no record of it.

14 A. Well, I certainly didn't give that impression.

15 303 Q. But in any event, Superintendent Walsh went down with 12:35
16 the documentation and as it transpires at the end of
17 the day there is actually no reference to this in the
18 Commissioner's office, in your office, other than the
19 documents that we eventually found and discovered, is
20 that right? 12:36

21 A. As I say, Mr. Marrinan, I don't have any input as to
22 how correspondence is dealt with in the office and it
23 is the case that my written note is attached to that
24 file. I made no secret of the fact that I had
25 scribbled doubt those few points. I handed them to the 12:36
26 superintendent at the time. And where it went to after
27 that or how it was recorded in the office I have no
28 idea, because that's not my function. I don't get
29 involved in the administrative area of the office.

1 304 Q. Okay. Just before we move on from that issue in
2 relation to Mr. Kean, is there anything else that you
3 wish to draw the Chairman's attention to or a point
4 that you wish to make?

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

12:36

6 305 Q. Well, if anything does occur to you over lunch or
7 whatever or later on just feel free to draw it to our
8 attention and you can make any point that you wish in
9 relation to it.

10 A. I am very much obliged, Chairman.

12:37

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12 THE HEARING THEN ADJOURNED FOR LUNCH

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1 THE HEARING RESUMED AS FOLLOWS AFTER THE LUNCHEON
2 ADJOURNMENT

- 3
- 4 306 Q. MR. MARRINAN: Now, Mr. Callinan, we're going to turn
5 to allegations that are made by Mr. Philip 13:39
6 Boucher-Hayes in relation to a conversation he had with
7 you on 17th December 2013. And his statement is set
8 out at page 5317 of the material which is in volume 20.
9 And just for ease of reference for yourself, you may
10 wish to -- have you got that? 13:40
- 11 A. I have, thank you, Chairman, yes.
- 12 307 Q. You may wish to refer to your own statement to the
13 Tribunal, which is your second supplemental statement
14 that I referred to this morning, at page 694, which is
15 in volume 2. If you need to refer to it at all, it may 13:40
16 be helpful.
- 17 A. Thanks, Mr. Marrinan.
- 18 308 Q. Have you got it?
- 19 A. Thanks very much, Mr. Marrinan, thank you.
- 20 309 Q. I think that annually that the Garda Commissioner 13:41
21 traditionally makes an appearance on Crimecall, is that
22 right?
- 23 A. That's correct, Chairman, yes.
- 24 310 Q. And just explain to the Chairman what is your
25 understanding of the Christmas appeal or speech that is 13:41
26 made by the Commissioner annually?
- 27 A. Yes, Chairman. It's an opportunity, Chairman, to thank
28 the members of the public who have assisted the Gardaí
29 during the year and who've rang into the programme, and

1 indeed generally people who are of assistance to the
2 Gardaí in various appeals in relation to
3 investigations. It's also an opportunity to thank the
4 production team as well for the Crimecall programme and
5 an opportunity to perhaps caution people in relation to 13:42
6 excessive celebrating over the Christmas in terms of
7 drink driving etcetera, and also in relation to
8 anticrime -- crime prevention issues.

9 311 Q. I think you also point out that it's an appeal also for
10 people to check on their elderly neighbours, isn't that 13:42
11 right?

12 A. That's correct, Chairman, yes.

13 312 Q. And it's an opportunity also for you to thank the men
14 and women of An Garda Síochána who have been working
15 hard all year keeping communities safe, isn't that 13:43
16 right?

17 A. That's correct, Chairman, yes.

18 313 Q. I think that due to a particular case that we needn't
19 refer to, it was also necessary to make an appeal for
20 information in relation to a killing, isn't that right? 13:43

21 A. That's correct, yes, Chairman. That was the unique
22 feature of that particular year, a stand out item, I
23 suppose, as apart from the ordinary run-of-the-mill
24 type issues that you would deal with.

25 314 Q. And you point out in your statement at the top of page 13:43
26 695 that there are many opportunities during the year
27 when the Commissioner is appearing in public whereby
28 the topical issues that are wide ranging in nature are
29 dealt with in an interview context, is that right?

1 A. That's correct, Chairman, yes.

2 315 Q. I think you make that observation in circumstances
3 where you didn't consider your appearance on Crimecall
4 on 17th December to be one of those opportunities, is
5 that right? 13:44

6 A. That's correct, Chairman. It generally follows a
7 particular pattern, as you -- the last point you
8 brought out there in relation to wishing everybody a
9 happy Christmas and generally asking people to stay
10 safe. 13:44

11 316 Q. Now, I think on the day of the programme Superintendent
12 Taylor brought to your attention that Philip
13 Boucher-Hayes wished to interview you about the
14 recently published Smithwick report, is that right?

15 A. That's correct, Chairman, yes. 13:44

16 317 Q. And also the penalty points issue?

17 A. Yes, Chairman.

18 318 Q. How did you respond to that?

19 A. Well, I indicated to the people who were liaising with
20 the people and also the Press Officer that the list of 13:45
21 items which I had addressed on page 1 of my statement
22 and that they were the subjects that I wished to speak
23 about in the context of the programme. And I was
24 asking the programme's cooperation in relation to
25 framing questions around those issues. 13:45

26 319 Q. And did you see any problem then, did you think
27 everything had been sorted?

28 A. I had heard that there was an issue earlier on in
29 relation to, you know, subjects particularly around the

1 whistleblowers controversy and the Smithwick Tribunal
2 in particular and it was conveyed -- my wishes were
3 conveyed through a meeting earlier on. And my
4 understanding was that that issue was resolved by the
5 time I got over there.

13:45

6 320 Q. And did you then travel to RTÉ on the night in
7 question?

8 A. I did, Chairman, yes.

9 321 Q. At page 5317 in the statement of Mr. Boucher-Hayes he
10 says that:

13:46

11
12 "On December 17, 2013 disagreement arose at the
13 Crimecall production meeting between members of An
14 Garda Síochána and myself and co-presenter Grainne
15 Seoige. The Gardaí presented the producers and
16 presenters with a list of topics that the Garda
17 Commissioner Martin Callinan would speak to in an
18 interview scheduled for inclusion in that evening's
19 programme. I argued that the allegations about penalty
20 points raised by Sergeant Maurice McCabe was something
21 that was of enormous public interest and concern and
22 should be addressed by the Commissioner.
23 Representatives of the Commissioner's office and the
24 Garda Press Office --"

13:46

13:46

13:47

25
26 I think that would be Superintendent Taylor, isn't that
27 right?

28 A. Yes, Chairman.

29 322 Q. "-- indicated there was no circumstances under which he

1 would address the topic. It proved impossible to reach
2 agreement on the matter."
3
4 Your understanding when you arrived in RTÉ that
5 evening, was it that there was still a live issue in 13:47
6 relation to all this?
7 A. My understanding was that there had been, that the
8 matter had been sorted out. That whatever disagreement
9 took place, that this was agreement to carry on.
10 323 Q. You say in your statement that you were unaware that 13:47
11 there was any risk to the programme being aired on the
12 night as outlined by Mr. Boucher-Hayes.
13 A. Yes.
14 324 Q. But you also point out that Superintendent Taylor
15 indicated to you that Mr. Boucher-Hayes was very 13:48
16 annoyed that you would not engage on the topic --
17 A. He did.
18 325 Q. -- that he wished to raise?
19 A. Yes.
20 326 Q. So in any event, you arrived at RTÉ. Who was with you? 13:48
21 A. One of my security people drove me over.
22 327 Q. Yes. And what about Superintendent Taylor, was he
23 there?
24 A. He was there certainly, yes, as was the Director of
25 Communications, Andrew McLindon. 13:48
26 328 Q. And do you recall meeting with Mr. Boucher-Hayes?
27 A. Yes, I do, yes.
28 329 Q. And where did you meet with him?
29 A. I met with him on the corridor leading down to the

1 studio. He had been talking to a young lady and that
2 conversation broke up and then we engaged in
3 conversation.

4 330 Q. What was his demeanour?
5 A. I thought pretty relaxed. He did mention to me that he 13:49
6 was disappointed and probably a little bit angry, truth
7 to tell, in relation to the fact that I wouldn't engage
8 on the topics, that he had hoped I would, and he made
9 reference to the fact that, you know, in his view as an
10 experienced journalist I should engage with those 13:49
11 topics.

12 331 Q. And what was your response to that?
13 A. More or less as I indicated in my statement, chair,
14 that I believed, you know, there were plenty of
15 opportunities during the year for these matters to be 13:49
16 aired and I had already done a pretty extensive press
17 conference with the Minister in relation to the
18 Smithwick report a short time previously and that this
19 wasn't the appropriate moment to raise those issues,
20 particularly in the context of the appeal I was going 13:50
21 to make in relation to the case you mentioned.

22 332 Q. I think in particular he asked you whether you'd be
23 willing to answer questions about the penalty points
24 issue and the two whistleblowers, Sergeant McCabe and
25 John Wilson, is that right? 13:50
26 A. That's correct, Chairman.

27 333 Q. Did he actually name the two whistleblowers?
28 A. He did, Chairman, yes.

29 334 Q. You say he was the first to introduce it into the

1 conversation, is that right?

2 A. I had no intention of getting involved in that subject
3 at all, Chairman.

4 335 Q. And you say in your statement that you imparted some
5 information in relation to John Wilson. Do you recall 13:50
6 that?

7 A. Yes, Chairman.

8 336 Q. What was that?

9 A. I had indicated that Garda John Wilson had made a
10 complaint under the Antifraud Policy in September of 13:51
11 '12, it was shortly after a HQ circular we had
12 distributed to the force in relation to fraud issues,
13 and he made a complaint against an inspector who had
14 allegedly wrongfully cancelled, I think, 20, if I'm not
15 mistaken, fixed charge notices. That matter was -- 13:51
16 because there were criminal allegations, that matter
17 was investigated by a chief superintendent who
18 completed a file and submitted it to the Director of
19 Public Prosecutions, who subsequently indicated there
20 was no prosecutions arising in the case. 13:51

21 337 Q. And you indicated that to Mr. Boucher-Hayes, is that
22 right?

23 A. Yes, I did, yes.

24 338 Q. Did you mention Sergeant McCabe then?

25 A. I just mentioned in terms of Sergeant McCabe as 13:51
26 everybody was aware, a number of allegations had been
27 made and they were being examined by assistant -- they
28 had been examined by Assistant Commissioner John
29 O'Mahony, as everyone was aware. And that report was

1 published.

2 339 Q. This conversation was taking place in a corridor in
3 RTÉ, is that right?

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

5 340 Q. Against a background where your understanding was that 13:52
6 you were going to Crimecall to give the Commissioner's
7 Christmas address, is that right?

8 A. That's correct, Chairman, yes.

9 341 Q. That you weren't going to be asked any questions and
10 you weren't going to be interviewed about the Smithwick 13:52
11 or the fixed charge penalty notice issue, is that
12 right?

13 A. That was my expressed wish, Chairman.

14 342 Q. Well, how is it that you end up talking to
15 Mr. Boucher-Hayes about these issues then in the 13:52
16 corridor at all?

17 A. Simply because he introduced the subject and rather
18 than blank him completely, I gave a very brief résumé
19 of the complaints from Garda John Wilson. And I think
20 everybody was aware of Sergeant McCabe's complaints at 13:53
21 that stage.

22 343 Q. How long did the conversation last?

23 A. I would think a couple of minutes, certainly no more.

24 344 Q. And how did it conclude?

25 A. Oh, it wasn't -- we parted on good company, we shook 13:53
26 hands and wished one another a happy Christmas. I
27 suppose it was a result of sorts.

28 345 Q. This is what Mr. Boucher-Hayes says of the incident at
29 page 5317:

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"When the Commissioner arrived in RTÉ I asked to speak to him alone without any of his advisors present."

Is that right? Did he ask to speak to you alone or did you just happen to meet him in the corridor when you arrived? 13:54

A. Well, I don't know whether he had made that request earlier, but it wasn't communicated to me. But we certainly happened on one another in the corridor. 13:54

346 Q. He says that he did so because he was attempting to resolve what had become a row that was, by that stage, at risk of knocking the programme off the air. Do you see there?

A. I do, yes, Chairman. 13:54

347 Q. Well, that would indicate that the matter hadn't been resolved that afternoon by Superintendent Taylor and that it was still a life issue?

A. Yes.

348 Q. Namely, the interview? 13:54

A. Yes.

349 Q. What do you say to that?

A. Well, that was my understanding, that the matter had been resolved.

350 Q. "We talked privately out of earshot of all others, but in a public corridor outside Studio 4. I explained to him that from the perspective of the journalist presenters it was wholly unacceptable that Gardaí were seeking to determine what questions we could and could 13:54

1 not ask."

2

3 Do you recall that?

4 A. Yes, I do, Chairman, yes.

5 351 Q. Anyway, he then said he offered -- that you offered him 13:55

6 background information on the penalty points story.

7 A. I don't know what that's about, Chairman.

8 352 Q. "But the majority of his information related solely to

9 the two whistleblowers, John Wilson and Maurice McCabe,

10 not to the substance of the story." 13:55

11 A. (Witness Nods).

12 353 Q. "He offered a negative but cursory impression of John

13 Wilson --" did you do that?

14 A. Other than what I've just outlined, that's what I said

15 to him. 13:56

16 354 Q. "-- before speaking at some length on Maurice McCabe's

17 character. I had not asked any questions to elicit

18 this information."

19

20 what do you say to that? 13:56

21 A. Well, I wouldn't have brought up the subject in the

22 first instance, had he not mentioned it. But it

23 wouldn't seem to make sense to me that I wasn't

24 prepared to go into that area and then to start talking

25 about. It didn't make any sense to me but -- 13:56

26 355 Q. When you say that you, in reference to Sergeant McCabe

27 you told him that Sergeant McCabe had submitted a list

28 of allegations around the wrongful cancellation of

29 fixed charge notices against several offices and these

1 allegations were investigated by Assistant Commissioner
2 John O'Mahony, did you point out to him that in large
3 part Assistant Commissioner John O'Mahony had rejected
4 the allegations?

5 A. No. 13:57

6 356 Q. No?

7 A. No, Chairman. I mean, it's a matter of public record
8 what the Assistant Commissioner's report contained and
9 it certainly didn't say that.

10 357 Q. Well, we'll just move on. He says: 13:57

11

12 "He told me that McCabe was a troubled individual --"

13

14 Did you say that?

15 A. No, I did not. Absolutely not. 13:57

16 358 Q. "-- and that he had a lot of psychological issues and
17 psychiatric issues."

18

19 Did you say that?

20 A. No, I certainly did not, Chairman. 13:57

21 359 Q. If you just go back to the executive summary that you
22 had received from Assistant Commissioner Derek Byrne
23 arising out of the Byrne/McGinn report.

24 A. Yes.

25 360 Q. Assistant Commissioner Derek Byrne had indicated in 13:58
26 that report that he had concerns for the welfare of
27 Sergeant McCabe, isn't that right?

28 A. I saw that, Chairman, yes.

29 361 Q. And that he should see a medical officer, isn't that

1 right?

2 A. I think he made reference that that should happen, yes.
3 I think that was a recommendation.

4 362 Q. And he was concerned mentally that Sergeant McCabe
5 wasn't right at that time, isn't that right? wasn't 13:58
6 that the impression that one would get from reading
7 this?

8 A. I think that would be a reasonable impression, yes.

9 363 Q. And indeed, in fairness to you, you'd responded to the
10 Assistant Commissioner by saying that Sergeant McCabe's 13:59
11 welfare was of paramount importance?

12 A. Of course.

13 364 Q. Isn't that right?

14 A. Absolutely, of course, yes.

15 365 Q. But in any event, here we have Mr. Boucher-Hayes 13:59
16 referring to the fact that you were saying, he claims,
17 that McCabe was a troubled individual and that he had a
18 lot of psychological issues and psychiatric issues.
19 Did you say anything of that nature or anything that
20 might have been interpreted as a reference to that? 13:59

21 A. Excuse me? I didn't quite catch, did I say anything
22 about?

23 366 Q. Did you say anything about Sergeant McCabe having a lot
24 of psychological issues and psychiatric issues?

25 A. No, I certainly did not. No, Chairman, no. 13:59

26 367 Q. Well, do you think you might have said something that
27 might have been taken up wrong by Mr. Boucher-Hayes in
28 that regard?

29 A. Chairman, I wouldn't get involved in that level of

1 discussion with a journalist, not a hope. Nor would I
2 with anybody else for that matter. You know, this is
3 -- I can see now where similarities are being drawn
4 with, you know, the evidence from Mr. Kean in relation
5 to opinions he was expressing and how there could be a 14:00
6 parallel at least, but that's not the case. I wouldn't
7 talk about any member of the Garda Síochána like that,
8 certainly not.

9 368 Q. "He claimed that McCabe was motivated by a set of
10 grievances against Garda management and that he was 14:00
11 famous within An Garda Síochána for this."
12

13 we know that from 2007 that Sergeant McCabe had issues
14 with Garda management, isn't that right?

15 A. He had, Chairman, yes. 14:00

16 369 Q. Not only in the handling of his own case insofar as
17 DPP's directions and the issues that arose there, but
18 also had issues in relation to his superintendent and
19 the chief superintendent. I wonder whether, you know,
20 that was commonly known? would that have been known by 14:01
21 Mr. Boucher-Hayes at the time?

22 A. It's a possibility. It's a possibility, Chairman. I
23 don't know. word travels, you know. I mean, the Garda
24 family is a big family, we know there are friends and
25 relatives all over the country and, you know, word 14:01
26 spreads, it's as simple as that.

27 370 Q. "He warned me that McCabe was not to be trusted and
28 went on to add that there were things he could tell me
29 about him 'horrific things, the worst kind of

1 things' --"

2 A. Yes.

3 371 Q. "-- but he did not elaborate further."

4 A. Yes, Chairman.

5 372 Q. I mean, potentially that could be a reference, if it 14:02
6 were true, to the sexual assault in 2006.

7 A. I accept that, Chairman, yes. But, you know, my
8 observation on this, for what it's worth, Chairman, is
9 this man is an experienced journalist with RTÉ, I don't
10 think that he would have left it go at that if I had 14:02
11 come out with something to the effect there's other
12 things I can tell you about, horrific things, the worst
13 kind of thing, without him coming back with a
14 supplementary to say, what the hell are you talking
15 about, Commissioner? It just wouldn't make sense to 14:02
16 me. And that's what I made reference to this morning,
17 talking about this opaque comment.

18 373 Q. Well, he's a very highly respected journalist and
19 broadcaster.

20 A. He is. I'm an admirer of his for quite sometime, 14:03
21 Chairman.

22 374 Q. And he made this statement to the Tribunal in
23 consequence of the Chairman's opening statement on 13th
24 March 2017, the statement is dated. I mean, he's
25 volunteered this. Is there any reason that you can 14:03
26 think of that Mr. Boucher-Hayes would be inventing this
27 conversation that he says that he had with you?

28 A. My only response, Chairman, to that is I certainly did
29 not say these things to Mr. Boucher-Hayes. He had

1 been, as we all know, interacting with members of the
2 An Garda Síochána from earlier on that day. Now, I'm
3 not making any accusation against anybody, but all I
4 can say in response is I didn't have that conversation
5 with Mr. Boucher-Hayes. If somebody else had it, I 14:04
6 didn't have it and it certainly wasn't on my
7 instructions or directions.

8 375 Q. Again it's not an instance of somebody, you know, sort
9 of harbouring some sort of personal animosity against
10 you from some incident in the past that has caused him 14:04
11 to effectively invent a conversation that didn't take
12 place that's painting you in a bad light?

13 A. No. And I'm not so sure -- well, I don't know whether
14 that was or wasn't the situation. But certainly I
15 didn't have any fight or argument with Philip 14:05
16 Boucher-Hayes in the past. That's not what that was
17 about. I mean, he has interviewed me in the past and I
18 believe our relationship was nothing other than
19 professional.

20 376 Q. I mean, the two accounts can't be reconciled, can they? 14:05
21 Or, can they?

22 A. I cannot reconcile them, you know, in the context of
23 the differences, the obvious differences that are
24 there, but --

25 377 Q. I mean, is there any room here at all for 14:05
26 misinterpretation of what you were saying? There
27 doesn't appear to be?

28 A. Certainly not, Chairman. These are very strong
29 accusations here and they're untrue. I certainly

1 didn't speak with Sergeant McCabe or any other member
2 of An Garda Síochána in those terms, nor would I ever.

3 378 Q. I mean, it's not a situation where his account on would
4 be that, well, he's just taken you up wrong on
5 something that you've said? 14:06

6 A. Well, I didn't even come remotely close to saying any
7 of these things.

8 379 Q. No.

9 A. That's the difficulty, Mr. Marrinan. If I thought
10 there was some sort of room for compromise, I'd 14:06
11 certainly --

12 380 Q. Yes?

13 A. I would concede the point, absolutely I would. But I
14 don't see where there's any -- you know,
15 Mr. Boucher-Hayes is quite clear in what he's saying 14:06
16 and I'm quite clear in the conversation I had with him.
17 So I can't really add much more to that.

18 381 Q. And it's a private conversation insofar as nobody else
19 is present, isn't that right?

20 A. No, I think as far as I recall Superintendent Taylor 14:07
21 was further down the corridor and maybe the Director of
22 Communications was with him. But certainly there was
23 nobody in earshot of us.

24 382 Q. He goes on to say:

25 14:07

26 "As our conversation was ending he added that if there
27 was anything else I wanted to know about Maurice McCabe
28 or the penalty points issue that I should ask
29 Superintendent Dave Taylor from the Garda Press Office,

1 who was also present that evening."

2 A. Yes.

3 383 Q. And you say in your statement:

4

5 "I certainly did say to Philip Boucher-Hayes that if he 14:07
6 had any questions on either of the topics raised, i.e.
7 the Smithwick report or the penalty points issue, that
8 he should forward them to the Garda Press Office or
9 Superintendent Dave Taylor, whom I was aware he was in
10 contact with prior to me speaking with him." 14:08

11

12 There's a slight different there between your two
13 accounts. Because he's saying that after you said,
14 according to him, that you'd warned him that McCabe was
15 not to be trusted and indicating that he could tell 14:08
16 you, or that you could tell him about horrific things,
17 the worst kind of things that he could tell you, that
18 he then, he alleges that you said "if you want to know
19 anything else about Maurice McCabe on the penalty
20 points issue that I should ask Superintendent Taylor", 14:08
21 it was confined to Maurice McCabe?

22 A. No, it certainly was not.

23 384 Q. You see:

24

25 "Almost immediately afterwards Superintendent Taylor 14:08
26 buttonholed me and asked: Now do you understand what
27 the problem with Maurice McCabe and the penalty points
28 is?"

29

1 Did you overhear that?

2 A. No, I did not, Chairman, no.

3 385 Q. And does it surprise you that Superintendent Taylor may
4 have said that to Mr. Boucher-Hayes?

5 A. I suppose, Chairman - and I don't wish to be flippant 14:09
6 or cheeky - but in the context of what I have heard now
7 from Mr. Taylor and all that has happened in between it
8 probably wouldn't surprise me anything he said.

9 386 Q. Well --

10 A. And I regret very much that I have to say that about an 14:09
11 officer of An Garda Síochána and a former colleague,
12 but that's the truth and that's the reality.

13 387 Q. Yeah, but the other side of the coin there,
14 Mr. Callinan, is that if it's true and what
15 Mr. Boucher-Hayes says is true, it would indicate that 14:09
16 Superintendent Taylor was of the mind at that time to
17 know that you had spoken to Mr. Boucher-Hayes about
18 Sergeant McCabe, isn't that right?

19 A. It's possibly an interpretation, yes. I just don't
20 know. 14:10

21 388 Q. Well, it's the only interpretation. "Now, do you
22 understand what the problem with Maurice McCabe and the
23 penalty points is?" - immediately you had left the
24 conversation would tend to indicate that Superintendent
25 Taylor was aware of the fact that you had been 14:10
26 discussing Maurice McCabe with Mr. Boucher-Hayes.

27 A. But, I accept what you are saying, Mr. Marrinan, in
28 this sense: It could also be interpreted as
29 Superintendent Taylor was aware of what

1 Mr. Boucher-Hayes was going to put to me from a
2 previous, previous knowledge or a previous
3 conversation. That, I think, would be a reasonable
4 interpretation also.

5 389 Q. And that perhaps -- 14:11

6 CHAIRMAN: Sorry to interrupt, there is somebody taking
7 photographs at the back. They're gone. Nobody seems
8 to have noticed the flash, but I did. I suppose I have
9 a better view.

10 A. Let's hope it's not long distance, Chairman. 14:11

11 CHAIRMAN: It could be anything these days.

12 390 Q. MR. MARRINAN: I think that in any event, you parted
13 company, isn't that right? Now, on page 5319, it's the
14 next page on that material, just a supplemental
15 statement of Mr. Boucher-Hayes. That's after being 14:11
16 shown your supplemental statement --

17 A. Yes.

18 391 Q. -- of 14th June. And he made this on 29th September.
19 He says:

20 14:12

21 "I confirm that I do not wish to correct or amend my
22 original statement in any respect, as I believe it is
23 an accurate account of the exchange I had with former
24 Commissioner Martin Callinan on the evening in
25 question. By way of assistance to the Tribunal, I 14:12
26 would like, however, to provide the following
27 additional information.

28

29 Former Commissioner Martin Callinan is incorrect when

1 he says that he was to be interviewed by me. The
2 interview was always scheduled to be conducted by
3 Gráinne Seoige and was done by her on the night. I was
4 merely keen that the then-Commissioner address some
5 matters of public concern." 14:12

6
7 That might be just a difference of detail between the
8 two of you; is there a possibility he's correct in that
9 regard?

10 A. Absolutely. He could very -- of course I certainly 14:12
11 wouldn't argue with that, Chairman. But that was my
12 information, that it was Mr. Boucher-Hayes that was
13 going to interview me and these are the issues that he
14 wanted to raise. But I absolutely accept his evidence
15 there. 14:13

16 392 Q. "Former Commissioner Martin Callinan has indicated that
17 I asked him about Maurice McCabe and John Wilson. I
18 did not mention either man's name."

19
20 Do you see there? 14:13

21 A. I see that, Chairman, yes.

22 393 Q. You say that that's incorrect?

23 A. It is incorrect, yes.

24 394 Q. "I only suggested to the then-Commissioner that in 14:13
25 order for the interview to be relevant to our audience,
26 that he was going to have to address issues such as the
27 penalty points controversy, the closure of rural Garda
28 stations and the recent remarks of Judge Smithwick
29 about the culture of loyalty over honesty in An Garda

1 Síochána. I was surprised when the then-Commissioner,
2 unprompted by me, started talking about both men and
3 made the remarks referred to in my previous statement.
4

5 During our conversation the then-Commissioner stated 14:14
6 that he wished to confine his remarks on the programme
7 to issues like the change in the Garda roster and the
8 traditional Christmas road safety message. I suggested
9 to him that nobody watching would be remotely
10 interested in the Garda roster and that he really 14:14
11 needed to address the topics I identified, as these
12 were matters of public concern and would be more
13 relevant to the audience. He conceded that maybe he
14 should, but he would agree to take a direct question on
15 these issues. In his subsequent interview with Gráinne 14:14
16 Seoige he did go on to mention in passing to the
17 culture of loyalty and closure of Garda stations. He
18 did not refer to the penalty points controversy at
19 all."

20
21 Do you recall that? 14:14

22 A. Yes, I did speak about those subjects on the programme.
23 Again, it was quite a cursory reference, Judge. It was
24 in relation to the change of roster and the closing of
25 Garda stations were co-terminus on the basis that we 14:15
26 need to keep the public informed and we needed to
27 improve the service we were providing, and it was in
28 that context and in the context of negative publicity
29 around leaving communities behind that I'd mentioned

1 those two things. And I referred to the acronym of the
2 HARP as being a ready reckoner for members of the Garda
3 Síochána in the context of values. HARP, Chairman:
4 Honesty, accountability, respect and professionalism.
5 It's just the acronym for values that we adhere to. 14:15
6 Because, as Mr. Boucher-Hayes had referenced there,
7 Mr. Smithwick reference to loyalty, referring to -- in
8 a different light than the views I was expressing. So
9 I made that very cursory remark in the context of the
10 overall point I was making about service to the 14:16
11 community. That was the point.

12 395 Q. He concludes that:

13
14 "At this remove, I do not recall whether the
15 then-Commissioner Martin Callinan told me or not that 14:16
16 John Wilson had made a complaint against a garda
17 inspector about the cancellation of fixed penalty
18 notices. I only recall him saying that Mr. Wilson had
19 grievances."

20 14:16
21 You disagree with that?

22 A. No, I didn't use that word, no. But I certainly did
23 make the comments I made about the investigation over
24 the alleged 20 fixed charge notices being cancelled and
25 that that was the complaint of Garda Wilson. I 14:16
26 certainly did say that.

27 396 Q. I think that you go on to conclude your own statement
28 by saying that on Sunday, 30th May 2017 you read a
29 front-page article in the Sunday Times by Mr. John

1 Mooney, is that right?

2 A. That's correct, Chairman, yes.

3 397 Q. And that read that "RTÉ journalist links Callinan to
4 McCabe smear", in which the article claimed that
5 "Mr. Boucher-Hayes's statement is the first independent 14:17
6 verification of claims made by Taylor that he was
7 directed by Callinan to discredit McCabe by smearing
8 his reputation". What was your reaction when you read
9 that article?"

10 A. Well, I do say here, Chairman, that I was shocked and 14:17
11 alarmed by that particular article. And indeed it has
12 been a trend in the context of the currency of this
13 Tribunal that Mr. Mooney has had quite a number of
14 front-page articles in relation to, you know, me in
15 particular and certainly within a couple of days of me 14:18
16 making the statement that I made following your call,
17 Chairman, for assistance, very key aspects of that
18 statement appeared on the front page of the Sunday
19 Times, and that is a matter I know that has been
20 brought to the attention of the Tribunal teams. So 14:18
21 yes, I was shocked, but I was reassured by my legal
22 team, having consulted with the Tribunal's team, that
23 there was certainly no indication that this was
24 independent verification of claims made and I was
25 satisfied with that reply, Chairman. 14:18

26 398 Q. Well, there we have it. Your account and apparently
27 Mr. Boucher-Hayes is going to come to the Tribunal and
28 give evidence --

29 A. Yes.

1 399 Q. -- of his account of the conversation there.
2 A. Yes.

3 400 Q. They are diametrically opposed and that's the
4 situation. Is there anything else that you wish to say
5 in relation to the allegation being made by 14:19
6 Mr. Boucher-Hayes?
7 A. Other than what I've already stated in my evidence and
8 in my statements, Chairman, I can't bring it any
9 closer.

10 401 Q. Yeah. Just, if we could then move on from December 14:19
11 into January 2014 and the preparation for Public
12 Accounts --
13 A. Yes.

14 402 Q. -- Committee. Your private secretary, Superintendent 14:20
15 Frank Walsh said in evidence, it's at day 67, at page
16 10, but he felt that you had a frustration with the
17 issues as they were developing. Now, this may have
18 been a little bit later, because it's in reference to
19 his interactions with you in relation to Gerard Kean,
20 so it could be a month later. But did you have a sense 14:20
21 of frustration at this time?
22 A. No, I wouldn't describe it as a frustration, certainly
23 not.

24 403 Q. Did you feel he described you as being under pressure?
25 A. No, I wasn't under pressure in relation to that. I 14:20
26 mean, the reality of life is the Garda Commissioner,
27 the job itself is a highly pressurised role and, you
28 know, there are so many competing interests for
29 resources, both human and financial, in keeping alive a

1 proper policing and security service. And those
2 pressures come from a variety of sources. But your job
3 as Commissioner is to manage those pressures and deal
4 with them accordingly. If it was the case that I was
5 under pressure to that degree, I simply wouldn't turn 14:21
6 up for work the next day, there'd be no point, let
7 somebody else get on with it.

8 404 Q. There was no sense of frustration in you that your
9 voice wasn't being listened to at the time?

10 A. Well, I think my voice probably was being listened to, 14:21
11 you know.

12 405 Q. If you could just have volume 2 there, page 659. This
13 is a letter to John McGuinness dated 15th November
14 2013.

15 A. Thank you, Chair, yes. 14:22

16 406 Q. "I refer to the above and to an article which appeared
17 in the Irish Examiner on Saturday last, 9th November
18 2013. The report states that one of the Garda
19 whistleblowers in respect of the cancellation of the
20 fixed charge penalty notices has provided you with 14:22
21 files containing data which relate to monies lost to
22 the State through improper cancellation of such
23 notices. This newspaper report appears to be a
24 continuation of claims by one of two persons, one a
25 serving member of An Garda Síochána and the other now a 14:22
26 retired member regarding the discretionary system in
27 place --"

28
29 That's obviously a clear reference to Sergeant McCabe,

1 isn't it?

2 A. It is, Chairman, yes.

3 407 Q. "-- to allow the cancellation of fixed charge notices
4 by the deployment of prosecutorial discretion. In
5 accordance with my duties as Data Controller under the 14:23
6 Data Protection Acts 1988-2003 I am of the view that
7 these files containing personal data are files which I
8 am responsible for and accordingly should be returned
9 forthwith to me. I am also concerned that there is a
10 potential breach of either section 19(3) or section 22 14:23
11 of the Data Protection Acts 1988-2003.

12
13 Unfortunately, I am not in a position at this juncture
14 to identify whether the person who has furnished the
15 information to you is an employee of mine or not. I 14:23
16 can confirm that my prior authority was not obtained
17 before this data was furnished to you. I have in
18 accordance with my duties as Data Controller informed
19 the Data Protection Commissioner in relation to a
20 potential breach of the Data Protection Acts. 14:24

21
22 Having taken legal advice from the Attorney General, I
23 now request that you return all such personal data to
24 me forthwith. My prior authorisation was not obtained
25 before this data was furnished to you and in this 14:24
26 respect I am concerned now that either section 18(3) or
27 section 22 of the Acts has been breached. I am also
28 advised that any such disclosure of personal data in
29 this respect is an unauthorised disclosure in

1 accordance with the Data Protection Acts 1988-2003.
2
3 I look forward to hear from you by return."
4 A. Yes.
5 408 Q. There you clearly set out your stall in relation to the 14:24
6 matter, isn't that right?
7 A. Yes, Chairman, yeah. I should --
8 409 Q. You had --
9 A. I beg your pardon, sorry, Mr. Marrinan, just there
10 appears to be a typo, that should be section 19(3) I am 14:24
11 referring to. 18(3) I see. Apologies.
12 410 Q. No, that's fine. You had taken advice from the
13 Attorney General in relation to this issue, isn't that
14 right?
15 A. The Attorney General's office. The Attorney General's 14:25
16 office. It was a senior advisory counsel in the
17 Attorney General as opposed to the Attorney herself,
18 who I'm sure was kept up to speed I presume.
19 411 Q. And if we turn over the page, at page 661 this was a
20 letter sent the same day by you to Mr. Billy Hawkes, 14:25
21 the Data Protection Commissioner, isn't that right?
22 A. Yes, Chairman.
23 412 Q. And it's setting out on page 662:
24
25 "Having taken legal advice from the Attorney General, I 14:25
26 now propose to proceed as follows.
27
28 1. Write to Deputy McGuinness indicating that I have
29 reported the matter to you in my capacity as Data

1 Controller and request that all data be returned to me
2 forthwith;

3 2. Indicate to Deputy McGuinness that the data was
4 furnished to him without my authorisation and
5 accordingly there is potentially a breach of the Data 14:26
6 Protection Acts;

7 3. Inform Deputy McGuinness that any such disclosure
8 of such personal data is, in my opinion, an
9 unauthorised disclosure. "

10 A. Yes. 14:26

11 413 Q. Now, the first substantial response that you got from
12 the Public Accounts Committee is at page 663.

13 A. Thank you, Chairman, yes.

14 414 Q. It's dated 18th December 2013, from Ted McEnery.

15 A. McEnery. 14:27

16 415 Q. Who is the clerk of the Committee.

17

18 "I refer to your letter of 15th November 2013 and the
19 Chairman's reply of 21st November --"

20 14:27

21 I think that was just a holding letter effectively.

22

23 "-- in relation to documentation supplied by a
24 whistleblower to the Committee in connection with the
25 fixed charge notice system. The Committee sought legal 14:27
26 advice as to the legality of its receipt of the
27 documentation and related issues. Specific advice was
28 also sought as to your request that the documentation
29 be returned to your offices forthwith.

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Having received this legal advice, the Committee notes that the documentation is lawfully before the Committee pursuant, inter alia, to section 62 of the Garda Síochána Act 2005. The documentation is relevant to the Committee's examination of Chapter 7 of the Comptroller and Attorney General's Annual Report on the Accounts of the Public Service 2012 as regards the adequacy of the fixed charge notice system and in particular the controls, protocols, procedures and systems in place.

14:27

14:28

The Committee notes your concerns as to data protection considerations which necessarily arise. The Committee has taken legal advice on the issue and, having viewed the documentation in private session in order to ascertain whether the material contained therein properly falls within the Committee's remit, has now arranged for the redaction of all sensitive, personal information from the documentation and for the information contained therein to be compiled into anonymised statistical information relevant to its considerations of the fixed charge notice system.

14:28

14:28

I trust this clarifies the position of the Committee."

14:28

A. Yes.

416 Q. So there you are, they're joining issue with you in relation to the matter and indicating they've got separate legal advice. And you respond on, I think

1 it's on 24th, is it, Christmas Eve?

2 A. It is, Chairman, yes.

3 417 Q. 24th December of 2012.

4 A. Yes.

5 418 Q. You refer to the letter of 18th December 2013 and you
6 point out:

7

8 "I remain very concerned that all files in respect of
9 which I am the Data Controller should be subject to
10 unauthorised disclosure. I do not know what 14:29
11 information is contained in the files, which were
12 furnished to you by a member of the Gardaí. However,
13 insofar as you have said that these files contain
14 sensitive personal data which you are redacting, I must
15 assume the files relate to individuals. 14:29

16

17 As I have already said, I believe these files should be
18 returned to me as the Data Controller. They could then
19 be reviewed by the Comptroller and Attorney General
20 should he so wish to supplement his report on the 14:30
21 controls, systems, procedures and practices in relation
22 to the fixed charge notices. I could then address such
23 a supplemental report if your Committee were to request
24 me to attend to discuss it."

25

26 Had the Comptroller and Attorney General already
27 reported on the matter? Is that Chapter 7 of his
28 report?

29 A. Yes, that's the penalty points. 14:30

1 419 Q. Had you already seen that?
2 A. Yes.
3 420 Q. You had?
4 A. Yes.
5 421 Q. "In your letter you refer to section 62 of the Garda 14:30
6 Síochána Act 2005. That provision makes it an offence
7 for members and civilian staff of the Gardaí to
8 disclose certain information subject to certain
9 exceptions. It does not authorise your Committee to
10 receive sensitive personal data which has been 14:30
11 disclosed without the authorisation of the relevant
12 data controller. The position as set out in my earlier
13 letter and that of the Data Protection Commissioner is
14 quite clear. I cannot put the matter further than
15 that. 14:31
16
17 I refer to my forthcoming attendance at the Public
18 Accounts Committee. I have been asked to attend to
19 answer questions in relation to Chapter 7 of the
20 Comptroller and Attorney General's Annual Report for 14:31
21 2012, i.e. his report into the system of control
22 applied and the adequacy of systems, procedures and
23 practices implemented by An Garda Síochána to the
24 system of fixed charge notices. I understand from what
25 you have said that the files in question relate to 14:31
26 individuals. Insofar as you have indicated that you do
27 not intend to return the files in question and that you
28 intend to use them in redacted form in your
29 consideration of the fixed charge notice system, I

1 should make clear that I cannot, in my forthcoming
2 attendance at the PAC, discuss individual cases. My
3 function in attending is to assist the Committee in its
4 task understanding Order 163 by answering questions in
5 relation to Chapter 7 of the Comptroller and Attorney 14:32
6 General's Annual Report, i.e. the controls, systems,
7 procedures and practices in relation to the fixed
8 charge notices, and not in relation to individual
9 exercises of prosecutorial discretion whereby fixed
10 charge notices may have been cancelled. 14:32

11
12 I should also say that even if I were in a position to
13 discuss individual cases, I would not be in a position
14 to answer any questions about the files you have in
15 your possession, as I do not know what is contained in 14:32
16 them."

17
18 Then, finally in relation to this, there's a response
19 on 17th January.

20 A. Yes. 14:33

21 422 Q. Again from the clerk to the Committee:

22
23 "I refer to your letter of 24th December and to the
24 Committee's letter to you of 18th December in relation
25 to retention of documentation supplied by a 14:33
26 whistleblower to the Committee in connection with the
27 fixed charge notice system.

28
29 The Committee notes your view that section 62 of the

1 Garda Síochána Act 2005 does not authorise the
2 Committee to receive the relevant Garda whistleblower
3 material without your consent. As outlined in the
4 letter of 18th December 2013, the Committee's legal
5 advice is to the contrary.

14:33

6
7 The documentation being lawfully before the Committee
8 has been redacted of all sensitive and personal
9 information by the office of the Parliamentary legal
10 advisor in whose custody all documentation remains."

14:33

11
12 Did that in any sense put your mind at ease in relation
13 to the matter?

14 A. While I accepted the contents of the letter, Chairman,
15 the particular difficulty I had was that I could not
16 see how it would be possible for the Committee to hear
17 the issues being raised by Sergeant McCabe without
18 making reference to sensitive personal data that was
19 contained within the Pulse letters. I couldn't see how
20 it's possible. I don't think it's possible to, for
21 instance, give an indication that tickets were
22 cancelled because superintendent A did it for driver B
23 on a multiple basis without expressing some sort of
24 relationship between the cancelling officer and the
25 benefactor. I just couldn't see that. I think it
26 would be impossible to do.

14:34

14:34

14:34

27 423 Q. He continues on:

28
29 "The documentation, now devoid of any information from

1 which any person can be identified and on which an
2 anonymised statistical analysis has been prepared, will
3 be considered by the Committee solely in order for the
4 members thereof to better understand the fixed charge
5 notice system and operation thereof. The controls 14:35
6 mechanism and procedures in place for the operation of
7 that system is contained in the report of the
8 Comptroller and Attorney General.

9
10 The Committee wishes to assure you that it shall not 14:35
11 discuss any individual case or prosecutorial discretion
12 whereby fixed charge notices may have been cancelled.

13
14 As you correctly identify, you are being asked to
15 answer questions in relation to the system of controls 14:35
16 applied and the adequacy of systems, procedures and
17 practices implemented by An Garda Síochána.

18
19 I trust this clarifies the position and I look forward
20 to your appearance. " 14:35

21
22 So in any event, there matters stood. And then if we
23 could just turn and look to your preparation for the
24 PAC. Just before we get into the detail of that,
25 Mr. McLindon has given evidence on day 65 to the 14:36
26 Tribunal, he says as a civilian coming into his role as
27 the Director of Communications that he was under the
28 impression that you were more inclined to listen to
29 members of the force. What do you say to that?

1 A. I thought it was an extraordinary comment, Chairman.
2 You know, as a policing and security service, we have a
3 requirement for support. That takes a number of
4 guises, financial advices and assistance, and there is
5 a whole section dealing with finance as an example, 14:37
6 there's a whole section dealing with IT as another
7 example, there's another section dealing with the Garda
8 estate. So at various levels, senior, intermediate and
9 junior, there are many, many examples of how a
10 Commissioner, when he or she was trying to decide a 14:37
11 particular issue, would be required to take advice from
12 these people. Because you couldn't obviously be
13 expected -- I was a policeman all my life, I wouldn't
14 have the experience, for example, to manage a budget of
15 1.4 million billion nor indeed would I be in a position 14:38
16 to give expert advice in relation to estate management,
17 etcetera. So we had people in the organisation with
18 various skills to assist in that process. And of
19 course I had to rely on their assistance. And that
20 included the Director of Communications, Andrew 14:38
21 McLindon. After all, that was the reason that I sat on
22 that interview board and employed him.

23 424 Q. It may well just be an impression, it may be wrong, but
24 an impression that one gets from listening to the staff
25 of the Press Office, the impression one gets is that 14:38
26 Superintendent Taylor was particularly close to you
27 over and above Mr. McLindon and that you were always
28 seen together and that Superintendent Taylor was in and
29 out of your office.

1 A. Yeah, I saw that in the evidence, Chairman, and I think
2 that's a perception above reality really. My door was
3 always open to Mr. McLindon if he wished to accompany
4 Superintendent Taylor at any given time when issues
5 were arising that needed to be dealt with. 14:39

6 425 Q. Well, in any event, there were a number of meetings of
7 senior officers prior to the Public Accounts appearance
8 on 24th January, 23rd January. The first meeting was
9 on 6th January 2014. Now, in that regard - just bear
10 with me one moment. 14:40

11 A. Mm-hmm.

12 426 Q. Sorry, just one moment.

13 A. Thank you.

14 427 Q. Sorry, we'll just move on.

15 A. Thank you. 14:40

16 428 Q. A document just isn't immediately to hand. We see 6th
17 January. If you would turn to page 1231 of the
18 material.

19 A. I'll just clear this for one second, excuse me,
20 Chairman. Thank you, Chairman. 14:41

21 429 Q. Now, we're advised that as a pack for these meetings
22 there would have been reports from the relevant
23 departments and maybe submissions from the relevant
24 departments that were dealing with different aspects of
25 the fixed charge penalty notices, is that right? 14:42

26 A. That's correct, Chairman, yes.

27 430 Q. And in that was a document entitled "Reports on
28 Sergeant Maurice McCabe and retired Garda John Wilson"
29 and the document includes a history of issues in

1 relation to Sergeant McCabe in An Garda Síochána, but
2 also refers to - it has the wrong date on it - 4th
3 November 2006 in relation to Ms. D and has three
4 paragraphs there in relation to the investigation of
5 Ms. D's allegations. 14:42

6 A. I'm sorry, Chairman, where is that?

7 431 Q. Sorry, I was looking for it there. It's actually in
8 volume 26. We'll bring it up on the screen. It's page
9 7224. I'm sorry, Mr. Callinan, it's my fault.

10 A. Yes. 14:43

11 432 Q. Okay, you'll see there "Reports on Sergeant Maurice
12 McCabe".

13 A. Yes.

14 433 Q. And it starts in 1992, 2002, 2006. And then do you see
15 at the bottom of page 7225, "2/30/06: Discipline on 14:43
16 4th November 2006, Ms. D, 14 years, made a statement to
17 Sergeant Denise Flynn"? Do you see that?

18 A. I see that, yes.

19 434 Q. And Detective Sergeant James Fraher.

20 14:44
21 "In the statement she alleges that she was six years of
22 age. She was playing in the home of Garda McCabe.
23 Ms. D was playing with member's children."

24
25 Do you see that? 14:44

26 A. I see that, Chairman, yes.

27 435 Q. "During the day she alleged that Sergeant McCabe took
28 hold of her from behind and began pressing against her.
29 After a few minutes it ended. The statement does not

1 contain any other details. Inspector Noel Cunningham
2 appointed to investigate criminal aspect of matter. A
3 file on the matter was sent to the DPP, not
4 recommending prosecution. On 24th August 2007 the DPP
5 directed no prosecution. Chief Superintendent Monaghan 14:44
6 decide not to initiate discipline in the matter and the
7 file was closed."

8 A. Yes.

9 436 Q. Do you recall that being included in the material?
10 A. No, I do not. I haven't seen this document. It was 14:45
11 shown to me by my legal team.

12 437 Q. Yeah.
13 A. I haven't seen this document before.

14 438 Q. Yeah. well, apparently we've been advised that it was
15 included in the material that was given, or was 14:45
16 available at the PAC meeting, preparation meetings and
17 was part of your brief. But in any event, you didn't
18 read it, is that right?

19 A. well, I --

20 439 Q. Or you don't recall reading it? 14:45
21 A. well, I don't agree that it was. I don't know where
22 that information came from, but I don't recall ever
23 seeing this document.

24 440 Q. well, we're advised that it was. But perhaps there's
25 an error made, we'll look into it, all right? 14:45
26 A. Yes.

27 441 Q. So in any event, if we come back to page 1231.
28 A. Sorry?

29 442 Q. That is the one that we had open there and it's in

1 volume --

2 A. It may be the case of course, Mr. Marrinan, it just
3 occurs to me, that somebody brought that to the
4 meeting. But I don't recall it being distributed or
5 discussed. I wouldn't see the relevance of it. 14:46

6 443 Q. Well, that's the whole point.

7 A. Yes.

8 444 Q. But in any event, we come to page 1231 here. You see
9 these are the handwritten notes of --

10 A. Can I leave this folder for the moment? 14:46

11 445 Q. -- of Superintendent Orla McPartlin.

12 A. Thank you, Chairman, yes.

13 446 Q. I made a brief reference to it this morning.
14 "Up-to-date info on the two boys." Do you see there?

15 A. Yes. 14:47

16 447 Q. Then there's a reference to social networking sites and
17 Killian. This is clearly a reference to some
18 discussion in relation to the up-to-date info in
19 relation to John Wilson and Sergeant McCabe, isn't that
20 right? 14:47

21 A. Yes, I suspect that is the position, yes.

22 448 Q. Why was that being discussed?

23 A. I'm not particularly clear what it's doing there. It
24 appears to me that it's an update from the Assistant
25 Commissioner HRM outlining some sort of report. And in 14:47
26 fact the previous document you have shown me could well
27 be the Assistant Commissioner's report, I just don't
28 know. But it does appear he is outlining issues that
29 are arising. And beyond that, I don't know. I don't

1 recall any meaningful discussion on either of Sergeant
2 McCabe or Garda Wilson in relation to these meetings.

3 449 Q. If you go on to page 1238.
4 A. Thank you.

5 450 Q. Sorry, 1237 in the first instance. 14:48
6 A. Thank you.

7 451 Q. Do you see just halfway down there under "Data
8 Protection Issues" --
9 A. Yes.

10 452 Q. -- and then "at ST", I think that's Sunday Times, 14:49
11 "Justine McCarthy article, ST McCabe". Then "Mick
12 O'Sullivan's investigation".
13 A. Yes. That's --

14 453 Q. Yes?
15 A. Sorry, I think that's a reference to the then, he was 14:49
16 chief superintendent at that time, he was the person
17 who had investigated the complaints of Garda Wilson. I
18 think that's the reference there. It's probably just
19 an update on it.

20 454 Q. Then at page 1238 at the top there "Wilson's 14:49
21 Allegations".
22 A. Yes.

23 455 Q. "When Wilson interviewed in February 2013 by Aidan
24 Glacken, statement provided by Wilson." Then you see
25 "No interview by JOM", I presume that's John O'Mahony? 14:50
26 A. Yes.

27 456 Q. Then further down you see "JW", John Wilson.
28 A. Yes.

29 457 Q. "-- told --" I think that's something "-- in charge he

1 was working with Maurice McCabe"?

2 A. Yes.

3 458 Q. Then a reference to Maurice McCabe going sick at
4 Christmas, isn't that right?

5 A. That's correct, yeah. I think, sorry, Chairman, just 14:50
6 to clarify, I may have been mistaken when I mentioned
7 it was Chief Superintendent Sullivan carried out that
8 investigation, because this note seems to indicate that
9 it was Chief Superintendent Glacken that investigated
10 John Wilson's complaint, at the top of the page. Sorry 14:50
11 now for interrupting your flow, Mr. Murrinan.

12 459 Q. No, there's no flow.

13 A. But I think that I might have had it slightly off
14 kilter. But that can be checked if needs be, if you
15 wish, Chairman. 14:51

16 460 Q. Then if we just move on then to the 16th January
17 meeting, there was another meeting. And there's again
18 a reference there to Noel Cunningham and Mary Lou
19 McDonald, March 2012. Do you recall what that was
20 about? 14:51

21 A. I can't recall that now, no.

22 461 Q. You can't recall a discussion?

23 A. Mm-hmm.

24 462 Q. Then if we move on to 1282.

25 A. That, it sounds like, and I'm only guessing really, I 14:52
26 suppose I shouldn't speculate, but it sounds like
27 something that the Deputy Mary Lou McDonald has raised
28 in relation to Noel Cunningham. But I --

29 463 Q. Yeah?

1 A. I'm sorry, I can't.

2 464 Q. No, it may well be. Then if we move on to 1282, this
3 is the meeting, notes of a meeting, Mr. McLindon's
4 notes of 21st January 2014. You will see "Personal
5 injuries claim 2009". 14:52

6 A. Yes.

7 465 Q. Then "2007/2008 defamation", then "2006, first
8 incident" and then you see "Sergeant serving". All
9 right?

10 A. Yes. 14:52

11 466 Q. Mr. McLindon is relatively sure that that relates to
12 the 2006 allegation that was made by Ms. D.

13 A. That would seem logical, yes.

14 467 Q. And then if you follow down there, there's no
15 disciplinary action taken. 14:53

16 A. Mm-hmm.

17 468 Q. Then at the bottom: "Not supposed to know who
18 confidential recipients are."

19 A. I would think that should be confidential reporters,
20 Chairman. 14:53

21 469 Q. No, I would have thought so as well.

22 A. Yeah.

23 470 Q. But in any event, if we turn over, at page 1246, and
24 these are the notes of the same meeting by Assistant
25 Commissioner Nolan -- 14:53

26 A. Yes.

27 471 Q. -- and then it has in the third line there "Start
28 Sergeant McCabe 2006".

29 A. Yes.

1 472 Q. It would appear that, I mean, this issue was being
2 discussed. I mean, not the detail of it, but the fact
3 that there had been an allegation in 2006 against
4 Sergeant McCabe appears to have been discussed at these
5 meetings? 14:54

6 A. I get the impression from a combination of these two
7 notes that somebody is recounting a chronological
8 sequence, 2006, 2007 and 2008. 2006. The obvious
9 reference there of course is to the allegation of
10 sexual assault, I agree with that. And then the 14:54
11 various other issues that have arisen in the succeeding
12 years.

13 473 Q. But if we turn over at page 1247 we see "Motivation of
14 whistleblowers", do you see that?

15 A. I do. 14:55

16 474 Q. It's the first line there. Then "Sergeant McCabe
17 2010". I can't make out the rest of that, but --

18 A. It appears to be, Chairman, "D Byrne investigation,
19 four complaints".

20 475 Q. Yeah, there's a reference to Cunningham and to Chief 14:55
21 Superintendent Clancy.

22 A. And "Farrell and confidential reports x 2", something,
23 Mr. Connolly I think and Mr. McCarthy, who was his
24 predecessor.

25 476 Q. Yeah. 14:56

26 A. And then a note to M Cummins I think.

27 477 Q. Then if one turns over the page again this refers to an
28 earlier meeting on 9th January 2014 again it's
29 Assistant Commissioner Nolan. I think this is the

1 typed version of what we've just read? Yeah.

2 A. Yes.

3 478 Q. Well again it refers to "Wilson/McCabe issues".

4 A. Yes.

5 479 Q. You see, coming back to the question that I asked you 14:56
6 this morning in relation to the story and the
7 storyteller, I mean it does appear that there seems to
8 have been some focus on motivation, on discussing the
9 motivation of the whistleblowers, a reference to a 2006
10 allegation of sexual assault against Sergeant McCabe. 14:56
11 Why were these issues being discussed at these pre-PAC
12 meetings?

13 A. I don't recall a discussion of any degree at all in
14 relation to any of these matters other than that there
15 was a probably a mention of these and that's why 14:57
16 there's a note of them. But I certainly can't bring
17 back to mind any of these particular issues. I mean, I
18 know about them certainly, I know about every single
19 one of them, but I don't know the detail of what's here
20 or what's in the notetaker's mind when they made a 14:57
21 reference to it, other than perhaps somebody had
22 mentioned a summary of the history.

23 480 Q. If we could turn over the page to 1286 then. This was
24 draft questions that had been prepared by Mr. McLindon.

25 A. Yes, Chairman. 14:58

26 481 Q. And you'll see that halfway down there: "What is the
27 Commissioner's view of the character/integrity of the
28 whistleblowers?"

29 A. Yes.

1 482 Q. what have you noted there beside it?
2 A. In the square brackets it appears to be "[uni forms and
3 savings]". I don't know what that particular reference
4 is to.
5 483 Q. "[Uni form and savings]", and just below that? 14:58
6 A. "Due process", I don't know what that last word is.
7 "Due process".
8 484 Q. All right. well, these were a list of questions that
9 were prepared by Mr. McLindon arising out of pre-PAC
10 meetings and issues that you thought you might have to 14:59
11 deal with. I mean, it may just be as simple as you
12 thought this was going to arise as a question from the
13 Public Accounts Committee. I mean, did you think you
14 were going to be asked what was your view in relation
15 to the integrity of Sergeant McCabe? 14:59
16 A. No. And I wouldn't go there. That's not a matter for
17 the Public Accounts Committee. You know, I had an
18 issue and the issue was the manner in which these
19 unsubstantiated allegations were being brought into the
20 Committee, which at that point in time was going to be 14:59
21 a public forum. And that was the issue I had; that
22 sensitive personal details of members of the public,
23 and indeed An Garda Síochána, and very serious
24 allegations, unsubstantiated allegations being made and
25 that this was not the appropriate venue or forum for 15:00
26 that to happen. That was my only issue.
27
28 I mean, the integrity of the whistleblowers is
29 certainly not something I would engage in at any point.

1 But, you, I suppose those are Mr. McLindon's notes to
2 me, I take it?

3 485 Q. Yes, and they are your notes on it.

4 A. And they are my handwritten notes, yes, sorry. But
5 obviously I have no control over what is going to send 15:00
6 in to me, you know. But your question, no, I would not
7 discuss the integrity of any member of An Garda
8 Síochána in a committee.

9 486 Q. Then if we just go to page 1106 for the moment. This
10 was a letter that was sent by Sergeant McCabe to 15:00
11 Inspector McCarthy in Mullingar dated 7th January 2014.

12 A. Yes, sorry.

13 487 Q. "Ongoing harassment, intimidation and victimisation for
14 reporting corruption.
15 15:01

16 I refer to the above, to our meeting yesterday and to
17 previous incidents. I availed of the confidential
18 reporting mechanism. I complied with the law in
19 reporting malpractice. I reported a loss of revenue to
20 the State. I have done my duty as a member of An Garda 15:01
21 Síochána, having been directed by and complied with the
22 Minister for Justice. I have been subjected to
23 unbearable harassment and intimidation by Garda
24 authorities. It has come to the stage where I need to
25 be protected. It has come to the stage where I have to 15:01
26 take appropriate steps. Can you advise me on and put
27 in place welfare and the protection policy in place as
28 a matter of urgency."
29

1 was that drawn to your attention at the time?

2 A. No, I only saw that document when the papers were
3 distributed.

4 488 Q. In terms of the issue we discussed this morning in
5 terms of the Sergeant McCabe's motivation, did you ever 15:02
6 pick up the phone and ring Chief Superintendent Terry
7 McGinn and ask her for, you know, what sort of person
8 are we dealing with here?

9 A. No.

10 489 Q. What's Maurice McCabe, you know, like as a person? 15:02
11 You'd never met him?

12 A. No.

13 490 Q. Do you regret that?

14 A. Well, I mean, there were several officers dealing with
15 Sergeant McCabe at the time. 15:02

16 491 Q. I know that. And people have been deputed and we know
17 that your successor Níorín O'Sullivan met Maurice
18 McCabe. But do you regret over those four years that
19 you were there that you didn't actually invite him into
20 your office and sit him down and discuss things on a 15:03
21 one-to-one basis with him or concern yourself about his
22 welfare?

23 A. Well, I'm not sure that I regretted not doing it. And
24 certainly if there was an opportunity or if
25 representations had been made by Sergeant McCabe or 15:03
26 someone on his behalf to come and meet with me, of
27 course I'd have acceded to that. But, you know, things
28 moved on substantially after I had left the
29 organisation. You had, you know, you had a disclosures

1 bill moving through the House and that required
2 support. So there was a different dynamic developing
3 along the way.

4
5 But to answer your question, I don't have a particular 15:03
6 regret. But if Sergeant McCabe wanted to come and see
7 me, I certainly wouldn't be locking the door or keeping
8 him out.

9 492 Q. Yeah, but we're sort of back to the Assistant
10 Commissioner O'Mahony scenario; if you have something 15:04
11 to say, come to me.

12 A. Well, I think, you know, just on that, it was the case
13 that at that particular time in An Garda Síochána I had
14 checked very carefully right across the organisation
15 and I knew the complaints that were out there in 15:04

16 relation to the alleged wrongful cancellation of fixed
17 charge notices and I think the total was 24 allegations
18 against two officers. And then in late October the
19 department sending me two lists, A and B, containing
20 189 allegations and something just short of 2,200 15:04

21 allegations within that cohort of 189 complaints. So
22 there's no comparison really, you know. So that's the
23 situation I was faced with. And I would have thought
24 again, you know, it's a personal opinion, but I would
25 have thought if the concern was such, given that 15:05

26 magnitude of complaints, that the author of that report
27 would be more than happy to sit down with the Assistant
28 Commissioner's team and discuss the complaints that
29 they had.

1 493 Q. Well, look, you know, you knew historically that
2 Sergeant McCabe had cooperated in the first instance
3 with Chief Superintendent Terry McGinn, isn't that
4 right?
5 A. Yes, correct. 15:05

6 494 Q. And I am not sure how many times he met, but it must
7 have been upwards of seven or eight times that he met
8 and he gave lengthy statements to the Byrne and McGinn
9 investigation, isn't that right?
10 A. That's correct, Chairman, yes. 15:05

11 495 Q. There was never any instance where he didn't cooperate?
12 A. No. Nor indeed, I have never said he never cooperated.

13 496 Q. So, you know, he was there to take a statement from, if
14 necessary. Now, as it turns out, I think Assistant
15 Commissioner O'Mahony was very firmly of the view that 15:06
16 it didn't detract from his report one way or the other,
17 because it was all data based, it was based on the
18 material that was contained in Pulse, isn't that right?
19 A. Correct, Chairman, yes.

20 497 Q. And it didn't in fact need the input -- 15:06
21 A. No.

22 498 Q. -- from Sergeant McCabe or from John Wilson --
23 A. No, I mean.

24 499 Q. -- except insofar as there was an allegation of some
25 sort of corruption, isn't that right? 15:06
26 A. Correct. I think if you look at the documentation,
27 Chairman, in relation to -- that accompanied the list
28 of complaints, what the requirement from the Minister
29 was, was to examine the complaints to see if there was

1 any weaknesses of substance within the administration
2 of the actual fixed charge penalty system and to report
3 back as a matter of urgency. So, in the context of
4 Assistant Commissioner O'Mahony's report and the
5 inquiries he was conducting, he was conscious, 15:07
6 obviously, based on the point you've just raised,
7 Mr. Marrinan, of whether there would be any criminal or
8 disciplinary issues arising. But primarily it was to
9 look a weaknesses within the system and report back.
10 And of course, that's precisely what he did; report 15:07
11 back on the weaknesses within the system, and indeed he
12 identified a number of officers who acted outside of
13 their remit. You see, he had to be very, very careful
14 in terms of the very serious -- the three officers who
15 were accused of very serious disciplinary offences, in 15:08
16 particular not to do or say anything that would
17 prejudice a formal investigation, a disciplinary
18 investigation. So he made recommendations on that
19 basis. Does that make sense?

20 500 Q. No, and I understand. Were you familiar with Operation 15:08
21 Squeeze?

22 A. I read it about it in the context of the papers that
23 came to me, that that was the operational name put on
24 the investigation and probably supplementary
25 investigations, I don't know. 15:08

26 501 Q. It was a supplementary investigation that was looking
27 into the individual officers who'd been involved in
28 cancelling penalty points, isn't that right?

29 A. There was, yes.

1 502 Q. No, but that was what Operation squeeze was?
2 A. I honestly can't say. I absolutely take your word for
3 it if you've seen it somewhere, but I'm not familiar
4 with the title.

5 503 Q. All right. Were you aware of the fact that, or had you 15:09
6 spoken to Assistant Commissioner O'Mahony about what he
7 was doing in his investigation looking into the
8 allegations that had been made by, at that time, the
9 unnamed whistleblower, Maurice McCabe? Did you ask him
10 how is that going and what's going on? 15:09
11 A. Yes. And I received regular updates in --

12 504 Q. Did he tell you that a chief superintendent and a
13 superintendent had visited the home of an uncle of
14 Maurice McCabe and spent several hours --

15 A. No. 15:09

16 505 Q. -- in the home in January of 2013?
17 A. Yes, I saw that in the papers. But I wasn't familiar
18 with that aspect.

19 506 Q. Nobody advised you of that?
20 A. No, I have no recollection of getting that update, no. 15:10
21 I think that was treated separately, it was a family
22 issue as far as I'm aware.

23 507 Q. Well, it was very much a family issue that had
24 absolutely nothing to do with the fixed charge penalty
25 notices? 15:10
26 A. I think so. And that's probably the reason why I
27 wasn't spoken to on it.

28 508 Q. It just seems a little bit odd that I think perhaps two
29 to three hours of an interview with the uncle, who

1 doesn't get on particularly well with Sergeant McCabe,
2 I gather, and then a visit or re-visit to the home to
3 discuss family matters. Does that surprise you that
4 that was done?

5 A. Well, I'm not familiar with the full circumstance, so 15:10
6 it would be unsafe for me to comment on it.

7 509 Q. But in any event, you arrive to give evidence at the
8 PAC on 23rd January 2014. And I'll deal with what
9 Mr. McCarthy alleges that you said to him prior to the
10 meeting and also Mr. Deasy. But I'm just going to 15:11
11 first of all deal with what you actually said at the
12 Public Accounts Committee.

13 A. Thank you.

14 510 Q. And if we go to page 1107. I mean, you're sent in
15 there to bat for the Gardaí and you were getting a 15:11
16 fairly tough time of it, but you were fighting your
17 corner. There appeared to be some quite heated
18 exchanges, is that fair to say?

19 A. Well, I think it's fair to say that when you're in
20 front of any committee of the Houses of the Oireachtas, 15:12
21 whether it's PAC or Justice or Oversight, or whatever,
22 that there will be tensions, of course there will. You
23 are the accounting officer and you are expected to go
24 down there and account for yourself and your
25 organisation. So there's bound to be issues arising 15:12
26 that would be confrontational, yes.

27 511 Q. And you arrived to the meeting, who was there with you?
28 The Deputy Commissioner Nóirín O'Sullivan was there
29 with you?

1 A. Yes.

2 512 Q. And Assistant Commissioner O'Mahony?

3 A. Yes.

4 513 Q. Mr. McLindon?

5 A. Yes, sitting behind me with Superintendent Taylor. 15:12

6 514 Q. Superintendent Taylor?

7 A. Yes.

8 515 Q. Was that the full complement?

9 A. No. You had Assistant Commissioner Twomey was there,

10 the Director of Finance Michael Culhane was there and 15:13

11 then I think there were some Justice officials,

12 Mr. Clark and some other individual I just don't recall

13 at the moment.

14 516 Q. And when you arrived, I think you arrived in

15 circumstances where you were very disapproving of the 15:13

16 idea that Sergeant McCabe, or anybody else, should be

17 giving evidence to the Public Accounts Committee in the

18 first instance, and second of all, that the data that

19 had been passed on to the Committee ought not to have

20 been passed onto the Committee? 15:13

21 A. Correct on both counts, Chairman.

22 517 Q. And you didn't approve of the Committee's proposal to

23 take Sergeant McCabe's evidence, isn't that right?

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

25 518 Q. If we look at page 1107: 15:14

26

27 "I see the point about the concept of the Garda

28 investigating the Garda, that is why we have an

29 inspectorate examining the system and an Ombudsman

1 examining how we do our business. I find there is a
2 certain irony in that the very person charged with
3 policing and security of the State, the person we all
4 put our trust and belief in on a daily basis, the man
5 responsible for all these serious matters is the very 15:14
6 person who stands accused by the deputy's submission of
7 not being open and transparent or producing a report as
8 such. I find that extraordinary. I do respect the
9 notion that Gardaí, in certain circumstances, should
10 not be investigating one another. That is why we have 15:15
11 the Ombudsman's Commission, to deal with those cases.
12 Clearly, here, however, we have two people out of a
13 force of over 13,000 who are making extraordinary and
14 serious allegations. There is not a whisper anywhere
15 else or from any other member of the Garda Síochána, 15:15
16 however, about this corruption, malpractice and other
17 charges levied against their fellow officers. Frankly,
18 on a person level I think it is quite disgusting. That
19 said, I have openly admitted here to this Committee
20 that there were difficulties within the system and that 15:15
21 we have addressed them. That is where the deputy and I
22 will agree to differ. With the greatest of respect, I
23 do respect what the deputy is saying to me."

24
25 And of course, the use there of the word "disgusting" 15:16
26 caused a media storm and you were put under the cosh --

27 A. I was, yes.

28 519 Q. -- immediately.

29 A. Yes.

1 520 Q. And the reaction. I'll just go on, because you've
2 pointed it out in your statement and I think I brought
3 Mr. McGuinness through this as well, because --

4 A. Well, if I may, Chairman, I won't detain you, but I
5 think --

15:16

6 521 Q. Well, I'll just bring you back to that. But you see,
7 at the time, if you look at page 650 of the material,
8 this is --

9 A. Thank you.

10 522 Q. Have you got it?

15:17

11 A. Yes.

12 523 Q. This is again an excerpt from the transcript. And we
13 have Deputy Mary Lou McDonald.

14

15 "Mary Lou McDonald: The Commissioner described their
16 behaviour as disgusting. It is a strong thing to say,
17 that they have carried themselves in a manner that is
18 disgusting."

15:17

19

20 Then you reply:

15:17

21

22 "Correct. In the context of the manner in which they
23 decided to pursue what they are pursuing, that is
24 definitely something that I cannot accept at any
25 level."

15:17

26 A. Yes, Chairman.

27 524 Q. And that was followed by a further extract at page 654.
28 Have you got that?

29

1 "However, the Deputy should be very clear that from my
2 perspective, as Commissioner of An Garda Síochána, I
3 will not allow anyone reporting wrongdoing to be
4 bullied, harassed, intimidated or whatever adverb or
5 adjective the deputy chooses to use. That will not 15:18
6 happen on my watch. There is a mechanism and procedure
7 for reporting wrongdoing which should not be going off
8 to a third party with a whole raft of serious
9 allegations, criminal and otherwise, and producing them
10 elsewhere." 15:18

11
12 Then if we go on to page 655 of the material:

13
14 "People will be aware, and it's a matter of public
15 record, of how I do my business and how this man beside 15:18
16 me, Deputy Commissioner O'Mahony, does his business.
17 We have, and I have said this in the past, both been
18 involved in investigations where we sent our colleagues
19 to jail, not a very pleasant exercise I can assure
20 everyone sitting in this room. We have had on 15:19
21 occasion, where one of our own colleague's wives
22 collapses in front of us and when he was sent to jail.
23 So no one can point the finger at me and say that I
24 will not take firm action if I have any hint of
25 wrongdoing." 15:19

26
27 Then at page 657 of the material you said later on:

28
29 "To repeat what I said earlier, if anybody has any

1 wrongdoing to report, they have a clear responsibility
2 as members of An Garda Síochána to report those
3 matters. There is a process of doing that up through
4 the authorities or going down through the confidential
5 reporting mechanism. I can assure the committee once 15:19
6 again, this is probably the third or fourth time I have
7 done it, but I will do it again, that I will support
8 fully any person who is reporting wrongdoing and so
9 will these officers around me and all the other offices
10 in An Garda Síochána." 15:20

11
12 And then Mary Lou McDonald:

13
14 "So the Commissioner does not regard whistleblowers as
15 disloyal?" 15:20

16
17 And your answer is:

18
19 "How could I? I fully support the concept. Of course I
20 do." 15:20

21
22 Now, I've just referred to those because they're
23 matters that you'd like to highlight insofar as you'd a
24 very strong feeling afterwards that the manner in which
25 it was reported was, to some extent, taken out of 15:20
26 context and the words that you used didn't amount to
27 actually referring to Maurice McCabe or John Wilson as
28 being disgusting persons, isn't that right?

29 A. That's absolutely correct, Chairman, and I think it's a

1 very good summary of my position.

2 525 Q. And it's clear from the transcript that you were saying
3 was the manner in which they went about reporting --

4 A. That was the only --

5 526 Q. -- you regarded as disgusting. And of course, that's 15:21
6 an emotive word to use, and I'm sure you regret having
7 used that word?

8 A. Well, it is a very strong term, a very, very strong
9 term to use, but I had very strong feelings in that
10 regard. And that was my position then and 15:21
11 unfortunately that's the way things are. I had --

12 527 Q. Well, you see, it's because you had strong feelings at
13 the time, a little bit like what we were discussing
14 this morning in relation to Mr. Kean, as to why you
15 would do something that, you know, looking back on it, 15:21
16 you know is wrong; you know, sometimes one can be
17 overcome by one's feelings, isn't that right?

18 A. Yes. Well, of course that is true, yes. But I had
19 very strong feelings, Chairman, in relation to the
20 manner in which these matters were being brought before 15:21
21 a public forum. And at every level it was wrong as far
22 as I was concerned. And I know that that particular
23 comment was isolated and misconstrued to such a degree
24 that there has been miles of articles published since
25 pillorying me for more or less attaching that comment 15:22
26 to an objection to Sergeant McCabe reporting
27 wrongdoing. And I can assure this Tribunal that is
28 very, very far removed from what I was talking about at
29 that particular time.

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Sergeant McCabe rightly reported what he saw to be wrongdoing and indeed he has proved to be correct on quite a large amount of the issues that he has raised, and we know the other criticisms in relation to some of the other matters. But I would be the first to acknowledge that Sergeant McCabe has identified and did identify weaknesses in the system, there isn't a shadow of a doubt and I would be hypocritical to come in here and say otherwise. My only --

528 Q. Well, yes. And indeed on that very point, I mean, even Assistant Commissioner O'Mahony found that in 13% of the cases that he examined there was noncompliance with directions that had been given as to how the discretion should be exercised in relation to fixed charge penalty notices, isn't that right?

A. Yes. I suppose when you break it down, the range of complaints from Sergeant McCabe range in date from 1st January 2009 to June '12. And at that point in time there was over 1.46 million fixed charge notices issued. And when you break that down in terms of the attrition rate, it worked out at 4.55%. And when you looked at that percentile and you broke it down further in relation to prosecutorial discretion - i.e. people making representations etc. - it came to 2.57%, which is relatively small in the overall context. But having said that, Chairman, it did amount to over 10,000 fixed charge notices per annum. And again breaking that down, it is less than two cancellations per week per

1 Garda district. And a district could be five or six
2 stations. So that's putting things in perspective at a
3 macro level. But of course, there is no excuse for so
4 many of those cancellations that weren't appropriate.

5 529 Q. And do you recall whether or not Deputy Commissioner 15:25
6 O'Sullivan passed you a note when you made the comment?
7 A. I don't recall that. I saw the evidence, but I don't
8 actually recall that.

9 530 Q. Well, do you think it's something that you would
10 recall? 15:25
11 A. I would suspect that I would've recalled it, yes. But,
12 you know, the range of questions that were coming that
13 day and the amount of topics we covered within that
14 cohort, notes were being passed to me on a pretty
15 regular basis. So, you know, it may be a note that was 15:25
16 there and I didn't see it or whatever.

17 531 Q. Yeah. I know I get many from Mr. McGuinness and --
18 MR. MCGUINNESS: I deny that.

19 532 Q. MR. MARRINAN: -- so I know the feeling. But in any
20 event, when you broke up afterwards - and I'm going to 15:26
21 come to your interaction with Mr. McGuinness,
22 Mr. McCarthy and Mr. Deasy in due course - but was
23 there any discussion immediately afterwards amongst the
24 group about the comment?
25 A. I don't recall there and then, no. No. Certainly we 15:26
26 discussed it in the day and days afterwards. As I said
27 in my statement, of course, you know, it received a
28 hell of a lot of publicity and of course we discussed
29 it, you know.

1 533 Q. what was your style of management? were you receptive
2 to criticism or people --
3 A. Absolutely.
4 534 Q. -- advancing or throwing out ideas or perhaps
5 suggesting to you that maybe you'd gone too far? 15:26
6 A. I would be totally receptive. And --
7 535 Q. would those around you know that?
8 A. well, I would hope so, because we had our monthly
9 regular meetings and people expressed their views all
10 the time. And indeed when you're trying to make an 15:27
11 executive decision, if you're required to make those
12 decisions, of course you listen to the people around
13 you and particularly the people who would be considered
14 to be responsible for the areas where the decision had
15 to be made. If you didn't do that, sure, you know, 15:27
16 you'd be at nothing, you certainly wouldn't be doing
17 your job correctly, in my view.
18 536 Q. And did anybody say, who was in the party, did anybody
19 say anything to you about the comment that you had
20 made? 15:27
21 A. Immediately afterwards?
22 537 Q. Yes.
23 A. I don't recall, no.
24 538 Q. Did you travel back to headquarters?
25 A. I did indeed, yes. 15:27
26 539 Q. were you alone in the car or were you accompanied?
27 Obviously your driver was driving you, but were you
28 accompanied by other senior officers?
29 A. I think perhaps the Deputy Commissioner would be with

1 me. Pretty sure. Pretty sure.

2 540 Q. Do you recall if she said anything to you driving back
3 as to the comment that you had made and the
4 appropriateness of it?

5 A. Nothing specific anyway, no. 15:28

6 541 Q. Em --

7 A. We certainly discussed it in the days afterwards. And
8 just for completeness - sorry, maybe you're going on to
9 that - I took the view there was so much publicity
10 about that I was best off letting it roll, that I 15:28
11 would, by interjecting, that I would be adding fuel to
12 the fire.

13 542 Q. Well, you were getting quite a lot of advice from
14 colleagues and I think Mr. McLindon drafted a suggested
15 clarification for you, is that right? 15:28

16 A. I'm not altogether sure.

17 543 Q. Em --

18 A. I think I saw something in the documentation, yes.

19 544 Q. Yeah.

20 A. I think I did, yes. 15:29

21 545 Q. If I could have 1269 up on the screen please. This is
22 an e-mail from Mr. McLindon to you dated 31st January
23 2014.

24 A. Yeah. Thank you, Chairman.

25 546 Q. It's an e-mail, as I say, on 31st January 2014: 15:30
26
27 "For your consideration and in order to provide some
28 balance and context to the ongoing coverage over the
29 fixed charge penalty notices matter and to turn the

1 conversation back to the positive activities of An
2 Garda Síochána, I propose the following to take place
3 next week: (1) a pre recorded interview between
4 yourself and Sean O'Rourke to address issues in
5 relation to the fixed charge penalty notice, but also 15:30
6 your career, the great work carried out by members of
7 An Garda Síochána every day of the week, intelligence
8 led policing operation."

9
10 And then an investigation. 15:31

11
12 "The values of An Garda Síochána. I have attached a
13 document outlining some of the potential key messages
14 for guidance. The areas for discussion are subject to
15 agreement with Sean O'Rourke and his producer. In 15:31
16 order for us to agree to this interview, Sean O'Rourke
17 will have to give a commitment that the interview is
18 not dominated or solely focused on the fixed charge
19 penalty notices."

20
21 And if you just turn over the page then, at 1630, four 15:31
22 paragraphs down then "Disgusting" in quotation marks:
23

24 "Firstly, I want to make it quite clear that this was
25 not a comment on the individuals and I didn't say I 15:31
26 found them personally disgusting. As I made very clear
27 to the committee, the individuals are involved in High
28 Court actions against the state, so I didn't and won't
29 be commenting on them individually."

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All right?

A. Yes.

547 Q. So, you know, that was suggested to you. And you in fact didn't agree to that, isn't that right?

15:32

A. Well, I declined to -- yes, that's a fair assessment, yes.

548 Q. And --

A. I suppose my thinking, Mr. Marrinan, sorry, just for what it's worth, is that by adding -- by coming out publicly, you know, I felt anyway that I would be seen to be making excuses and that it might just fan the problem rather than reduce it. So that was my thinking in not going forward with that.

15:32

549 Q. Yeah, well, they always say an apology accompanied by an excuse is meaningless. But you could perhaps have apologised, full stop, for any offence that was taken.

15:32

A. Well, I mean, the fact is I had a particular view of what was happening and that it shouldn't be happening. And they were -- that was the context. And I did qualify that at the time, contrary to what has been said, I did qualify it by saying the only issue I had with Sergeant McCabe was the manner in which these documents were being produced to a third party and that they were going to be discussed in public. I was the Data Protection Officer for An Garda Síochána, I had a statutory duty to protect the information contained within the Garda system, and that was a duty I took very, very seriously.

15:33

15:33

1 550 Q. If you go to page 2999 of the material.
2 A. Sorry, two-nine?
3 551 Q. No, sorry, 3000 of the material. This is apparently a
4 press release, it's entered on 12th March 2014.
5 A. Thank you, Chairman. 15:34
6 552 Q. Have you got 3001?
7 A. Yes.
8 553 Q. The third last paragraph:
9
10 "There is one other matter that I would like to address 15:34
11 and which has been in the public domain for some time
12 and which refers to the use of the term 'disgusting' at
13 my recent Public Accounts Committee appearance on 23rd
14 January 2014. I want to clarify that my use of that
15 term was not in reference to the character of either 15:35
16 Sergeant McCabe or former Garda Wilson, but the manner
17 in which the personal and sensitive data was
18 inappropriately appearing in the public domain without
19 regard to due process and fair procedures. I stated at
20 the PAC and reiterate now my absolute support and 15:35
21 commitment to any member of An Garda Síochána who
22 reports wrongdoing of any kind."
23
24 That was a statement that you made, is that right?
25 A. Yes. 15:35
26 554 Q. It falls short of being an apology, but it's an
27 explanation and it's the explanation that in fact you
28 gave at the Public Accounts Committee meeting to --
29 A. It is.

1 555 Q. -- Mary Lou McDonald, amongst others, is that right?

2 A. That's correct, Chairman, yes.

3 MR. MARRINAN: I don't know, Sir, if that's an
4 appropriate time? I'm moving on to some fairly lengthy
5 matters.

6

7 THE HEARING WAS THEN ADJOURNED UNTIL MONDAY, 21ST MAY
8 2018 AT 10:00AM

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				5
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1 [7] - 3:31, 18:6, 63:27, 63:29, 95:21, 119:28, 155:3 1.4 [1] - 127:15 1.46 [1] - 151:20 10 [1] - 116:16 10,000 [1] - 151:27 100% [1] - 40:1 10:00AM [1] - 158:8 10:30 [1] - 78:16 10th [1] - 20:15 11 [2] - 20:21, 41:29 11/12 [1] - 9:10 1106 [1] - 138:9 1107 [2] - 144:14, 145:25 11:58:25 [1] - 72:23 11th [1] - 45:28 12 [1] - 28:29 1231 [3] - 128:17, 130:27, 131:8 1237 [1] - 132:5 1238 [2] - 132:3, 132:20 1246 [1] - 134:23 1247 [1] - 135:13 1269 [1] - 154:21 1282 [2] - 133:24, 134:2 1286 [1] - 136:23 12:30 [1] - 65:16 12:43 [1] - 80:2 12:50 [1] - 72:26 12th [1] - 157:4 13 [1] - 72:23 13% [1] - 151:12 13,000 [1] - 146:13 139 [1] - 71:5 13:09 [1] - 75:26 13th [3] - 25:10, 56:11, 106:23	17 [2] - 1:10, 96:12 1773 [1] - 82:25 1774 [1] - 83:20 1783 [1] - 84:3 1793 [2] - 59:4, 59:8 17th [3] - 93:7, 95:4, 124:19 18 [2] - 2:29, 72:23 18(3) [2] - 118:26, 119:11 1831 [2] - 72:4, 72:6 189 [3] - 11:24, 140:20, 140:21 18:03 [1] - 72:20 18th [6] - 22:4, 48:15, 120:14, 122:5, 124:24, 125:4 18TH [2] - 1:18, 6:1 19 [2] - 68:12, 69:10 19(3) [2] - 118:10, 119:10 1914 [2] - 12:21, 12:22 1915 [1] - 12:20 1916 [1] - 13:17 1921 [1] - 1:10 1973 [1] - 6:19 1986 [1] - 47:5 1988-2003 [3] - 118:6, 118:11, 119:1 1992 [1] - 129:14 1st [1] - 151:18	2,200 [1] - 140:20 2.57% [1] - 151:25 2/30/06 [1] - 129:15 20 [3] - 93:8, 99:14, 114:24 2002 [1] - 129:14 2005 [3] - 121:5, 123:6, 125:1 2006 [2] - 8:14, 34:2, 34:14, 34:29, 35:25, 36:12, 37:13, 38:17, 39:5, 39:16, 106:6, 129:3, 129:14, 129:16, 134:7, 134:12, 135:3, 135:8, 136:9 2006" [1] - 134:28 2006/2007/2008 [1] - 39:24 2007 [6] - 6:28, 34:29, 49:27, 105:13, 130:4, 135:8 2007/2008 [1] - 134:7 2008 [1] - 135:8 2009 [1] - 151:19 2009" [1] - 134:5 2010 [4] - 7:3, 7:8, 8:9, 37:15 2010" [1] - 135:17 2012 [1] - 13:21, 14:24, 16:23, 23:4, 33:17, 34:16, 37:12, 121:8, 122:3, 123:21, 133:19 2013 [24] - 24:5, 32:8, 32:13, 32:20, 34:19, 34:23, 37:12, 41:12, 41:15, 48:25, 49:1, 52:20, 53:7, 93:7, 96:12, 117:14, 117:18, 120:14, 120:18, 122:5, 125:4, 132:23, 143:16 2013/2014 [1] - 38:18 2014 [24] - 1:4, 6:11, 17:25, 23:4, 23:27, 34:19, 39:5, 43:6, 43:10, 43:29, 64:1, 64:4, 82:29, 85:18, 116:11, 128:9, 134:4, 135:28, 138:11, 144:8, 154:23, 154:25, 157:4, 157:14 2015 [2] - 23:29, 42:1 2016 [10] - 17:8, 17:14, 18:5, 19:7, 20:15, 20:22, 21:13, 22:4, 22:22, 23:3 2017 [1] - 1:6, 1:10, 25:11, 45:19, 46:3,	48:15, 56:14, 56:21, 58:29, 106:24, 114:28 2018 [4] - 1:18, 6:2, 59:8, 158:8 20th [2] - 56:20, 58:29 21 [3] - 2:25, 20:20, 42:1 21ST [1] - 158:7 21st [2] - 120:19, 134:4 22 [2] - 118:10, 118:27 23rd [8] - 6:19, 22:22, 46:6, 54:4, 55:2, 128:8, 144:8, 157:13 24 [1] - 140:17 24th [1] - 17:25, 23:26, 43:6, 43:10, 43:29, 72:19, 122:1, 122:3, 124:23, 128:8, 130:4 25 [2] - 70:12, 80:26 25/1 [1] - 75:25 25th [2] - 6:11, 7:4 26 [1] - 129:8 26th [2] - 17:8, 20:22 28 [1] - 76:15 28th [4] - 7:2, 17:14, 41:15, 46:3 2999 [1] - 157:1 29th [1] - 111:18	6
				6 [1] - 5:4 62 [3] - 121:4, 123:5, 124:29 64 [2] - 68:9, 68:12 640 [2] - 25:12, 26:21 641 [1] - 31:29 642 [1] - 41:8 644 [1] - 43:4 646 [1] - 43:26 648 [1] - 45:14 65 [1] - 126:25 650 [1] - 147:7 654 [1] - 147:27 655 [1] - 148:12 657 [1] - 148:27 659 [1] - 117:12 661 [1] - 119:19 662 [1] - 119:23 663 [1] - 120:12 67 [1] - 116:15 689 [1] - 45:20 691 [1] - 48:13 692 [1] - 48:14 693 [1] - 56:7 694 [3] - 52:8, 56:28, 93:14 695 [1] - 94:26 696 [1] - 57:12 697 [1] - 57:27 698 [1] - 8:29 6th [6] - 19:7, 21:13, 64:3, 82:28, 128:9, 128:16
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				3 [4] - 13:19, 19:9, 63:29, 120:7 3000 [1] - 157:3 3001 [1] - 157:6 30th [5] - 23:3, 45:19, 56:8, 85:18, 114:28 31st [3] - 18:5, 154:22, 154:25 32 [1] - 2:12 343 [1] - 41:23 3rd [1] - 23:28
				4
				4 [4] - 4:8, 4:21, 64:2, 101:26 4.55% [1] - 151:22 41 [3] - 20:19, 22:8, 36:3 43 [1] - 76:3 45 [1] - 71:5

7	<p>accepted [3] - 85:20, 86:15, 125:14</p> <p>access [2] - 8:17, 49:8</p> <p>accessed [2] - 14:9, 70:16</p> <p>accessing [2] - 13:24, 49:6</p> <p>accidents [2] - 12:9, 14:17</p> <p>accompanied [4] - 141:27, 153:26, 153:28, 156:15</p> <p>accompany [1] - 128:3</p> <p>accompanying [1] - 11:27</p> <p>accordance [3] - 118:5, 118:18, 119:1</p> <p>according [3] - 74:13, 77:27, 109:14</p> <p>accordingly [3] - 117:4, 118:8, 120:5</p> <p>account [7] - 9:15, 28:8, 108:3, 111:23, 115:26, 116:1, 144:24</p> <p>accountability [1] - 114:4</p> <p>Accounting [1] - 44:14</p> <p>accounting [1] - 144:23</p> <p>accounts [5] - 107:20, 109:13, 116:12, 121:8, 128:7</p> <p>Accounts [2] - 10:18, 24:3, 24:10, 43:25, 44:2, 44:15, 45:5, 46:6, 54:3, 66:17, 70:29, 71:1, 75:7, 120:12, 123:18, 137:13, 137:17, 144:12, 145:17, 157:13, 157:28</p> <p>accurate [1] - 111:23</p> <p>accusation [2] - 10:3, 107:3</p> <p>accusations [4] - 35:12, 35:26, 55:19, 107:29</p> <p>accused [3] - 80:8, 142:15, 146:6</p> <p>accusing [1] - 80:8</p> <p>achieved [1] - 18:16</p> <p>acknowledge [1] - 151:7</p> <p>acronym [2] - 114:1, 114:5</p> <p>ACT [2] - 1:4, 1:9</p> <p>act [3] - 121:5, 123:6,</p>	<p>125:1</p> <p>Act [1] - 36:4</p> <p>acted [2] - 89:25, 142:12</p> <p>acting [1] - 74:20</p> <p>action [6] - 1:28, 73:15, 78:23, 86:19, 134:15, 148:24</p> <p>actions [1] - 155:28</p> <p>activities [2] - 37:14, 155:1</p> <p>ACTIVITY [1] - 4:1</p> <p>Acts [5] - 24:12, 118:11, 118:20, 119:1, 120:6</p> <p>acts [2] - 118:6, 118:27</p> <p>actual [1] - 142:2</p> <p>acumen [1] - 29:16</p> <p>add [2] - 105:28, 108:17</p> <p>added [1] - 108:26</p> <p>adding [2] - 154:11, 156:10</p> <p>additional [2] - 56:26, 111:27</p> <p>address [9] - 50:16, 97:1, 100:7, 112:4, 112:26, 113:11, 122:22, 155:4, 157:10</p> <p>addressed [6] - 10:14, 18:29, 51:2, 95:21, 96:22, 146:21</p> <p>adequacy [3] - 121:9, 123:22, 126:16</p> <p>adhere [1] - 114:5</p> <p>ADJECTIVE [1] - 148:5</p> <p>ADJOURNED [2] - 92:12, 158:7</p> <p>ADJOURNMENT [1] - 93:2</p> <p>adjudicated [1] - 8:24</p> <p>administration [2] - 61:15, 142:1</p> <p>administrative [1] - 91:29</p> <p>admirer [1] - 106:20</p> <p>admissions [1] - 9:8</p> <p>admitted [1] - 146:19</p> <p>adopted [1] - 25:8</p> <p>advance [1] - 69:6</p> <p>advanced [1] - 82:10</p> <p>advancing [1] - 153:4</p> <p>adverb [1] - 148:4</p> <p>advice [16] - 85:14, 89:5, 89:8, 89:14, 118:22, 119:12, 119:25, 120:26,</p>	<p>120:27, 121:2, 121:15, 121:29, 125:5, 127:11, 127:16, 154:13</p> <p>advices [2] - 24:7, 127:4</p> <p>advise [1] - 138:26</p> <p>advised [9] - 19:11, 21:14, 24:28, 59:10, 118:28, 128:21, 130:14, 130:24, 143:19</p> <p>advisor [1] - 125:10</p> <p>advisors [1] - 101:3</p> <p>advisory [1] - 119:16</p> <p>affecting [1] - 78:13</p> <p>affidavit [1] - 71:9</p> <p>affirmation [1] - 22:29</p> <p>affront [1] - 52:23</p> <p>AFTER [1] - 93:1</p> <p>afternoon [4] - 66:1, 80:16, 84:26, 101:17</p> <p>afterwards [9] - 8:26, 39:4, 109:25, 149:24, 152:20, 152:23, 152:26, 153:21, 154:7</p> <p>age [1] - 129:22</p> <p>agenda [2] - 27:22, 28:3</p> <p>agendas [1] - 27:2</p> <p>agitating [1] - 11:20</p> <p>agree [16] - 9:7, 9:26, 9:29, 14:14, 30:4, 54:12, 54:17, 54:23, 62:23, 79:8, 113:14, 130:21, 135:10, 146:22, 155:16, 156:5</p> <p>agreeable [1] - 90:21</p> <p>agreed [10] - 14:13, 62:22, 64:21, 77:2, 77:4, 87:24, 87:26, 88:28, 89:7, 90:17</p> <p>agreement [3] - 97:2, 97:9, 155:15</p> <p>Aidan [1] - 132:23</p> <p>air [1] - 101:13</p> <p>aired [3] - 87:2, 97:11, 98:16</p> <p>airport [1] - 29:1</p> <p>airwaves [1] - 82:8</p> <p>airways [2] - 79:5, 87:1</p> <p>Alan [3] - 35:20, 41:10, 41:13</p> <p>ALAN [1] - 4:19</p> <p>alarmed [1] - 115:11</p> <p>albeit [1] - 85:18</p> <p>alerting [1] - 46:23</p>	<p>alia [1] - 121:4</p> <p>ALISON [2] - 2:17, 2:27</p> <p>alive [1] - 116:29</p> <p>allay [1] - 18:7</p> <p>allegation [28] - 8:14, 8:23, 20:10, 27:12, 27:20, 28:3, 28:7, 34:2, 34:14, 35:25, 36:12, 36:25, 37:2, 37:13, 38:17, 39:6, 39:17, 45:2, 45:15, 56:9, 57:1, 58:4, 116:5, 134:12, 135:3, 135:9, 136:10, 141:24</p> <p>allegations [58] - 11:6, 11:24, 12:18, 14:20, 17:19, 18:10, 18:15, 18:21, 18:28, 19:12, 19:29, 20:3, 20:29, 21:1, 21:4, 21:6, 21:15, 21:27, 21:28, 22:7, 22:9, 24:6, 25:23, 25:28, 26:4, 27:18, 32:6, 34:8, 35:2, 38:12, 40:15, 41:5, 43:13, 43:16, 45:11, 53:20, 53:21, 53:27, 53:28, 55:12, 82:12, 93:5, 96:19, 99:16, 99:26, 102:28, 103:1, 103:4, 129:5, 137:19, 137:24, 140:17, 140:20, 140:21, 143:8, 146:14, 148:9</p> <p>allegations" [1] - 132:21</p> <p>allege [1] - 26:28</p> <p>alleged [10] - 19:14, 19:28, 21:18, 25:25, 39:29, 45:3, 46:5, 114:24, 129:27, 140:16</p> <p>allegedly [1] - 99:14</p> <p>alleges [4] - 27:8, 109:18, 129:21, 144:9</p> <p>allocated [1] - 6:20</p> <p>allow [2] - 118:3, 148:3</p> <p>almost [5] - 76:5, 77:9, 80:20, 81:15, 109:25</p> <p>alone [5] - 48:10, 77:4, 101:3, 101:5, 153:26</p> <p>altered [1] - 52:20</p> <p>alternative [1] - 19:3</p> <p>altogether [1] -</p>
8	<p>8 [4] - 2:20, 3:23, 12:20, 70:12</p>			
9	<p>9-15 [1] - 4:16</p> <p>9:43 [1] - 77:27</p> <p>9th [2] - 117:17, 135:28</p>			
A	<p>A4 [2] - 20:20, 20:21</p> <p>abandon [1] - 58:9</p> <p>able [5] - 28:10, 42:10, 69:28, 73:27, 76:26</p> <p>above-named [1] - 1:27</p> <p>abroad [1] - 48:18</p> <p>absolute [1] - 157:20</p> <p>absolutely [36] - 10:25, 22:29, 24:23, 27:11, 34:15, 34:20, 38:13, 38:29, 39:11, 40:1, 53:13, 53:19, 59:19, 67:17, 71:18, 75:11, 77:2, 77:4, 78:15, 82:24, 84:7, 86:24, 87:15, 89:9, 90:15, 103:15, 104:14, 108:13, 112:10, 112:14, 143:2, 143:24, 149:29, 153:3</p> <p>abuse [1] - 32:7</p> <p>acceded [1] - 139:27</p> <p>accept [18] - 20:18, 39:18, 40:8, 51:13, 51:19, 53:27, 60:27, 63:1, 63:18, 77:7, 83:24, 84:5, 84:7, 88:19, 106:7, 110:27, 112:14, 147:24</p>			

<p>154:16</p> <p>amend [1] - 111:21</p> <p>amount [6] - 66:23, 78:5, 149:26, 151:4, 151:27, 152:13</p> <p>analysis [1] - 126:2</p> <p>AND [4] - 1:4, 1:5, 1:9, 3:4</p> <p>Andrew [2] - 97:25, 127:20</p> <p>anger [1] - 50:20</p> <p>angry [7] - 31:15, 49:15, 49:19, 49:21, 49:24, 52:12, 98:6</p> <p>animosity [1] - 107:9</p> <p>Anne [1] - 45:27</p> <p>annoyance [2] - 50:20, 51:15</p> <p>annoyed [3] - 51:17, 52:17, 97:16</p> <p>annual [3] - 121:7, 123:20, 124:6</p> <p>annually [2] - 93:20, 93:26</p> <p>annum [1] - 151:28</p> <p>anonimised [2] - 121:22, 126:2</p> <p>anonymity [3] - 14:6, 15:22, 16:16</p> <p>anonymous [1] - 12:29</p> <p>answer [10] - 20:10, 54:29, 66:22, 90:27, 98:23, 123:19, 124:14, 126:15, 140:5, 149:17</p> <p>answered [1] - 82:1</p> <p>answering [1] - 124:4</p> <p>answers [1] - 80:14</p> <p>ANTHONY [1] - 3:10</p> <p>anticrime [1] - 94:8</p> <p>antifraud [1] - 99:10</p> <p>ANTRIM [1] - 4:17</p> <p>anxious [3] - 65:17, 74:20, 91:10</p> <p>anyway [5] - 49:7, 74:10, 102:5, 154:5, 156:11</p> <p>apart [1] - 94:23</p> <p>apologies [1] - 119:11</p> <p>apologise [2] - 16:22, 56:5</p> <p>apologised [1] - 156:17</p> <p>apology [2] - 156:15, 157:26</p> <p>apparent [4] - 12:8, 12:10, 23:3, 43:28</p>	<p>appeal [4] - 93:25, 94:9, 94:19, 98:20</p> <p>appeals [1] - 94:2</p> <p>appear [14] - 14:10, 16:18, 25:15, 40:20, 44:2, 53:26, 68:1, 79:3, 79:25, 88:19, 107:27, 131:28, 135:1, 136:7</p> <p>appearance [8] - 10:17, 43:24, 78:1, 93:21, 95:3, 126:20, 128:7, 157:13</p> <p>APPEARANCES [1] - 2:1</p> <p>appeared [7] - 60:2, 60:5, 68:22, 69:15, 115:18, 117:16, 144:17</p> <p>appearing [4] - 15:17, 79:11, 94:27, 157:18</p> <p>applied [3] - 50:2, 123:22, 126:16</p> <p>appoint [1] - 29:2</p> <p>appointed [10] - 6:24, 6:26, 6:29, 7:3, 11:2, 11:5, 11:16, 28:17, 28:28, 130:2</p> <p>appreciate [4] - 53:9, 53:12, 53:13, 62:28</p> <p>appreciated [1] - 83:18</p> <p>apprised [1] - 40:14</p> <p>approached [1] - 16:15</p> <p>appropriate [19] - 19:13, 21:17, 30:29, 50:28, 73:6, 85:29, 86:19, 86:21, 87:20, 87:23, 87:24, 87:25, 87:27, 88:12, 98:19, 137:25, 138:26, 152:4, 158:4</p> <p>appropriateness [1] - 154:4</p> <p>approve [1] - 145:22</p> <p>April [2] - 48:25, 58:29</p> <p>area [2] - 91:29, 102:24</p> <p>areas [3] - 90:18, 153:14, 155:14</p> <p>arena [1] - 38:3</p> <p>argue [1] - 112:11</p> <p>argued [1] - 96:19</p> <p>argument [1] - 107:15</p> <p>arise [3] - 18:23, 121:14, 137:12</p>	<p>arisen [1] - 135:11</p> <p>arising [10] - 16:9, 24:29, 48:20, 99:20, 103:23, 128:5, 131:29, 137:9, 142:8, 144:25</p> <p>arose [3] - 67:7, 96:12, 105:17</p> <p>ARRAN [3] - 2:12, 4:11, 4:11</p> <p>arranged [2] - 51:19, 121:19</p> <p>arrest [2] - 31:4, 31:17</p> <p>arrested [1] - 31:19</p> <p>arrive [2] - 63:10, 144:7</p> <p>arrived [11] - 61:28, 62:7, 63:7, 88:27, 97:4, 97:20, 101:2, 101:7, 144:27, 145:14</p> <p>article [8] - 52:14, 53:6, 114:29, 115:4, 115:9, 115:11, 117:16, 132:11</p> <p>articles [2] - 115:14, 150:24</p> <p>articulate [1] - 37:10</p> <p>AS [3] - 6:1, 6:8, 93:1</p> <p>ascertain [4] - 18:16, 18:19, 22:15, 121:17</p> <p>ascertained [2] - 17:23, 18:1</p> <p>aspect [3] - 12:17, 130:2, 143:18</p> <p>aspects [2] - 115:17, 128:24</p> <p>assault [10] - 8:15, 9:14, 9:28, 34:2, 40:1, 82:15, 106:6, 135:10, 136:10</p> <p>assert [1] - 23:29</p> <p>asserted [1] - 58:11</p> <p>assertion [1] - 14:7</p> <p>assessment [1] - 156:6</p> <p>assist [4] - 86:1, 91:1, 124:3, 127:18</p> <p>assistance [6] - 83:17, 94:1, 111:25, 115:17, 127:4, 127:19</p> <p>Assistant [40] - 6:26, 7:13, 10:22, 11:4, 11:15, 12:7, 12:10, 12:24, 13:13, 14:11, 16:10, 34:13, 35:6, 38:6, 39:21, 41:14, 51:9, 51:19, 65:18, 66:10, 74:8, 99:28, 103:1, 103:3, 103:8,</p>	<p>103:22, 103:25, 104:10, 131:24, 131:27, 134:24, 135:29, 140:9, 140:27, 141:14, 142:4, 143:6, 145:2, 145:9, 151:12</p> <p>assistant [4] - 51:8, 51:10, 71:26, 99:27</p> <p>assisted [1] - 93:28</p> <p>associate [1] - 48:4</p> <p>associated [2] - 33:12, 47:24</p> <p>ASSOCIATED [1] - 3:15</p> <p>assume [2] - 68:4, 122:15</p> <p>assure [4] - 126:10, 148:19, 149:5, 150:27</p> <p>AT [1] - 158:8</p> <p>attached [4] - 58:18, 59:19, 91:23, 155:12</p> <p>attaching [3] - 67:20, 79:23, 150:25</p> <p>attempt [2] - 15:19, 63:3</p> <p>attempting [1] - 101:11</p> <p>attend [3] - 73:27, 122:24, 123:18</p> <p>attendance [2] - 123:17, 124:2</p> <p>attending [2] - 49:27, 124:3</p> <p>attention [12] - 10:2, 10:15, 27:20, 27:28, 37:16, 60:21, 81:23, 92:3, 92:8, 95:12, 115:20, 139:1</p> <p>attitude [1] - 8:7</p> <p>Attorney [13] - 24:8, 118:22, 119:13, 119:15, 119:17, 119:25, 121:7, 122:19, 122:26, 123:20, 124:5, 126:8</p> <p>attorney [1] - 119:17</p> <p>attributed [1] - 16:25</p> <p>attrition [1] - 151:22</p> <p>audience [2] - 112:25, 113:13</p> <p>Auditor [2] - 53:23, 56:10</p> <p>August [4] - 32:20, 34:23, 42:1, 130:4</p> <p>AUGUSTUS [1] - 2:28</p> <p>author [5] - 11:28, 12:17, 12:29, 14:17, 140:26</p>	<p>authorisation [3] - 118:24, 120:4, 123:11</p> <p>authorise [2] - 123:9, 125:1</p> <p>authorities [2] - 138:24, 149:4</p> <p>authority [1] - 118:16</p> <p>authors [1] - 12:29</p> <p>avail [1] - 23:17</p> <p>available [2] - 57:4, 130:16</p> <p>availed [1] - 138:17</p> <p>avoid [1] - 7:23</p> <p>avoidance [1] - 58:7</p> <p>aware [33] - 8:9, 13:8, 13:21, 15:25, 16:29, 20:3, 23:15, 32:5, 34:3, 36:2, 36:6, 36:8, 36:18, 38:21, 38:22, 43:17, 44:24, 47:19, 48:5, 49:3, 49:4, 60:16, 61:19, 70:27, 99:26, 99:29, 100:20, 109:9, 110:25, 110:29, 143:5, 143:22, 148:14</p> <p>awareness [2] - 8:22, 16:24</p> <p>awful [1] - 16:18</p>
B				
<p>background [9] - 28:23, 36:1, 36:7, 36:19, 38:21, 40:23, 89:19, 100:5, 102:6</p> <p>bad [3] - 40:17, 85:9, 107:12</p> <p>balance [2] - 78:12, 154:28</p> <p>bar [1] - 25:3</p> <p>BARRINGTON [1] - 4:19</p> <p>based [5] - 25:23, 70:19, 141:17, 142:6</p> <p>basis [15] - 9:17, 9:27, 13:4, 28:27, 31:23, 34:10, 59:22, 64:9, 82:1, 113:25, 125:23, 139:21, 142:19, 146:4, 152:15</p> <p>bat [1] - 144:15</p> <p>bear [2] - 47:28, 128:9</p> <p>became [6] - 7:10, 8:8, 12:8, 12:27, 16:29, 49:8</p> <p>become [4] - 16:26,</p>				

<p>19:29, 29:27, 101:12 becoming [2] - 17:29, 20:3 BEEN [1] - 6:7 beg [3] - 38:24, 72:10, 119:9 begin [1] - 129:28 behalf [5] - 30:25, 42:10, 58:11, 88:2, 139:26 behave [1] - 87:7 behaviour [1] - 147:16 behest [1] - 81:27 behind [10] - 14:8, 15:25, 15:27, 16:20, 35:24, 35:25, 79:18, 113:29, 129:28, 145:5 BELFAST [1] - 4:16 belief [4] - 31:1, 31:25, 58:5, 146:4 below [1] - 137:5 benefactor [1] - 125:25 beneficial [1] - 29:18 benefit [1] - 7:29 berett [1] - 19:23 BERRY [1] - 4:14 beside [2] - 137:1, 148:15 best [3] - 76:24, 82:1, 154:10 better [4] - 40:11, 62:17, 111:9, 126:4 between [18] - 14:27, 22:7, 23:4, 30:10, 37:24, 38:1, 55:15, 65:15, 72:17, 90:6, 91:10, 91:12, 96:13, 109:12, 110:7, 112:7, 125:24, 155:3 beyond [6] - 10:15, 29:8, 30:22, 34:5, 55:23, 131:29 big [1] - 105:24 bill [1] - 140:1 billion [1] - 127:15 Billy [1] - 119:20 bit [6] - 37:10, 51:24, 98:6, 116:18, 143:28, 150:13 BL [14] - 2:7, 2:10, 2:16, 2:16, 2:17, 2:23, 2:27, 2:28, 3:1, 3:5, 3:10, 4:10, 4:14, 4:19 black [1] - 35:6 blacken [1] - 53:11 blank [1] - 100:18 Bloomfield [1] - 33:8 board [1] - 127:22</p>	<p>bodies [1] - 33:13 bogged [1] - 7:23 bom [2] - 91:1 bom' [1] - 91:1 bom-bom-bom' [1] - 91:1 bore [2] - 30:6, 31:2 bottom [3] - 41:23, 129:15, 134:17 Boucher [40] - 53:8, 53:22, 54:10, 55:5, 55:29, 57:2, 57:8, 57:10, 57:13, 57:20, 57:23, 93:6, 95:13, 96:9, 97:12, 97:15, 97:26, 99:21, 100:15, 100:28, 104:15, 104:27, 105:21, 106:26, 106:29, 107:5, 107:16, 108:15, 109:5, 110:4, 110:15, 110:17, 110:26, 111:1, 111:15, 112:12, 114:6, 115:5, 115:27, 116:6 Boucher-Hayes [39] - 53:8, 53:22, 54:10, 55:5, 55:29, 57:2, 57:8, 57:10, 57:13, 57:20, 57:23, 93:6, 95:13, 96:9, 97:12, 97:15, 97:26, 99:21, 100:15, 100:28, 104:15, 104:27, 105:21, 106:26, 106:29, 107:5, 107:16, 108:15, 109:5, 110:4, 110:15, 110:17, 110:26, 111:1, 111:15, 112:12, 114:6, 115:5, 115:27, 116:6 Boucher-Hayes's [1] - 115:5 bound [1] - 144:25 BOW [1] - 2:29 boys [2] - 40:22, 131:14 brackets [1] - 137:2 Branch [1] - 28:24 breach [3] - 118:10, 118:20, 120:5 breached [1] - 118:27 break [2] - 151:17, 151:21 breaking [2] - 85:3, 151:28 BREFFNI [1] - 2:10</p>	<p>BRIAN [1] - 4:20 brief [5] - 26:24, 43:9, 100:18, 130:17, 131:13 briefing [2] - 41:16, 58:4 briefly [3] - 28:17, 28:29, 33:25 bring [7] - 13:12, 31:20, 71:26, 116:8, 129:8, 136:16, 147:6 bringing [2] - 37:15, 38:2 broad [2] - 25:24, 81:24 broadcaster [1] - 106:19 broadcasting [1] - 58:6 BRODERICK [1] - 3:28 broke [3] - 98:2, 151:23, 152:20 brought [11] - 8:29, 10:2, 61:29, 95:8, 95:12, 102:21, 115:20, 131:3, 137:19, 147:2, 150:20 budget [1] - 127:14 build [1] - 78:1 bullet [3] - 62:18, 74:26, 86:5 bullied [1] - 148:4 buried [2] - 34:22, 60:14 BURNS [1] - 2:22 business [6] - 10:20, 30:25, 82:5, 146:1, 148:15, 148:16 buttonholed [1] - 109:26 BY [16] - 1:5, 1:8, 2:11, 2:17, 2:23, 2:28, 3:2, 3:6, 3:17, 4:7, 4:10, 4:14, 4:20, 5:4, 6:8 Byrne [10] - 7:13, 8:10, 10:22, 11:4, 33:20, 38:6, 103:22, 103:25, 135:18, 141:8 Byrne/McGinn [4] - 7:8, 10:6, 11:7, 103:23</p>	<p>6:10, 7:17, 13:22, 19:21, 31:21, 54:17, 59:5, 60:13, 63:27, 63:29, 72:9, 76:28, 78:25, 82:26, 87:11, 93:4, 96:17, 110:14, 111:24, 111:29, 112:16, 114:15, 115:3, 115:7, 129:9 campaign [4] - 25:26, 27:8, 27:13, 27:14 cancellation [9] - 13:25, 24:6, 52:27, 102:28, 114:17, 117:19, 117:22, 118:3, 140:16 cancellations [3] - 15:9, 151:29, 152:4 cancelled [8] - 48:22, 50:3, 50:4, 99:14, 114:24, 124:10, 125:22, 126:12 cancelling [2] - 125:24, 142:28 cannot [9] - 18:9, 22:15, 37:17, 40:3, 55:18, 107:22, 123:14, 124:1, 147:24 capable [1] - 18:29 capacity [2] - 24:2, 119:29 car [2] - 59:28, 153:26 career [4] - 6:15, 6:16, 31:13, 155:6 careful [2] - 90:23, 142:13 carefully [2] - 67:12, 140:14 carried [4] - 25:2, 133:7, 147:17, 155:6 carry [1] - 97:9 CARTHAGE [1] - 2:23 case [26] - 15:16, 16:23, 22:24, 29:7, 39:19, 39:26, 51:17, 52:19, 52:22, 67:13, 70:27, 79:27, 81:24, 84:25, 85:8, 85:23, 91:23, 94:18, 98:21, 99:20, 105:6, 105:16, 117:4, 126:11, 131:2, 140:12 cases [4] - 124:2, 124:13, 146:11, 151:13 CASTLE [1] - 1:17</p>	<p>catalyst [1] - 38:27 catch [1] - 104:21 categorically [1] - 26:23 CATHAL [1] - 4:19 caused [5] - 19:25, 52:12, 85:24, 107:10, 146:26 caution [1] - 94:5 Cavan [1] - 15:3 celebrating [1] - 94:6 celebrities [1] - 77:11 certain [5] - 17:9, 123:8, 146:2, 146:9 CERTAIN [1] - 1:4 certainly [92] - 6:18, 7:7, 8:5, 8:19, 10:15, 12:12, 12:16, 13:8, 14:15, 19:29, 25:7, 28:28, 29:14, 30:20, 30:21, 31:12, 35:7, 38:6, 38:14, 38:26, 38:29, 39:21, 39:29, 48:3, 49:19, 49:24, 51:17, 52:3, 52:19, 59:15, 62:16, 62:19, 67:21, 69:6, 71:10, 71:29, 72:2, 74:7, 74:10, 74:15, 77:22, 78:8, 78:14, 79:14, 79:16, 79:18, 79:20, 79:24, 79:26, 79:27, 81:2, 81:27, 82:4, 82:7, 82:22, 83:18, 85:10, 85:23, 88:24, 89:6, 89:21, 91:14, 97:24, 100:23, 101:10, 103:9, 103:20, 104:25, 105:8, 106:28, 107:6, 107:14, 107:28, 107:29, 108:11, 108:22, 109:5, 109:22, 112:10, 114:22, 114:26, 115:15, 115:23, 116:22, 136:16, 136:18, 137:29, 139:24, 140:7, 152:25, 153:16, 154:7 certify [1] - 1:25 chain [1] - 39:24 chair [2] - 98:13, 117:15 CHAIRMAN [2] - 111:6, 111:11 Chairman [189] - 6:13, 6:16, 6:18, 7:16, 7:28, 8:1, 8:5, 8:12,</p>
C				
		<p>CALLINAN [2] - 5:3, 6:7 Callinan [26] - 6:5,</p>		

<p>8:16, 8:19, 9:6, 9:21, 9:26, 10:1, 10:5, 10:12, 10:25, 10:29, 11:10, 11:13, 11:18, 11:22, 13:16, 14:27, 16:13, 16:23, 17:3, 17:11, 19:24, 19:27, 20:12, 22:2, 24:2, 25:18, 26:16, 26:20, 28:15, 28:20, 28:22, 29:14, 30:4, 30:8, 30:11, 32:18, 32:22, 32:25, 32:28, 33:1, 33:19, 34:17, 34:20, 35:4, 35:28, 37:25, 38:11, 38:19, 39:7, 39:10, 40:13, 40:26, 41:4, 43:21, 45:24, 47:9, 47:11, 48:19, 48:24, 48:26, 49:4, 49:7, 49:10, 49:14, 49:19, 52:22, 52:29, 53:3, 53:13, 54:22, 55:17, 55:26, 56:14, 57:6, 57:28, 59:2, 59:13, 59:15, 59:27, 60:7, 61:23, 62:10, 62:12, 62:15, 63:4, 65:13, 72:11, 72:29, 74:15, 74:23, 75:21, 76:8, 77:4, 77:7, 77:23, 79:13, 85:8, 85:14, 87:19, 88:5, 92:10, 93:11, 93:23, 93:24, 93:27, 94:12, 94:17, 94:21, 95:1, 95:6, 95:15, 95:17, 96:8, 96:28, 98:26, 98:28, 99:3, 99:7, 100:4, 100:8, 100:13, 101:15, 102:4, 102:7, 103:7, 103:20, 103:28, 104:25, 104:29, 105:15, 105:22, 106:4, 106:7, 106:8, 106:21, 106:28, 107:28, 110:2, 110:5, 111:10, 112:11, 112:21, 114:3, 115:2, 115:10, 115:17, 115:25, 116:8, 118:2, 119:7, 119:22, 120:13, 122:2, 125:14, 127:1, 128:1, 128:20, 128:26, 129:6, 129:26, 131:12, 133:5, 133:15, 134:20, 135:18, 136:25, 141:10, 141:19, 141:27,</p>	<p>145:21, 145:24, 147:4, 147:26, 149:29, 150:19, 151:27, 154:24, 157:5, 158:2 Chairman's [5] - 56:15, 81:23, 92:3, 106:23, 120:19 CHAMBERS [1] - 2:24 champion [1] - 47:25 change [2] - 113:7, 113:24 chapter [4] - 121:6, 122:27, 123:19, 124:5 character [4] - 53:11, 65:14, 102:17, 157:15 character/integrity [1] - 136:27 charge [42] - 6:29, 7:2, 11:11, 13:26, 24:7, 33:13, 33:29, 34:12, 35:2, 37:15, 41:2, 48:21, 51:20, 61:14, 99:15, 100:11, 102:29, 114:24, 117:20, 118:3, 120:25, 121:9, 121:23, 122:22, 123:24, 123:29, 124:8, 124:10, 124:27, 126:4, 126:12, 128:25, 132:29, 140:17, 142:2, 143:24, 151:15, 151:20, 151:28, 154:29, 155:5, 155:18 charged [2] - 18:2, 146:2 charges [1] - 146:17 charity [3] - 64:7, 73:23, 89:23 CHARLETON [2] - 1:12, 2:2 chart [2] - 72:14, 75:24 chat [1] - 66:7 check [1] - 94:10 checked [2] - 133:14, 140:14 cheeky [1] - 110:6 chief [6] - 13:28, 81:11, 99:17, 105:19, 132:16, 143:12 CHIEF [1] - 2:18 Chief [14] - 6:23, 10:22, 38:6, 51:7, 59:16, 60:11, 68:16, 72:17, 130:5, 133:7,</p>	<p>133:9, 135:20, 139:6, 141:3 child [1] - 36:13 children [1] - 129:23 choose [1] - 86:28 chooses [1] - 148:5 Christmas [9] - 53:7, 93:25, 94:6, 95:9, 100:7, 100:26, 113:8, 122:1, 133:4 chronological [1] - 135:7 circular [1] - 99:11 circumstance [1] - 144:5 circumstances [11] - 17:18, 26:2, 28:5, 46:14, 50:2, 53:5, 84:9, 95:2, 96:29, 145:15, 146:9 city [1] - 51:21 civilian [2] - 123:7, 126:26 claim [3] - 58:2, 58:9, 134:5 claimed [3] - 58:3, 105:9, 115:4 claims [4] - 104:16, 115:6, 115:24, 117:24 Clancy [1] - 135:21 Clare [1] - 15:8 clarification [1] - 154:15 clarifies [2] - 121:25, 126:19 clarify [2] - 133:6, 157:14 clarity [1] - 21:3 Clark [1] - 145:12 clear [28] - 12:27, 16:22, 16:26, 19:29, 21:26, 22:6, 24:15, 44:24, 49:8, 54:8, 54:10, 54:12, 58:23, 60:13, 63:20, 76:28, 108:15, 108:16, 117:29, 123:14, 124:1, 128:19, 131:23, 148:1, 149:1, 150:2, 155:24, 155:26 clearest [1] - 16:19 clearly [9] - 16:3, 35:10, 45:7, 45:21, 52:12, 67:13, 119:5, 131:17, 146:12 clerk [2] - 120:16, 124:21 CLIFFORD [1] - 3:28 close [6] - 29:20, 29:22, 29:23, 29:25,</p>	<p>108:6, 127:26 closed [1] - 130:7 closer [1] - 116:9 closest [1] - 60:23 closing [1] - 113:24 closure [2] - 112:27, 113:17 co [2] - 96:14, 113:25 co-presenter [1] - 96:14 co-terminus [1] - 113:25 cohort [2] - 140:21, 152:14 coin [1] - 110:13 collapses [1] - 148:22 colleague [1] - 110:11 colleague's [1] - 148:21 colleagues [5] - 31:12, 35:13, 35:27, 148:18, 154:14 colluding [1] - 55:19 collusion [1] - 55:15 combination [1] - 135:6 combined [1] - 72:14 comfort [1] - 80:20 coming [8] - 53:10, 70:2, 70:9, 106:13, 126:26, 136:5, 152:12, 156:10 comment [10] - 106:17, 127:1, 144:6, 150:23, 150:25, 152:6, 152:24, 153:19, 154:3, 155:25 commenting [1] - 155:29 comments [1] - 114:23 commission [1] - 146:11 Commission [12] - 22:28, 23:20, 23:21, 23:23, 23:27, 24:16, 25:1, 33:9, 38:8, 41:27, 42:4, 87:6 Commissioner [96] - 6:26, 6:29, 7:3, 7:13, 10:22, 11:2, 11:3, 11:4, 11:5, 11:15, 12:7, 12:10, 12:25, 13:22, 14:11, 16:11, 22:10, 27:10, 29:20, 31:2, 31:16, 31:18, 34:14, 35:6, 38:6, 38:23, 39:21, 41:14,</p>	<p>41:26, 42:3, 43:5, 50:17, 51:8, 51:9, 51:10, 51:20, 64:7, 64:17, 64:20, 64:24, 65:18, 69:19, 69:29, 70:21, 74:8, 75:17, 75:19, 79:17, 86:17, 86:20, 87:4, 93:20, 93:26, 94:27, 96:17, 96:22, 99:28, 101:2, 103:1, 103:3, 103:22, 103:25, 104:10, 106:15, 111:24, 111:29, 112:4, 112:16, 112:24, 113:1, 114:15, 116:26, 117:3, 118:19, 119:21, 123:13, 127:10, 131:25, 134:25, 135:29, 140:10, 141:15, 142:4, 143:6, 144:28, 145:2, 145:9, 147:15, 148:2, 148:16, 149:14, 151:12, 152:5, 153:29 commissioner [2] - 71:27, 113:5 COMMISSIONER [1] - 2:14 Commissioner's [10] - 13:14, 60:11, 66:11, 91:18, 96:23, 100:6, 103:8, 131:27, 136:27, 140:28 commitment [2] - 155:17, 157:21 Committee [21] - 10:18, 24:3, 24:10, 43:25, 44:3, 44:16, 45:5, 46:6, 54:3, 66:17, 70:29, 71:2, 75:7, 120:12, 123:18, 137:13, 137:17, 144:12, 145:17, 157:13, 157:28 committee [31] - 55:1, 55:2, 116:14, 120:16, 120:24, 120:25, 121:2, 121:3, 121:13, 121:14, 121:25, 122:23, 123:9, 124:3, 124:21, 124:26, 124:29, 125:2, 125:7, 125:16, 126:3, 126:10, 137:20, 138:8, 144:20, 145:19, 145:20, 146:19, 149:5, 155:27</p>
---	---	---	---	--

<p>committee's [5] - 121:6, 121:18, 124:24, 125:4, 145:22</p> <p>committing [2] - 80:9, 89:2</p> <p>commonly [1] - 105:20</p> <p>communicated [2] - 58:5, 101:9</p> <p>communication [2] - 33:17, 62:7</p> <p>Communications [4] - 97:25, 108:22, 126:27, 127:20</p> <p>communities [2] - 94:15, 113:29</p> <p>community [1] - 114:11</p> <p>COMPANY [2] - 2:11, 4:2</p> <p>company [2] - 100:25, 111:13</p> <p>comparison [1] - 140:22</p> <p>competing [1] - 116:28</p> <p>compiled [1] - 121:21</p> <p>complain [1] - 20:8</p> <p>complaint [9] - 11:3, 26:13, 26:14, 27:29, 99:10, 99:13, 114:16, 114:25, 133:10</p> <p>complaints [24] - 7:14, 10:9, 10:13, 10:16, 10:27, 33:28, 34:8, 34:12, 35:9, 36:9, 37:5, 38:10, 38:28, 41:1, 100:19, 100:20, 132:17, 140:15, 140:21, 140:26, 140:28, 141:28, 141:29, 151:18</p> <p>complaints" [1] - 135:19</p> <p>complement [1] - 145:8</p> <p>complete [2] - 22:6, 32:12</p> <p>completed [2] - 7:9, 99:18</p> <p>completely [2] - 84:20, 100:18</p> <p>completeness [1] - 154:8</p> <p>complied [2] - 138:18, 138:21</p> <p>comprehend [1] - 74:2</p>	<p>comprehension [1] - 30:23</p> <p>compromise [1] - 108:10</p> <p>Comptroller [8] - 53:23, 56:10, 121:7, 122:19, 122:26, 123:20, 124:5, 126:8</p> <p>concealing [2] - 88:21, 88:23</p> <p>concealment [1] - 89:4</p> <p>concede [1] - 108:13</p> <p>conceded [2] - 74:24, 113:13</p> <p>concept [2] - 145:27, 149:19</p> <p>concern [15] - 8:25, 10:6, 19:25, 24:21, 25:22, 34:5, 43:8, 43:15, 44:12, 59:5, 96:21, 112:5, 113:12, 139:21, 140:25</p> <p>concerned [17] - 34:21, 35:17, 35:21, 39:2, 44:17, 48:16, 52:11, 59:25, 67:29, 79:15, 88:25, 89:15, 104:4, 118:9, 118:26, 122:8, 150:22</p> <p>concerning [5] - 33:18, 59:12, 64:13, 73:10, 74:4</p> <p>concerns [8] - 16:11, 17:15, 19:20, 44:3, 71:25, 71:26, 103:26, 121:13</p> <p>concession [1] - 73:1</p> <p>conclude [2] - 100:24, 114:27</p> <p>concluded [1] - 75:25</p> <p>concludes [1] - 114:12</p> <p>conclusion [1] - 76:5</p> <p>conduct [2] - 19:16, 21:20</p> <p>conducted [1] - 112:2</p> <p>conducting [3] - 10:20, 30:25, 142:5</p> <p>conduit [2] - 35:8, 35:10</p> <p>conference [1] - 98:17</p> <p>confidential [6] - 88:27, 134:18, 134:19, 135:22, 138:17, 149:4</p>	<p>Confidential [1] - 61:29</p> <p>Confidential' [1] - 64:11</p> <p>confidentiality [1] - 11:26</p> <p>confine [1] - 113:6</p> <p>confined [2] - 34:22, 109:21</p> <p>confirm [5] - 21:27, 58:2, 58:8, 111:21, 118:16</p> <p>confirmation [1] - 58:15</p> <p>conflict [1] - 22:6</p> <p>confrontational [1] - 144:26</p> <p>confronted [1] - 15:2</p> <p>CONLON [1] - 2:23</p> <p>connection [4] - 41:13, 48:1, 120:24, 124:26</p> <p>Connolly [1] - 135:23</p> <p>CONOR [3] - 2:15, 3:17, 4:2</p> <p>conscious [3] - 36:3, 59:14, 142:5</p> <p>consent [1] - 125:3</p> <p>consequence [1] - 106:23</p> <p>consider [3] - 20:22, 35:24, 95:3</p> <p>considerable [3] - 43:14, 43:24, 47:3</p> <p>consideration [3] - 64:15, 123:29, 154:27</p> <p>considerations [2] - 121:14, 121:23</p> <p>considered [5] - 9:3, 20:19, 20:24, 126:3, 153:13</p> <p>consisted [1] - 11:23</p> <p>constitute [1] - 9:13</p> <p>construction [1] - 53:25</p> <p>consultation [1] - 56:16</p> <p>consulted [1] - 115:22</p> <p>contact [11] - 16:10, 36:13, 50:26, 64:8, 68:29, 75:13, 75:17, 75:18, 75:19, 76:19, 109:10</p> <p>contacted [5] - 50:20, 59:15, 66:1, 68:15, 78:27</p> <p>contacts [1] - 72:17</p> <p>contain [5] - 20:20,</p>	<p>20:21, 71:23, 122:13, 130:1</p> <p>contained [14] - 11:24, 20:29, 22:7, 44:18, 90:28, 103:8, 121:17, 121:21, 122:11, 124:15, 125:19, 126:7, 141:18, 156:27</p> <p>containing [4] - 32:6, 117:21, 118:7, 140:19</p> <p>contaminated [1] - 54:27</p> <p>content [1] - 21:4</p> <p>contents [3] - 20:22, 24:11, 125:14</p> <p>context [31] - 10:19, 14:15, 24:4, 28:5, 36:8, 36:19, 41:16, 41:27, 44:4, 67:6, 74:26, 75:12, 75:20, 90:10, 94:29, 95:23, 98:20, 107:22, 110:6, 113:28, 114:3, 114:9, 115:12, 142:3, 142:22, 147:22, 149:26, 151:26, 154:28, 156:20</p> <p>contextualised [1] - 88:17</p> <p>continuation [1] - 117:24</p> <p>continues [1] - 125:27</p> <p>contrary [2] - 125:5, 156:21</p> <p>control [3] - 91:4, 123:21, 138:5</p> <p>controller [6] - 118:5, 118:18, 120:1, 122:9, 122:18, 123:12</p> <p>controls [5] - 121:10, 122:21, 124:6, 126:5, 126:15</p> <p>controversy [4] - 90:19, 96:1, 112:27, 113:18</p> <p>conversation [36] - 35:29, 46:5, 55:5, 61:21, 62:1, 65:15, 66:6, 67:8, 75:25, 81:11, 82:18, 88:16, 88:21, 89:24, 89:29, 90:16, 90:24, 90:29, 93:6, 98:2, 98:3, 99:1, 100:2, 100:22, 106:27, 107:4, 107:11, 108:16, 108:18, 108:26, 110:24, 111:3, 113:5,</p>	<p>116:1, 155:1</p> <p>conversations [4] - 54:20, 65:6, 70:20, 76:29</p> <p>convey [2] - 38:26, 38:29</p> <p>conveyed [2] - 96:2, 96:3</p> <p>cooperate [2] - 16:8, 141:11</p> <p>cooperated [3] - 71:11, 141:2, 141:12</p> <p>cooperating [3] - 71:15, 75:2, 80:10</p> <p>cooperation [5] - 64:14, 66:18, 72:1, 95:24</p> <p>copy [2] - 68:10, 83:3</p> <p>Cork [2] - 73:23, 77:11</p> <p>CORMAC [1] - 3:27</p> <p>corner [1] - 144:17</p> <p>correct [67] - 6:13, 7:16, 8:12, 9:26, 11:13, 13:16, 15:29, 17:11, 17:28, 19:24, 20:12, 24:23, 26:16, 28:15, 34:17, 34:20, 42:6, 46:22, 47:7, 47:9, 48:19, 48:24, 48:26, 49:20, 49:26, 50:22, 51:13, 59:2, 59:13, 59:27, 60:1, 60:4, 60:7, 65:9, 72:29, 76:8, 83:17, 84:1, 85:5, 86:2, 88:8, 91:2, 93:23, 94:12, 94:17, 94:21, 95:1, 95:6, 95:15, 98:26, 100:4, 100:8, 111:21, 112:8, 115:2, 128:26, 133:5, 141:5, 141:10, 141:19, 141:26, 145:21, 145:24, 147:22, 149:29, 151:3, 158:2</p> <p>corrected [1] - 83:13</p> <p>correctly [2] - 126:14, 153:17</p> <p>correspondence [10] - 14:29, 20:27, 24:18, 60:29, 61:1, 62:8, 62:22, 65:4, 77:6, 91:22</p> <p>corridor [8] - 54:11, 97:29, 100:2, 100:16, 101:6, 101:10, 101:26, 108:21</p> <p>corroborate [1] -</p>
---	---	---	--	--

<p>54:13 corruption [3] - 138:14, 141:25, 146:16 cosh [1] - 146:26 COSTELLO [1] - 2:11 could've [1] - 8:18 counsel [1] - 119:16 country [1] - 105:25 counts [1] - 145:21 COUNTY [1] - 4:17 couple [10] - 62:18, 64:6, 66:15, 74:25, 76:22, 78:3, 86:5, 88:9, 100:23, 115:15 courier [2] - 61:28, 82:28 course [42] - 10:21, 12:18, 12:23, 12:27, 14:6, 14:18, 15:6, 22:27, 35:4, 35:29, 39:13, 40:6, 41:3, 42:8, 44:21, 45:9, 51:13, 53:20, 54:19, 54:25, 55:4, 75:13, 87:17, 87:19, 104:12, 104:14, 112:10, 127:19, 131:2, 135:9, 139:27, 142:10, 144:22, 146:25, 149:19, 150:5, 150:18, 152:3, 152:22, 152:27, 152:28, 153:12 Court [1] - 155:28 COURT [2] - 1:13, 2:3 cousin [1] - 9:15 cover [2] - 64:3, 88:28 coverage [1] - 154:28 covered [1] - 152:13 created [3] - 32:2, 61:9, 67:8 creates [2] - 38:1, 75:16 creation [1] - 32:5 credibility [1] - 9:12 crime [1] - 94:8 Crimecall [5] - 93:21, 94:4, 95:3, 96:13, 100:6 criminal [8] - 27:21, 27:29, 44:26, 80:9, 99:16, 130:2, 142:7, 148:9 criticising [1] - 16:5 criticism [2] - 46:15,</p>	<p>153:2 criticisms [1] - 151:5 Culhane [1] - 145:10 CULLEN [1] - 2:28 culture [2] - 112:29, 113:17 Cummins [1] - 135:26 CUNNINGHAM [1] - 3:22 Cunningham [9] - 32:20, 32:29, 33:5, 33:12, 33:18, 130:1, 133:18, 133:28, 135:20 currency [1] - 115:12 currency [3] - 102:12, 113:23, 114:9 custody [1] - 125:10 cut [3] - 65:23, 75:26</p>	<p>120:14, 138:11, 154:22 Dave [2] - 108:29, 109:9 DAVID [1] - 4:2 David [3] - 23:2, 26:11, 26:15 DAY [1] - 1:18 days [5] - 62:17, 111:11, 115:15, 152:26, 154:7 dead [1] - 34:22 deal [29] - 10:10, 26:10, 34:6, 34:7, 35:16, 35:18, 44:16, 45:14, 48:12, 55:9, 56:1, 56:3, 56:8, 57:7, 57:8, 59:23, 63:6, 63:8, 68:8, 68:13, 76:24, 85:15, 87:7, 94:24, 117:3, 137:11, 144:8, 144:11, 146:11 dealing [21] - 6:27, 7:13, 32:1, 41:22, 45:11, 62:20, 62:21, 63:9, 67:5, 81:5, 84:12, 88:15, 88:25, 89:2, 89:15, 127:5, 127:6, 127:7, 128:24, 139:8, 139:14 dealt [9] - 10:19, 34:9, 59:22, 68:1, 75:10, 80:13, 91:22, 94:29, 128:5 dear [1] - 83:2 Deasy [4] - 53:25, 54:1, 144:10, 152:22 DEBBIE [1] - 3:16 December [15] - 7:3, 13:21, 14:23, 14:27, 33:16, 93:7, 95:4, 96:12, 116:10, 120:14, 122:3, 122:5, 124:23, 124:24, 125:4 decide [2] - 127:10, 130:6 decided [5] - 9:11, 20:1, 31:23, 45:1, 147:23 decision [3] - 59:14, 153:11, 153:14 decisions [1] - 153:12 declined [2] - 43:10, 156:6 defamation [3] - 61:10, 86:19, 134:7 defence [4] - 18:23, 73:4, 86:18, 86:22 defend [1] - 43:15</p>	<p>definitely [1] - 147:24 definitively [1] - 12:15 degree [5] - 14:12, 52:15, 117:5, 136:13, 150:23 delete [1] - 42:7 deleted [2] - 42:6, 42:11 demeanour [1] - 98:4 denial [2] - 26:5, 32:12 denied [1] - 21:28 denies [1] - 43:2 Denise [1] - 129:17 deny [6] - 19:1, 23:7, 28:11, 39:19, 82:18, 152:18 denying [1] - 52:2 department [1] - 140:19 Department [3] - 14:29, 16:25, 31:7 departments [2] - 128:23, 128:24 deployment [1] - 118:4 deputed [1] - 139:16 Deputy [27] - 6:29, 11:2, 11:4, 17:24, 23:26, 24:2, 24:14, 24:18, 42:24, 43:6, 43:8, 44:5, 44:10, 44:14, 44:19, 44:21, 53:22, 119:28, 120:3, 120:7, 133:27, 144:28, 147:13, 148:1, 148:16, 152:5, 153:29 deputy [3] - 146:21, 146:23, 148:5 deputy's [1] - 146:6 Derek [7] - 7:13, 8:10, 10:22, 11:4, 33:20, 103:22, 103:25 derogatory [2] - 82:3, 86:27 describe [2] - 71:17, 116:22 described [6] - 9:9, 23:2, 44:3, 74:13, 116:24, 147:15 describes [1] - 9:13 describing [1] - 75:1 descriptions [2] - 17:24, 17:27 DESIGNATED [1] - 4:1</p>	<p>designed [1] - 71:21 desire [1] - 21:26 desist [4] - 13:23, 15:12, 15:13, 49:5 desk [1] - 88:1 despatches [1] - 34:25 desperately [1] - 29:29 detail [26] - 16:7, 17:5, 19:14, 19:15, 19:23, 21:17, 21:18, 21:28, 25:27, 26:3, 28:5, 28:9, 34:11, 39:8, 42:14, 43:24, 47:3, 50:7, 51:18, 57:9, 65:19, 71:7, 112:7, 126:24, 135:2, 136:19 detailed [1] - 22:23 details [4] - 20:11, 26:6, 130:1, 137:22 detain [1] - 147:4 Detective [1] - 129:19 detective [1] - 6:23 determine [1] - 101:29 determined [1] - 64:16 detract [1] - 141:16 detrimental [2] - 31:13, 87:9 develop [1] - 84:26 developed [2] - 29:17, 90:16 developing [3] - 12:28, 116:17, 140:2 devoid [2] - 28:9, 125:29 diametrically [1] - 116:3 DIARMAID [1] - 2:6 Diarmuid [7] - 68:16, 72:18, 72:21, 75:29, 80:16, 80:22, 80:28 differ [2] - 73:11, 146:22 difference [1] - 112:7 differences [2] - 107:23 different [8] - 38:5, 54:20, 54:25, 67:16, 109:12, 114:8, 128:24, 140:2 differently [1] - 84:19 differs [1] - 9:15 difficult [10] - 7:7, 19:28, 20:10, 26:4,</p>
D				
	<p>D's [1] - 129:5 daily [1] - 146:4 Daly [1] - 15:8 DALY [1] - 3:29 DANIEL [1] - 3:26 dark [1] - 89:4 DARRAGH [1] - 4:14 DARREN [1] - 4:10 DARRYL [1] - 3:28 dart [1] - 47:25 darts [1] - 47:28 data [33] - 13:25, 44:13, 64:13, 66:18, 87:2, 87:3, 117:21, 118:5, 118:6, 118:7, 118:17, 118:18, 118:19, 118:23, 118:25, 118:28, 119:21, 119:29, 120:1, 120:3, 120:8, 121:13, 122:9, 122:14, 122:18, 123:10, 123:12, 123:13, 125:18, 132:7, 141:17, 145:18, 157:17 Data [6] - 24:11, 118:11, 118:20, 119:1, 120:5, 156:26 date [7] - 13:29, 24:27, 91:1, 129:2, 131:14, 131:18, 151:18 dated [10] - 42:1, 45:27, 56:11, 64:1, 64:3, 106:24, 117:13,</p>			

<p>35:14, 71:12, 74:2, 74:14, 77:19, 79:1</p> <p>difficulties [1] - 146:20</p> <p>difficulty [5] - 62:9, 80:15, 90:28, 108:9, 125:15</p> <p>dig [1] - 74:10</p> <p>DIGNAM [1] - 2:15</p> <p>dinner [1] - 73:25</p> <p>direct [7] - 26:23, 26:26, 27:27, 28:1, 38:19, 46:28, 113:14</p> <p>directed [6] - 25:26, 27:19, 78:27, 115:7, 130:5, 138:21</p> <p>direction [13] - 9:23, 9:29, 13:22, 13:27, 14:23, 15:12, 15:27, 16:9, 16:19, 28:6, 28:8, 71:19, 71:23</p> <p>directions [4] - 33:23, 105:17, 107:7, 151:14</p> <p>DIRECTLY [2] - 5:4, 6:7</p> <p>directly [4] - 16:15, 58:6, 73:9, 74:3</p> <p>Director [6] - 9:4, 97:24, 99:18, 108:21, 126:27, 127:20</p> <p>director [1] - 145:10</p> <p>disagree [1] - 114:21</p> <p>disagreement [2] - 96:12, 97:8</p> <p>disappeared [1] - 33:11</p> <p>disappointed [2] - 31:15, 98:6</p> <p>disapproving [1] - 145:15</p> <p>disciplinary [4] - 134:15, 142:8, 142:15, 142:17</p> <p>discipline [3] - 85:7, 129:15, 130:6</p> <p>disclose [4] - 11:28, 70:2, 90:9, 123:8</p> <p>disclosed [1] - 123:11</p> <p>disclosing [1] - 13:24</p> <p>disclosure [19] - 15:20, 17:1, 19:21, 23:18, 26:10, 26:17, 27:7, 27:19, 30:12, 42:16, 42:21, 42:26, 60:16, 71:22, 118:28, 118:29, 120:7, 120:9, 122:10</p>	<p>Disclosures [1] - 63:25</p> <p>disclosures [6] - 17:9, 17:13, 20:20, 22:8, 25:1, 139:29</p> <p>DISCLOSURES [2] - 1:3, 1:4</p> <p>discovered [2] - 60:23, 91:19</p> <p>discovery [2] - 60:15, 63:26</p> <p>discredit [5] - 27:11, 32:9, 45:3, 54:14, 115:7</p> <p>discretion [5] - 118:4, 124:9, 126:11, 151:14, 151:24</p> <p>discretionary [1] - 117:26</p> <p>discuss [14] - 13:7, 13:9, 36:16, 81:3, 81:4, 86:25, 122:24, 124:2, 124:13, 126:11, 138:7, 139:20, 140:28, 144:3</p> <p>discussed [17] - 39:3, 39:9, 39:10, 39:14, 64:19, 81:16, 89:21, 131:5, 131:22, 135:2, 135:4, 136:11, 139:4, 152:26, 152:28, 154:7, 156:25</p> <p>discussing [3] - 110:26, 136:8, 150:13</p> <p>discussion [18] - 13:11, 13:12, 39:29, 40:2, 40:28, 41:9, 44:12, 46:24, 71:29, 73:11, 87:25, 105:1, 131:18, 132:1, 133:22, 136:13, 152:23, 155:14</p> <p>discussions [1] - 53:29</p> <p>disgusting [7] - 146:18, 146:25, 147:16, 147:18, 149:28, 150:5, 155:26</p> <p>Disgusting [1] - 155:22</p> <p>disloyal [1] - 149:15</p> <p>dismissed [2] - 9:28, 10:3</p> <p>dispatched [1] - 86:9</p> <p>disposed [1] - 85:22</p> <p>dispute [5] - 18:21, 18:22, 19:2, 20:29, 21:5</p> <p>disputed [1] - 18:17</p> <p>disputing [1] - 63:17</p>	<p>disquiet [1] - 43:15</p> <p>disrespect [1] - 77:13</p> <p>dissatisfaction [1] - 33:22</p> <p>disseminated [1] - 33:24</p> <p>disseminating [1] - 16:2</p> <p>dissemination [1] - 14:9</p> <p>distance [1] - 111:10</p> <p>distinction [1] - 14:26</p> <p>distinguished [1] - 6:15</p> <p>distributed [4] - 40:19, 99:12, 131:4, 139:3</p> <p>distributing [1] - 15:15</p> <p>distribution [2] - 32:1, 32:5</p> <p>district [2] - 152:1</p> <p>DMG [1] - 3:18</p> <p>DOCK [1] - 3:30</p> <p>document [12] - 61:5, 61:27, 63:7, 128:16, 128:27, 128:29, 130:10, 130:13, 130:23, 131:26, 139:2, 155:13</p> <p>documentation [18] - 16:24, 24:5, 62:4, 71:22, 91:16, 120:23, 120:27, 120:28, 121:3, 121:5, 121:16, 121:20, 124:25, 125:7, 125:10, 125:29, 141:26, 154:18</p> <p>documents [31] - 7:17, 7:19, 7:24, 11:22, 11:28, 13:16, 15:4, 15:15, 18:28, 20:23, 21:1, 21:2, 24:10, 40:6, 60:14, 60:20, 60:22, 60:25, 60:28, 60:29, 61:5, 61:26, 63:23, 63:24, 63:26, 67:28, 91:19, 156:24</p> <p>domain [8] - 15:17, 74:6, 74:10, 74:27, 88:10, 157:11, 157:18</p> <p>dominated [1] - 155:18</p> <p>DONAL [1] - 2:16</p> <p>done [7] - 84:18, 85:4, 98:16, 112:3,</p>	<p>138:20, 144:4, 149:7</p> <p>door [3] - 79:19, 128:2, 140:7</p> <p>doorstep [2] - 63:8, 63:10</p> <p>doubt [10] - 9:12, 10:25, 13:11, 14:19, 40:27, 58:8, 71:14, 84:23, 91:25, 151:9</p> <p>down [36] - 7:23, 15:13, 26:10, 31:20, 40:16, 43:4, 44:7, 55:1, 66:17, 74:10, 74:21, 74:25, 86:5, 86:9, 86:28, 88:9, 89:23, 90:19, 91:6, 91:15, 97:29, 108:21, 132:7, 132:27, 134:14, 136:26, 139:20, 140:27, 144:24, 149:4, 151:17, 151:21, 151:23, 151:29, 155:22</p> <p>DPP [10] - 8:24, 8:28, 9:23, 10:2, 36:14, 44:24, 44:29, 45:1, 130:3, 130:4</p> <p>DPP's [2] - 33:23, 105:17</p> <p>draft [11] - 44:19, 64:2, 64:11, 65:2, 83:4, 83:16, 83:25, 83:27, 83:28, 91:6, 136:24</p> <p>drafted [2] - 84:3, 154:14</p> <p>drafting [5] - 73:3, 84:2, 86:17, 87:21, 88:2</p> <p>draw [5] - 27:20, 27:28, 81:23, 92:3, 92:7</p> <p>drawing [1] - 15:13</p> <p>drawn [6] - 10:16, 14:26, 60:21, 90:18, 105:3, 139:1</p> <p>Drayton [1] - 73:25</p> <p>drink [1] - 94:7</p> <p>driven [1] - 27:1</p> <p>driver [2] - 125:22, 153:27</p> <p>driving [3] - 94:7, 153:27, 154:2</p> <p>drove [1] - 97:21</p> <p>DUBLIN [13] - 1:17, 2:12, 2:20, 2:25, 2:30, 3:8, 3:13, 3:23, 3:31, 4:4, 4:8, 4:12, 4:21</p> <p>due [13] - 14:5,</p>	<p>39:13, 40:6, 41:3, 42:8, 45:9, 53:20, 86:8, 94:18, 137:6, 137:7, 152:22, 157:19</p> <p>Dundalk [1] - 44:10</p> <p>duration [1] - 72:27</p> <p>during [16] - 7:7, 12:23, 12:27, 13:13, 16:26, 22:27, 30:5, 41:26, 44:21, 55:2, 64:7, 93:29, 94:26, 98:15, 113:5, 129:27</p> <p>duties [2] - 118:5, 118:18</p> <p>duty [7] - 23:11, 24:15, 38:23, 87:16, 138:20, 156:27, 156:28</p> <p>dwelt [1] - 38:25</p> <p>dynamic [1] - 140:2</p> <p>DÁIL [1] - 1:5</p>
E				
<p>e-mail [2] - 154:22, 154:25</p> <p>EARLSFORT [1] - 4:4</p> <p>early [2] - 18:14, 50:29</p> <p>earshot [2] - 101:25, 108:23</p> <p>earthly [1] - 40:16</p> <p>ease [3] - 41:28, 93:9, 125:12</p> <p>effect [4] - 26:24, 85:7, 90:29, 106:11</p> <p>effectively [6] - 9:27, 16:10, 26:12, 86:18, 107:11, 120:21</p> <p>eight [3] - 12:8, 66:9, 141:7</p> <p>EILEEN [1] - 4:19</p> <p>either [18] - 16:25, 37:29, 38:3, 39:27, 47:29, 48:11, 49:11, 50:9, 52:15, 52:17, 86:16, 88:9, 109:6, 112:18, 118:10, 118:26, 132:1, 157:15</p> <p>elaborate [2] - 43:11, 106:3</p> <p>elderly [1] - 94:10</p> <p>element [1] - 79:21</p> <p>eleven [1] - 52:5</p> <p>elicit [2] - 18:20, 102:17</p> <p>ELIZABETH [1] - 2:7</p> <p>elsewhere [1] -</p>				

<p>148:10 ELY [1] - 4:21 Em [2] - 154:6, 154:17 emanated [1] - 47:26 embarked [1] - 31:3 embarrassed [1] - 62:14 emerged [1] - 30:21 EMMA [1] - 2:18 emotive [1] - 150:6 emphasise [2] - 23:5, 44:14 emphatically [1] - 23:7 employed [2] - 66:24, 127:22 employee [1] - 118:15 employer [1] - 87:21 enable [4] - 19:17, 21:3, 21:4, 21:21 enclose [2] - 22:10, 83:3 enclosed [1] - 83:21 enclosing [1] - 83:4 encourage [2] - 26:27, 26:29 end [4] - 14:29, 26:21, 91:16, 100:14 ended [1] - 129:29 ending [1] - 108:26 endorsement [2] - 67:20, 79:23 engage [6] - 71:27, 71:28, 97:16, 98:7, 98:10, 137:29 engaged [1] - 98:2 engaging [1] - 44:1 enjoy [1] - 29:23 enjoyed [1] - 16:16 enormous [1] - 96:21 ensure [1] - 44:1 enter [2] - 19:11, 21:14 entered [3] - 11:12, 62:7, 157:4 enthusiasm [3] - 77:29, 79:11, 79:13 enthusiastically [1] - 78:28 entirely [2] - 74:19, 86:15 entitled [6] - 14:6, 38:12, 50:10, 52:4, 67:18, 128:27 EQUALITY [1] - 1:9 equation [1] - 11:12 error [1] - 130:25</p>	<p>essentially [2] - 65:13, 87:8 establish [1] - 50:16 ESTABLISHED [1] - 1:8 established [2] - 23:28, 25:9 establishment [1] - 23:21 estate [2] - 127:8, 127:16 etc [1] - 151:25 etcetera [2] - 94:7, 127:17 eve [1] - 122:1 evening [4] - 68:18, 97:5, 109:1, 111:24 evening's [1] - 96:18 event [20] - 10:8, 20:14, 25:8, 42:13, 48:12, 75:24, 82:25, 91:5, 91:15, 97:20, 104:15, 111:12, 126:22, 128:6, 130:17, 130:27, 131:8, 134:23, 144:7, 152:20 events [2] - 64:7, 89:23 eventually [1] - 91:19 EVIDENCE [1] - 1:9 evidence [35] - 7:22, 9:7, 9:24, 12:14, 30:22, 31:28, 36:22, 38:5, 38:7, 39:15, 39:20, 45:8, 46:12, 47:21, 55:21, 58:20, 61:17, 61:19, 62:23, 63:16, 74:29, 84:22, 85:17, 88:20, 105:4, 112:14, 115:28, 116:7, 116:15, 126:25, 128:1, 144:7, 145:17, 145:23, 152:7 exact [1] - 51:18 examination [4] - 12:27, 17:23, 60:23, 121:6 examine [3] - 11:5, 40:11, 141:29 EXAMINED [2] - 5:4, 6:8 examined [5] - 12:9, 42:8, 99:27, 99:28, 151:13 Examiner [1] - 117:17 EXAMINER [1] - 3:25 examining [2] -</p>	<p>145:29, 146:1 example [4] - 17:22, 127:5, 127:7, 127:14 examples [1] - 127:9 exceeding [1] - 49:28 except [1] - 141:24 exceptions [1] - 123:9 excerpt [1] - 147:12 excessive [1] - 94:6 exchange [1] - 111:23 EXCHANGE [1] - 3:29 exchanges [1] - 144:18 excuse [4] - 104:21, 128:19, 152:3, 156:16 excuses [1] - 156:12 executive [8] - 7:12, 8:9, 33:20, 33:26, 34:4, 35:5, 103:21, 153:11 exercise [1] - 148:19 exercised [1] - 151:15 exercises [1] - 124:9 exhaustively [1] - 87:1 expectation [1] - 18:1 expected [3] - 43:15, 127:13, 144:23 experience [5] - 29:10, 29:15, 29:16, 74:16, 127:14 experiencing [2] - 98:10, 106:9 expert [1] - 127:16 explain [2] - 38:2, 93:24 explained [2] - 41:25, 101:26 explanation [4] - 19:4, 31:26, 157:27 express [1] - 30:27 expressed [3] - 51:15, 100:13, 153:9 expressing [3] - 105:5, 114:8, 125:23 expression [1] - 31:20 extensive [4] - 10:23, 76:19, 77:10, 98:16 extensively [3] - 7:21, 11:14, 82:16 extent [4] - 18:17, 30:18, 53:24, 149:25</p>	<p>extract [2] - 42:10, 147:27 extraordinary [4] - 28:7, 127:1, 146:8, 146:13 extremely [4] - 25:24, 31:15, 52:12, 66:29</p>	<p>fan [1] - 156:12 FANNING [3] - 3:5, 3:6, 3:11 far [13] - 23:15, 34:21, 38:15, 39:2, 67:29, 71:28, 79:15, 89:14, 108:20, 143:22, 150:21, 150:28, 153:5 Farrell [1] - 135:22 fatal [2] - 12:9, 14:16 fault [1] - 129:9 FCPS [1] - 86:29 fears [1] - 18:7 feature [1] - 94:22 February [6] - 23:28, 25:9, 64:1, 64:3, 82:29, 132:23 FEBRUARY [2] - 1:6, 1:10 feelings [4] - 150:9, 150:12, 150:17, 150:19 FELIX [1] - 4:6 fellow [1] - 146:17 felt [9] - 38:22, 69:28, 75:21, 84:21, 84:23, 85:12, 85:15, 116:16, 156:11 Fennelly [2] - 41:27, 42:4 FERRY [1] - 2:23 few [2] - 91:25, 129:29 fides [2] - 38:9, 38:15 fight [1] - 107:15 fighting [1] - 144:16 file [17] - 8:17, 8:18, 8:21, 8:23, 9:3, 32:2, 32:6, 32:13, 44:23, 44:29, 61:7, 61:9, 61:10, 91:24, 99:18, 130:3, 130:7 files [13] - 70:16, 70:17, 117:21, 118:7, 122:8, 122:11, 122:13, 122:15, 122:17, 123:25, 123:27, 124:14 final [2] - 24:24, 87:4 finally [2] - 7:2, 124:18 finance [2] - 127:5, 145:10 financial [2] - 116:29, 127:4 findings [1] - 18:9 fine [1] - 119:12 finest [2] - 73:2,</p>
F				
<p>faced [2] - 64:17, 140:23 facilities [2] - 19:16, 21:20 fact [29] - 8:13, 15:25, 25:17, 38:25, 50:6, 51:5, 51:29, 54:14, 55:13, 61:19, 61:22, 62:4, 63:14, 77:8, 80:21, 88:11, 89:21, 91:24, 98:7, 98:9, 104:16, 110:25, 131:26, 135:2, 141:20, 143:5, 156:5, 156:18, 157:27 factor [1] - 37:18 facts [9] - 18:9, 18:17, 19:14, 21:18, 36:5, 37:6, 67:18, 67:19, 75:5 factual [1] - 82:1 factually [7] - 49:20, 49:26, 83:17, 84:1, 86:2, 88:8, 91:2 failure [1] - 25:3 fair [9] - 63:6, 69:19, 77:12, 84:21, 86:26, 144:18, 144:19, 156:6, 157:19 fairly [5] - 9:23, 46:28, 82:16, 144:16, 158:4 fairness [2] - 82:10, 104:9 falls [2] - 121:18, 157:26 false [3] - 32:6, 35:12, 35:26 familiar [9] - 7:10, 8:3, 8:13, 16:12, 28:26, 142:20, 143:3, 143:17, 144:5 familiarise [1] - 29:8 family [7] - 33:24, 34:24, 105:24, 143:21, 143:23, 144:3 famous [2] - 57:18, 105:11</p>				

<p>74:24 finger [1] - 148:23 Finucane [9] - 60:6, 65:8, 65:21, 67:10, 77:24, 78:2, 79:3, 79:12, 79:29 fire [1] - 154:12 firm [2] - 69:24, 148:24 firmly [1] - 141:15 first [37] - 7:5, 8:8, 8:27, 20:2, 25:10, 33:4, 40:10, 45:12, 46:3, 50:24, 52:25, 54:1, 57:4, 61:28, 68:13, 70:6, 77:6, 79:13, 84:4, 86:23, 86:24, 87:28, 88:2, 88:6, 89:1, 98:29, 102:22, 115:5, 120:11, 128:8, 132:5, 134:7, 135:16, 141:2, 144:11, 145:18, 151:6 firstly [1] - 155:24 fit [1] - 38:12 FITZGERALD [1] - 2:17 five [4] - 66:5, 72:20, 77:28, 152:1 fixed [38] - 11:11, 13:26, 24:7, 33:29, 34:12, 35:2, 37:15, 41:2, 48:21, 84:28, 99:15, 100:11, 102:29, 114:17, 114:24, 117:20, 118:3, 120:25, 121:9, 121:23, 122:22, 123:24, 123:29, 124:7, 124:9, 124:27, 126:4, 126:12, 128:25, 140:16, 142:2, 143:24, 151:15, 151:20, 151:27, 154:29, 155:5, 155:18 flash [1] - 111:8 flippant [1] - 110:5 FLOOR [1] - 4:15 flow [2] - 133:11, 133:12 Flynn [1] - 129:17 focus [3] - 40:20, 40:24, 136:8 focused [1] - 155:18 focusing [1] - 67:4 folder [1] - 131:10 follow [6] - 39:21, 39:24, 52:13, 53:6, 54:5, 134:14</p>	<p>follow-up [2] - 52:13, 54:5 followed [2] - 80:20, 147:27 FOLLOWING [1] - 1:5 following [23] - 1:26, 6:19, 6:25, 7:26, 8:24, 9:5, 19:6, 22:3, 27:5, 31:4, 43:29, 54:4, 59:28, 66:27, 68:21, 70:28, 72:22, 78:11, 79:3, 79:28, 111:26, 115:16, 155:2 follows [4] - 63:27, 82:11, 95:6, 119:26 FOLLOWS [3] - 6:1, 6:8, 93:1 foot [1] - 44:3 FOR [18] - 1:8, 2:6, 2:9, 2:14, 2:22, 2:27, 3:1, 3:4, 3:10, 3:15, 3:20, 3:25, 4:1, 4:6, 4:10, 4:14, 4:19, 92:12 force [5] - 69:13, 85:7, 99:12, 126:29, 146:13 foregoing [3] - 21:25, 24:28, 43:28 forensic [2] - 18:19, 18:23 Forensic [1] - 42:9 forgetting [1] - 60:8 form [6] - 22:17, 22:25, 25:4, 30:16, 32:27, 123:28 formal [1] - 142:17 formally [1] - 24:9 formed [1] - 13:5 formed.. [1] - 13:2 former [14] - 11:2, 15:2, 16:1, 33:7, 35:20, 43:5, 46:11, 46:29, 48:8, 110:11, 111:23, 111:29, 112:16, 157:16 forthcoming [2] - 123:17, 124:1 forthwith [4] - 118:9, 118:24, 120:2, 120:29 forum [4] - 18:18, 137:21, 137:25, 150:21 forward [9] - 15:23, 16:14, 19:3, 53:10, 79:25, 109:8, 119:3, 126:19, 156:14 forwarded [2] - 63:23, 63:24</p>	<p>four [6] - 18:28, 20:23, 66:1, 135:19, 139:18, 155:21 four' [1] - 70:1 fourth [1] - 149:6 Fraher [1] - 129:19 frailty [1] - 30:9 framing [1] - 95:25 FRANCIS [1] - 3:22 Frank [5] - 47:12, 62:5, 64:19, 86:9, 88:14 frank [1] - 116:15 frankly [1] - 146:17 fraud [1] - 99:12 free [2] - 30:27, 92:7 FREEMAN [1] - 3:5 Friday [1] - 72:20 FRIDAY [2] - 1:18, 6:1 friends [2] - 29:27, 105:24 front [9] - 7:18, 37:7, 68:6, 76:21, 114:29, 115:14, 115:18, 144:20, 148:22 front-page [2] - 114:29, 115:14 frustration [4] - 116:16, 116:21, 116:22, 117:8 fucking [1] - 46:13 fuel [1] - 154:11 full [4] - 18:22, 144:5, 145:8, 156:17 fully [5] - 21:3, 28:11, 36:14, 149:8, 149:19 function [2] - 91:28, 124:3 furnished [5] - 118:14, 118:17, 118:25, 120:4, 122:12, 23:17 FÍONÁN [1] - 2:27</p>	<p>34:15, 34:18, 36:4, 38:13, 40:23, 46:15, 46:29, 47:5, 47:10, 47:13, 47:16, 48:8, 48:29, 49:1, 49:11, 50:16, 52:16, 52:26, 57:17, 57:18, 59:17, 60:11, 61:25, 63:25, 64:6, 64:8, 67:21, 71:24, 75:17, 75:18, 79:15, 81:28, 81:29, 82:6, 86:17, 86:20, 87:5, 87:13, 93:20, 94:14, 96:14, 96:16, 96:24, 99:9, 100:19, 105:7, 105:10, 105:11, 105:14, 105:23, 107:2, 108:2, 108:29, 109:8, 110:11, 112:27, 112:29, 113:7, 113:10, 113:17, 113:25, 114:2, 114:25, 116:26, 117:18, 117:25, 121:4, 123:5, 123:23, 125:1, 125:2, 126:17, 127:7, 128:28, 129:1, 129:22, 132:2, 132:17, 137:23, 138:7, 138:20, 138:23, 140:13, 145:27, 145:28, 146:15, 148:2, 149:2, 149:10, 152:1, 155:2, 155:7, 155:12, 156:26, 156:28, 157:16, 157:21 Gardaí [11] - 27:23, 32:8, 78:27, 93:28, 94:2, 96:15, 101:28, 122:12, 123:7, 144:15, 146:9 gather [1] - 144:2 GEMMA [1] - 4:14 Gemma [1] - 48:15 General [9] - 53:24, 56:11, 118:22, 119:13, 119:17, 119:25, 122:19, 122:26, 126:8 general [1] - 8:6 General's [6] - 24:8, 119:15, 121:7, 123:20, 124:6 generally [5] - 14:7, 46:16, 94:1, 95:6, 95:9 GEORGE'S [1] - 3:30 GERAGHTY [1] - 4:7</p>	<p>Gerard [11] - 59:11, 59:18, 61:9, 64:6, 72:23, 75:29, 76:6, 76:14, 79:10, 88:22, 116:19 GILLANE [1] - 3:1 given [25] - 9:15, 9:16, 19:16, 20:21, 21:19, 21:27, 25:27, 28:6, 28:9, 52:16, 53:13, 60:19, 61:16, 61:19, 67:9, 67:19, 70:17, 80:14, 90:3, 91:7, 126:25, 128:4, 130:15, 140:25, 151:14 Glacken [2] - 132:24, 133:9 gladly [1] - 69:27 God [1] - 33:8 GORDON [1] - 2:10 Grainne [1] - 96:14 grateful [2] - 83:10, 83:15 great [5] - 10:10, 30:17, 42:14, 77:10, 155:6 greatest [1] - 146:22 gregarious [1] - 65:14 grievance [2] - 31:5, 57:17 grievances [2] - 105:10, 114:19 GRIFFIN [1] - 2:18 GROUP [1] - 3:20 group [1] - 152:24 grudge [2] - 30:7, 31:2 Gráinne [2] - 112:3, 113:15 guards [3] - 66:8, 77:11, 89:22 Guards [3] - 9:7, 9:16, 47:23 guards' [1] - 79:26 guessing [1] - 133:25 guest [1] - 60:5 guidance [1] - 155:14 guises [1] - 127:4 Gwen [1] - 1:25 GWEN [1] - 1:30</p>
G				
<p>GALLAGHER [2] - 4:20, 4:20 garda [1] - 114:16 Garda [118] - 6:11, 6:15, 6:18, 6:20, 6:21, 6:25, 6:28, 7:3, 11:19, 12:4, 13:1, 13:23, 13:26, 15:2, 15:3, 16:1, 23:10, 27:9, 27:14, 29:7, 30:26,</p>				
H				
<p>habitually [1] - 42:27 half [1] - 77:28</p>				

<p>halfway [3] - 43:4, 132:7, 136:26</p> <p>HALIDAY [1] - 2:11</p> <p>HALL [2] - 3:7, 3:12</p> <p>HAMILTON [1] - 3:16</p> <p>HANAHOE [1] - 2:24</p> <p>hand [1] - 128:16</p> <p>handed [2] - 42:3, 91:25</p> <p>HANDED [1] - 68:10</p> <p>handled [1] - 61:15</p> <p>handling [1] - 105:16</p> <p>hands [1] - 100:26</p> <p>handwriting [1] - 59:19</p> <p>handwritten [4] - 63:27, 63:28, 131:9, 138:4</p> <p>happy [5] - 32:26, 79:2, 95:9, 100:26, 140:27</p> <p>harassed [1] - 148:4</p> <p>harassment [2] - 138:13, 138:23</p> <p>harbouring [1] - 107:9</p> <p>hard [1] - 94:15</p> <p>HARD [2] - 114:2, 114:3</p> <p>HARRINGTON [1] - 3:2</p> <p>Harris [1] - 45:27</p> <p>HATCH [4] - 3:7, 3:7, 3:12, 3:12</p> <p>HAVING [1] - 6:7</p> <p>hawkes [1] - 119:20</p> <p>HAYES [1] - 4:3</p> <p>Hayes [39] - 53:8, 53:22, 54:10, 55:5, 55:29, 57:2, 57:8, 57:10, 57:13, 57:20, 57:23, 93:6, 95:13, 96:9, 97:12, 97:15, 97:26, 99:21, 100:15, 100:28, 104:15, 104:27, 105:21, 106:26, 106:29, 107:5, 107:16, 108:15, 109:5, 110:4, 110:15, 110:17, 110:26, 111:1, 111:15, 112:12, 114:6, 115:27, 116:6</p> <p>Hayes's [1] - 115:5</p> <p>head [2] - 39:6, 69:13</p> <p>header' [1] - 46:13</p> <p>Headquarters [1] - 61:25</p> <p>headquarters [1] -</p>	<p>153:24</p> <p>hear [6] - 7:5, 48:8, 48:11, 75:17, 119:3, 125:16</p> <p>heard [10] - 24:19, 30:13, 35:20, 38:5, 48:7, 62:5, 78:23, 80:10, 95:28, 110:6</p> <p>hearing [1] - 56:15</p> <p>HEARING [4] - 6:1, 92:12, 93:1, 158:7</p> <p>heated [1] - 144:17</p> <p>heaven's [1] - 75:16</p> <p>HELD [1] - 1:17</p> <p>held [1] - 61:25</p> <p>hell [2] - 106:14, 152:28</p> <p>helpful [1] - 93:16</p> <p>hereby [1] - 58:8</p> <p>hereto [1] - 58:18</p> <p>herself [1] - 119:17</p> <p>High [1] - 155:27</p> <p>high [3] - 14:12, 51:14, 52:15</p> <p>highest [1] - 27:9</p> <p>highlight [1] - 149:23</p> <p>highlighting [2] - 48:22, 49:22</p> <p>highly [3] - 90:11, 106:18, 116:27</p> <p>himself [4] - 23:11, 35:21, 66:14, 67:17</p> <p>hindsight [3] - 74:17, 84:16</p> <p>hint [1] - 148:24</p> <p>historical [1] - 67:6</p> <p>historically [1] - 141:1</p> <p>history [2] - 128:29, 136:22</p> <p>hmm [6] - 37:3, 73:22, 76:4, 128:11, 133:23, 134:16</p> <p>hold [2] - 73:18, 129:28</p> <p>holding [1] - 120:21</p> <p>home [12] - 29:1, 31:4, 45:16, 48:16, 49:15, 50:12, 51:3, 51:29, 129:22, 143:13, 143:16, 144:2</p> <p>honestly [1] - 143:2</p> <p>honesty [2] - 112:29, 114:4</p> <p>hope [4] - 86:26, 105:1, 111:10, 153:8</p> <p>hoped [3] - 10:14, 18:20, 98:8</p> <p>hoping [1] - 7:22</p> <p>horrific [2] - 106:12,</p>	<p>109:16</p> <p>horse [1] - 48:4</p> <p>hour [5] - 52:1, 65:22, 73:2, 74:24, 77:9</p> <p>hours [2] - 143:14, 143:29</p> <p>house [2] - 50:25, 140:1</p> <p>HOUSE [4] - 2:11, 2:19, 3:22, 4:3</p> <p>houses [1] - 144:20</p> <p>HQ [1] - 99:11</p> <p>HRM [1] - 131:25</p> <p>huge [2] - 31:5, 86:4</p> <p>human [1] - 116:29</p> <p>hundred [1] - 40:13</p> <p>hundreds [2] - 42:23, 60:24</p> <p>hurrying [1] - 25:15</p> <p>hypocritical [1] - 151:9</p>	<p>importance [2] - 50:1, 104:11</p> <p>important [5] - 25:14, 28:25, 46:7, 57:29, 81:6</p> <p>impossible [2] - 97:1, 125:26</p> <p>impression [11] - 60:19, 71:13, 91:14, 102:12, 104:6, 104:8, 126:28, 127:23, 127:24, 127:25, 135:6</p> <p>improper [3] - 27:2, 35:1, 117:22</p> <p>impropriety [2] - 23:6, 52:27</p> <p>improve [1] - 113:27</p> <p>IN [1] - 1:17</p> <p>inappropriate [16] - 36:13, 62:19, 64:16, 64:21, 74:19, 83:25, 84:6, 84:7, 85:20, 85:25, 85:27, 86:16, 87:27, 88:29, 89:1</p> <p>inappropriately [1] - 157:18</p> <p>incident [8] - 9:9, 9:13, 15:1, 34:5, 52:13, 100:28, 107:10, 134:8</p> <p>incidents [3] - 26:7, 53:9, 138:17</p> <p>inclined [1] - 126:28</p> <p>include [1] - 26:18</p> <p>included [5] - 22:20, 58:17, 127:20, 130:9, 130:15</p> <p>includes [1] - 128:29</p> <p>including [2] - 58:19, 82:7</p> <p>inclusion [1] - 96:18</p> <p>incorrect [5] - 26:28, 77:21, 111:29, 112:22, 112:23</p> <p>incumbent [1] - 23:21</p> <p>indeed [18] - 9:14, 31:5, 34:23, 35:19, 50:9, 71:24, 81:28, 94:1, 104:9, 115:11, 127:15, 137:23, 141:12, 142:11, 151:3, 151:11, 153:10, 153:25</p> <p>independence [1] - 53:28</p> <p>INDEPENDENT [1] - 3:4</p> <p>independent [6] - 53:26, 54:18, 54:19,</p>	<p>54:24, 115:5, 115:24</p> <p>independently [1] - 55:13</p> <p>INDEX [1] - 5:1</p> <p>indicate [11] - 57:19, 64:24, 71:23, 79:10, 81:25, 89:27, 101:16, 110:15, 110:24, 120:3, 133:8</p> <p>indicated [25] - 15:7, 20:8, 33:20, 45:1, 50:18, 50:24, 64:22, 64:28, 65:16, 65:20, 65:23, 66:3, 66:19, 81:2, 89:25, 95:19, 96:29, 97:15, 98:13, 99:9, 99:19, 99:21, 103:25, 112:16, 123:26</p> <p>indicating [4] - 19:1, 109:15, 119:28, 121:28</p> <p>indication [5] - 12:13, 16:19, 24:17, 115:23, 125:21</p> <p>indifferent [1] - 40:17</p> <p>indirectly [1] - 58:6</p> <p>individual [8] - 103:12, 104:17, 124:2, 124:8, 124:13, 126:11, 142:27, 145:12</p> <p>individually [2] - 53:20, 155:29</p> <p>individuals [11] - 40:29, 41:6, 54:8, 54:25, 55:18, 55:19, 55:22, 122:15, 123:26, 155:25, 155:27</p> <p>inextricably [1] - 24:3</p> <p>influenced [1] - 37:14</p> <p>influencing [1] - 35:11</p> <p>info [2] - 131:14, 131:18</p> <p>inform [4] - 36:4, 36:17, 38:24, 120:7</p> <p>information [37] - 32:9, 32:16, 40:23, 52:17, 58:4, 67:9, 70:2, 70:6, 70:17, 70:19, 73:13, 73:14, 73:16, 74:8, 75:14, 75:22, 78:12, 89:17, 90:3, 90:12, 94:20, 99:5, 102:6, 102:8,</p>
I				
		<p>i.e [5] - 14:16, 109:6, 123:21, 124:6, 151:24</p> <p>larfhlaith [3] - 17:7, 18:4, 22:4</p> <p>idea [4] - 9:27, 20:4, 91:28, 145:16</p> <p>ideas [1] - 153:4</p> <p>identified [8] - 14:16, 44:17, 58:3, 60:21, 113:11, 126:1, 142:12, 151:7</p> <p>identify [3] - 118:14, 126:14, 151:8</p> <p>identity [1] - 58:12</p> <p>IFSC [1] - 3:30</p> <p>ill [1] - 38:4</p> <p>ill-motivated [1] - 38:4</p> <p>imagines [1] - 39:14</p> <p>immediately [9] - 76:5, 80:21, 109:25, 110:23, 128:16, 146:28, 152:23, 153:21</p> <p>impact [2] - 61:13, 74:28</p> <p>impaired [1] - 84:15</p> <p>impart [2] - 75:15, 82:5</p> <p>imparted [1] - 99:4</p> <p>imparting [1] - 71:4</p> <p>implemented [2] - 123:23, 126:17</p> <p>implication [1] - 32:8</p>		

<p>102:18, 111:27, 112:12, 118:15, 121:20, 121:21, 121:22, 122:11, 123:8, 125:9, 125:29, 130:22, 156:27 informed [8] - 13:27, 21:13, 36:25, 42:17, 46:20, 59:16, 113:26, 118:18 informing [1] - 60:10 ingredient [1] - 29:14 initial [7] - 28:13, 62:16, 64:9, 74:25, 85:27, 88:5, 88:8 initiate [1] - 130:6 injured [1] - 9:9 injuries [1] - 134:5 INM [1] - 51:11 innuendo [1] - 43:13 input [2] - 91:21, 141:20 inquired [2] - 46:10, 75:6 inquiries [7] - 12:7, 12:11, 19:17, 21:21, 51:2, 58:16, 142:5 inquiring [1] - 74:7 inquiry [10] - 10:24, 10:28, 18:19, 18:23, 22:17, 22:18, 22:20, 22:25, 25:4, 50:26 INQUIRY [2] - 1:3, 1:9 insofar [12] - 7:23, 15:22, 21:27, 23:5, 58:8, 58:12, 105:16, 108:18, 122:13, 123:26, 141:24, 149:23 inspector [2] - 99:13, 114:17 Inspector [3] - 6:21, 130:1, 138:11 inspectorate [1] - 145:29 instance [18] - 8:28, 33:29, 40:9, 40:11, 40:25, 45:12, 52:25, 68:13, 77:6, 87:28, 89:1, 102:22, 107:8, 125:21, 132:5, 141:2, 141:11, 145:18 instructed [1] - 26:28 INSTRUCTED [11] - 2:11, 2:17, 2:23, 2:28, 3:2, 3:6, 3:17, 4:7, 4:10, 4:14, 4:20</p>	<p>instructions [1] - 107:7 INSTRUMENT [1] - 1:8 integrity [4] - 74:29, 137:15, 137:28, 138:7 intelligence [1] - 155:7 Intelligence [1] - 6:24 intend [4] - 55:7, 55:24, 123:27, 123:28 intention [3] - 40:16, 84:12, 99:2 inter [1] - 121:4 interacting [1] - 107:1 interaction [12] - 48:13, 53:8, 54:7, 57:7, 59:25, 60:8, 62:14, 63:12, 68:16, 68:24, 81:18, 152:21 interactions [6] - 53:15, 53:29, 54:2, 59:10, 79:9, 116:19 interest [1] - 96:21 interested [1] - 113:10 interests [1] - 116:28 interim [2] - 13:14, 42:1 interjecting [1] - 154:11 intermediate [1] - 127:8 International [1] - 33:9 international [1] - 28:27 internet [2] - 66:13, 66:20 interpret [1] - 55:22 interpretation [4] - 37:8, 110:19, 110:21, 111:4 interpreted [2] - 104:20, 110:28 interrupt [1] - 111:6 interrupted [1] - 15:5 interrupting [1] - 133:11 interview [17] - 14:4, 43:22, 56:20, 94:29, 95:13, 96:18, 101:20, 112:2, 112:13, 112:25, 113:15, 127:22, 132:25, 143:29, 155:3, 155:16, 155:17 interviewed [4] -</p>	<p>100:10, 107:17, 112:1, 132:23 intimate [1] - 82:16 intimidated [1] - 148:4 intimidation [2] - 138:13, 138:23 INTO [1] - 1:3 introduce [1] - 98:29 introduced [1] - 100:17 introduction [1] - 25:19 intrusion [1] - 52:24 invent [1] - 107:11 inventing [1] - 106:26 investigate [4] - 11:6, 11:16, 27:18, 130:2 investigated [5] - 36:14, 99:17, 103:1, 132:17, 133:9 investigating [4] - 16:29, 87:6, 145:28, 146:10 investigation [39] - 7:14, 8:24, 12:6, 16:9, 16:27, 18:2, 18:15, 19:17, 24:17, 34:13, 34:29, 44:26, 45:2, 64:15, 65:18, 66:24, 71:11, 73:13, 74:9, 75:12, 75:20, 75:23, 78:5, 78:7, 81:5, 81:6, 81:13, 114:23, 129:4, 133:8, 135:18, 141:9, 142:17, 142:18, 142:24, 142:26, 143:7, 155:10 Investigation [6] - 22:28, 23:20, 23:23, 23:28, 25:2, 41:28 investigation" [1] - 132:12 investigations [4] - 21:20, 94:3, 142:25, 148:18 investigators [3] - 14:5, 43:23, 56:20 invitation [1] - 71:24 invite [1] - 139:19 invited [2] - 16:10, 73:25 inviting [1] - 17:12 involve [2] - 23:11, 31:24 involved [21] - 17:29, 28:23, 32:27, 33:6, 36:13, 42:23, 50:5,</p>	<p>64:21, 64:25, 64:29, 82:14, 82:20, 85:2, 86:3, 89:28, 91:29, 99:2, 104:29, 142:27, 148:18, 155:27 involvement [1] - 24:15 involving [2] - 25:4, 27:9 IRA [1] - 33:11 Ireland [2] - 42:9, 69:14 IRELAND [1] - 3:18 IRISH [3] - 3:25, 4:1, 4:2 Irish [1] - 117:17 irony [1] - 146:2 isolated [2] - 60:20, 150:23 issue [43] - 11:11, 11:21, 11:26, 15:22, 16:15, 20:6, 24:8, 33:21, 34:15, 34:18, 35:21, 46:4, 49:22, 57:12, 65:3, 66:25, 73:8, 77:17, 91:12, 92:1, 95:16, 95:28, 96:4, 97:5, 98:24, 100:11, 101:18, 108:28, 109:7, 109:20, 119:13, 121:15, 121:27, 127:11, 135:1, 137:18, 137:21, 137:26, 139:4, 143:22, 143:23, 156:22 issued [3] - 13:22, 15:27, 151:21 issues [49] - 8:3, 16:28, 35:16, 35:18, 39:27, 44:13, 44:22, 52:6, 52:9, 57:16, 73:9, 74:4, 86:25, 94:8, 94:24, 94:28, 95:25, 98:19, 99:12, 100:15, 103:16, 103:17, 104:18, 104:24, 105:13, 105:17, 105:18, 112:13, 112:26, 113:7, 113:15, 116:17, 120:27, 125:17, 128:4, 128:29, 131:28, 132:8, 135:11, 136:11, 136:17, 137:10, 142:8, 144:25, 151:4, 155:4 issues" [1] - 136:3</p>	<p>issuing [1] - 14:23 IT [1] - 127:6 it'll [1] - 8:29 item [1] - 94:22 items [2] - 75:6, 95:21 itself [5] - 16:19, 59:23, 67:28, 74:22, 116:27</p>
J				
<p>jail [2] - 148:19, 148:22 James [1] - 129:19 January [27] - 17:25, 23:27, 39:5, 43:6, 43:10, 43:29, 46:7, 54:4, 59:8, 72:19, 85:18, 116:11, 124:19, 128:8, 128:9, 128:17, 133:16, 134:4, 135:28, 138:11, 143:16, 144:8, 151:19, 154:22, 154:25, 157:14 JERMYN [1] - 3:29 job [5] - 28:25, 29:3, 116:27, 117:2, 153:17 Jockey [4] - 47:16, 47:18, 47:24, 48:3 Jocky [1] - 47:25 JOHN [5] - 2:17, 2:23, 3:5, 4:10, 4:14 John [36] - 11:15, 13:1, 15:2, 16:1, 17:24, 33:7, 41:14, 43:6, 46:11, 46:21, 46:24, 46:29, 47:10, 48:7, 50:9, 53:22, 98:25, 99:5, 99:9, 99:28, 100:19, 102:9, 102:12, 103:2, 103:3, 112:17, 114:16, 114:29, 117:13, 128:28, 131:19, 132:25, 132:27, 133:10, 141:22, 149:27 join [1] - 57:12 joined [1] - 6:18 joining [1] - 121:27 joking [1] - 46:12 JOM [1] - 132:25 got [3] - 74:25, 86:5, 88:9 journalist [8] - 51:29, 55:28, 98:10, 101:27,</p>				

<p>105:1, 106:9, 106:18, 115:3 journalistic [2] - 58:10, 58:24 journalists [2] - 28:2, 58:5 journalists' [2] - 27:20, 27:28 JUDGE [2] - 1:12, 2:3 Judge [12] - 22:29, 23:22, 24:23, 30:19, 30:29, 34:3, 39:18, 42:5, 46:22, 47:21, 52:2, 55:6 judge [2] - 112:28, 113:23 judgment [1] - 84:14 July [1] - 23:4 junction [6] - 22:25, 28:17, 47:4, 56:26, 81:10, 118:13 June [3] - 23:4, 111:18, 151:19 junior [1] - 127:9 JUNO [1] - 3:26 justice [8] - 17:6, 18:4, 20:14, 22:3, 22:27, 24:15, 144:21, 145:11 JUSTICE [3] - 1:8, 1:12, 2:2 Justice [5] - 25:2, 38:8, 41:12, 41:27, 138:22 justification [1] - 30:15 Justine [1] - 132:11 JW [1] - 132:27</p>	<p>74:29, 75:5, 75:29, 76:6, 76:12, 76:14, 78:1, 78:22, 78:27, 79:2, 79:10, 79:22, 79:29, 80:13, 80:17, 80:19, 80:22, 81:3, 81:18, 82:16, 83:13, 83:26, 83:27, 88:3, 88:16, 88:17, 88:22, 89:16, 90:4, 90:7, 90:19, 90:23, 91:6, 91:9, 92:2, 105:4, 116:19, 150:14 Kean's [5] - 64:10, 67:26, 73:4, 86:10, 86:11 Keara [1] - 32:19 KEELEY [1] - 3:17 keen [1] - 112:4 keep [3] - 61:21, 90:6, 113:26 keeping [3] - 94:15, 116:29, 140:7 KELLY [4] - 3:6, 3:6, 3:11, 3:11 KENNEDY [1] - 3:1 Kenneth [1] - 33:8 kept [3] - 91:10, 91:12, 119:18 KEVIN'S [2] - 3:8, 3:13 key [2] - 115:17, 155:13 KIERAN [2] - 3:6, 3:11 Killian [1] - 131:17 killling [1] - 94:20 kilter [1] - 133:14 kind [5] - 57:22, 105:29, 106:13, 109:17, 157:22 kindly [1] - 17:18 knocking [1] - 101:13 knowing [1] - 47:22 knowledge [12] - 14:27, 14:28, 18:17, 27:12, 32:12, 32:15, 33:3, 36:5, 46:1, 71:3, 82:6, 111:2 known [10] - 11:19, 12:1, 12:6, 12:14, 14:7, 23:12, 24:15, 28:21, 105:20 KRW [1] - 4:15</p>	<p>LALLY [1] - 4:2 large [3] - 42:11, 103:2, 151:4 last [12] - 17:16, 20:16, 21:23, 23:1, 25:9, 28:16, 77:9, 95:7, 100:22, 117:17, 137:6, 157:8 lasted [3] - 44:11, 77:15, 80:4 lasting [2] - 72:20, 72:23 lasts [1] - 76:15 late [4] - 15:1, 41:12, 51:1, 140:18 LAVERY [1] - 4:3 LAW [2] - 2:28, 4:15 law [2] - 89:10, 138:18 lawfully [2] - 121:3, 125:7 LAWLOR [1] - 4:10 LEADER [1] - 2:7 leading [3] - 30:2, 53:7, 97:29 least [2] - 31:8, 105:6 leave [1] - 131:10 leaving [2] - 89:3, 113:29 led [2] - 52:17, 155:8 left [5] - 71:13, 71:14, 106:10, 110:23, 139:28 legal [13] - 85:14, 87:22, 89:10, 115:21, 118:22, 119:25, 120:25, 121:2, 121:15, 121:29, 125:4, 125:9, 130:11 legality [1] - 120:26 legally [1] - 52:9 LEHANE [1] - 4:10 length [3] - 77:10, 86:4, 102:16 lengthy [2] - 141:8, 158:4 less [4] - 66:9, 98:13, 150:25, 151:29 lesser [1] - 53:24 letter [62] - 8:28, 10:4, 11:27, 18:5, 21:13, 22:23, 23:3, 23:6, 32:19, 32:23, 45:27, 48:14, 59:17, 59:23, 60:10, 63:29, 64:2, 64:3, 64:10, 64:17, 64:27, 67:4, 67:5, 67:6, 68:2, 73:4, 76:23, 76:24, 82:28, 83:3, 83:15, 83:20,</p>	<p>84:2, 86:1, 86:11, 87:21, 87:27, 88:2, 88:3, 88:7, 88:17, 88:25, 88:26, 88:29, 89:15, 90:11, 90:23, 90:28, 117:13, 119:20, 120:18, 120:21, 122:5, 123:5, 123:13, 124:23, 124:24, 125:4, 125:14, 138:10 letters [4] - 44:19, 83:5, 83:9, 125:19 letting [3] - 14:24, 15:26, 154:10 level [8] - 27:9, 51:14, 71:29, 104:29, 146:18, 147:25, 150:21, 152:3 levels [1] - 127:8 levied [1] - 146:17 liaising [1] - 95:19 Liaison [1] - 28:24 lies [1] - 22:16 life [6] - 52:25, 52:26, 81:29, 101:18, 116:26, 127:13 light [3] - 21:25, 107:12, 114:8 likely [1] - 23:14 limit [1] - 49:28 LIMITED [3] - 3:16, 3:20, 3:21 limited [2] - 21:28, 58:24 line [4] - 70:12, 71:5, 134:27, 135:16 lines [1] - 84:13 link [4] - 34:1, 37:23, 37:25, 38:1 linked [1] - 24:3 linking [5] - 34:28, 34:29, 35:7, 38:15, 54:13 links [1] - 115:3 list [7] - 11:23, 95:20, 96:16, 102:27, 137:8, 141:27 listed [2] - 6:5, 63:26 listen [3] - 80:11, 126:28, 153:12 listened [3] - 80:13, 117:9, 117:10 listening [1] - 127:24 lists [2] - 11:23, 140:19 LITTLE [1] - 2:19 live [1] - 97:5 lives [1] - 73:26 location [2] - 33:6,</p>	<p>78:6 Location [1] - 33:10 locking [1] - 140:7 logical [1] - 134:13 look [25] - 7:9, 8:28, 9:2, 12:20, 17:4, 40:12, 62:15, 66:14, 66:19, 72:3, 83:15, 83:29, 84:17, 86:15, 86:21, 88:7, 119:3, 126:19, 126:23, 130:25, 141:1, 141:26, 142:9, 145:25, 147:7 looked [5] - 8:18, 11:1, 85:29, 88:11, 151:23 looking [15] - 7:6, 8:4, 12:21, 40:9, 65:29, 69:3, 75:11, 89:4, 89:8, 89:13, 89:16, 129:7, 142:26, 143:7, 150:15 loss [1] - 138:19 lost [1] - 117:21 Lou [6] - 133:18, 133:27, 147:13, 147:15, 149:12, 158:1 LOWER [2] - 3:7, 3:12 loyalty [3] - 112:29, 113:17, 114:7 luck [3] - 78:20, 78:23 lunch [1] - 92:6 LUNCH [1] - 92:12 LUNCHEON [1] - 93:1</p>
M				
<p style="text-align: center;">K</p> <p>KATHLEEN [1] - 2:7 KAVANAGH [1] - 2:4 Kean [81] - 53:26, 59:11, 59:18, 59:26, 60:5, 61:10, 61:19, 62:14, 62:24, 63:12, 64:1, 64:2, 64:6, 64:23, 64:26, 65:3, 65:7, 65:12, 65:13, 65:17, 67:8, 67:12, 67:24, 68:2, 68:8, 68:14, 68:15, 68:21, 69:1, 69:3, 69:10, 70:8, 70:10, 71:4, 72:17, 72:21, 72:24, 72:26, 73:9, 73:12, 73:18, 74:5, 74:13,</p>	<p style="text-align: center;">L</p> <p>lady [1] - 98:1</p>			<p>M.E [1] - 2:24 machine [1] - 15:4 MACKIN [1] - 4:14 macro [1] - 152:3 MADE [2] - 1:3, 1:8 magnitude [1] - 140:26 mail [2] - 154:22, 154:25 major [1] - 24:21 majority [1] - 102:8 mala [2] - 38:9, 38:15 malice [1] - 26:25 MALONE [1] - 1:30 Malone [1] - 1:25 malpractice [2] - 138:19, 146:16 man [7] - 75:21,</p>

<p>77:9, 77:14, 86:23, 106:9, 146:4, 148:15 man's [1] - 112:18 manage [2] - 117:3, 127:14 management [6] - 7:1, 57:18, 105:10, 105:14, 127:16, 153:1 managers [1] - 51:10 manifestly [1] - 22:15 manner [15] - 10:3, 30:1, 30:24, 46:16, 64:18, 74:12, 85:4, 137:18, 147:17, 147:22, 149:24, 150:3, 150:20, 156:23, 157:16 manoeuvre [1] - 50:6 manor [1] - 73:26 March [11] - 6:11, 7:4, 25:10, 28:16, 41:15, 45:28, 46:3, 56:12, 106:24, 133:19, 157:4 Marian [9] - 60:6, 65:7, 65:21, 67:10, 77:24, 78:2, 79:3, 79:12, 79:28 marked [2] - 61:28, 64:10 marks [1] - 155:22 MARRINAN [9] - 2:6, 5:4, 6:4, 6:8, 6:10, 93:4, 111:12, 152:19, 158:3 Marrinan [13] - 72:5, 79:16, 88:23, 91:21, 93:17, 93:19, 108:9, 110:27, 119:9, 131:2, 133:11, 142:7, 156:9 MARTIN [2] - 5:3, 6:7 Martin [9] - 6:5, 63:27, 63:28, 83:2, 96:17, 111:24, 111:29, 112:16, 114:15 Mary [6] - 133:18, 133:27, 147:13, 147:15, 149:12, 158:1 material [32] - 14:9, 15:14, 15:21, 16:2, 17:15, 20:24, 21:9, 36:19, 36:21, 40:19, 41:29, 44:16, 45:21, 59:21, 66:20, 68:6, 76:26, 78:14, 89:2, 93:8, 111:14, 121:17, 125:3, 128:18, 130:9, 130:15, 141:18,</p>	<p>147:7, 148:12, 148:27, 157:1, 157:3 materials [8] - 15:16, 20:15, 20:18, 56:7, 59:3, 65:11, 70:29, 72:4 matter [54] - 8:25, 11:8, 11:14, 20:8, 24:29, 25:16, 34:22, 36:14, 36:17, 37:8, 38:22, 42:13, 47:2, 49:27, 50:4, 55:23, 59:5, 62:3, 62:20, 64:16, 64:19, 65:2, 67:17, 70:26, 75:9, 81:5, 81:8, 85:15, 88:11, 88:15, 97:2, 97:8, 99:15, 99:16, 101:16, 101:23, 103:7, 105:2, 115:19, 119:6, 119:29, 121:28, 122:27, 123:14, 125:13, 130:2, 130:3, 130:6, 137:16, 138:28, 142:3, 148:14, 154:29, 157:10 matters [35] - 10:18, 12:12, 17:29, 22:26, 23:2, 23:5, 23:19, 24:4, 24:26, 25:4, 25:13, 34:6, 36:1, 38:3, 58:17, 64:12, 67:23, 70:10, 78:13, 78:15, 79:19, 81:22, 87:6, 98:15, 112:5, 113:12, 126:22, 136:14, 144:3, 146:5, 149:3, 149:23, 150:20, 151:6, 158:5 MATTERS [1] - 1:5 Maurice [29] - 7:5, 7:11, 8:7, 13:23, 25:27, 26:12, 63:29, 83:4, 83:21, 96:20, 102:9, 102:16, 108:27, 109:19, 109:21, 109:27, 110:22, 110:26, 112:17, 128:28, 129:11, 133:1, 133:3, 139:10, 139:17, 143:9, 143:14, 149:27 MAY [3] - 1:18, 6:1, 158:7 McALEESE [2] - 3:21, 3:21 McCabe [186] - 2:9, 7:5, 7:11, 7:15, 8:8, 10:8, 10:16, 10:27,</p>	<p>11:19, 11:26, 12:2, 12:11, 12:16, 13:1, 13:23, 13:27, 14:6, 14:8, 14:13, 14:17, 14:20, 14:22, 14:24, 15:10, 15:25, 16:1, 16:8, 24:4, 24:5, 25:27, 26:12, 26:19, 26:25, 26:28, 27:1, 27:11, 27:21, 28:1, 32:7, 32:9, 32:13, 33:18, 33:22, 33:28, 34:7, 34:21, 35:1, 35:8, 35:11, 35:22, 35:26, 36:2, 36:7, 36:12, 36:19, 37:1, 37:14, 37:17, 38:9, 38:15, 38:18, 38:27, 39:28, 40:15, 40:17, 40:22, 42:24, 44:2, 44:22, 44:25, 45:4, 48:29, 49:11, 50:9, 52:16, 52:21, 52:24, 53:12, 54:15, 57:15, 57:20, 58:7, 59:12, 61:6, 61:7, 64:1, 64:2, 70:11, 70:16, 70:28, 71:10, 71:14, 71:17, 71:20, 71:24, 73:5, 73:10, 74:4, 74:11, 74:21, 77:18, 78:13, 78:15, 78:29, 79:6, 80:1, 80:7, 80:9, 81:25, 82:3, 82:7, 82:14, 82:20, 83:4, 83:21, 84:22, 85:1, 85:17, 85:22, 86:13, 87:10, 87:13, 88:4, 91:3, 96:20, 98:24, 99:24, 99:25, 102:9, 102:26, 102:27, 103:12, 103:27, 104:4, 104:17, 104:23, 105:9, 105:13, 105:27, 108:1, 108:27, 109:14, 109:19, 109:21, 109:27, 110:18, 110:22, 110:26, 112:17, 115:4, 115:7, 117:29, 125:17, 128:28, 129:1, 129:22, 129:27, 131:19, 132:2, 133:1, 133:3, 134:28, 135:4, 135:16, 136:10, 137:15, 138:10, 139:10, 139:15, 139:18, 139:25, 140:6, 141:2, 141:22,</p>	<p>143:9, 143:14, 144:1, 145:16, 149:27, 150:26, 151:2, 151:7, 151:18, 156:23, 157:16 McCabe [2] - 129:12, 132:11 McCabe's [8] - 42:20, 74:28, 87:21, 100:20, 102:16, 104:10, 139:5, 145:23 McCANN [1] - 3:16 McCarthy [9] - 53:24, 54:2, 56:10, 82:12, 132:11, 135:23, 138:11, 144:9, 152:22 McCONNELL [1] - 3:26 McCOURT [1] - 4:7 McDonald [6] - 133:19, 133:27, 147:13, 147:15, 149:12, 158:1 McDOWELL [1] - 2:9 McEney [2] - 120:14, 120:15 McENROE [1] - 3:26 McENROY [1] - 4:6 McGARRY [1] - 2:10 McGinn [5] - 10:23, 38:7, 139:7, 141:3, 141:8 McGlone [1] - 32:20 MCGUINNESS [2] - 2:6, 2:16 McGuinness [39] - 4:10, 17:25, 20:1, 20:6, 23:26, 24:2, 24:14, 24:19, 43:6, 43:9, 43:20, 44:5, 44:11, 44:15, 44:19, 44:21, 45:9, 46:2, 46:4, 46:10, 46:12, 46:14, 46:20, 46:25, 48:13, 53:23, 54:1, 54:6, 55:3, 59:29, 82:12, 117:13, 119:28, 120:3, 120:7, 147:3, 152:17, 152:18, 152:21 McLindon [12] - 39:15, 97:25, 126:25, 127:21, 127:27, 128:3, 134:11, 136:24, 137:9, 145:4, 154:14, 154:22 McLindon's [3] - 39:20, 134:3, 138:1 McPartlin [1] -</p>	<p>131:11 mean [55] - 34:14, 34:28, 35:10, 37:17, 37:29, 38:3, 39:9, 49:19, 51:14, 51:24, 53:21, 60:19, 61:14, 62:13, 63:6, 67:6, 70:26, 71:2, 71:9, 73:5, 74:2, 75:8, 75:9, 76:19, 76:22, 77:13, 77:29, 80:12, 84:14, 84:21, 86:4, 87:1, 90:26, 91:3, 103:7, 105:23, 106:5, 106:24, 107:17, 107:20, 107:25, 108:3, 116:26, 135:1, 135:2, 136:7, 136:17, 137:11, 137:13, 137:28, 139:14, 141:23, 144:14, 151:11, 156:18 meaningful [1] - 132:1 meaningless [1] - 156:16 meant [2] - 20:4, 37:9 mechanism [4] - 126:6, 138:18, 148:6, 149:5 media [9] - 10:16, 11:21, 26:24, 26:27, 26:29, 42:25, 49:2, 58:6, 146:26 MEDIA [2] - 3:4, 3:18 medical [1] - 103:29 meet [7] - 33:15, 49:29, 64:23, 89:27, 97:28, 101:6, 139:26 meeting [35] - 17:28, 23:26, 29:1, 43:5, 43:10, 43:12, 43:25, 44:4, 44:10, 44:11, 44:21, 44:25, 51:19, 54:4, 54:5, 55:4, 59:28, 64:25, 75:7, 96:3, 96:13, 97:26, 128:8, 130:16, 131:4, 133:17, 134:3, 134:24, 135:28, 138:16, 144:10, 144:27, 157:28 meetings [12] - 17:24, 39:5, 40:4, 40:21, 128:6, 128:21, 130:16, 132:2, 135:5, 136:12, 137:10, 153:9 MEMBER [2] - 1:12, 2:2</p>
---	---	--	--	---

<p>member ^[16] - 23:10, 38:13, 38:14, 52:26, 82:6, 85:3, 87:13, 105:7, 108:1, 117:25, 117:26, 122:12, 138:7, 138:20, 146:15, 157:21</p> <p>member's ^[1] - 129:23</p> <p>members ^[14] - 13:26, 44:17, 48:10, 49:1, 93:28, 96:13, 107:1, 114:2, 123:7, 126:4, 126:29, 137:22, 149:2, 155:6</p> <p>memory ^[2] - 59:19, 78:9</p> <p>men ^[2] - 94:13, 113:2</p> <p>mentally ^[1] - 104:4</p> <p>mention ^[8] - 63:17, 69:8, 69:20, 98:5, 99:24, 112:18, 113:16, 136:15</p> <p>mentioned ^[15] - 13:14, 34:25, 34:27, 36:11, 39:1, 39:2, 40:2, 56:5, 70:8, 98:21, 99:25, 102:22, 113:29, 133:6, 136:22</p> <p>mentioning ^[1] - 40:3</p> <p>MERCHANTS ^[1] - 3:23</p> <p>merely ^[1] - 112:4</p> <p>message ^[3] - 38:29, 75:12, 113:8</p> <p>messages ^[8] - 42:6, 42:7, 42:11, 42:23, 42:27, 47:15, 78:22, 155:13</p> <p>met ^[18] - 28:28, 28:29, 33:4, 33:5, 51:10, 64:6, 66:7, 66:8, 73:18, 73:21, 73:23, 89:21, 89:23, 97:29, 139:11, 139:17, 141:6, 141:7</p> <p>Michael ^[1] - 145:10</p> <p>MICHAEL ^[5] - 2:9, 2:22, 2:28, 3:10, 3:17</p> <p>MICHELLE ^[1] - 4:6</p> <p>Mick ^[1] - 132:11</p> <p>MICK ^[1] - 3:28</p> <p>middle ^[1] - 44:7</p> <p>might ^[21] - 9:1, 11:14, 17:18, 18:23, 37:4, 37:22, 52:20, 55:26, 64:18, 67:15, 78:19, 88:17, 90:1,</p>	<p>90:22, 104:20, 104:26, 104:27, 112:7, 133:13, 137:10, 156:12</p> <p>might've ^[1] - 67:16</p> <p>miles ^[1] - 150:24</p> <p>mill ^[1] - 94:23</p> <p>million ^[2] - 127:15, 151:20</p> <p>mind ^[9] - 12:21, 13:12, 31:11, 76:26, 79:19, 110:16, 125:12, 136:17, 136:20</p> <p>mine ^[1] - 118:15</p> <p>Minister ^[17] - 13:15, 35:20, 35:28, 36:4, 36:25, 36:29, 37:7, 38:20, 38:24, 38:26, 41:9, 41:12, 41:15, 41:17, 98:17, 138:22, 141:28</p> <p>MINISTER ^[1] - 1:8</p> <p>minute ^[2] - 68:19, 76:9</p> <p>minutes ^[16] - 44:12, 66:9, 66:10, 72:20, 72:23, 72:27, 76:3, 76:15, 77:15, 77:28, 80:4, 80:26, 81:14, 81:15, 100:23, 129:29</p> <p>misconduct ^[2] - 27:21, 27:29</p> <p>misconstrued ^[1] - 150:23</p> <p>misinterpretation ^[1] - 107:26</p> <p>mislead ^[1] - 63:3</p> <p>misleading ^[2] - 62:29, 63:1</p> <p>mistaken ^[2] - 99:15, 133:6</p> <p>mobile ^[3] - 41:26, 42:29, 72:14</p> <p>moment ^[9] - 56:24, 62:27, 73:18, 98:19, 128:10, 128:12, 131:10, 138:9, 145:13</p> <p>Monaghan ^[2] - 33:14, 130:5</p> <p>MONDAY ^[1] - 158:7</p> <p>monies ^[1] - 117:21</p> <p>month ^[1] - 116:20</p> <p>monthly ^[1] - 153:8</p> <p>months ^[1] - 28:29</p> <p>Mooney ^[2] - 115:1, 115:13</p> <p>morning ^[16] - 51:1, 52:5, 54:3, 66:27, 72:22, 77:25, 77:27,</p>	<p>78:16, 79:28, 93:14, 106:16, 131:13, 136:6, 139:4, 150:14</p> <p>MORRISSEY ^[1] - 2:17</p> <p>most ^[2] - 18:18, 36:18</p> <p>motivated ^[5] - 26:25, 38:4, 57:17, 105:9</p> <p>motivating ^[1] - 37:18</p> <p>motivation ^[7] - 30:28, 35:15, 37:4, 135:13, 136:8, 136:9, 139:5</p> <p>motive ^[1] - 35:1</p> <p>move ^[11] - 13:17, 31:7, 31:10, 31:13, 92:1, 103:10, 116:10, 128:14, 133:16, 133:24, 134:2</p> <p>moved ^[2] - 31:16, 139:28</p> <p>moving ^[2] - 140:1, 158:4</p> <p>MR ^[48] - 1:12, 2:2, 2:4, 2:6, 2:6, 2:9, 2:10, 2:10, 2:14, 2:15, 2:15, 2:16, 2:16, 2:17, 2:22, 2:23, 2:23, 2:27, 2:28, 3:1, 3:1, 3:5, 3:5, 3:6, 3:10, 3:11, 3:17, 3:21, 3:28, 3:28, 4:2, 4:6, 4:10, 4:14, 4:14, 4:19, 4:20, 5:3, 5:4, 6:4, 6:7, 6:8, 6:10, 93:4, 111:12, 152:18, 152:19, 158:3</p> <p>MRS ^[1] - 4:6</p> <p>MS ^[6] - 2:7, 2:7, 2:17, 2:18, 2:22, 4:19</p> <p>MUIRCHEARTAIGH ^[1] - 2:27</p> <p>MULLAN ^[1] - 2:7</p> <p>Mullingar ^[1] - 138:11</p> <p>multiple ^[1] - 125:23</p> <p>MURPHY ^[2] - 2:14, 4:19</p> <p>must ^[3] - 46:12, 122:14, 141:6</p> <p>MÍCHEÁL ^[1] - 2:15</p>	<p>named ^[1] - 1:27</p> <p>namely ^[4] - 20:21, 27:22, 77:18, 101:20</p> <p>National ^[1] - 6:26</p> <p>national ^[2] - 6:27, 28:26</p> <p>naturally ^[2] - 45:8, 49:18</p> <p>nature ^[6] - 9:11, 18:16, 28:7, 50:28, 94:28, 104:19</p> <p>nearly ^[1] - 76:15</p> <p>nebulous ^[1] - 43:16</p> <p>necessarily ^[2] - 14:21, 121:14</p> <p>necessary ^[8] - 17:22, 18:19, 19:17, 21:20, 22:16, 58:9, 94:19, 141:14</p> <p>need ^[10] - 17:5, 36:5, 41:22, 56:24, 78:22, 83:17, 93:15, 113:26, 138:24, 141:20</p> <p>needed ^[6] - 36:8, 38:21, 73:15, 113:11, 113:26, 128:5</p> <p>needn't ^[1] - 94:18</p> <p>needs ^[2] - 29:5, 133:14</p> <p>nefarious ^[1] - 50:5</p> <p>negative ^[2] - 102:12, 113:28</p> <p>negatively ^[1] - 26:27</p> <p>neighbours ^[1] - 94:10</p> <p>networking ^[1] - 131:16</p> <p>never ^[8] - 39:2, 48:6, 77:22, 82:19, 139:11, 141:11, 141:12</p> <p>new ^[1] - 45:21</p> <p>NEWS ^[2] - 3:4, 3:20</p> <p>newspaper ^[2] - 50:26, 117:23</p> <p>NEWSPAPERS ^[3] - 3:15, 3:20, 3:20</p> <p>next ^[5] - 27:4, 82:25, 111:14, 117:6, 155:3</p> <p>nice ^[1] - 69:28</p> <p>nickname ^[4] - 47:18, 47:20, 47:26, 48:3</p> <p>night ^[6] - 51:1, 52:1, 52:5, 96:6, 97:12, 112:3</p> <p>nine ^[2] - 76:3, 157:2</p>	<p>nobody ^[5] - 108:18, 108:23, 111:7, 113:9, 143:19</p> <p>Nods ^[1] - 102:11</p> <p>Noel ^[3] - 130:1, 133:18, 133:28</p> <p>NOEL ^[1] - 2:16</p> <p>Nolan ^[2] - 134:25, 135:29</p> <p>Nolan's ^[1] - 39:22</p> <p>non ^[2] - 43:16, 72:1</p> <p>non-cooperation ^[1] - 72:1</p> <p>non-specific ^[1] - 43:16</p> <p>noncompliance ^[1] - 151:13</p> <p>none ^[1] - 17:28</p> <p>Northern ^[1] - 42:9</p> <p>NORTHUMBERLA</p> <p>ND ^[1] - 4:7</p> <p>note ^[9] - 27:7, 40:26, 42:16, 91:23, 133:8, 135:26, 136:16, 152:6, 152:15</p> <p>noted ^[1] - 137:1</p> <p>notes ^[21] - 1:27, 39:7, 39:11, 39:13, 39:22, 63:27, 63:28, 64:11, 85:28, 121:2, 121:13, 124:29, 131:9, 134:3, 134:4, 134:24, 135:7, 138:1, 138:3, 138:4, 152:14</p> <p>notetaker's ^[1] - 136:20</p> <p>nothing ^[12] - 34:15, 34:18, 50:5, 69:5, 70:9, 74:27, 82:2, 85:1, 107:18, 143:24, 153:16, 154:5</p> <p>notice ^[10] - 37:16, 48:21, 100:11, 120:25, 121:9, 121:23, 123:29, 124:27, 126:5, 155:5</p> <p>noticed ^[1] - 111:8</p> <p>notices ^[27] - 11:11, 13:26, 24:7, 34:1, 34:13, 35:3, 41:2, 99:15, 102:29, 114:18, 114:24, 117:20, 117:23, 118:3, 122:22, 123:24, 124:8, 124:10, 126:12, 128:25, 140:17, 143:25, 151:16, 151:20, 151:28, 154:29, 155:19</p>
N				
<p>name ^[6] - 15:23, 47:24, 75:16, 98:27, 112:18, 142:23</p>				

<p>notify [1] - 23:22 notion [1] - 146:9 notwithstanding [1] - 21:25 November [12] - 19:7, 20:15, 21:8, 21:13, 22:4, 22:22, 117:13, 117:17, 120:18, 120:19, 129:3, 129:16 number [18] - 7:19, 9:15, 33:4, 42:11, 62:24, 64:23, 65:11, 69:3, 70:14, 77:15, 82:11, 89:26, 90:20, 99:26, 115:13, 127:3, 128:6, 142:12 Noirín [5] - 27:10, 31:2, 42:24, 139:17, 144:28</p>	<p>72:21, 72:24, 76:1, 80:17, 80:22, 80:28, 139:17, 144:28, 152:6 O'Sullivan's [2] - 22:11, 132:12 O'TOOLE [1] - 3:10 oath [1] - 55:21 objection [1] - 150:26 obligation [3] - 16:3, 67:7, 75:16 obligations [1] - 36:3 obliged [5] - 25:18, 36:17, 75:13, 75:18, 92:10 observation [5] - 9:24, 35:5, 55:26, 95:2, 106:8 observations [2] - 9:5, 81:21 obstructive [7] - 71:12, 71:15, 74:14, 75:1, 77:19, 79:1, 81:26 obtained [2] - 118:16, 118:24 obvious [2] - 107:23, 135:8 obviously [6] - 90:27, 117:29, 127:12, 138:5, 142:6, 153:27 occasion [2] - 81:16, 148:21 occasions [2] - 33:4, 64:6 occupied [2] - 10:21, 29:18 occupying [3] - 10:8, 10:9, 10:10 occur [2] - 23:14, 92:6 occurred [4] - 9:11, 17:27, 23:14, 36:27 occurs [1] - 131:3 October [7] - 15:1, 17:8, 17:14, 18:5, 20:22, 56:21, 140:18 odd [1] - 143:28 OF [4] - 1:3, 1:9, 1:12, 2:3 offence [2] - 123:6, 156:17 offences [2] - 80:9, 142:15 offensive [1] - 87:9 offered [5] - 62:24, 64:23, 102:5, 102:12 offering [1] - 67:19 OFFICE [1] - 2:18</p>	<p>office [18] - 24:8, 56:16, 61:15, 62:3, 84:3, 86:10, 91:6, 91:18, 91:22, 91:27, 91:29, 96:23, 119:15, 119:16, 125:9, 127:29, 139:20 Office [9] - 31:6, 50:29, 52:4, 59:16, 60:12, 96:24, 108:29, 109:8, 127:25 officer [5] - 9:4, 103:29, 110:11, 125:24, 144:23 Officer [8] - 28:18, 29:5, 29:11, 29:21, 30:6, 44:14, 95:20, 156:26 Officers [1] - 29:6 officers [10] - 42:25, 128:7, 139:14, 140:18, 142:12, 142:14, 142:27, 146:17, 149:9, 153:28 offices [3] - 102:29, 120:29, 149:9 official [1] - 61:25 officials [1] - 145:11 Oireachtas [1] - 144:20 ÓISÍN [1] - 3:28 Ombudsman [2] - 87:5, 145:29 Ombudsman's [1] - 146:11 ON [4] - 1:6, 1:10, 1:18, 6:1 once [2] - 73:18, 149:5 one [48] - 19:20, 35:18, 39:13, 40:13, 47:11, 50:8, 53:25, 53:28, 54:26, 55:11, 55:20, 55:26, 60:29, 62:17, 66:17, 66:18, 66:23, 70:1, 70:15, 78:4, 78:6, 81:16, 86:2, 95:4, 97:21, 100:26, 101:10, 104:6, 117:18, 117:24, 127:24, 127:25, 128:10, 128:12, 128:19, 130:29, 135:27, 136:19, 139:21, 141:16, 146:10, 148:21, 148:23, 150:16, 157:10 one's [2] - 40:9, 150:17</p>	<p>one-to-one [1] - 139:21 onerous [1] - 20:25 ongoing [3] - 25:22, 138:13, 154:28 opaque [2] - 56:1, 106:17 open [8] - 39:13, 40:5, 50:29, 52:5, 56:25, 128:3, 130:29, 146:7 opening [3] - 9:19, 56:15, 106:23 openly [1] - 146:19 operation [5] - 126:5, 126:6, 142:20, 143:1, 155:8 operational [2] - 49:27, 142:23 Operations [1] - 7:1 operative [1] - 9:2 opinion [7] - 18:29, 30:19, 30:27, 67:19, 86:26, 120:8, 140:24 opinions [1] - 105:5 opportune [1] - 9:2 opportunities [3] - 94:26, 95:4, 98:15 opportunity [13] - 7:9, 19:16, 20:2, 21:19, 55:9, 55:14, 56:3, 74:21, 93:27, 94:3, 94:5, 94:13, 139:24 opposed [3] - 40:29, 116:3, 119:17 orchestrated [1] - 25:26 order [9] - 31:24, 37:22, 56:6, 112:25, 121:16, 124:4, 126:3, 154:27, 155:16 ordered [1] - 49:5 ordinary [1] - 94:23 organisation [4] - 127:17, 139:29, 140:14, 144:25 original [1] - 111:22 Orla [1] - 131:11 OSMOND [1] - 2:19 OTHER [1] - 1:4 otherwise [4] - 47:29, 87:8, 148:9, 151:10 ought [3] - 25:4, 62:7, 145:19 outlined [5] - 97:12, 102:14, 125:3 outlining [4] - 65:11, 131:25, 131:28,</p>	<p>155:13 outside [2] - 101:26, 142:12 overall [2] - 114:10, 151:26 overcome [1] - 150:17 overhear [1] - 110:1 overreaction [1] - 51:25 oversaw [1] - 41:28 oversight [1] - 144:21 owed [1] - 87:16 own [6] - 27:1, 76:26, 93:12, 105:16, 114:27, 148:21</p>
O				P
<p>o'clock [1] - 66:1 O'Doherty [9] - 48:15, 48:16, 49:8, 49:21, 49:24, 50:7, 50:25, 52:6, 53:7 O'DOHERTY [1] - 4:14 O'DONNELL [1] - 3:17 O'Higgins [8] - 22:27, 23:20, 23:22, 23:27, 24:16, 25:2, 38:8 O'HIGGINS [2] - 2:15, 2:22 O'KEEFFE [1] - 3:27 O'Mahony [18] - 11:16, 12:25, 14:11, 16:8, 16:11, 34:14, 41:14, 64:14, 99:29, 103:2, 103:3, 132:25, 140:10, 141:15, 143:6, 145:2, 148:16, 151:12 O'Mahony's [3] - 65:18, 74:9, 142:4 O'MARA [1] - 4:7 O'Neill [4] - 17:7, 18:4, 20:14, 22:4 O'REILLY [1] - 2:27 O'Rourke [3] - 155:4, 155:15, 155:16 O'Sullivan [18] - 22:10, 27:11, 31:2, 31:18, 42:24, 68:17, 68:25, 69:5, 72:18,</p>				<p>PAC [12] - 39:5, 40:21, 60:3, 84:22, 124:2, 126:24, 130:16, 136:11, 137:9, 144:8, 144:21, 157:20 pack [1] - 128:21 PAGE [1] - 5:2 page [80] - 8:29, 12:20, 13:17, 17:7, 17:14, 17:16, 18:5, 18:26, 19:6, 20:15, 21:9, 22:3, 23:1, 25:12, 26:21, 31:29, 36:21, 41:8, 41:23, 43:4, 43:26, 44:8, 45:14, 45:20, 48:14, 52:8, 56:7, 56:22, 56:28, 57:12, 57:27, 59:4, 59:8, 68:12, 69:10, 70:12, 71:5, 72:4, 82:25, 83:20, 84:3, 93:8, 93:14, 94:25, 95:21, 96:9, 100:29, 111:13, 111:14, 114:29, 115:14, 115:18, 116:15, 117:12, 119:19, 119:23, 120:12, 128:17, 129:8, 129:15, 130:27, 131:8, 132:3, 132:20, 133:10, 134:23, 135:13, 135:27, 136:23, 138:9, 144:14, 145:25, 147:7, 147:27, 148:12, 148:27, 155:21, 157:1 pages [3] - 20:20,</p>

<p>20:21, 60:25 painting [1] - 107:12 panic [1] - 80:1 papers [5] - 9:21, 32:24, 139:2, 142:22, 143:17 paragraph [16] - 13:19, 17:16, 18:6, 19:9, 20:16, 21:11, 21:23, 23:1, 24:24, 25:20, 27:4, 27:5, 44:7, 45:25, 46:8, 157:8 paragraphs [2] - 129:4, 155:22 parallel [1] - 105:6 paramount [1] - 104:11 pardon [3] - 38:24, 72:10, 119:9 parents [1] - 9:16 park [1] - 59:28 PARLIAMENT [1] - 2:25 Parliamentary [1] - 125:9 part [5] - 9:2, 23:7, 63:25, 103:3, 130:17 partake [1] - 23:22 parted [2] - 100:25, 111:12 particular [37] - 7:10, 11:21, 12:12, 12:17, 24:27, 29:9, 34:4, 34:26, 47:22, 48:8, 50:1, 50:6, 51:22, 52:21, 54:9, 65:9, 79:20, 82:9, 86:27, 94:18, 94:22, 95:7, 96:2, 98:22, 115:11, 115:15, 121:10, 125:15, 127:11, 136:17, 137:3, 140:5, 140:13, 142:16, 150:22, 150:29, 156:18 particularly [9] - 10:17, 28:22, 34:3, 95:29, 98:20, 127:26, 131:23, 144:1, 153:13 parties [9] - 13:24, 15:15, 16:26, 53:15, 54:7, 54:13, 54:23, 70:18, 77:11 PARTNERS [1] - 4:10 party [7] - 9:9, 16:2, 58:26, 73:25, 148:8, 153:18, 156:24 PASSED [1] - 1:5</p>	<p>passed [5] - 36:16, 145:19, 145:20, 152:6, 152:14 passing [2] - 47:4, 113:16 passionate [1] - 85:12 past [5] - 34:23, 107:10, 107:16, 107:17, 148:17 PATRICIA [1] - 3:2 PATRICK [1] - 2:6 pattern [1] - 95:7 PAUL [2] - 2:10, 3:5 Pearse [3] - 47:5, 48:9, 48:11 penalty [33] - 11:11, 15:9, 24:7, 33:29, 34:13, 35:3, 37:15, 48:21, 49:22, 52:28, 95:16, 96:19, 98:23, 100:11, 102:6, 108:28, 109:7, 109:19, 109:27, 110:23, 112:27, 113:18, 114:17, 117:20, 122:29, 128:25, 142:2, 142:28, 143:24, 151:15, 154:29, 155:5, 155:19 people [29] - 31:9, 33:11, 40:3, 51:24, 53:10, 54:20, 55:16, 55:18, 66:7, 66:23, 69:14, 78:5, 94:1, 94:5, 94:10, 95:9, 95:19, 95:20, 97:21, 127:12, 127:17, 139:16, 146:12, 148:14, 151:24, 153:2, 153:9, 153:12, 153:13 per [3] - 151:28, 151:29 perceived [6] - 23:9, 23:13, 23:18, 37:11, 37:12, 81:29 percent [1] - 40:13 percentile [1] - 151:23 perception [3] - 31:8, 31:9, 128:2 perhaps [23] - 8:27, 14:21, 30:9, 36:29, 40:11, 52:20, 55:10, 56:5, 60:9, 67:7, 74:18, 77:9, 79:11, 80:19, 85:19, 94:5, 111:5, 130:24,</p>	<p>136:21, 143:28, 153:4, 153:29, 156:16 period [9] - 6:19, 6:25, 7:8, 30:5, 33:16, 64:7, 64:27, 65:20, 79:10 person [20] - 31:18, 42:17, 42:18, 58:21, 83:5, 83:9, 83:12, 84:4, 86:24, 88:2, 118:14, 126:1, 132:16, 139:7, 139:10, 146:2, 146:3, 146:6, 146:18, 149:8 personal [19] - 13:25, 52:23, 52:24, 78:14, 82:5, 107:9, 118:7, 118:23, 118:28, 120:8, 121:19, 122:14, 123:10, 125:8, 125:18, 134:4, 137:22, 140:24, 157:17 personalise [1] - 70:10 personalised [1] - 74:12 personally [2] - 13:28, 155:26 persons [3] - 11:20, 117:24, 149:28 perspective [6] - 10:12, 30:21, 79:27, 101:27, 148:2, 152:2 pertaining [1] - 81:5 PETER [3] - 1:12, 2:2, 2:4 PHELAN [1] - 4:2 Philip [8] - 55:5, 55:28, 57:19, 57:23, 93:5, 95:12, 107:15, 109:5 phone [20] - 41:26, 42:2, 42:29, 51:5, 63:14, 65:10, 66:28, 67:1, 72:3, 72:15, 76:3, 76:14, 76:27, 77:5, 77:8, 77:25, 77:28, 80:22, 80:26, 139:6 phoned [2] - 80:1, 80:4 phones [3] - 76:6, 80:17, 80:22 photographs [1] - 111:7 pick [1] - 139:6 piece [1] - 90:12 pillorying [1] -</p>	<p>150:25 place [15] - 22:17, 23:26, 24:27, 64:26, 77:12, 88:7, 97:9, 100:2, 107:12, 117:27, 121:11, 126:6, 138:27, 155:2 PLACE [1] - 4:21 placing [1] - 37:6 plainclothes [1] - 6:22 play [1] - 80:29 player [2] - 47:25, 47:29 playing [2] - 129:22, 129:23 pleasant [1] - 148:19 plenty [1] - 98:14 point [50] - 14:16, 16:21, 16:27, 19:9, 23:25, 25:17, 26:8, 26:21, 27:16, 42:14, 43:26, 45:3, 46:8, 46:18, 46:19, 50:27, 68:29, 70:27, 80:11, 80:12, 82:9, 86:3, 86:23, 86:28, 86:29, 87:4, 87:28, 90:13, 90:15, 92:3, 92:8, 94:9, 94:25, 95:7, 97:14, 103:2, 108:13, 114:10, 114:11, 117:6, 122:6, 131:6, 137:20, 137:29, 142:6, 145:27, 148:23, 151:11, 151:19 pointed [1] - 147:2 pointing [1] - 61:24 points [30] - 15:9, 18:6, 18:12, 18:26, 20:16, 49:22, 52:28, 62:18, 65:1, 74:26, 86:5, 86:11, 86:18, 86:21, 87:8, 88:9, 91:25, 95:16, 96:20, 98:23, 102:6, 108:28, 109:7, 109:20, 109:27, 110:23, 112:27, 113:18, 122:29, 142:28 policeman [1] - 127:13 policing [5] - 7:2, 117:1, 127:2, 146:3, 155:8 policy [2] - 99:10, 138:27 politicians [2] - 37:16, 49:2</p>	<p>posed [1] - 35:19 posing [1] - 35:21 position [26] - 14:4, 18:18, 21:26, 25:7, 28:10, 36:20, 41:25, 52:2, 52:3, 53:14, 53:17, 64:12, 64:29, 67:16, 81:1, 86:6, 118:13, 121:25, 123:12, 124:12, 124:13, 126:19, 127:15, 131:21, 150:1, 150:10 positive [2] - 40:1, 155:1 possession [2] - 24:9, 124:15 possibilities [1] - 70:15 possibility [7] - 12:28, 14:18, 14:19, 49:13, 105:22, 112:8 possible [8] - 7:23, 21:27, 24:29, 26:6, 50:8, 125:16, 125:20 possibly [4] - 12:5, 64:18, 66:21, 110:19 potential [3] - 118:10, 118:20, 155:13 potentially [3] - 85:6, 106:5, 120:5 PR [1] - 29:10 practices [4] - 122:21, 123:23, 124:7, 126:17 pre [4] - 39:5, 136:11, 137:9, 155:3 pre-PAC [3] - 39:5, 136:11, 137:9 precedent [1] - 85:9 precise [1] - 43:17 precisely [6] - 13:13, 17:19, 37:9, 40:14, 48:2, 142:10 predating [1] - 55:4 predecessor [1] - 135:24 prefer [1] - 9:1 prejudice [1] - 142:17 preliminary [1] - 58:16 preparation [3] - 116:11, 126:23, 130:16 prepared [7] - 41:14, 83:28, 89:27, 102:24, 126:2, 136:24, 137:9 present [3] - 101:3,</p>
--	--	--	--	---

<p>108:19, 109:1 presented [3] - 74:22, 88:26, 96:15 presenter [1] - 96:14 presenters [2] - 96:16, 101:28 press [2] - 98:16, 157:4 Press [14] - 28:18, 29:4, 29:6, 29:11, 29:21, 30:6, 31:6, 50:29, 52:4, 95:20, 96:24, 108:29, 109:8, 127:25 pressing [1] - 129:28 pressure [3] - 116:24, 116:25, 117:5 pressures [2] - 117:2, 117:3 pressurised [1] - 116:27 presumably [1] - 65:27 presume [2] - 119:18, 132:25 presuming [1] - 78:10 pretty [6] - 80:12, 98:5, 98:16, 152:14, 154:1 prevent [3] - 15:19, 16:4, 71:21 prevention [1] - 94:8 previous [7] - 90:29, 111:2, 113:3, 131:26, 138:17 previously [3] - 9:22, 41:25, 98:18 primarily [2] - 52:11, 142:8 primary [1] - 31:21 principle [2] - 40:8, 85:2 print [1] - 58:5 printing [1] - 15:3 private [9] - 47:12, 58:21, 64:20, 85:18, 88:27, 90:6, 108:18, 116:14, 121:16 Private [1] - 61:28 privately [1] - 101:25 privilege [4] - 58:3, 58:10, 58:24 privy [1] - 32:19 probability [2] - 14:12, 52:15 problem [5] - 39:4, 95:26, 109:27, 110:22, 156:13 procedure [1] -</p>	<p>148:6 procedures [8] - 24:26, 121:10, 122:21, 123:22, 124:7, 126:6, 126:16, 157:19 proceed [1] - 119:26 proceeded [1] - 34:9 proceedings [3] - 7:26, 58:26, 87:22 process [12] - 18:14, 19:11, 21:15, 23:18, 31:25, 33:7, 63:26, 90:21, 127:18, 137:6, 149:3, 157:19 process [1] - 137:7 produced [2] - 67:18, 156:24 producer [1] - 155:15 producers [1] - 96:15 producing [2] - 146:7, 148:9 production [2] - 94:4, 96:13 professional [6] - 9:3, 29:22, 29:25, 52:25, 64:9, 107:19 professionalism [1] - 114:4 proffered [1] - 48:5 profound [1] - 85:6 programme [17] - 65:21, 65:24, 73:17, 77:24, 79:26, 80:2, 80:8, 80:10, 93:29, 94:4, 95:11, 95:23, 96:19, 97:11, 101:13, 113:6, 113:22 programme's [1] - 95:24 programmes [1] - 86:25 project [2] - 81:28, 82:9 projecting [1] - 79:26 prominent [1] - 81:12 promise [1] - 78:10 promote [1] - 79:5 promotion [1] - 47:8 prompted [1] - 44:27 promptly [1] - 23:13 proper [2] - 44:1, 117:1 properly [3] - 10:14, 38:4, 121:18 proposal [1] - 145:22</p>	<p>proposals [1] - 44:18 propose [2] - 119:26, 155:2 proposed [1] - 83:16 proposition [2] - 40:8, 82:11 prosecution [5] - 9:8, 9:17, 36:15, 130:4, 130:5 prosecutions [1] - 99:20 Prosecutions [2] - 9:4, 99:19 prosecutorial [4] - 118:4, 124:9, 126:11, 151:24 protect [1] - 156:27 PROTECTED [2] - 1:3, 1:4 protected [17] - 17:1, 17:9, 17:13, 19:21, 20:20, 22:7, 23:17, 24:11, 24:29, 26:10, 26:17, 27:7, 27:19, 30:12, 42:16, 42:20, 138:25 Protection [7] - 24:12, 28:25, 118:11, 118:20, 119:1, 120:6, 156:26 protection [12] - 44:13, 64:14, 66:18, 87:3, 118:6, 118:19, 119:21, 121:13, 123:13, 132:8, 138:27 protest [2] - 51:28, 52:4 protocols [1] - 121:10 prove [1] - 87:9 proved [2] - 97:1, 151:3 provide [3] - 26:6, 111:26, 154:27 provided [15] - 11:22, 20:9, 24:5, 42:27, 45:19, 56:19, 59:6, 63:20, 67:3, 67:25, 67:26, 70:29, 76:29, 117:20, 132:24 provides [2] - 52:7, 86:25 providing [1] - 113:27 provision [1] - 123:6 psychiatric [4] - 57:16, 103:17, 104:18, 104:24 psychological [4] - 57:16, 103:16,</p>	<p>104:18, 104:24 public [40] - 15:17, 20:4, 24:14, 24:18, 38:3, 38:14, 43:9, 43:11, 43:12, 44:17, 58:21, 65:2, 70:7, 70:26, 74:6, 74:10, 74:27, 79:4, 87:1, 88:10, 93:28, 94:27, 96:21, 101:26, 103:7, 112:5, 113:12, 113:26, 116:11, 121:8, 128:7, 137:21, 137:22, 148:14, 150:21, 156:25, 157:11, 157:18 Public [23] - 9:4, 10:18, 24:3, 24:10, 43:25, 44:2, 44:15, 45:4, 46:6, 54:3, 66:17, 70:29, 71:1, 75:6, 99:19, 120:12, 123:17, 137:13, 137:17, 144:12, 145:17, 157:13, 157:28 publication [1] - 52:14 publicity [3] - 113:28, 152:28, 154:9 publicly [2] - 64:13, 156:11 publish [2] - 49:25, 50:10 published [3] - 95:14, 100:1, 150:24 publishing [1] - 49:25 Pulse [10] - 13:24, 14:10, 15:3, 15:4, 15:14, 49:2, 49:6, 49:8, 50:5, 141:18 pulse [1] - 125:19 purported [1] - 28:6 purpose [4] - 22:16, 24:16, 50:15, 58:16 purposes [1] - 58:19 pursuant [1] - 121:4 pursue [1] - 147:23 pursued [1] - 52:10 pursuing [1] - 147:23 pursuit [1] - 48:20 put [17] - 10:12, 15:23, 16:14, 19:3, 29:11, 44:18, 68:6, 78:25, 79:4, 88:9, 111:1, 123:14, 125:12, 138:26, 142:23, 146:4, 146:26</p>	<p>puts [1] - 28:9 putting [4] - 30:1, 74:5, 79:25, 152:2</p>
Q				
<p>qualification [1] - 89:10 qualifications [1] - 29:4 qualify [2] - 156:21, 156:22 quarter [1] - 65:22 QUAY [3] - 2:12, 3:23, 4:11 QUEEN [1] - 4:16 queries [3] - 50:29, 51:2, 78:4 query [2] - 44:26, 75:8 questions [19] - 66:15, 66:16, 66:21, 80:13, 82:2, 95:25, 98:23, 100:9, 101:29, 102:17, 109:6, 123:19, 124:4, 124:14, 126:15, 136:24, 137:8, 152:12 quickly [1] - 36:16 QUINN [1] - 3:28 quite [31] - 7:6, 7:20, 8:1, 13:10, 13:15, 14:14, 21:1, 38:11, 44:1, 49:18, 50:8, 52:11, 55:29, 62:24, 66:5, 66:25, 69:24, 89:26, 90:20, 104:21, 106:20, 108:15, 108:16, 113:23, 115:13, 123:14, 144:17, 146:18, 151:4, 154:13, 155:24 quotation [1] - 155:22 quoted [1] - 47:1</p>				
R				
<p>radio [2] - 69:14, 86:23 raft [1] - 148:8 raise [3] - 97:18, 98:19, 112:14 raised [15] - 22:26, 23:6, 24:4, 24:8, 25:1, 25:5, 39:27, 65:1, 78:4, 96:20, 109:6, 125:17, 133:27, 142:6, 151:4</p>				

<p>raises [1] - 39:6 raising [1] - 44:22 rang [6] - 65:19, 69:4, 73:12, 80:6, 80:7, 93:29 range [3] - 151:17, 151:18, 152:12 ranging [1] - 94:28 rank [2] - 6:23, 29:12 ranks [4] - 6:21, 10:10, 29:16, 85:3 rate [1] - 151:22 rather [3] - 40:12, 100:17, 156:13 rational [2] - 30:18, 30:20 re [1] - 144:2 re-visit [1] - 144:2 reach [1] - 97:1 reaction [9] - 51:28, 62:16, 64:10, 74:25, 85:27, 88:6, 88:8, 115:8, 147:1 reactions [1] - 45:11 read [25] - 7:7, 8:9, 9:19, 10:5, 33:25, 35:4, 35:5, 39:19, 47:21, 51:12, 57:29, 60:17, 62:23, 63:16, 63:19, 67:12, 83:12, 114:28, 115:3, 115:8, 130:18, 136:1, 142:22 readily [1] - 83:24 reading [6] - 7:29, 8:22, 10:5, 40:19, 104:6, 130:20 ready [1] - 114:2 realise [1] - 81:14 realised [1] - 62:19 reality [7] - 15:24, 77:14, 82:4, 90:16, 110:12, 116:26, 128:2 really [8] - 11:29, 62:26, 85:1, 108:17, 113:10, 128:2, 133:25, 140:22 reason [10] - 15:11, 16:14, 30:19, 31:11, 34:26, 90:9, 90:23, 106:25, 127:21, 143:26 reasonable [4] - 19:16, 21:19, 104:8, 111:3 reasonably [1] - 20:24 reassured [1] - 115:21 rebut [2] - 19:18, 21:21</p>	<p>recalled [2] - 63:11, 152:11 receipt [1] - 120:26 receive [5] - 30:12, 64:17, 87:27, 123:10, 125:2 received [13] - 14:28, 27:13, 41:15, 43:19, 65:10, 65:12, 70:20, 83:3, 83:16, 103:22, 121:2, 143:11, 152:27 receiving [2] - 64:27, 67:29 recent [2] - 112:28, 157:13 recently [1] - 95:14 receptive [2] - 153:1, 153:6 recipients [1] - 134:18 reckoner [1] - 114:2 recollection [9] - 8:20, 13:10, 13:13, 40:28, 54:8, 54:10, 54:12, 67:1, 143:20 recommendation [1] - 104:3 recommendations [1] - 142:18 recommending [1] - 130:4 reconcile [1] - 107:22 reconciled [1] - 107:20 reconstruct [1] - 76:26 record [10] - 50:4, 61:25, 65:2, 65:26, 70:7, 70:26, 77:27, 91:13, 103:7, 148:15 recorded [5] - 49:28, 50:2, 62:19, 91:27, 155:3 records [7] - 7:6, 49:2, 49:9, 65:29, 68:19, 72:3, 79:9 recounting [2] - 39:27, 135:7 recovered [1] - 33:14 redacted [2] - 123:28, 125:8 redacting [1] - 122:14 redaction [1] - 121:19 reduce [1] - 156:13 refer [22] - 11:7, 11:14, 23:6, 26:17, 42:8, 43:24, 45:16,</p>	<p>61:22, 82:18, 90:24, 90:29, 93:12, 93:15, 94:19, 113:18, 117:16, 120:18, 122:5, 123:5, 123:17, 124:23, 138:16 reference [47] - 25:23, 26:18, 28:4, 34:4, 39:11, 39:12, 39:15, 39:16, 40:21, 40:22, 41:8, 41:23, 41:28, 42:20, 43:9, 46:21, 55:29, 58:18, 65:6, 76:28, 77:8, 91:17, 93:9, 98:9, 102:26, 104:2, 104:20, 106:5, 106:16, 113:23, 114:7, 116:18, 117:29, 125:18, 131:13, 131:16, 131:17, 132:15, 132:18, 133:3, 133:18, 135:9, 135:20, 136:9, 136:21, 137:3, 157:15 referenced [2] - 40:27, 114:6 referred [16] - 20:4, 41:9, 46:4, 47:16, 55:12, 59:20, 63:29, 64:13, 79:29, 80:19, 82:13, 87:4, 93:14, 113:3, 114:1, 149:22 referring [9] - 7:19, 7:20, 40:26, 57:24, 73:3, 104:16, 114:7, 119:11, 149:27 refers [5] - 20:6, 129:2, 135:27, 136:3, 157:12 reflect [2] - 63:11, 84:17 reflected [5] - 30:17, 62:18, 85:28, 86:3, 88:12 reflecting [2] - 64:12, 85:21 reflection [1] - 62:15 refrained [1] - 17:29 refute [2] - 26:5, 27:12 regard [13] - 13:2, 15:11, 24:26, 24:28, 44:27, 51:24, 61:18, 104:28, 112:9, 128:9, 149:14, 150:10, 157:19 regarded [1] - 150:5 regarding [5] -</p>	<p>13:25, 17:8, 23:18, 41:25, 117:26 regardless [2] - 35:15, 62:6 regards [1] - 121:8 register [2] - 61:1, 62:8 REGISTRAR [1] - 2:4 regret [5] - 110:10, 139:13, 139:18, 140:6, 150:6 regretted [1] - 139:23 regular [4] - 64:8, 143:11, 152:15, 153:9 reiterate [1] - 157:20 reiterating [1] - 26:14 rejected [1] - 103:3 relate [5] - 54:20, 61:6, 117:21, 122:15, 123:25 related [4] - 44:12, 64:7, 102:8, 120:27 relates [2] - 58:12, 134:11 relating [3] - 24:6, 43:13, 58:7 relation [134] - 7:14, 8:7, 9:21, 10:28, 11:8, 11:26, 12:12, 12:17, 16:15, 16:28, 17:12, 18:9, 20:6, 20:7, 23:19, 25:15, 26:3, 26:7, 30:28, 32:1, 32:17, 33:21, 33:23, 33:27, 33:29, 34:12, 35:2, 38:5, 40:29, 41:1, 42:2, 43:4, 46:1, 46:5, 46:19, 46:24, 47:19, 48:10, 48:15, 48:20, 48:22, 49:22, 51:15, 52:6, 52:10, 52:13, 52:14, 52:21, 53:14, 54:1, 54:9, 54:28, 56:18, 58:11, 59:18, 61:9, 61:17, 63:19, 63:21, 65:1, 65:17, 67:15, 67:22, 67:25, 68:9, 69:24, 70:5, 70:17, 73:13, 78:5, 79:19, 81:22, 82:13, 84:25, 85:13, 89:14, 89:20, 89:22, 92:2, 92:9, 93:6, 94:2, 94:5, 94:7, 94:20, 95:8, 95:24, 95:29, 97:6, 98:7, 98:17, 98:21, 99:5, 99:12, 105:4, 105:18,</p>	<p>113:24, 115:14, 116:5, 116:19, 116:25, 118:19, 119:5, 119:13, 120:23, 121:28, 122:21, 123:19, 124:5, 124:7, 124:8, 124:18, 124:24, 125:12, 126:15, 127:16, 129:1, 129:3, 129:4, 131:18, 131:19, 132:2, 133:28, 136:6, 136:14, 137:14, 140:16, 141:27, 150:14, 150:19, 151:5, 151:15, 151:24, 155:5 relationship [8] - 29:21, 29:22, 29:23, 29:26, 30:10, 30:23, 107:18, 125:24 relatively [2] - 134:11, 151:26 relatives [1] - 105:25 relaxed [1] - 98:5 release [1] - 157:4 relevance [2] - 26:8, 131:5 relevant [21] - 8:8, 19:14, 21:17, 23:11, 26:6, 37:22, 37:29, 38:1, 40:6, 41:29, 53:18, 75:23, 90:11, 112:25, 113:13, 121:5, 121:22, 123:11, 125:2, 128:22, 128:23 relied [2] - 29:15, 58:25 rely [2] - 67:18, 127:19 remain [1] - 122:8 remains [3] - 33:7, 43:8, 125:10 Remains [1] - 33:10 remark [1] - 114:9 remarkable [1] - 28:8 remarks [3] - 112:28, 113:3, 113:6 remember [3] - 63:7, 77:5, 77:6 remit [3] - 23:19, 121:18, 142:13 remotely [2] - 108:6, 113:9 remove [1] - 114:14 removed [1] - 150:28 repeat [1] - 148:29 replied [1] - 46:12</p>
---	--	---	---	--

<p>replies [2] - 22:4, 67:14</p> <p>reply [7] - 17:13, 19:6, 21:8, 115:25, 120:19, 147:20</p> <p>report [42] - 7:8, 7:10, 8:22, 10:6, 11:7, 13:14, 23:13, 23:15, 26:29, 27:13, 41:13, 42:1, 66:11, 66:13, 95:14, 98:18, 99:29, 103:8, 103:23, 103:26, 109:7, 117:18, 117:23, 121:7, 122:20, 122:23, 122:28, 123:20, 123:21, 124:6, 126:7, 131:25, 131:27, 140:26, 141:16, 142:2, 142:4, 142:9, 142:10, 146:7, 149:1, 149:2</p> <p>reported [7] - 11:8, 51:4, 119:29, 122:27, 138:19, 149:25, 151:2</p> <p>reporters [1] - 134:19</p> <p>reporting [10] - 15:9, 138:14, 138:18, 138:19, 148:3, 148:7, 149:5, 149:8, 150:3, 150:26</p> <p>reports [7] - 20:19, 22:8, 128:22, 128:27, 129:11, 135:22, 157:22</p> <p>representations [2] - 139:25, 151:25</p> <p>representative [1] - 24:14</p> <p>representatives [1] - 96:23</p> <p>represented [2] - 52:9, 58:27</p> <p>representing [1] - 79:14</p> <p>reputation [1] - 115:8</p> <p>request [5] - 101:8, 118:23, 120:1, 120:28, 122:23</p> <p>requested [2] - 19:13, 21:16</p> <p>required [6] - 18:24, 20:28, 34:9, 127:11, 140:1, 153:11</p> <p>requirement [3] - 29:9, 127:3, 141:28</p> <p>resemblance [1] - 47:28</p>	<p>residence [1] - 51:23</p> <p>RESOLUTIONS [1] - 1:5</p> <p>resolve [1] - 101:12</p> <p>resolved [3] - 96:4, 101:17, 101:24</p> <p>resource [1] - 7:1</p> <p>resources [1] - 116:29</p> <p>respect [14] - 44:13, 58:10, 65:3, 67:13, 86:8, 111:22, 114:4, 117:19, 118:26, 118:29, 122:8, 146:8, 146:22, 146:23</p> <p>respected [1] - 106:18</p> <p>respects [1] - 9:16</p> <p>respond [12] - 17:20, 19:13, 19:28, 21:5, 21:16, 38:23, 62:16, 63:23, 64:18, 76:23, 95:18, 121:29</p> <p>responded [5] - 19:1, 22:22, 44:28, 68:7, 104:9</p> <p>responding [2] - 59:22, 91:2</p> <p>response [21] - 17:12, 22:11, 28:13, 44:27, 45:21, 46:29, 50:19, 56:29, 64:2, 65:2, 65:3, 83:4, 83:16, 83:25, 84:4, 88:3, 98:12, 106:28, 107:4, 120:11, 124:18</p> <p>responses [1] - 22:9</p> <p>responsibility [1] - 149:1</p> <p>responsible [5] - 31:19, 51:21, 118:8, 146:5, 153:14</p> <p>rest [3] - 14:19, 66:8, 135:17</p> <p>restate [1] - 41:4</p> <p>result [1] - 100:27</p> <p>RESUMED [2] - 6:1, 93:1</p> <p>retention [1] - 124:25</p> <p>retired [6] - 6:10, 6:17, 12:24, 72:19, 117:26, 128:28</p> <p>retirement [2] - 7:4, 30:2</p> <p>return [9] - 39:8, 40:5, 42:13, 43:23, 45:8, 56:25, 118:23, 119:3, 123:27</p> <p>returned [5] - 47:2,</p>	<p>118:8, 120:1, 120:29, 122:18</p> <p>returning [1] - 25:12</p> <p>revenge [2] - 26:26, 27:23</p> <p>revenue [1] - 138:19</p> <p>review [5] - 11:6, 17:9, 18:14, 18:16, 22:15</p> <p>reviewed [1] - 122:19</p> <p>rightly [1] - 151:2</p> <p>ring [1] - 139:6</p> <p>ringing [1] - 75:29</p> <p>risk [2] - 97:11, 101:3</p> <p>ROAD [1] - 4:7</p> <p>road [2] - 86:28, 113:8</p> <p>role [7] - 29:8, 29:10, 29:11, 44:13, 80:29, 116:27, 126:26</p> <p>roles [1] - 29:17</p> <p>roll [1] - 154:10</p> <p>RONAN [2] - 3:1, 3:29</p> <p>room [3] - 107:25, 108:10, 148:20</p> <p>root [2] - 27:22, 28:2</p> <p>ROSSA [1] - 3:5</p> <p>roster [3] - 113:7, 113:10, 113:24</p> <p>roughly [1] - 44:11</p> <p>row [1] - 101:12</p> <p>RTÉ [6] - 3:1, 3:2, 53:8, 53:22, 54:11, 55:28</p> <p>RTé [7] - 96:6, 97:4, 97:20, 100:3, 101:2, 106:9, 115:3</p> <p>ruled [1] - 36:15</p> <p>run [1] - 94:23</p> <p>run-of-the-mill [1] - 94:23</p> <p>running [1] - 38:28</p> <p>rural [1] - 112:27</p> <p>résumé [1] - 100:18</p>	<p>65:7, 65:16, 75:24, 81:19, 82:15, 117:17</p> <p>savings [1] - 137:5</p> <p>savings] [1] - 137:3</p> <p>saw [15] - 13:15, 31:7, 38:9, 38:12, 39:7, 42:12, 86:14, 103:28, 128:1, 139:2, 143:17, 151:2, 152:7, 154:18</p> <p>SC [13] - 2:6, 2:6, 2:9, 2:10, 2:14, 2:15, 2:15, 2:22, 3:1, 3:5, 3:28, 4:6, 4:19</p> <p>scathing [1] - 46:15</p> <p>scenario [1] - 140:10</p> <p>scene [2] - 28:27, 33:13</p> <p>scheduled [2] - 96:18, 112:2</p> <p>Science [1] - 42:9</p> <p>Scottish [1] - 47:25</p> <p>screen [6] - 7:18, 9:1, 59:4, 68:12, 129:8, 154:21</p> <p>scribbled [1] - 91:25</p> <p>Seamus [2] - 53:24, 56:10</p> <p>Sean [3] - 155:4, 155:15, 155:16</p> <p>SEAN [2] - 2:11, 3:1</p> <p>SEANAD [1] - 1:6</p> <p>SEBASTIAN [1] - 3:16</p> <p>second [8] - 21:11, 21:23, 25:20, 56:27, 86:28, 93:13, 128:19, 145:18</p> <p>seconds [7] - 72:21, 72:23, 72:27, 76:3, 76:9, 80:5, 80:26</p> <p>secret [5] - 61:21, 70:7, 71:2, 71:3, 91:24</p> <p>secretary [3] - 47:12, 64:20, 116:14</p> <p>section [13] - 6:24, 41:29, 118:10, 118:26, 118:27, 119:10, 121:4, 123:5, 124:29, 127:5, 127:6, 127:7</p> <p>Section [3] - 20:19, 22:8, 36:3</p> <p>Security [1] - 6:24</p> <p>security [7] - 7:2, 29:1, 51:22, 97:21, 117:1, 127:2, 146:3</p> <p>see [90] - 12:23, 13:5, 13:19, 14:2,</p>	<p>16:6, 17:4, 30:18, 30:20, 34:26, 37:20, 39:4, 39:11, 40:20, 44:15, 53:1, 56:24, 61:18, 62:5, 62:25, 65:26, 66:14, 66:29, 67:9, 69:10, 69:24, 70:23, 72:19, 72:22, 72:24, 72:26, 73:11, 74:5, 75:27, 76:1, 76:17, 76:21, 76:25, 78:25, 79:29, 80:16, 80:24, 83:20, 83:29, 84:16, 85:15, 85:26, 88:7, 89:19, 90:1, 90:13, 90:15, 90:22, 95:26, 101:14, 103:29, 105:3, 108:14, 109:23, 112:20, 112:21, 119:11, 125:16, 125:19, 125:25, 128:16, 129:11, 129:14, 129:17, 129:18, 129:25, 129:26, 131:5, 131:8, 131:14, 132:7, 132:24, 132:27, 134:4, 134:8, 135:13, 135:14, 136:5, 136:26, 140:6, 141:29, 142:13, 145:27, 147:6, 150:12, 152:16</p> <p>seeing [1] - 130:23</p> <p>seek [1] - 45:3</p> <p>seeking [4] - 49:25, 73:12, 73:16, 101:29</p> <p>seem [4] - 26:7, 66:29, 102:23, 134:13</p> <p>segments [1] - 55:20</p> <p>select [1] - 18:18</p> <p>send [3] - 75:26, 78:17, 138:5</p> <p>sending [2] - 42:23, 140:19</p> <p>senior [7] - 10:10, 42:25, 51:10, 119:16, 127:8, 128:7, 153:28</p> <p>sense [15] - 16:18, 30:5, 30:11, 34:28, 36:11, 62:13, 84:20, 102:23, 102:25, 106:15, 110:28, 116:20, 117:8, 125:12, 142:19</p> <p>sensitive [10] - 13:25, 15:14, 81:13, 121:19, 122:14, 123:10, 125:8,</p>
		S		
		<p>safe [2] - 94:15, 95:10</p> <p>safety [1] - 113:8</p> <p>SAINT [2] - 3:8, 3:13</p> <p>SAME [1] - 68:10</p> <p>sat [2] - 84:3, 127:21</p> <p>satisfied [3] - 15:29, 21:1, 115:25</p> <p>Saturday [7] - 63:15,</p>		

<p>125:18, 137:22, 157:17</p> <p>sent [34] - 7:12, 8:10, 15:11, 20:18, 22:23, 32:7, 32:19, 32:24, 42:28, 44:23, 45:22, 45:27, 46:2, 47:15, 48:14, 59:21, 60:11, 60:15, 65:27, 68:2, 71:19, 73:5, 83:5, 83:9, 88:3, 88:18, 90:24, 119:20, 130:3, 138:10, 144:14, 148:18, 148:22</p> <p>sentence [1] - 90:28</p> <p>Seoige [3] - 96:15, 112:3, 113:16</p> <p>separate [3] - 11:24, 58:26, 121:29</p> <p>separately [1] - 143:21</p> <p>September [3] - 23:3, 99:10, 111:18</p> <p>sequence [2] - 65:10, 135:8</p> <p>sergeant [8] - 15:3, 15:4, 15:7, 33:5, 33:13, 36:26, 38:11, 47:6</p> <p>Sergeant [170] - 6:21, 7:11, 7:15, 8:7, 10:8, 10:16, 10:27, 11:19, 11:26, 12:1, 12:11, 12:16, 12:29, 13:23, 13:27, 14:6, 14:8, 14:13, 14:17, 14:20, 14:21, 14:24, 15:10, 15:25, 16:1, 16:8, 24:4, 24:5, 25:26, 26:11, 26:12, 26:19, 26:25, 26:27, 27:1, 27:11, 27:21, 28:1, 32:7, 32:9, 32:13, 33:18, 33:22, 33:28, 34:7, 34:21, 35:1, 35:8, 35:11, 35:22, 35:26, 36:2, 36:7, 36:12, 36:19, 37:1, 37:14, 37:17, 38:9, 38:15, 38:18, 38:27, 39:28, 40:15, 40:17, 40:22, 42:20, 42:24, 44:1, 44:22, 44:25, 45:4, 48:29, 49:11, 50:9, 52:15, 52:21, 52:24, 53:11, 54:14, 57:15, 57:20, 58:7, 59:12, 61:6, 70:10, 70:16, 70:28, 71:10, 71:14, 71:17,</p>	<p>71:19, 71:24, 73:5, 73:10, 74:4, 74:11, 74:21, 74:28, 77:18, 78:13, 78:15, 78:29, 79:6, 80:1, 80:7, 80:9, 81:25, 82:3, 82:7, 82:14, 82:20, 83:21, 84:22, 85:1, 85:17, 85:22, 86:13, 87:9, 87:13, 87:20, 88:4, 91:3, 96:20, 98:24, 99:24, 99:25, 100:20, 102:26, 102:27, 103:27, 104:4, 104:10, 104:23, 105:13, 108:1, 110:18, 117:29, 125:17, 128:28, 129:1, 129:11, 129:17, 129:19, 129:27, 131:19, 132:1, 134:8, 134:28, 135:4, 135:16, 136:10, 137:15, 138:10, 139:5, 139:15, 139:25, 140:6, 141:2, 141:22, 144:1, 145:16, 145:23, 150:26, 151:2, 151:7, 151:18, 156:23, 157:16</p> <p>series [1] - 66:28</p> <p>serious [9] - 19:12, 21:15, 34:8, 137:23, 142:14, 142:15, 146:5, 146:14, 148:8</p> <p>seriously [3] - 79:20, 79:21, 156:29</p> <p>served [1] - 6:20</p> <p>service [5] - 113:27, 114:10, 117:1, 121:8, 127:2</p> <p>Service [1] - 42:9</p> <p>SERVICES [1] - 1:30</p> <p>Services [2] - 1:25, 6:27</p> <p>serving [5] - 23:10, 42:3, 85:2, 87:13, 117:25</p> <p>serving [1] - 134:8</p> <p>session [1] - 121:16</p> <p>set [21] - 10:3, 17:15, 17:18, 18:28, 19:13, 19:15, 21:16, 21:18, 22:19, 22:23, 25:19, 26:3, 41:19, 45:7, 52:7, 56:21, 57:17, 93:7, 105:9, 119:5, 123:12</p> <p>sets [1] - 13:4</p>	<p>setting [2] - 85:9, 119:23</p> <p>seven [3] - 52:5, 80:4, 141:7</p> <p>several [3] - 102:29, 139:14, 143:14</p> <p>sexual [11] - 8:14, 9:11, 9:14, 9:28, 32:7, 34:2, 39:29, 82:14, 106:6, 135:10, 136:10</p> <p>SGT [1] - 2:9</p> <p>shadow [3] - 14:19, 84:23, 151:8</p> <p>shall [1] - 126:10</p> <p>SHANE [1] - 2:14</p> <p>shape [2] - 30:16, 32:27</p> <p>Shatter [6] - 35:20, 36:22, 36:29, 41:10, 41:13, 41:15</p> <p>SHATTER [2] - 4:19, 4:20</p> <p>shifted [1] - 31:6</p> <p>SHIP [1] - 2:19</p> <p>shocked [4] - 30:14, 115:10, 115:21</p> <p>shook [1] - 100:25</p> <p>short [6] - 64:27, 65:20, 66:2, 98:18, 140:20, 157:26</p> <p>shortly [2] - 61:20, 99:11</p> <p>should've [1] - 22:26</p> <p>show [8] - 60:6, 65:8, 67:10, 78:2, 78:20, 79:3, 79:12, 79:29</p> <p>shown [3] - 111:16, 130:11, 131:26</p> <p>sick [1] - 133:3</p> <p>side [2] - 33:9, 110:13</p> <p>sideways [3] - 31:7, 31:10, 31:13</p> <p>signed [2] - 57:26, 58:29</p> <p>significance [1] - 60:9</p> <p>significant [1] - 90:12</p> <p>similar [2] - 19:15, 21:18</p> <p>similarities [1] - 105:3</p> <p>SIMON [2] - 3:21, 3:21</p> <p>simple [3] - 67:20, 105:26, 137:11</p> <p>simply [9] - 19:27, 26:13, 28:10, 36:20,</p>	<p>54:29, 67:4, 88:13, 100:17, 117:5</p> <p>single [1] - 136:18</p> <p>sit [2] - 139:20, 140:27</p> <p>sites [1] - 131:16</p> <p>sitting [2] - 145:5, 148:20</p> <p>sittings [1] - 58:21</p> <p>situation [9] - 15:24, 36:18, 49:14, 60:17, 82:16, 107:14, 108:3, 116:4, 140:23</p> <p>six [3] - 76:9, 129:21, 152:1</p> <p>skills [1] - 127:18</p> <p>slight [1] - 109:12</p> <p>slightly [1] - 133:13</p> <p>small [1] - 151:26</p> <p>smear [1] - 115:4</p> <p>smearing [1] - 115:7</p> <p>SMITHFIELD [1] - 2:29</p> <p>Smithwick [7] - 95:14, 96:1, 98:18, 100:10, 109:7, 112:28, 114:7</p> <p>snapshot [1] - 54:6</p> <p>social [3] - 64:9, 66:6, 131:16</p> <p>socially [1] - 73:29</p> <p>SOLE [2] - 1:12, 2:2</p> <p>solely [3] - 102:8, 126:3, 155:18</p> <p>SOLICITOR [1] - 2:7</p> <p>solicitor [6] - 59:11, 64:1, 74:4, 75:22, 87:21, 88:27</p> <p>SOLICITOR'S [1] - 2:18</p> <p>Solicitor's [2] - 59:16, 60:12</p> <p>SOLICITORS [9] - 2:24, 2:28, 3:6, 3:11, 3:21, 3:29, 4:3, 4:10, 4:20</p> <p>someone [1] - 139:26</p> <p>sometime [1] - 106:20</p> <p>sometimes [3] - 47:16, 84:16, 150:16</p> <p>somewhere [1] - 143:3</p> <p>sorry [33] - 12:20, 12:23, 25:29, 31:22, 37:21, 37:28, 51:9, 56:26, 71:13, 72:5, 72:10, 83:7, 91:11, 111:6, 119:9, 128:12,</p>	<p>128:14, 129:6, 129:7, 129:9, 130:28, 132:5, 132:15, 133:5, 133:10, 134:1, 138:4, 138:12, 154:8, 156:9, 157:2, 157:3</p> <p>sort [14] - 16:7, 17:5, 30:7, 37:23, 55:15, 71:3, 107:8, 107:9, 108:10, 125:23, 131:25, 139:7, 140:9, 141:25</p> <p>sorted [2] - 95:27, 97:8</p> <p>sorts [2] - 38:28, 100:27</p> <p>sought [5] - 44:4, 44:14, 85:14, 120:25, 120:28</p> <p>sounds [2] - 133:25, 133:26</p> <p>source [6] - 25:22, 43:8, 43:12, 43:14, 58:4, 58:12</p> <p>sources [1] - 117:2</p> <p>speaking [9] - 63:18, 64:26, 66:10, 67:15, 69:8, 79:19, 81:3, 102:16, 109:10</p> <p>Special [1] - 28:24</p> <p>specialists [1] - 6:28</p> <p>specific [9] - 13:10, 22:19, 26:3, 26:6, 29:9, 43:13, 43:16, 120:27, 154:5</p> <p>specifically [4] - 25:25, 27:27, 36:6, 45:14</p> <p>specifics [2] - 39:26, 70:19</p> <p>speculate [1] - 133:26</p> <p>speculated [1] - 36:26</p> <p>speculation [1] - 43:12</p> <p>speech [1] - 93:25</p> <p>speed [2] - 49:28, 119:18</p> <p>speeding [1] - 50:2</p> <p>spent [2] - 66:9, 143:14</p> <p>spoken [7] - 61:22, 69:20, 71:1, 81:7, 110:17, 143:6, 143:27</p> <p>spokesman [1] - 67:21</p> <p>spreads [1] - 105:26</p> <p>spurious [1] - 35:12</p> <p>square [1] - 137:2</p>
--	--	---	--	---

<p>SQUARE [1] - 4:11 squarily [2] - 57:12, 78:25 squeeze [2] - 142:21, 143:1 ST [2] - 132:10, 132:11 staff [5] - 56:16, 61:16, 62:3, 123:7, 127:24 stage [13] - 12:13, 15:24, 18:14, 18:24, 20:28, 26:5, 82:19, 87:2, 89:11, 100:21, 101:12, 138:24, 138:25 stall [2] - 45:7, 119:5 stand [2] - 84:11, 94:22 stands [1] - 146:6 start [3] - 55:18, 102:24, 134:27 started [3] - 12:6, 12:7, 113:2 starts [1] - 129:14 STATE [1] - 2:18 State [2] - 59:16, 60:12 state [14] - 9:24, 14:27, 14:28, 20:28, 26:23, 27:27, 53:17, 57:12, 57:15, 57:21, 117:22, 138:20, 146:3, 155:28 statement [59] - 12:24, 20:1, 25:10, 25:13, 25:19, 28:13, 31:29, 36:21, 41:7, 43:19, 45:20, 46:2, 47:1, 52:7, 56:7, 56:9, 56:11, 56:15, 56:27, 57:5, 57:9, 59:6, 62:28, 63:20, 67:2, 67:24, 67:25, 67:26, 68:1, 76:29, 93:7, 93:12, 93:13, 94:25, 95:21, 96:9, 97:10, 98:13, 99:4, 106:22, 106:23, 106:24, 109:3, 111:15, 111:16, 111:22, 113:3, 114:27, 115:5, 115:16, 115:18, 129:16, 129:21, 129:29, 132:24, 141:13, 147:2, 152:27, 157:24 statements [4] - 20:9, 56:18, 116:8, 141:8</p>	<p>states [1] - 117:18 stating [1] - 21:5 Station [2] - 15:3, 47:6 station [2] - 6:20, 15:6 stationed [1] - 15:6 stations [4] - 112:28, 113:17, 113:25, 152:2 statistical [2] - 121:22, 126:2 stature [1] - 47:29 statutory [2] - 38:23, 156:27 stay [1] - 95:9 stenographic [1] - 1:27 STENOGRAPHY [1] - 1:30 stenography [1] - 1:25 steps [2] - 44:1, 138:26 still [2] - 97:5, 101:18 stood [1] - 126:22 stop [4] - 16:3, 25:16, 40:3, 156:17 stopped [4] - 86:6, 88:13 stories [2] - 47:23, 48:7 storm [1] - 146:26 story [20] - 31:3, 31:24, 40:9, 40:11, 40:12, 40:24, 47:19, 47:22, 48:4, 48:6, 48:8, 48:11, 48:20, 49:25, 50:11, 70:28, 102:6, 102:10, 136:6 story-teller [2] - 40:12, 40:24 storyteller [1] - 136:7 strategic [1] - 7:1 Street [3] - 47:5, 48:9, 48:11 STREET [7] - 2:19, 2:25, 2:29, 3:7, 3:12, 3:22, 4:16 stressed [1] - 20:27 striking [1] - 28:3 strong [11] - 12:13, 12:15, 49:13, 107:28, 147:16, 149:24, 150:8, 150:9, 150:12, 150:19 strongly [5] - 30:1, 84:21, 84:23, 84:27, 85:16 stuck [1] - 67:14</p>	<p>studied [1] - 89:10 studio [2] - 98:1, 101:26 style [1] - 153:1 subject [8] - 44:26, 86:29, 99:2, 100:17, 102:21, 122:9, 123:8, 155:14 subjected [1] - 138:22 subjects [3] - 95:22, 95:29, 113:22 submission [1] - 146:6 submissions [1] - 128:23 submit [1] - 20:1 submitted [4] - 8:23, 59:17, 99:18, 102:27 subsequent [5] - 10:27, 43:22, 62:1, 81:7, 113:15 subsequently [10] - 11:8, 31:16, 43:19, 50:3, 51:4, 55:4, 62:21, 64:25, 69:8, 99:19 substance [4] - 41:5, 44:18, 102:10, 142:1 substantial [2] - 8:1, 120:11 substantially [1] - 139:28 succeeding [1] - 135:11 successor [1] - 139:17 sufficient [1] - 21:3 suggest [3] - 28:1, 78:29, 80:28 suggested [6] - 82:19, 90:22, 112:24, 113:8, 154:14, 156:4 suggesting [6] - 36:29, 52:26, 53:10, 54:26, 87:11, 153:5 suggestion [9] - 16:7, 53:1, 53:3, 53:5, 55:15, 78:19, 78:26, 79:25, 90:1 suggestions [1] - 82:13 suggests [1] - 82:19 suitable [3] - 18:18, 29:3, 89:28 Sullivan [1] - 133:7 summary [10] - 6:16, 7:12, 8:10, 33:20, 33:26, 34:4, 35:5, 103:21, 136:22, 150:1</p>	<p>Sunday [9] - 68:18, 68:21, 77:25, 78:11, 81:19, 114:28, 114:29, 115:18, 132:10 SUNLIGHT [1] - 2:24 superintendent [21] - 13:28, 29:12, 29:15, 31:23, 81:11, 87:26, 89:24, 91:5, 91:26, 99:17, 105:18, 105:19, 108:29, 109:9, 116:14, 125:22, 131:11, 132:16, 143:12, 143:13 Superintendent [83] - 6:22, 6:23, 10:23, 17:2, 19:22, 20:7, 23:2, 23:9, 26:11, 26:15, 26:18, 26:24, 26:26, 26:29, 27:7, 27:18, 27:28, 28:4, 28:18, 29:24, 30:22, 31:1, 32:20, 32:29, 33:5, 33:12, 33:18, 38:7, 42:17, 42:26, 42:28, 43:2, 45:15, 47:12, 50:20, 50:23, 51:6, 51:7, 61:16, 62:2, 62:5, 62:21, 63:16, 64:19, 64:22, 65:15, 68:16, 69:2, 72:18, 75:9, 75:10, 86:9, 88:14, 88:20, 89:3, 90:2, 90:7, 90:10, 90:18, 91:15, 95:11, 96:26, 97:14, 97:22, 101:17, 108:20, 109:20, 109:25, 110:3, 110:16, 110:24, 110:29, 127:26, 127:28, 128:4, 130:5, 133:7, 133:9, 135:21, 139:6, 141:3, 145:5, 145:6 superintendents [1] - 29:6 supplement [1] - 122:20 supplemental [8] - 45:20, 56:27, 57:5, 62:28, 93:13, 111:14, 111:16, 122:23 supplementary [3] - 106:14, 142:24, 142:26 supplied [3] - 60:26, 120:23, 124:25</p>	<p>Support [1] - 6:27 support [5] - 127:3, 140:2, 149:7, 149:19, 157:20 supported [1] - 89:22 suppose [16] - 7:6, 10:12, 14:23, 35:18, 35:28, 46:18, 51:21, 62:15, 94:23, 100:27, 110:5, 111:8, 133:26, 138:1, 151:17, 156:9 supposed [1] - 134:17 SUPREME [2] - 1:13, 2:3 SUPT [1] - 2:22 surprise [5] - 46:13, 47:22, 110:3, 110:8, 144:3 surprised [1] - 113:1 surrounding [1] - 28:5 suspect [2] - 131:21, 152:11 suspected [1] - 14:25 suspension [1] - 31:17 suspicion [4] - 12:5, 12:15, 12:16, 14:15 SWORN [1] - 6:7 system [21] - 15:14, 37:16, 50:5, 117:26, 120:25, 121:9, 121:23, 123:21, 123:24, 123:29, 124:27, 126:5, 126:7, 126:15, 142:2, 142:9, 142:11, 145:29, 146:20, 151:8, 156:28 systems [5] - 121:11, 122:21, 123:22, 124:6, 126:16 Síochána [58] - 6:11, 6:15, 6:18, 6:25, 6:28, 7:4, 13:26, 23:10, 27:9, 27:14, 29:7, 30:26, 34:16, 34:19, 36:4, 38:14, 46:15, 49:1, 52:26, 57:19, 59:17, 63:25, 64:8, 67:22, 79:15, 81:28, 82:6, 87:5, 87:14, 94:14, 96:14, 105:7, 105:11, 107:2, 108:2, 110:11, 113:1, 114:3, 117:25, 121:5, 123:6, 123:23, 125:1, 126:17, 129:1,</p>
---	---	--	--	--

<p>137:23, 138:8, 138:21, 140:13, 146:15, 148:2, 149:2, 149:10, 155:2, 155:7, 155:12, 156:26, 157:21 Síochána's [1] - 81:29</p>	<p>150:9, 157:12, 157:15 terminus [1] - 113:25 terms [24] - 7:21, 10:21, 25:23, 25:25, 30:23, 34:11, 37:10, 38:18, 41:23, 43:17, 58:17, 68:20, 71:17, 81:18, 81:24, 82:3, 94:6, 99:25, 108:2, 139:4, 139:5, 142:14, 151:21</p>	<p>three [5] - 66:21, 70:1, 129:3, 142:14, 143:29 throwing [1] - 153:4 THULLIER [1] - 3:10 ticket [1] - 50:3 tickets [1] - 125:21 TIM [1] - 3:27 TIMES [3] - 3:20, 4:1, 4:2</p>	<p>treated [3] - 30:2, 46:16, 143:21 trend [1] - 115:12 Tribunal [67] - 7:22, 7:27, 8:3, 9:22, 12:24, 20:2, 20:9, 25:8, 25:10, 28:14, 31:27, 32:16, 32:25, 36:22, 41:8, 41:20, 42:10, 43:22, 45:12, 45:19, 45:22, 45:27, 46:3, 46:4, 46:20, 46:23, 47:27, 48:5, 52:8, 56:8, 56:19, 56:20, 56:28, 58:19, 58:20, 58:25, 58:27, 59:5, 59:6, 59:10, 60:9, 60:10, 60:12, 60:15, 60:26, 61:17, 61:20, 63:3, 63:25, 65:11, 67:3, 67:29, 68:4, 68:9, 77:1, 79:23, 91:9, 93:13, 96:1, 106:22, 111:25, 115:13, 115:20, 115:27, 126:26, 150:27</p>	<p>153:10 turn [11] - 80:8, 93:4, 117:5, 119:19, 126:23, 128:17, 134:23, 135:13, 136:23, 154:29, 155:21 turns [2] - 135:27, 141:14 Tusla [4] - 32:2, 32:6, 32:13 twice [2] - 73:20, 73:21 two [33] - 11:23, 16:25, 20:20, 22:7, 22:8, 24:29, 30:5, 30:10, 33:13, 37:24, 38:1, 40:21, 50:9, 66:16, 66:21, 70:1, 75:6, 98:24, 98:27, 102:9, 107:20, 109:12, 112:8, 114:1, 117:24, 131:14, 135:6, 140:18, 140:19, 143:28, 146:12, 151:29, 157:2 two-nine [1] - 157:2 two-year [1] - 30:5 Twomey [5] - 51:8, 51:9, 51:10, 51:20, 145:9 type [4] - 15:20, 22:18, 31:28, 94:24 typed [2] - 63:28, 136:1 typo [1] - 119:10 Tánaiste [1] - 33:7</p>
T				
<p>talker [1] - 77:10 TARA [1] - 2:22 target [1] - 31:21 task [1] - 124:4 Taylor [51] - 17:2, 19:22, 20:7, 23:2, 23:9, 26:11, 26:15, 26:18, 26:24, 26:26, 26:29, 27:19, 27:28, 28:4, 28:18, 29:24, 30:22, 31:1, 42:17, 42:26, 43:2, 45:15, 50:21, 50:23, 51:6, 65:15, 69:2, 75:9, 75:10, 90:7, 95:12, 96:26, 97:14, 97:22, 101:17, 108:20, 108:29, 109:9, 109:20, 109:25, 110:3, 110:7, 110:16, 110:25, 110:29, 115:6, 127:26, 127:28, 128:4, 145:5, 145:6 TAYLOR [2] - 2:22, 4:6 Taylor's [2] - 27:7, 42:28 TD [1] - 15:8 team [7] - 12:10, 60:12, 94:4, 115:22, 130:11, 140:28 teams [1] - 115:20 Ted [1] - 120:14 telephone [3] - 64:26, 70:20, 79:8 television [1] - 86:24 teller [2] - 40:12, 40:24 Templemore [1] - 6:19 ten [3] - 66:5, 66:9, 66:10 tend [2] - 80:28, 110:24 tens [1] - 60:24 tensions [1] - 144:22 term [4] - 150:8,</p>	<p>TERRACE [1] - 4:4 Terry [3] - 38:7, 139:6, 141:3 text [9] - 42:11, 42:23, 42:27, 47:15, 65:26, 75:26, 76:12, 78:17, 78:20 THE [16] - 1:4, 1:8, 1:9, 1:12, 2:3, 2:6, 2:14, 3:25, 3:29, 4:1, 4:2, 6:1, 92:12, 93:1, 158:7 themselves [5] - 29:8, 55:23, 61:26, 67:28, 147:17 THEN [2] - 92:12, 158:7 then-commissioner [7] - 13:22, 27:10, 112:4, 112:24, 113:1, 113:5, 114:15 then-Deputy [1] - 42:24 then-Garda [1] - 71:24 then-Minister [1] - 41:12 there'd [2] - 36:15, 117:6 therefore [2] - 27:1, 32:8 therein [2] - 121:17, 121:21 thereof [2] - 126:4, 126:5 they've [1] - 121:28 things' [2] - 57:23, 106:1 thinking [2] - 156:9, 156:13 third [10] - 13:24, 15:15, 16:2, 62:28, 70:18, 134:27, 148:8, 149:6, 156:24, 157:8 THIRD [1] - 4:15 thousands [4] - 60:14, 60:24, 60:25 threatened [2] - 86:18, 87:22</p>	<p>three [5] - 66:21, 70:1, 129:3, 142:14, 143:29 throwing [1] - 153:4 THULLIER [1] - 3:10 ticket [1] - 50:3 tickets [1] - 125:21 TIM [1] - 3:27 TIMES [3] - 3:20, 4:1, 4:2 timescale [1] - 23:4 timespan [1] - 8:8 title [1] - 143:4 today [1] - 6:5 together [4] - 54:13, 64:3, 77:9, 127:28 took [10] - 23:26, 33:13, 46:13, 49:15, 64:25, 79:20, 97:9, 129:27, 154:9, 156:28 top [3] - 94:25, 132:20, 133:10 topic [2] - 97:1, 97:16 topical [2] - 86:25, 94:28 topics [7] - 22:19, 96:16, 98:8, 98:11, 109:6, 113:11, 152:13 total [2] - 11:24, 140:17 totally [3] - 39:18, 82:9, 153:6 touch [1] - 28:16 touching [1] - 66:17 tough [1] - 144:16 towards [2] - 8:7, 14:29 traditional [1] - 113:8 traditionally [2] - 29:6, 93:21 traffic [2] - 12:9, 14:16 Traffic [1] - 31:7 transcript [5] - 1:26, 68:10, 72:10, 147:12, 150:2 transcripts [3] - 7:20, 7:29, 8:1 transparent [1] - 146:7 transpired [2] - 68:20, 73:16 transpires [1] - 91:16 travel [2] - 96:6, 153:24 travelled [1] - 44:10 travels [1] - 105:23</p>	<p>tribunal [2] - 1:3, 2:6 Tribunal's [4] - 58:16, 58:17, 60:21, 115:22 TRIBUNALS [1] - 1:9 tried [2] - 63:8, 76:24 troubled [2] - 103:12, 104:17 troublesome [5] - 71:12, 74:14, 77:19, 79:1, 81:26 true [15] - 52:29, 53:4, 61:23, 69:23, 74:15, 74:16, 74:23, 90:5, 90:8, 106:6, 110:14, 110:15, 150:18 trust [3] - 121:25, 126:19, 146:4 TRUST [1] - 4:2 trusted [3] - 57:21, 105:27, 109:15 truth [9] - 18:1, 18:19, 22:16, 53:16, 55:7, 55:8, 98:6, 110:12 try [5] - 10:12, 16:3, 18:6, 50:15, 62:16 trying [11] - 20:13, 39:18, 53:11, 54:14, 59:23, 63:6, 75:18, 82:5, 86:1, 127:10,</p>	<p>ugly [1] - 39:6 unacceptable [1] - 101:28 unattributed [1] - 11:25 unauthorised [5] - 15:20, 71:21, 118:29, 120:9, 122:10 unaware [1] - 97:10 unbearable [1] - 138:23 uncle [2] - 143:13, 143:29 under [13] - 24:11, 27:16, 36:3, 88:27, 96:29, 99:10, 116:24, 116:25, 117:5, 118:5, 126:27, 132:7, 146:26 UNDER [2] - 1:3, 1:9</p>
U				

<p>underlying [4] - 19:14, 21:17, 30:9, 45:2</p> <p>undermine [1] - 45:4</p> <p>undue [1] - 40:24</p> <p>unequivocal [1] - 9:23</p> <p>unfortunately [2] - 118:13, 150:11</p> <p>unfounded [1] - 32:10</p> <p>uniform [1] - 137:5</p> <p>uniformed [1] - 6:22</p> <p>uniforms [1] - 137:2</p> <p>unique [2] - 85:10, 94:21</p> <p>units [2] - 6:28, 47:11</p> <p>unlawful [1] - 87:7</p> <p>unnamed [1] - 143:9</p> <p>unprecedented [1] - 85:10</p> <p>unprompted [1] - 113:2</p> <p>unsafe [1] - 144:6</p> <p>unsubstantiated [2] - 137:19, 137:24</p> <p>UNTIL [1] - 158:7</p> <p>untrue [3] - 35:24, 82:9, 107:29</p> <p>up [30] - 6:16, 8:29, 30:2, 33:14, 39:13, 39:16, 52:13, 53:7, 54:5, 59:4, 66:14, 66:19, 68:12, 78:1, 88:24, 98:2, 100:14, 102:21, 104:27, 108:4, 117:6, 119:18, 129:8, 131:14, 131:18, 139:6, 149:3, 152:20, 154:21</p> <p>up-to-date [2] - 131:14, 131:18</p> <p>update [4] - 40:21, 131:24, 132:19, 143:20</p> <p>updates [1] - 143:11</p> <p>UPPER [1] - 4:21</p> <p>upset [4] - 29:29, 36:27, 37:1, 80:7</p> <p>upsetting [1] - 86:27</p> <p>upwards [1] - 141:7</p> <p>urgency [2] - 138:28, 142:3</p> <p>urgent [1] - 49:27</p> <p>utterances [1] - 24:18</p> <p>utterly [2] - 9:28, 85:12</p>	<p style="text-align: center;">V</p> <p>vague [3] - 9:9, 19:22, 25:24</p> <p>values [3] - 114:3, 114:5, 155:12</p> <p>variety [3] - 12:19, 17:27, 117:2</p> <p>various [9] - 6:21, 17:23, 29:16, 29:17, 53:15, 94:2, 127:8, 127:18, 135:11</p> <p>VAUGHAN [1] - 3:27</p> <p>venue [1] - 137:25</p> <p>verbatim [2] - 1:26, 86:10</p> <p>verification [2] - 115:6, 115:24</p> <p>version [3] - 55:6, 63:28, 136:1</p> <p>victimisation [1] - 138:13</p> <p>victims' [1] - 33:6</p> <p>Victims' [1] - 33:10</p> <p>view [22] - 13:1, 13:4, 30:29, 34:6, 52:21, 55:10, 79:4, 79:5, 81:29, 82:9, 85:12, 87:3, 98:9, 111:9, 118:6, 124:29, 136:27, 137:14, 141:15, 153:17, 154:9, 156:18</p> <p>viewed [2] - 31:12, 121:15</p> <p>views [5] - 22:18, 53:14, 84:28, 114:8, 153:9</p> <p>vile [2] - 20:3, 42:27</p> <p>VIPs [1] - 66:7</p> <p>visit [9] - 45:16, 48:16, 48:25, 49:15, 50:12, 50:15, 50:28, 144:2</p> <p>visited [1] - 143:13</p> <p>voice [2] - 117:9, 117:10</p> <p>volume [13] - 8:1, 17:4, 20:23, 25:11, 56:21, 56:29, 72:8, 82:26, 93:8, 93:15, 117:12, 129:8, 131:1</p> <p>Volume [5] - 8:29, 12:20, 52:8, 59:3, 72:9</p> <p>volumes [1] - 7:17</p> <p>voluminous [1] - 20:19</p> <p>volunteered [1] -</p>	<p>106:25</p> <p style="text-align: center;">W</p> <p>waive [1] - 58:9</p> <p>waiver [2] - 57:26, 58:23</p> <p>WALL [1] - 2:28</p> <p>Walsh [16] - 47:12, 61:16, 62:2, 62:6, 62:21, 64:19, 64:22, 86:9, 88:14, 89:3, 90:2, 90:10, 90:18, 91:5, 91:15, 116:15</p> <p>Walsh's [2] - 63:16, 88:20</p> <p>warned [2] - 105:27, 109:14</p> <p>warrant [1] - 9:8</p> <p>WAS [2] - 6:7, 158:7</p> <p>watch [1] - 148:6</p> <p>watching [1] - 113:9</p> <p>Waterford [1] - 6:20</p> <p>weaknesses [4] - 142:1, 142:9, 142:11, 151:8</p> <p>week [3] - 151:29, 155:3, 155:7</p> <p>welcome [1] - 22:17</p> <p>welfare [4] - 103:26, 104:11, 138:27, 139:22</p> <p>whatsoever [5] - 32:15, 59:24, 62:9, 79:14, 80:15</p> <p>WHELAN [1] - 2:16</p> <p>whereby [3] - 94:27, 124:9, 126:12</p> <p>whilst [2] - 12:14, 43:11</p> <p>whisper [1] - 146:14</p> <p>whistleblower [5] - 40:10, 120:24, 124:26, 125:2, 143:9</p> <p>whistleblowers [12] - 40:27, 46:16, 96:1, 98:24, 98:27, 102:9, 117:19, 135:14, 136:9, 136:28, 137:28, 149:14</p> <p>white [1] - 35:6</p> <p>who'd [1] - 142:27</p> <p>who've [1] - 93:29</p> <p>whole [4] - 127:5, 127:6, 131:6, 148:8</p> <p>wholly [6] - 32:10, 83:25, 84:5, 85:25, 85:26, 101:28</p> <p>wide [3] - 12:19,</p>	<p>40:16, 94:28</p> <p>wife [2] - 50:13, 73:28</p> <p>WILLIAMS [1] - 3:5</p> <p>willing [1] - 98:23</p> <p>Wilson [45] - 11:20, 12:4, 13:1, 13:23, 15:2, 16:1, 33:8, 40:23, 46:11, 46:21, 46:24, 46:29, 47:10, 47:16, 47:17, 47:24, 47:25, 47:27, 48:3, 48:7, 48:29, 49:11, 50:9, 52:16, 71:25, 98:25, 99:5, 99:9, 100:19, 102:9, 102:13, 112:17, 114:16, 114:18, 114:25, 128:28, 131:19, 132:2, 132:17, 132:23, 132:24, 132:27, 141:22, 149:27, 157:16</p> <p>Wilson's [2] - 132:20, 133:10</p> <p>Wilson/McCabe [1] - 136:3</p> <p>wish [22] - 17:19, 19:3, 23:4, 26:23, 27:27, 46:18, 55:14, 58:2, 58:23, 81:21, 81:22, 92:3, 92:4, 92:8, 93:10, 93:12, 100:13, 110:5, 111:21, 116:4, 122:20, 133:15</p> <p>wished [8] - 23:17, 66:19, 95:13, 95:22, 97:18, 100:26, 113:6, 128:3</p> <p>wishes [2] - 96:2, 126:10</p> <p>wishing [1] - 95:8</p> <p>WITNESS [1] - 5:2</p> <p>Witness [1] - 102:11</p> <p>witness [1] - 6:4</p> <p>witnesses [2] - 7:21, 55:12</p> <p>wives [1] - 148:21</p> <p>women [1] - 94:14</p> <p>wonder [1] - 105:19</p> <p>wonderful [2] - 74:18, 84:16</p> <p>wondering [1] - 67:2</p> <p>word [8] - 105:23, 105:25, 114:22, 137:6, 143:2, 146:25, 150:6, 150:7</p> <p>words [4] - 38:2,</p>	<p>79:5, 81:26, 149:26</p> <p>workings [1] - 45:4</p> <p>world [2] - 40:16, 47:25</p> <p>worry [1] - 56:4</p> <p>worst [4] - 57:22, 105:29, 106:12, 109:17</p> <p>worth [2] - 106:8, 156:10</p> <p>would've [5] - 10:14, 29:17, 33:3, 69:28, 152:11</p> <p>write [3] - 26:27, 89:20, 119:28</p> <p>writes [1] - 20:14</p> <p>written [4] - 17:6, 53:6, 65:3, 91:23</p> <p>wrongdoing [12] - 23:9, 23:12, 23:13, 23:18, 148:3, 148:7, 148:25, 149:1, 149:8, 150:27, 151:3, 157:22</p> <p>wrongful [5] - 15:9, 24:6, 24:9, 102:28, 140:16</p> <p>wrongfully [1] - 99:14</p> <p>wrote [2] - 17:8, 18:4</p> <p style="text-align: center;">Y</p> <p>year [9] - 25:9, 28:16, 30:5, 59:8, 93:29, 94:15, 94:22, 94:26, 98:15</p> <p>years [12] - 33:11, 39:24, 62:24, 64:23, 66:8, 76:22, 89:26, 90:20, 129:16, 129:21, 135:12, 139:18</p> <p>yesterday [3] - 35:20, 36:22, 138:16</p> <p>young [1] - 98:1</p> <p>yourself [10] - 22:9, 43:5, 72:17, 73:27, 88:1, 90:6, 93:9, 139:21, 144:24, 155:4</p> <p>yourselves [2] - 91:10, 91:12</p> <p style="text-align: center;">É</p> <p>ÉIREANN [2] - 1:5, 1:6</p>
--	--	--	--	--

Ó

Ó [1] - 2:27