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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 THURSDAY, 13TH JULY 2017 - DAY 8

8

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1 THE HEARING RESUMED ON THURSDAY, 13TH JULY 2017 AS
2 FOLLOWS:

3
4 **CHAIRMAN:** So Mr. McGuinness, you have some
5 post-Brexit -- post-breakfast as opposed to Brexit 09:03
6 submissions to make.

7 **MR. MCGUINNESS:** well, Chairman, you indicated
8 yesterday that you would wish to hear submissions from
9 parties as to the appropriate manner in which, or the
10 conditions in relation to which the evidence of Ms. D 09:03
11 and other family members would be taken. Now, counsel
12 for Ms. D is here and he has furnished me just
13 literally a minute ago with some, as it were, a written
14 sketch of submissions. I think he is anxious to make a
15 case for the Tribunal dealing with it in a particular 09:04
16 way, and it might be appropriate for him to outline
17 that case, as it were, at this juncture.

18 **CHAIRMAN:** Yes.

19
20 SUBMISSION BY MR. BUCKLEY 09:04

21
22 **MR. BUCKLEY:** Thank you, Chairman. Obviously I appear
23 on behalf of Ms. D, instructed by Fanning Kelly
24 solicitors. The Tribunal took the step, of its own
25 initiative, to protect Ms. D's identity and to protect 09:04
26 various confidential and private documentation in
27 recognising the important privacy and ancillary public
28 interest served by those measures, and it's Ms. D's
29 submission that the circumstances set out in Section

1 2(a) of the 1921 Act are satisfied. As I say, there
2 are some written submissions which I circulated just
3 this morning and I am going to speak briefly to them,
4 if it's appropriate, but I won't delay unduly.

09:05

5
6 I say the public interest reasons connected with both
7 the subject matter of the specific aspect of the
8 inquiry with which this term of reference is concerned
9 and the nature of the evidence to be given by Ms. D,
10 make it appropriate why the public should be excluded. 09:05
11 And I think if the public is satisfied that that
12 threshold is met it then becomes in part a matter for
13 the Tribunal and in part a matter of the disposition of
14 press representatives, whether it can uphold that
15 public interest with measures less than a full 09:05
16 *in camera* hearing. So I wanted to firstly identify the
17 public interest served by a private hearing, then
18 identify the particular apprehensions of the privacy
19 impact and go on to identify what I say confer powers
20 to restrict reporting, if the Tribunal feels that it 09:05
21 can facilitate a hearing with press restrictions.
22 So obviously the statutory norm is for a public
23 inquiry, but there is a clear jurisdiction for
24 exceptions where it's in the public interest for
25 reasons connected with the subject matter of the 09:06
26 inquiry or the nature of the evidence to be given, and
27 I say there is also a constitutional message which
28 overlays the application of those provisions. I say
29 the public interest served by Ms. D's evidence being

1 heard otherwise than in public relate to vindication of
2 her personal rights in terms of privacy and dignity
3 concerning deeply private matters, including in
4 relation to sexual health and family matters; secondly,
5 upholding the State's obligations under Article 8 of 09:06
6 the ECHR to protect the right to private and family
7 life; thirdly, protecting the confidentiality and
8 anonymity of minors in relation to private information
9 and/or allegations of sexual misconduct - and that is
10 an interest which I say continues after my a minor 09:06
11 attains majority; and finally, encouraging the
12 continued confidential reporting of allegations of
13 sexual misconduct.

14
15 So in terms of the apprehensions of privacy, I am 09:06
16 conscious that the Tribunal doesn't regard various
17 matters as being within its terms of reference but
18 nevertheless there has been, I suppose, public
19 attention and media reporting on various lines of
20 questioning which I would respectfully submit are 09:07
21 outside the scope of the Tribunal's inquiries.

22 **CHAIRMAN:** Can I just stop you there, Mr. Buckley, if I
23 may? We had a private hearing in relation to what was
24 within and what was without, and I think everybody
25 agreed -- I mean, everybody without cavil agreed that 09:07
26 certain things were not within the terms of reference.

27 **MR. BUCKLEY:** I fully appreciate that and I suppose I
28 am not apprehensive that there will be any
29 determination or findings by the Tribunal in relation

1 to those matters, but I am aware that there has been
2 reporting on matters which I say stray beyond the
3 strict parameters of the necessary terms of the
4 inquiry, and those are documented in the submissions,
5 but they obviously relate to the issues concerning the 09:07
6 presentation in 2006 and the presentation again in
7 2013. And I think it's undesirable that those matters
8 would be the subject of attention or public hearings.
9

10 So, in terms of the focus of this particular phase, it 09:08
11 seems to me it's concerned with the creation,
12 distribution and use by Tesla of a file in 2013, and
13 not anything else, and I don't think there is any
14 controversy in relation to that. But I say most of
15 Ms. D's evidence is likely to bear directly upon that 09:08
16 issue, but there is a risk that it would transgress
17 into some other private subject matters, as I say,
18 relating to 2006 and 2013. And I say that ordinarily
19 she would enjoy constitutional and statutory protection
20 against disclosure of such subject matter, and there is 09:08
21 a risk with even tangential questioning on those issues
22 and with media reporting thereon that there will be a
23 significant erosion of rights to privacy or a risk that
24 her anonymity may be eroded even if other features may
25 lead to her being identified. 09:09
26

27 So I say hopefully there might be a willingness on the
28 part of any press representatives, if the Court is
29 minded to permit their presence, to uphold protocols

1 around anonymity, but I say regardless there are powers
2 under the Tribunals of Inquiry 1921 Act and the 1979
3 Act in circumstances of section 1(1) and section 4, and
4 I say it's inherent in the Court's recognition, as
5 reflected by Flood v. Lawlor, that the Tribunal has a
6 wide discretion in terms of controlling its own
7 proceedings, and I say that if the Tribunal's entitled
8 to entirely exclude the public I say it follows as a
9 matter of course and ancillary to that, that it can
10 also impose intermediate restrictions to uphold that
11 objective of a public inquiry whilst prevailing to
12 protect countervailing public interests in having a
13 private hearing.

09:09

09:09

14
15 So, I would also direct the Chairman, the Tribunal to
16 Judge O'Donnell's recent comments in the Sunday
17 Newspapers v. Gilchrist, and I can hand in a copy of
18 that judgment if it's required but I don't propose to
19 open it now.

09:09

20 **CHAIRMAN:** Yeah, I know that judgment. And there is
21 also my own judgment in M.A.R.A. which seems to have
22 been forgotten.

09:10

23 **MR. BUCKLEY:** Indeed, Chairman.

24 **CHAIRMAN:** But maybe it wasn't any good, I don't know.

25 **MR. BUCKLEY:** There was only a limited timeframe for
26 preparing these particular submissions overnight and
27 the range of authorities covered may not do full
28 justice to the Tribunal. But I say that whilst Ms. D
29 has some concerns about a press presence and the scope

09:10

1 of any reporting that might take place if there is a
2 press presence she would be prepared to countenance the
3 application of a limited press presence subject to
4 certain restrictions and I would suggest that any
5 measures along those lines might encompass the 09:10
6 following: That the identities of Ms. D and her
7 immediate family would remain anonymised --

8 **CHAIRMAN:** Are you at a particular point in the
9 submissions now, because I have read most of them?

10 **MR. BUCKLEY:** Yes. 09:11

11 **CHAIRMAN:** Was there a particular point where you set
12 out --

13 **MR. BUCKLEY:** Yes, paragraph 4, Chairman, sets out some
14 of those measures.

15 **CHAIRMAN:** Okay. Yes. 09:11

16 **MR. BUCKLEY:** That the identities would remain
17 anonymised; there would be no identifying details not
18 already in the public domain be reported upon; no
19 photography or video footage of Ms. D and/or her family
20 approaching or departing the Tribunal; and the 09:11
21 questioning would be strictly limited to matters the
22 proper focus of the Tribunal's terms of reference,
23 namely the creation of the 2013 file; and the parties'
24 representatives would not be permitted to question her
25 on extraneous, intrusive and private matters without 09:11
26 satisfying the Tribunal as to the relevancy of such
27 questioning. And I think it follows that there may be
28 a need to perhaps impose redactions on transcripts for
29 public release to secure those objectives, and those

1 are essentially I suppose the terms on which Ms. D
2 thinks that a limited press presence could be
3 countenanced. But fundamentally, the submission is
4 that the circumstances warranting a hearing otherwise
5 than in public are satisfied and --

09:12

6 **CHAIRMAN:** But Mr. Buckley, I take it those particular
7 points there in paragraph 4 are based on your
8 instructions from Ms. D?

9 **MR. BUCKLEY:** Those are based on specific instructions,
10 Chairman, yes.

09:12

11 **CHAIRMAN:** Yeah. And what do you mean, if you don't
12 mind me asking you, by limited press presence?

13 **MR. BUCKLEY:** I suppose --

14 **CHAIRMAN:** Because I mean, it's kind of invidious for
15 me to be sitting up here and saying Ms. A and Ms. B may
16 attend and share their copy with everybody else, and I
17 don't know how the thing works. I would need your help
18 on that, please.

09:12

19 **MR. BUCKLEY:** No, I appreciate that. I am not
20 suggesting limiting it to specific members of the
21 press, but I think the general statutory protocols that
22 reflect *bona fide* representatives of the press is a
23 threshold. I think one would expect them to be
24 associated with a recognised media organ, but beyond
25 that, there is not a suggestion that there be a quota
26 put on the number of press representatives allowed to
27 attend.

09:12

09:12

28 **CHAIRMAN:** Okay. And the photographers wouldn't be
29 allowed in the room, because they do come in, I mean

1 they have their job to do too. And it may be better
2 that they know who not to photograph than who -- I
3 mean, that is important, too, isn't it? I am sorry, do
4 you see the point I am making?

5 **MR. BUCKLEY:** I do. 09:13

6 **CHAIRMAN:** I meet the photographers every morning and
7 they are very nice outside in the yard, but they do
8 come in, in order to see who they might like to
9 photograph later on. But surely, it's right for them
10 to come in, in order to see who they do not want to 09:13
11 photograph if there is a restriction. Is that --

12 **MR. BUCKLEY:** I think that is possible. The other
13 alternative is to have an alternative means of ingress
14 and egress from -- I am not sure if that is --

15 **CHAIRMAN:** Say that again. 09:13

16 **MR. BUCKLEY:** An alternative means of access and egress
17 from the Tribunal location here, but I am not sure
18 which is more feasible but --

19 **CHAIRMAN:** well, there's only two ways in and out, as
20 indeed Robert Emmet might have told you in 1803, so 09:14
21 it's not exactly difficult to cover all the spots.

22 **MR. BUCKLEY:** well, then, the former solution suggested
23 by you, Chairman, may be the more workable one.

24 **CHAIRMAN:** Yes. Maybe. Mr. Buckley, M.A.R.A. says the
25 following: That - as Judge O'Donnell said in the case 09:14
26 in relation to, it must have -- yeah, it's Gilchrist -
27 the fundamental thing is that there has to be an
28 administration of justice, but before you get to the
29 step of saying this hearing is *in camera*, in other

1 words no one is allowed to know about it, no one is
2 allowed to know any names, no one is allowed in, no one
3 is allowed to report on it, and only the judgment is
4 public, there are very many intermediate steps that you
5 can take. One step is that everyone be allowed in but 09:15
6 it's just a question of initials. Another step may be
7 the ultimately step, which is that no one is allowed in
8 but in between there are perhaps grades. So I kind of
9 need to know from you, and your submissions are indeed
10 very helpful, and thank you for them, where do you 09:15
11 stand on this?

12 **MR. BUCKLEY:** I think --

13 **CHAIRMAN:** Like, your preferred position is what if you
14 don't mind me asking you?

15 **MR. BUCKLEY:** Yes. I suppose, a first caveat is that 09:15
16 obviously I don't think the same constitutional
17 imperative of public processes apply to the tribunals
18 as would apply to administration of justice, obviously.
19 But in terms of setting out our specific position, I
20 think my specific instructions are set out by the kind 09:16
21 of measures identified at paragraph 4 of the
22 submissions, Judge; that she is prepared to countenance
23 a press presence subject to those type of restrictions
24 being imposed.

25 **CHAIRMAN:** Mm-hmm. Okay. 09:16

26 **MR. BUCKLEY:** Thank you.

27 **CHAIRMAN:** Thank you very much and thank you for the
28 submissions.

29 **SUBMISSION BY MR. GILLANE**

1 **MR. GILLANE:** Chairman, Sean Gillane is my name. I
2 appear as counsel for RTE. I have a very brief
3 submission to make and I hope it's of some assistance
4 in relation to Mr. Buckley's submissions to you.
5 Firstly, on behalf of RTE, can I indicate clearly and 09:16
6 explicitly there is no interest in nor application to
7 film Ms. D, photograph Ms. D or any of her family
8 members. Secondly - and I wish to indicate this
9 explicitly - there is no interest in, or application,
10 to identify her directly or indirectly or anyone 09:16
11 connected to her which could lead to her
12 identification. It's submitted on behalf of RTE that
13 the approach adopted by the Supreme Court in Gilchrist
14 explicitly indicates that incremental steps can be
15 taken, and I wish to indicate to you, Chairman, that 09:17
16 any such orders as the Court might make in that regard
17 will be adhered to by RTE. It's our submission that
18 the steps that can be taken to protect Ms. D and any of
19 the concerns raised by Mr. Buckley should not include a
20 full *in camera* order and it's my submission that *bona* 09:17
21 *fide* members of the press should be allowed to be
22 present to contemporaneously report the proceedings.
23 And again, there isn't any difficulty on behalf of RTE
24 with Mr. Buckley's submission that ultimately the Court
25 may redact certain portions of the transcript of 09:17
26 evidence that you will hear. And so, in those
27 circumstances, I submit that insofar as Mr. Buckley has
28 indicated in terms of paragraph 4 that incremental
29 steps can be taken on behalf of RTE, I'd ask the

1 Tribunal to adopt those steps and not to go as far as
2 excluding *bona fide* members of the press.

3 **CHAIRMAN:** Thanks, Mr. Gillane. Is there any
4 submission from any other media organisation?

09:18

5
6 **SUBMISSION BY MR. O'MALLEY**

7 **MR. O'MALLEY:** Chairman, Joe O'Malley from Hayes
8 solicitors on behalf of The Irish Times. We adopt the
9 position broadly outlined by Mr. Gillane. We are
10 certainly prepared to maintain the non-identification
11 of this witness, and to abide by any directions which
12 the Tribunal might hand down during the course of her
13 evidence. We have no desire whatsoever to identify her
14 by reference to our press coverage or any imagery. We
15 do believe that that should be the height of the
16 restrictions that are imposed upon the press, and
17 otherwise we should be free and fully at liberty to
18 attend and report in the normal way, because it's
19 clearly a matter of public interest and a fair and
20 accurate report of it can only be guaranteed by their
21 attendance.

09:18

09:18

09:19

22
23 **SUBMISSION BY MR. KEALY**

24 **MR. KEALY:** Mr. Chairman, Michael Kealy on behalf of
25 Associated Newspapers, the publishers of the Irish
26 Daily Mail and Irish Mail on Sunday. I too would adopt
27 the position given by Mr. Gillane to you. Similarly,
28 we have no desire or intention to identify Ms. D or
29 members of her family or to photograph them in any way.

09:19

1 we do believe, however, that the matter should not be
2 held *in camera* and that *bona fide* members of the press,
3 including representatives of my client, should be in a
4 position to attend. And I haven't had an opportunity
5 to see the submissions that are before you, so in terms 09:19
6 of the detailed intermediate steps it is somewhat
7 difficult. The only issue that I might raise, as
8 showing some potential concern, would be the suggestion
9 that matters might be raised which are outside of the
10 terms of reference and if they were said in front of 09:19
11 members of the press they should be entitled
12 potentially to report upon those. It's not for the
13 press I think to make a determination --

14 **CHAIRMAN:** Just go back a wee bit, Mr. Kealy, what did
15 you say there? 09:20

16 **MR. KEALY:** One of the concerns I have - and I haven't
17 seen the submissions so I am only doing this on the
18 basis of what Mr. Buckley has said - there seems to be
19 a suggestion that matters which are outside of the
20 terms of reference which are the subject of questioning 09:20
21 at the hearing could not be reported upon by the press.
22 I think it's a matter for Mr. Buckley to object to the
23 matters being raised if he believes they are outside
24 the terms of reference, but if matters are given in
25 evidence and if questions are raised it seems to me 09:20
26 that the press have an entitlement to report upon that
27 subject to anonymising Ms. D and members of her family.

28 **CHAIRMAN:** Can I just ask you about that, because that
29 is an important point? You will be aware, Mr. Kealy,

1 that the documents submitted by the Tribunal, I think
2 you would have got the memory stick containing all of
3 those.

4 **MR. KEALY:** We have received no material from the
5 Tribunal.

09:20

6 **CHAIRMAN:** Well, you are totally welcome to them,
7 Mr. Kealy, and we will give you a memory stick today
8 with thousands of documents and we would be delighted
9 for you to have it.

10 **MR. KEALY:** Thank you.

09:21

11 **CHAIRMAN:** That's just a little bit worrying. But
12 anyone who has seen any of the documents will realise
13 that there are blank -- there are black spaces. And
14 when you come, for instance, to the chart in relation
15 to the intake records 2013 and Tusla, there are charts
16 where only Ms. D is showing and then there are other
17 people and they are all blacked out, and then there are
18 private counselling records where large areas are
19 blacked out. Now, is it within the scope of the
20 court -- sorry, the Tribunal exercising the powers of
21 the High Court to say well, seeing as how we have
22 protected somebody's privacy, in the event of anything
23 of that variety slips out I am sorry you just can't
24 report that? And let's move away from Ms. D for a
25 moment and just let's say that it is an elderly
26 gentleman, which is the example given by Judge
27 O'Donnell in **gilchrist**, who is giving evidence, and who
28 does not want a particular thing to be known, for
29 instance, that his daughter died while he was in

09:21

09:21

09:22

1 England and has nothing to do with him but is very,
2 very sensitive about that subject, is it within the
3 scope of an order that a Tribunal can make to say well
4 look, that can't be reported on, I am sorry, if
5 something of that variety slips out? 09:22

6 **MR. KEALY:** I believe that the Tribunal does have that
7 power, and I believe the analogous situation would be
8 something like the decision of the House of Lords in
9 the UK in Campbell v. Mirror Group Newspapers, where,
10 for example, it was determined that the publication of 09:22
11 effectively private medical records was a breach of her
12 Article 8 privacy rights.

13 **CHAIRMAN:** That is to do with, for instance, an
14 addiction or something.

15 **MR. KEALY:** That was a case to do with a drug and 09:23
16 alcohol addiction that she suffered from, and while the
17 press were entitled to report upon certain aspects of
18 that, such as she was having treatment, they weren't
19 entitled to report upon what were described in the
20 judgment as the details of that treatment. It would 09:23
21 seem to me that that would be an analogous situation
22 here. I would like to make it clear, my clients have
23 no intention of publishing that kind of material,
24 because that might potentially both lead to
25 identification and could potentially cause unnecessary 09:23
26 distress. They have no intention of doing that. But I
27 am just merely flagging that the issue that the idea
28 that we as members of the press, if material is
29 ventilated before this Tribunal where members of the

1 press are there, it's not for them to make a
2 determination whether something is within or without
3 the terms of reference of the Tribunal.

4 **CHAIRMAN:** Has it happened before? I mean, I can't
5 think of it happening but then very, very few High 09:23
6 Court cases, which is what I would be familiar with,
7 are heard otherwise than in public. It's usually one
8 thing or the other, but I have never come across a
9 situation where a judge will say, like on American TV,
10 'strike that from the record, in this instance, sorry, 09:24
11 that detail can't be reported'.

12 **MR. KEALY:** I think it could potentially happen in
13 theory. I think it has sometimes happened in practice
14 where members of the High Court and other courts have
15 indicated to the press they should voluntarily, for 09:24
16 example, not publish material and that type of request
17 has been acceded to. In terms of the powers that you
18 might potentially have, it would seem to me that if you
19 make a determination that the publication of this
20 material would be a breach of a Constitutional or a 09:24
21 Convention right it seems to me the press would be
22 obligated to do that. Because publication in that
23 interest would, for example, expose them potentially to
24 some form of action by way of breach of privacy or
25 unnecessary distress or whatsoever. 09:24

26 **CHAIRMAN:** No, I see your point. I have come across
27 situations like that in the past where I did ask the
28 press not to report, for instance, a woman who had
29 suffered an operation that resulted in an embarrassing

1 condition, they didn't report her name but did report
2 the condition. But I think, in fact, there is a
3 statutory power in relation to medical matters to
4 prevent publication. In fact, there is a plethora of
5 new statutory powers covering this whole area, none of 09:25
6 which it seems apply to me. But then again, it may be
7 that in exercising the powers of the High Court I also
8 have those powers.

9 **MR. KEALY:** That was certainly the view that we had
10 come to; which is that the provisions of the Tribunals 09:25
11 of Inquiry Act, particularly section 4 which gives you
12 those powers, I think by analogy can apply in the
13 particular instance. And Mr. O'Malley has, I think,
14 helpfully pointed out, I think the provisions you were
15 referencing is section 27 of the Criminal Law 09:25
16 (Miscellaneous Provisions) Act.

17 **CHAIRMAN:** Yeah, there's a lot of those things that
18 have slipped in, in sections in apparently unrelated
19 act. Yes. Okay. Thanks, Mr. Kealy.

20 09:25
21 **SUBMISSION BY MR. MCALEESE**

22 **MR. MCALEESE:** Chairman, Simon McAleese is my name. I
23 am the solicitor for the News Group Newspapers and
24 Times Newspapers. Times being the publisher of The
25 Sunday Times and the Ireland Edition of The Times 09:26
26 Daily, News Group being the publisher of The Irish Sun.
27 My clients' position is exactly as outlined by
28 Mr. Kealy, and Mr. Kealy very kindly drew my attention
29 to section 4 of the 1979 Tribunals Act before kick-off,

1 and it would, it seems to me, just from my brief look
2 at it, give you the requisite powers to restrict, if
3 needs be, the publication of evidence that might
4 infringe upon the privacy of Ms. D, and that would be
5 possibly the way to go, I submit. 09:26

6 **CHAIRMAN:** Yes. So you are broadly in agreement?

7 **MR. MCALEESE:** I do, indeed

8 **CHAIRMAN:** Yeah. And what do you say then in relation
9 to the question of, if something that is clearly
10 private and would otherwise be redacted slips out, do 09:27
11 you submit that I do have the power to say, look, I am
12 sorry, you can't report that particular thing?

13 **MR. MCALEESE:** I think you do, Chairman. And I think
14 it's in everyone's interest that the Tribunal look
15 after that end of things, because otherwise, you 09:27
16 know -- we obviously don't know what has been blacked
17 out in the documents that you referred to, and if
18 something that has been blacked out slips out we are
19 not to know that it has been blacked out, if you know
20 what I mean. 09:27

21 **CHAIRMAN:** Yes. Thanks, Mr. McAleese. Mr. McDermott?
22

23 **SUBMISSION BY MR. MCDERMOTT**

24 **MR. MCDERMOTT:** Thank you, Chairman. It seems to be a
25 matter between Ms. D, the Tribunal and the media. 09:27
26 Insofar as Ms. D may comment on the dealings she had
27 with my client, Tesla, we have always accepted our
28 actions should be subject to public scrutiny.

29 **CHAIRMAN:** I appreciate you do accept that, but I think

1 the relationship that you have, you would have had with
2 Ms. D over the years, it goes back to 2005, is one
3 predicated on medical confidentiality,
4 psychotherapeutic confidentiality, is that right?

5 **MR. MCDERMOTT:** That would be at the heart of it. 09:28
6 Obviously I appreciate one of the things the Tribunal
7 is investigating is whether we fulfilled our own
8 standards in this case, but the normal procedure is
9 these matters would be treated by Tusla as being of the
10 highest confidentiality and privacy and we would have 09:28
11 intended to deal with Ms. D on that basis. Whether or
12 not we did is obviously a matter for the Tribunal to
13 decide in due course, but that would have been the
14 intention of Tusla.

15 **CHAIRMAN:** And is Tusla satisfied with the manner in 09:28
16 which redactions have been made by the Tribunal with a
17 view to protecting such matters as are confidential, A
18 and B, not impacting on any issue before the Tribunal?

19 **MR. MCDERMOTT:** Yes, I think the Tribunal has struck
20 the right balance between revealing just enough 09:29
21 information to allow the issues it has to consider to
22 be debated, but not revealing other issues which
23 couldn't possibly impact on the issues you have to
24 consider, sir.

25 **CHAIRMAN:** And there was just one last matter then. 09:29
26 You may be aware of an article which appeared in the
27 Bar Review I think about eight years ago, by Simon
28 O'Leary called *Privilege for Psychotherapy*, I don't
29 think that has been taken up, but you are not

1 contending that there is a privilege which is automatic
2 for psychotherapy beyond the duty to strike a balance
3 between confidentiality and the necessity to inquire
4 into matters publicly which are mandated by the terms
5 of reference? 09:29

6 **MR. MCDERMOTT:** No. And if any question of privilege
7 arises we will identify it, but I think we haven't seen
8 anything to date that would suggest any recognised
9 privilege arises.

10 **CHAIRMAN:** And just one final matter then: Insofar as 09:30
11 anything might arise which would be a potential breach
12 of confidentiality, but, in other words, not germane to
13 a public examination of the matters that are at issue,
14 and I am sticking strictly by the terms of reference as
15 I am obliged to do so, I take it Tusla would regard it 09:30
16 as appropriate to intervene?

17 **MR. MCDERMOTT:** Yes, of course.

18 **CHAIRMAN:** Thank you.

19
20 **SUBMISSION BY MR. BRODERICK** 09:30

21 **MR. BRODERICK:** Chairman, Darryl Broderick, Ronan Daly
22 Jermyn, on behalf of The Irish Examiner Newspaper.
23 Just for completeness and for expedience, just to
24 confirm that The Irish Examiner adopts the submissions
25 made on behalf of RTE and indeed the submissions made 09:30
26 on behalf of the other media representatives in
27 response to questions from the Chairman. And I can
28 confirm on behalf of The Irish Examiner that it doesn't
29 intend to publish anything which might identify Ms. D

1 or any of her family members.

2 **CHAIRMAN:** Thank you very much, Mr. Broderick. Did you
3 want to say something, Mr. McDowell?

4
5 **SUBMISSION BY MR. MCDOWELL**

09:31

6 **MR. MCDOWELL:** I only want to say very little,
7 Chairman; that obviously the Tribunal has determined on
8 a policy of anonymity for Ms. D and that can easily be
9 preserved and I don't think anybody is challenging
10 that. The second thing is that --

09:31

11 **CHAIRMAN:** You don't have a problem with it, as such?

12 **MR. MCDOWELL:** No, absolutely -- well, at this stage it
13 would be a bit late to -- My client's position has
14 always been that he wanted all matters dealt with in
15 public.

09:31

16 **CHAIRMAN:** Yeah.

17 **MR. MCDOWELL:** And insofar the parameters of the
18 Tribunal and what is inside its terms of reference and
19 outside its terms of reference seem to be agreed by
20 Mr. Buckley and not challenged in any way, we can live
21 with that. And the only thing that I would say is that
22 I would be wary of the idea about there being any
23 secret evidence or people thinking there was secret
24 evidence.

09:32

25 **CHAIRMAN:** No, I appreciate that, but hopefully we
26 won't ever get there, Mr. McDowell. But I mean, I do
27 think -- I mean, the Campbell case is a good example.
28 The fact that someone is attending, for instance, a
29 counsellor is perhaps of importance to us. I mean,

09:32

1 it's a fact that that is a background fact to 2005 and
2 again 2013. But the precise reasons for that -- I mean
3 if they come out, because witnesses can say things,
4 perhaps, in the heat of the moment. Whereas I would
5 find it undesirable, an extreme step, to do any such 09:32
6 thing, I think it may be appropriate with a view to
7 protecting people -- I am not referring to Ms. D in
8 particular, but you know the old legal concept
9 protecting people from themselves, I mean that can be
10 important. 09:33

11 **MR. MCDOWELL:** well, let's hope that that exigency
12 doesn't arise.

13 **CHAIRMAN:** But if it does happen --

14 **MR. MCDOWELL:** If it does, a strike from the record, to
15 use the American phrase, may be necessary, an order of 09:33
16 that kind may be necessary.

17 **CHAIRMAN:** Thank you, Mr. McDowell.

18
19 **SUBMISSION BY MR. MCGUINNESS**

20 **MR. MCGUINNESS:** It's very helpful to hear those views, 09:33
21 obviously. Might I just address one issue in passing?
22 Sir, you were in discussion with Mr. Kealy in relation
23 to the issue of him being provided with statements on a
24 USB key, I just want to clarify one matter: Obviously
25 that Mr. Kealy has written in to the Tribunal in 09:33
26 relation to a person who is intended to be a witness
27 before the Tribunal, and he is going to be seeking
28 representation in relation to that person.

29 **CHAIRMAN:** Yes. You are right to correct me,

1 Mr. McGuinness, because I am sorry, I was confused. I
2 had seen Mr. Kealy at the beginning, I was wondering
3 was he representing and then I understood the
4 application for representation was withdrawn. But I am
5 sorry, I am not completely up to date as to who is in 09:34
6 and out, but anyone who is represented is what I mean,
7 obviously, is entitled to the documents for the purpose
8 of the Tribunal.

9 **MR. MCGUINNESS:** Yes. And obviously if Mr. Kealy's
10 application for representation in relation to that 09:34
11 witness is granted on a limited basis --

12 **CHAIRMAN:** Is that done already?

13 **MR. MCGUINNESS:** No, no -- he will then be entitled to
14 any relevant documents. But he is here obviously today
15 in a completely different capacity. 09:34

16 **CHAIRMAN:** Yes.

17 **MR. MCGUINNESS:** For one purpose only, which is to
18 maintain his clients -- his different clients'
19 interests in having access to the proceedings before
20 the Tribunal and he is not seeking full representation 09:34
21 before the Tribunal on that basis, and he won't,
22 therefore, be entitled to the provision of all of the
23 documents.

24 **CHAIRMAN:** I am sorry, you are absolutely right,
25 Mr. McGuinness. I got that wrong and I am sorry, 09:34
26 Mr. Kealy, I did get that wrong.

27 **MR. MCGUINNESS:** Insofar as the issues raised by
28 Mr. Buckley are concerned, it's quite clear that he is
29 not envisaging or arguing for a completely private

1 hearing with the exclusion of the public and the total
2 exclusion of the press, and/or any ban on reporting
3 what would be properly the scope of evidence before the
4 Tribunal. He is arguing for a much more limited form
5 of restriction, which is a matter for the Tribunal to 09:35
6 balance as to whether it's justified in restricting it
7 to any extent. I did want to refer the Tribunal
8 obviously to the judgment of the Supreme Court in the
9 M.A.R.A. case, which is reported in the Irish Reports
10 for 2015, 1 Irish Reports, page 561. And it is a 09:35
11 judgment obviously of yourself, Chairman, in that
12 regard, I think unanimously concurred in by the other
13 members of the Court. It has been followed more
14 recently by the Gilchrist judgment, and Mr. Buckley has
15 referred to that in his submissions and in his written 09:36
16 submissions, and obviously the most relevant paragraphs
17 of that are paragraphs 44 and 45 of the judgment of the
18 Court delivered by Mr. Justice O'Donnell, and it's
19 perhaps appropriate to quote that key paragraph,
20 paragraph 44: 09:36

21
22 *"The legal issue for this Court was presented in a very*
23 *stark and binary form. The only options canvassed were*
24 *a hearing fully in public or one completely in camera.*
25 *I do not consider that this is or can be the correct*
26 *approach. In any event, since any departure from the*
27 *rule of hearing in public is an exception which must be*
28 *strictly justified, it is in my view necessary to*
29 *consider the matter incrementally, and to ask whether*

1 any lesser steps would meet any legitimate interests
2 involved. That may involve considerations of
3 anonymising witnesses or orders that witnesses may not
4 be photographed or identified in any way, or whether
5 any part of the hearing may be conducted in public, or
6 whether it is possible in respect of any hearing in
7 private, that a redacted transcript of proceedings can
8 be released to the media. Given the fact that the
9 plaintiffs are already identified by name, and that
10 there has been a range of interlocutory applications in
11 this case, and furthermore that the trial of this case
12 would necessarily involve disclosure of matters to at
13 least the 12 jurors and any witnesses from the
14 newspapers who were in attendance, it would in my view
15 be incumbent on a court, even if satisfied, that there
16 was a case for some exception from the general
17 principle to consider the precise steps which might be
18 taken in this case, starting from the proposition that
19 any provision permitting trial other than in public is
20 an exception to a general rule of fundamental
21 importance. Nothing more should be permitted than is
22 demonstrated to be necessary to avoid the damage to the
23 public interest involved. As already observed, this is
24 a matter which could be the subject of further
25 submissions to the trial judge by the parties and if
26 appropriate representatives of the media more
27 generally."

28
29 And he reinforces that in the succeeding paragraph, and

1 I will just (vii) of that paragraph:
2

3 *"The requirement of strict construction of any*
4 *exception to the principle of trial in public means*
5 *that a court must be satisfied that each departure from*
6 *that general rule is no more than is required to*
7 *protect the countervailing interest. It also means*
8 *that court must be resolutely sceptical of any claim to*
9 *depart from any aspect of a full hearing in public.*
10 *Litigation is a robust business. The presence of the*
11 *public is not just unavoidable, but is necessary and*
12 *welcome. In particular this will mean that even after*
13 *concluding that case warrants a departure from that*
14 *constitutional standard, the court must consider if any*
15 *lesser steps are possible such as providing for*
16 *witnesses not to be identified by name, or otherwise*
17 *identified or for the provision of a redacted*
18 *transcript for any portion of the hearing conducted in*
19 *camera."*
20

21 So in my submission, that does carry with it the
22 necessary inherent power that if any matter were
23 elicited or raised in the *in camera* hearing, albeit
24 with the representatives of the press public, that the
25 Tribunal has the power to decide what portions of the
26 transcript ought to be redacted and therefore ought not
27 to be reported as a consequence of that redaction.
28

29 But in summary, it would appear, sir, that no party has

1 argued substantially in any way or put forward any
2 grounds against the submission made by Mr. Buckley that
3 Ms. D's evidence ought to be taken in an *in camera*
4 session with the rights of the press to attend and
5 report upon that subject to your direction and control. 09:40

6 **MR. MCDOWELL:** Chairman, I didn't understand that to be
7 his submission, that it was to be taken *in camera*.

8 **MR. MCGUINNESS:** well, it's otherwise than in public.

9 **CHAIRMAN:** I am sorry, I am missing it, I beg your
10 pardon, it's the acoustics. Maybe, Mr. McGuinness, 09:40
11 would you just repeat that last bit and then
12 Mr. McDowell. We will see where we stand, please, if
13 you repeat that.

14 **MR. MCGUINNESS:** Yes, it's the reference to *in camera*,
15 paragraph 3 of Mr. Buckley's submissions, he is saying: 09:40

16
17 *"It is respectfully submitted insofar as the oral*
18 *testimony is required for Ms. D her evidence should be*
19 *heard in camera."*

20 09:40
21 And as I understand his submission, it's without the
22 public themselves being permitted to attend but that
23 *bona fide* representatives of the press would of course
24 be entitled to attend without any restriction on that
25 issue as such. 09:41

26 **CHAIRMAN:** Mr. McGuinness, in rape cases now in the
27 High Court - and obviously that is an allegation, it's
28 not proved, we don't know what happened, the standard
29 of proof is beyond reasonable doubt - we are not

1 deciding what happened, if there was a couch, if there
2 was a game of hide and seek back in 1998, and that is
3 not within the terms of reference, but what are the
4 restrictions now for sexual violence cases in the
5 Central Criminal Court? How are they done?

09:41

6 **MR. MCGUINNESS:** well, they are heard *in camera*,
7 subject to the right of the press to attend without
8 identifying the parties, each of whom at that stage,
9 although the accused may lose that right, have a right
10 of anonymity in respect of the matters at issue.

09:41

11 **CHAIRMAN:** And sometimes permission is given for other
12 persons to attend who are *bona fide* researchers or
13 whatever.

14 **MR. MCGUINNESS:** well, yes. I mean, there is a
15 statutory right for a complainant to have a friend or a
16 close family member in under the provisions of the
17 statutes in that regard.

09:42

18 **CHAIRMAN:** Yes. I am sorry, Mr. McDowell, you had a
19 problem and I didn't catch it, what was it?

20 **MR. MCDOWELL:** well, if the gravamen -- if we are now
21 discussing whether people who are not members of the --
22 *bona fide* members of the media should be allowed be
23 here when Ms. D is giving evidence, as long as her
24 evidence is in conformity with the rulings that the
25 Tribunal has already made, in my respectful submission
26 that is enough. Nobody has to be excluded from being
27 in the room.

09:42

09:42

28 **CHAIRMAN:** I don't know. well, it's just -- I suppose
29 the problem is, Mr. McDowell, it's intimidating enough

1 looking down on a host of faces in these circumstances.
2 **MR. MCDOWELL:** I fully accept that giving evidence,
3 especially possibly in this case, is intimidating for a
4 witness. But I would make the point with the media
5 here, it's very unlikely that anybody is going to be 09:43
6 intimidated by Josephine or Joe Soap sitting in the
7 back of the court or the tribunal. I am just making
8 that point. I don't see a need for an *in camera* order,
9 if the directions of the Tribunal are, which have
10 already been made -- and the understanding set out in 09:43
11 Mr. Buckley's submission as to what is and is not
12 within the area of proper debate and cross-examination,
13 if that's the case I don't see why somebody should be
14 put out of the room.
15 **CHAIRMAN:** Yeah, well, I mean, if there is a 09:43
16 represented party surely the represented party, even in
17 that, would be entitled to be here with a close person
18 they choose?
19 **MR. MCDOWELL:** well, I don't know who the members of
20 the public are. There are always people who attend 09:43
21 tribunals, just out of interest.
22 **CHAIRMAN:** well, they are always very welcome,
23 obviously.
24 **MR. MCDOWELL:** Exactly. I don't see why they should
25 not hear Ms. D's evidence. 09:44
26 **CHAIRMAN:** All right. No, I understand. And I am
27 sorry, I interrupted you at that point.
28 Mr. McGuinness, and --
29 **MR. MCGUINNESS:** No, and I hope I haven't misunderstood

1 Mr. Buckley's application, that it did embrace that.

2 **CHAIRMAN:** That it did embrace that?

3 **MR. MCGUINNESS:** That does embrace that.

4 **CHAIRMAN:** Yeah, maybe he would be so kind as to
5 clarify that. 09:44

6 **MR. BUCKLEY:** Yes, Chairman, that is the submission. I
7 think, I suppose there is not undertakings being made
8 by members of the public, in terms of orders are not
9 being directed towards them in terms of reporting on
10 the content of evidence given, so there is not the same 09:44

11 safeguards. And I think it's analogous to the
12 provision that applies in a range of provisions
13 traversing sexual offences in the context of the
14 criminal courts, and I think similar -- analogous
15 protocols should be adopted. That is my submission. 09:45

16 **CHAIRMAN:** Okay. well, it's good to clarify that.
17 Thank you. So, Mr. McGuinness, what do you say? did
18 you want to address that?

19 **MR. MCGUINNESS:** well, it seems that it is within the
20 power of the Tribunal under the section of the Act to 09:45
21 so decide. Obviously, the provision is as follows:

22
23 *"A tribunal to which this Act is so applied as*
24 *aforesaid shall not refuse to allow the public or any*
25 *portion of the public to be present at any of the* 09:45
26 *proceedings of the Tribunal unless in the opinion of*
27 *the Tribunal it's in the public interest expedient so*
28 *to do for reasons connected with the subject matter of*
29 *the inquiry and the nature of the evidence to be given,*

1 *and in particular where there is a risk of prejudice to*
2 *the criminal proceedings".*

3
4 So the power that Mr. Buckley is asking the Tribunal to
5 invoke is explicitly and solely directed towards that 09:45
6 issue, as opposed to the exercise solely of a power
7 conferred by section 4(1), which is derived from a High
8 Court jurisdiction.

9 **CHAIRMAN:** Yes. Did you want to say anything else,
10 Mr. McGuinness, on the general issue or would you like 09:46
11 to just help me in relation to paragraph 4 and the
12 bullet-point that occur there?

13 **MR. MCGUINNESS:** Paragraph 4. Yes. Well, I think it
14 would appear that there is no substantial issue in
15 objection to the first bullet-point. 09:46

16 **CHAIRMAN:** So the identities of Ms. D and her immediate
17 family should remain anonymised.

18 **MR. MCGUINNESS:** Yes. Nor the second bullet-point.
19 The third bullet-point --

20 **CHAIRMAN:** So, no identifying details not already in 09:46
21 the public domain would be reported. There's no
22 identifying details in the public domain as far as I
23 know, except that this is something to do with
24 Cavan-Monaghan.

25 **MR. MCGUINNESS:** well, there has been reference 09:46
26 obviously to the occupation of Ms. D's father.

27 **CHAIRMAN:** That is true. So that both fathers were
28 members of the Gardaí.

29 **MR. MCGUINNESS:** Yes.

1 relevant to the terms of reference of the Tribunal, nor
2 concealing it in any regard. And of course, with the
3 representatives of the press being permitted to be
4 present during the taking of it --

5 **CHAIRMAN:** Yeah.

09:49

6 **MR. MCGUINNESS:** And subject to any legitimate
7 restrictions of the Tribunal, that will, no doubt, be
8 reported upon immediately in the normal way. So, in my
9 submission, there can't be any objection in principle
10 to that last bullet-point.

09:49

11 **CHAIRMAN:** When we talk about *bona fide* representatives
12 of the press and media, I mean we all know we have
13 newspapers in this country and we have TV, etcetera,
14 that is fine, but then we also have cyberspace,
15 etcetera, have you got any submission to make in
16 relation to those who interest themselves in blogging
17 on matters? I mean, some of them are, I don't know, I
18 am not quite certain, it seems almost semi-official or
19 are news outlets in themselves, but then there are
20 others that, I don't know, seem to be more private or
21 pursued as a personal interest.

09:49

09:49

22 **MR. MCGUINNESS:** Yes. There is no statutory definition
23 of a *bona fide* representative of the press. They do
24 have, as I understand it, a chapel of journalists, a
25 National Union of Journalists, for those who in the
26 normal way profess themselves to be journalists, to
27 whatever extent they do that. Press accreditation is a
28 matter which I have no doubt they are familiar with
29 themselves and obviously it could become an issue

09:50

1 insofar as the Tribunal would want to be satisfied that
2 its order is not -- is complied with or not infringed,
3 whether accidentally or otherwise.

4 **CHAIRMAN:** Yes. So, maybe just whoever would perhaps
5 like to -- is there anything else? 09:50

6 **MR. MCGUINNESS:** No, sir. Not at present.

7 **CHAIRMAN:** Maybe Mr. McAleese or Mr. Broderick or
8 whatever would just like to object that. Is there any
9 objection to people having to show press cards? I
10 think, Mr. Barnes would certainly be familiar with 09:51
11 anybody who is here on a regular basis. I mean, I
12 don't think there is likely to be any such mistake
13 made, is there? Or, would anyone like to say anything
14 about that?

15 09:51
16 **SUBMISSION BY MR. KEALY**

17 **MR. KEALY:** Just in relation to that, I think it should
18 be a matter that should be dealt with on a case-by-case
19 basis by the Tribunal. People can apply for
20 accreditation and we would have no objection to people 09:51
21 doing that. The only area that there might be a slight
22 concern is that there would be freelance reporters who
23 would not necessarily be members of the National Union
24 of Journalists, so I think simply saying you are an NUJ
25 member -- the fact you are not a member shouldn't 09:51
26 exclude you, if you are -- you can be a *bona fide*
27 member of the press and not a member of the NUJ. But I
28 think that can be dealt with on a case-by-case basis.

29 **CHAIRMAN:** I wonder is it likely to arise at all.

1 **MR. KEALY:** It may not, but I am aware of some court
2 reporters who are not members of the NUJ.

3
4 **SUBMISSION BY MR. MCALEESE**

5 **MR. MCALEESE:** Chairman, Simon McAleese again. I would 09:52
6 again agree with Mr. Kealy. Whether it's an issue that
7 is going to arise or not remains to be seen, but there
8 is, I am sure, a very practical way of dealing with it,
9 which is simply, if there is any doubt that the
10 relevant press representative can make themselves known 09:52
11 to you and get the green light.

12 **CHAIRMAN:** Right. That makes sense. Thanks.
13 Mr. McGuinness, Ms. D is scheduled for?

14 **MR. MCGUINNESS:** It's intended to commence her evidence
15 next Monday morning. 09:52

16 **CHAIRMAN:** And are we making progress appropriately? I
17 know I have had to be elsewhere at times.

18 **MR. MCGUINNESS:** Well, I think we are happy with the
19 stage we are at. If it's necessary to reschedule a
20 witness, it's not intended to put them into that Monday 09:52
21 to displace her.

22 **CHAIRMAN:** Yes. But she is the whole of Monday?

23 **MR. MCGUINNESS:** Well, yes.

24 **CHAIRMAN:** Or is it that it's convenient to have her on
25 Monday? 09:53

26 **MR. MCGUINNESS:** No, it's intended to take Ms. D's
27 evidence and that of her immediate family together on
28 Monday with no other witnesses being scheduled.

29 **CHAIRMAN:** All right. Well, thank you very much

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everybody for your submissions and in due course I will give a ruling. Thank you.

So will we carry on with the evidence then, I am sorry I have to rise about five past eleven.

09:53

MS. LEADER: Yes, sir. The next witness is Sergeant Anthony Byrne.

1 SERGEANT ANTHONY BYRNE, HAVING BEEN SWORN, WAS EXAMINED
2 BY MS. LEADER AS FOLLOWS:

3
4 **SERGEANT BYRNE:** Sergeant Tony Byrne,
5 Carrick-on-Shannon Garda Station, Chairman. 09:54

6 **MS. LEADER:** Sergeant Byrne's statement is to be found
7 in volume 7 at page 1743 and there are also relevant
8 extracts from the Garda Code and various circulars in
9 volume 10 from page 3009 onwards.

10 1 Q. Now, Sergeant Byrne, I think you were promoted to the 09:54
11 rank of sergeant in or around February 2010, is that
12 correct?

13 A. That's correct, yes.

14 2 Q. And prior to your promotion where were you stationed?

15 A. I was stationed in Clune in County Leitrim. 09:54

16 3 Q. And on promotion were you transferred?

17 A. Yes, I was transferred from Clune Garda Station to
18 Bailieboro Garda Station in County Cavan.

19 4 Q. And that transfer was a consequence of your promotion,
20 is that correct? 09:55

21 A. That's correct, yes.

22 5 Q. Now, prior to your transfer to Bailieboro, what was
23 your state of knowledge in relation to policing matters
24 generally in Bailieboro and County Cavan?

25 A. I was aware that there were some issues and that there 09:55
26 was investigations ongoing. I wasn't particularly
27 aware of the nature of the investigation, but I was
28 aware there was issues.

29 6 Q. And when you are saying you were aware there were

1 issues, what type of issues were you aware of at that
2 stage?

3 A. There was complaints about the standard of policing or
4 allegations regarding the standard of policing, as far
5 as I can recollect. 09:55

6 7 Q. Were you aware who was making those complaints?

7 A. I would have been, yes.

8 8 Q. And who was that?

9 A. That was Sergeant McCabe, the sergeant in charge of
10 Bailieboro Garda Station. 09:55

11 9 Q. And were you aware of the investigation which was
12 commenced by Chief Superintendent McGinn and Assistant
13 Commissioner Byrne specifically, do you remember?

14 A. I was aware of an investigation ongoing. I wasn't
15 intimately familiar with it but I would have been 09:56
16 aware, yes.

17 10 Q. In relation to Sergeant McCabe specifically, what was
18 your state of knowledge about Sergeant McCabe?

19 A. When I transferred or prior to my transfer or just in
20 general? 09:56

21 11 Q. Prior -- well, just on your transfer, if I could ask
22 you that first of all?

23 A. I was aware just prior to transferring that he had made
24 complaints about the standard of policing and I was
25 also aware that there had been a complaint made in 09:56
26 respect of him or an allegation made in respect of
27 Sergeant McCabe dating back to 2006. I wasn't aware of
28 the specifics of it, but I was aware there had been an
29 allegation made against him.

1 12 Q. And was that prior to the time you went to Bailieboro,
2 that awareness?

3 A. No, it was around the time I was transferring to
4 Bailieboro. I would have heard about it because when I
5 was promoted I suppose people were ringing me to 09:57
6 congratulate me and I would have heard about it then
7 when I was going to Bailieboro.

8 13 Q. Okay. And were you aware of the nature of the
9 allegation made against Sergeant McCabe?

10 A. I was aware it was an allegation of abuse, sexual 09:57
11 abuse, in respect of, in respect of the daughter of a
12 colleague.

13 14 Q. Okay. And you understand, Sergeant Byrne, you haven't
14 been here for too long but we are referring to that
15 person as Ms. D? 09:57

16 A. Ms. D.

17 **CHAIRMAN:** Her father can be called Mr. D.

18 A. Mr. D. I wasn't aware of any identities or any
19 details, I was just aware of a general allegation.

20 15 Q. **MS. LEADER:** Okay. And when you say you were aware of 09:57
21 a general allegation, were you aware in any way of the
22 specifics of that allegation?

23 A. No, I just -- I knew that there had been an allegation
24 made and the file had been sent to the DPP and that was
25 the end of it, there was no prosecution directed or no 09:58
26 further action.

27 16 Q. Okay. Was that the extent of your knowledge?

28 A. Yes.

29 17 Q. And when you say colleagues informed you of this, was

1 it -- you said people congratulating you on your
2 transfer?

3 A. Yeah. People would have been ringing me and
4 congratulations, and I would have got numerous phone
5 calls from colleagues, yes. 09:58

6 18 Q. Garda colleagues?

7 A. Yes.

8 19 Q. Am I correct in saying that?

9 A. Yes.

10 20 Q. Were they people attached to Bailieboro Garda Station 09:58
11 or attached to --

12 A. No, not that I know of.

13 21 Q. Okay. So, can I take it from that, Sergeant Byrne,
14 that it was generally known within An Garda Síochána
15 that an allegation had been made by Ms. D implicating 09:58
16 Sergeant McCabe in sexual misconduct?

17 A. Yes, I believe -- well, I heard about it, I had no
18 connection with that division until I was being
19 transferred there.

20 22 Q. Okay. Now, you were transferred and you went to 09:59
21 Bailieboro, I am correct in saying, in February 2010?

22 A. Well, I was promoted in February 2010. I think I
23 transferred in March 2010.

24 23 Q. March 2010. And you were assigned certain duties at
25 that stage, is that correct, with regard to the HSE? 09:59

26 A. I couldn't remember the exact date but I know I was
27 appointed to be the HSE liaison officer, yes.

28 24 Q. Okay. Now, at that stage, I don't know if you can
29 assist the Tribunal with regard to this, but were you

1 the first formal person -- appointment in that role?
2 A. I don't know that. When I transferred to Bailieboro in
3 March 2010 there was a number of sergeants went there
4 at the same time, so there would have been a large
5 number of sergeants would have left that particular 09:59
6 station. I don't know whether somebody had that role
7 before me or not or whether it was a new role, I
8 couldn't -- I don't know.

9 25 Q. Okay. So, I don't know if you are able to comment in
10 any way but the Tribunal has been informed by the 10:00
11 office of the Chief State Solicitor that the nomination
12 of a sergeant inspector to be the Garda representative
13 on the Garda HSE liaison management team, the first
14 formal enunciation of that role was made on 13th April
15 2010. Can you comment in any way on that? 10:00

16 A. No, I have no knowledge of that.

17 26 Q. And that would appear to emanate from a Directive No.
18 54/2010, are you familiar with that directive --

19 A. No.

20 27 Q. -- in any way? 10:00

21 A. If I could see it, maybe. I may have seen it. But,
22 no. Off the top of my head, no.

23 28 Q. OK. It's at page 3011 of the materials and it should
24 come up on the screen in front of you.

25 A. Yes, I may have seen that document and read it, yes. 10:01

26 29 Q. Okay. And you will see at page 3010 of that document,
27 that:
28
29 *"The nomination of a member inspector/sergeant rank to*

1 *oversee and monitor the effective implementation in*
2 *each district station of part 3 of the Policy in*
3 *relation to child welfare. The sergeant/inspector will*
4 *be the Garda representative on the Garda HSE Liaison*
5 *Management Team as outlined in the policy document."* 10:01

6
7 Do you see that in front of you at page 3013 underneath
8 the heading "*District officers will ensure*"?

9 **CHAIRMAN:** This is a Fogra Tora.

10 **MS. LEADER:** Folder 10. 3011. 10:01

11 **CHAIRMAN:** Yes. I said Fogra Tora.

12 **MS. LEADER:** Yes, sorry, Chairman, I misheard.

13 30 Q. Do you see that Sergeant Byrne?

14 A. "*District officers will ensure nominated member is*
15 *inspector/sergeant rank*", yes. 10:02

16 31 Q. Yes. And that document is signed off by the then
17 Deputy Commissioner Martin Callinan and is dated 13th
18 of April 2010, and that is at page 3014. So would it
19 make sense, Sergeant Byrne, that your nomination --

20 A. That would appear to be the role, yes. 10:02

21 32 Q. Are you agreeing with me?

22 A. Yes.

23 33 Q. Yes. Now, can you explain to the Tribunal what the
24 duties of the HSE liaison sergeant were?

25 A. My understanding in the role was that I had -- there 10:02
26 was three aspects to it. One was to be a point of
27 contact for the then HSE, if they needed Garda
28 assistance, maybe, with executing court orders or
29 issues like that, that I was to that point of contact.

1 The second one was that I would attend case conferences
2 that were organised by the HSE in relation to children
3 at risk in the Bailieboro district. And the third
4 aspect of it was to attend joint agency meetings with
5 HSE staff. 10:03

6 34 Q. Okay. So, you have referred to two varieties of
7 meetings between you and the HSE. So the first one was
8 in relation to -- the first type of meeting?

9 A. The first type of meeting was case conferences.

10 35 Q. And is that in relation to specific children? 10:03

11 A. It would be. Now, what would happen is the HSE would
12 convene a case conference in relation to children at
13 risk, it would be attended by, generally attended by
14 any professionals that had an input or involvement, the
15 children, the likes of the GP, the public-health nurse, 10:04
16 social workers and Gardaí, if necessary.

17 36 Q. Okay.

18 A. Now, I didn't really get to attend many of them
19 meetings because if they didn't happen to fall on a
20 date that I was working an early tour of duty then 10:04
21 whatever sergeant was on duty would attend at the
22 meeting.

23 37 Q. So you could delegate --

24 A. No. If I wasn't available somebody else -- as in, if I
25 wasn't working at that time then somebody else was 10:04
26 delegated to go in my stead.

27 38 Q. Okay. The meetings wouldn't be arranged so as to
28 coincide with when you were on duty?

29 A. No, no, no. The meetings would be arranged by the then

1 HSE or Child and Family Agency and if I wasn't working
2 early tour then somebody else was just sent.

3 39 Q. Okay. And the second category of meetings, Sergeant
4 Byrne, if you could explain those to me, please.

5 A. They were joint agency meetings and what would happen 10:05
6 was -- well, I would meet with a social work team
7 leader and we would review all the cases that were
8 open, that would be referrals, say, from the HSE to us
9 and from us to the HSE. We would review all those
10 cases just to see what the status -- where there was a 10:05
11 Garda investigation to see what status that was at or
12 where there was social work involvement to see what
13 status that was at. If the input feeder agency was
14 finished on a particular case then we would sign off on
15 it as it was closed to one or other particular agency. 10:05

16 40 Q. And how regularly would those meetings take place?

17 A. Up to -- when I went there in 2010 I was being assisted
18 in the task by Garda Peter O'Sullivan, and he used to
19 organise those meetings, he would coordinate with the
20 HSE staff and he would arrange the meetings and then 10:06
21 I'd attend at them.

22 41 Q. Okay.

23 A. Ideally, they were to be held every quarter, as far as
24 I am aware, but realistically that wasn't always
25 possible. 10:06

26 42 Q. Okay. Do you know how many meetings were held in 2010,
27 for instance?

28 A. No, I can't -- I would have no recollection, I would
29 have to go back and check, same with 2011 and 2012.

1 acknowledge receipt of that referral and they would
2 inform us which social worker had been allocated to the
3 case. Vice versa, if the HSE came across a case of
4 some form of child abuse, whether it was an historic
5 case or they became aware of physical abuse through 10:08
6 their work, they would cause a referral to be created
7 at their end. That would be forwarded to our district
8 office and then it would be allocated by the
9 superintendent to member of Garda rank to investigate
10 the incident. Copies of all those referrals would have 10:08
11 been kept on file or would have been copied to
12 Ms. Kenny and she would keep a record then of the cases
13 that were -- had been gone between both agencies.

14 46 Q. So am I correct in saying, Sergeant Byrne, that on the
15 agenda for the liaison meetings would be all of the 10:09
16 referrals received from the HSE to the Guards and all
17 of the referrals given by the Guards to the HSE?

18 A. That should be the case, yes.

19 47 Q. And when you say "that should be the case"?

20 A. Well, that would be the case. That would be the case, 10:09
21 yeah.

22 48 Q. Okay. And you wouldn't compile the agenda but somebody
23 else in the Garda station would compile the agenda?

24 A. Ms. Kenny would put together a list of the cases
25 that -- to be discussed. 10:09

26 49 Q. Okay.

27 A. And that'd be on the basis of what she would have had
28 received through her office and what she had on file,
29 she would record them on computer and she would

1 generate a list then that we could discuss at the next
2 meeting.

3 50 Q. Okay. Was there a system in Bailieboro Garda Station
4 whereby all notifications automatically went to you as
5 the liaison person -- 10:10

6 A. No.

7 51 Q. -- with the HSE?

8 A. No, no.

9 52 Q. And can you explain to me why that was the case, if you
10 were the Garda liaison person with the HSE? 10:10

11 A. I can't explain. That was the system when I got there,
12 they came through the district office and they went to
13 Ms. Kenny. They weren't notified directly to me. I
14 wouldn't have been aware of every referral that was
15 coming through the office. 10:10

16 53 Q. But would you eventually find out about every referral
17 if you were attending at meetings?

18 A. Yeah, the list would be there, the files would be
19 there, the referrals, there'd be copies of the
20 referrals there and I would go through the list, the 10:10
21 spreadsheet in advance of meetings.

22 54 Q. And if, for instance, a person who worked with Tusla, a
23 social worker, wanted to make an inquiry as to the
24 status of any particular referral, were you the person
25 they'd go to? 10:11

26 A. But they could but in practice I very rarely ever heard
27 from them. I would assume that they would liaise
28 directly with the investigating guard or the guard that
29 had generated the report that would have the kind of

1 more intimate knowledge of the reason behind the
2 referral.

3 55 Q. Okay.

4 A. Or the guard -- if there was a criminal offence, the
5 guard that would be investigating it. 10:11

6 56 Q. So, did you maintain overall control of the referrals?

7 A. I would have been aware of them, no, but I didn't
8 direct, I didn't coordinate investigations or anything
9 like that.

10 57 Q. Okay. So, if somebody from the HSE were to phone the 10:11
11 Garda liaison officer would you simply act as a
12 signpost --

13 A. Well, I would make inquiries for them if need be, but I
14 don't ever recollect it happening.

15 58 Q. It never happened? 10:11

16 A. I don't recollect any incident where somebody rang me
17 up and said 'what's the status with Garda
18 such-and-such's referral Garda such-and-such's or
19 investigation?'

20 59 Q. Or, for instance, a referral going from the HSE to the 10:12
21 Guards or Tusla to the Guards?

22 A. No, no, I don't ever -- I can't remember any occasion
23 that they rang me as the liaison officer to ask me what
24 is the status of this referral.

25 60 Q. So that never happened; that you were randomly asked 10:12
26 about the status of a referral?

27 A. No.

28 61 Q. Okay. Now, what was your understanding of the role of
29 the Gardaí with regard to children at that stage and

1 referrals, in distinguishing, it say from the role of
2 the HSE or Tusla?

3 A. We had concerns regarding any form -- there would be
4 four types of child abuse, for want of a better --
5 physical, emotional, sexual and neglect. If we came 10:13
6 across a scenario that we believed a child was the
7 victim or at risk of any of those forms of abuse, we
8 would have a notification sent to the HSE. If we
9 believed there was a criminal offence involved then we
10 would also initiate an investigation, criminal 10:13
11 investigation.

12 62 Q. And would you tell the HSE about the investigation?

13 A. They would have been kept up to date at the meetings.
14 When we would have the joint meetings I could say yes,
15 it's at this stage or a file has been sent to the DPP 10:13
16 or it's -- the case is closed to the Guards or there is
17 no further Garda involvement, there is no criminal
18 offence alleged.

19 63 Q. Okay. And insofar as referrals coming from the HSE,
20 what was your understanding of what the Gardaí had to 10:14
21 do with those referrals or the purpose of those
22 referrals?

23 A. The referral would generally come from the HSE where
24 there was a possibility of a criminal offence. That
25 referral would arrive into the district office and then 10:14
26 it would be allocated by superintendent or an inspector
27 acting for him to a specific member from the district,
28 depending what area it was, to investigate the criminal
29 allegation.

1 64 Q. Okay. And do you remember any occasion when the Guards
2 received a referral in relation to something they had
3 already investigated?
4 A. No.

5 65 Q. Okay. Would you be surprised if the guards got such a 10:14
6 referral in relation --
7 A. If the matter was already investigated, yeah, it would
8 be unusual, to my mind anyway.

9 66 Q. Okay. Can you think of any instance when it happened
10 in your role as Garda liaison officer? 10:15
11 A. No, I can't say I have ever encountered --

12 67 Q. If I could just --
13 **CHAIRMAN:** So, Ms. Leader, what you might be referring
14 to there is reopening a case, but would it be fair to
15 regard it as that? 10:15
16 **MS. LEADER:** Yes.
17 **CHAIRMAN:** In that it can happen sometimes in old
18 murder cases, or whatever. But that is what you are
19 asking about?

20 **MS. LEADER:** I think what I was asking about is a 10:15
21 duplicate referral, Chairman, but --
22 A. I have never encountered it in my time dealing with the
23 HSE or Child and Family Agency.

24 68 Q. Now, if I could refer you, please, to 3045. It's an
25 extract from the Garda Code. And just at paragraph 10:15
26 number 6 there. You will see that that paragraph
27 describes the An Garda Síochána health authority
28 protocol, and it would appear from that:
29

1 *"That a social work team leader from the health*
2 *authority and designated district-based inspector or*
3 *sergeant" -- who would appear to be you in*
4 *Bailieboro -- "from within An Garda Síochána would*
5 *constitute a liaison management team whose functions* 10:16
6 *comprise the following:*
7 *A. To consider notifications;*
8 *B. To assign personnel and supervise investigation;*
9 *C. To review the progress in the case;*
10 *D. To ensure that cases are brought to a satisfactory* 10:16
11 *conclusion and that all who should know are informed."*
12
13 Do you see that, Sergeant Byrne, there? It should be
14 on the screen in front of you.
15 A. No, the screen is still moving. 10:16
16 69 Q. Mr. Kavanagh might be -- 3045, volume 10.
17 **CHAIRMAN:** Well, it's 6A, B, C, D, is that the one?
18 **MS. LEADER:** Yes, I think it's -- yes, yes. That's
19 correct.
20 A. I see it there, yes, yes. 10:17
21 70 Q. So my understanding of what you told me earlier on in
22 relation to your role, that particular procedure wasn't
23 followed in Bailieboro, am I correct in saying that?
24 A. We wouldn't jointly assign personnel, no. If there was
25 to be a criminal investigation, it would be a matter 10:17
26 for the superintendent or inspector acting for him to
27 assign Garda personnel to investigations.
28 **CHAIRMAN:** In other words, the evidence seems to be
29 that it was the same as kind of other things, you had

1 an official role but everything went through the
2 superintendent as opposed to going through you?

3 A. Yes, yes. We didn't --

4 71 Q. **MS. LEADER:** So your function would appear to have been
5 to consider individual notifications and thereafter 10:18
6 assign somebody to investigate the matter. That didn't
7 actually happen in Bailieboro, am I correct in saying
8 that?

9 A. No, to the best of my knowledge, the superintendent --
10 when a notification came from the HSE, it wasn't -- I 10:18
11 didn't know -- I didn't feel it was my role to allocate
12 a member to that investigation.

13 72 Q. Okay. It would be --

14 A. I was a sergeant in Bailieboro Garda Station.

15 73 Q. Yes. 10:18

16 A. Investigations may have pertained to Ballyjamesduff
17 Garda Station or Cootehill Garda Station, who had their
18 own sergeants in charge who were responsible for
19 supervising the officers in those stations. A
20 notification would come in and it would be sent by the 10:18
21 superintendent's office or the superintendent to
22 Ballyjamesduff Station to be investigated.

23 74 Q. Okay. Perhaps if it related to the Ballyjamesduff
24 area, a notification would be sent there as opposed to
25 Bailieboro, you understand? 10:19

26 A. No, I believe all notifications would come in centrally
27 to -- from HSE to the district office with --
28 Bailieboro would have been the district headquarters,
29 so notifications would come into the district

1 headquarters and then been distributed. If it referred
2 to a sub-district other than Bailieboro, it would go to
3 the -- either the sergeant in charge of that station to
4 delegate it or to a particular member to delegate it.

5 75 Q. In relation to the district of Bailieboro, did it cover 10:19
6 the entire County of Cavan?

7 A. No, Bailieboro would have covered, I suppose, east --
8 the eastern half of the county, I think. It covered
9 about seven towns.

10 76 Q. Okay. 10:19
11 A. Or seven Garda stations or sub-districts.

12 77 Q. Now, if I then could then, Sergeant Byrne, I think you
13 were present at a liaison meeting in December 2013, is
14 that correct?

15 A. That's correct, yes. 10:20

16 78 Q. And who from the HSE was present there, can you
17 remember?

18 A. Keara McGlone was the team leader. I don't recollect
19 who was with her.

20 79 Q. Okay. And I think you may be aware that in August of 10:20
21 2013 Ms. McGlone had sent a letter to Superintendent
22 Noel Cunningham inquiring about Sergeant McCabe's case.
23 Are you now aware of that?

24 A. I am aware of that now, yes, in the last week or so.

25 80 Q. And do you know Superintendent Cunningham? 10:20
26 A. No, I have never met him.

27 81 Q. Never met him?
28 A. No.

29 82 Q. But would you make it your business to conduct

1 inquiries if -- with Superintendent Cunningham if
2 Ms. McGlone had asked you to?

3 A. Oh, yeah, if she had raised an issue at a meeting and
4 it needed to be followed up, yes. I would certainly
5 try to oblige anyway. 10:21

6 83 Q. And did she at any time make any inquiries with you in
7 relation to Sergeant McCabe?

8 A. No.

9 **CHAIRMAN:** So this is the letter of the 15th of August
10 2013? 10:21

11 **MS. LEADER:** The 15th of August.

12 **CHAIRMAN:** That is the one. Thank you.

13 84 Q. **MS. LEADER:** And did anybody at that meeting ask you
14 about Sergeant McCabe?

15 A. No. 10:21

16 85 Q. Did you speak to anybody in relation to Sergeant McCabe
17 and, in particular, in relation to the allegation made
18 against him by Ms. D in August of 2013?

19 A. No.

20 86 Q. Did you hear any talk of it in the Garda station? 10:21

21 A. No.

22 87 Q. Well, are you sure about that, because there was a lot
23 of attention focused on Sergeant McCabe in 2013?

24 A. I am aware of the attention that was focused on him,
25 but I never discussed any matters relating to any 10:22
26 allegation against Sergeant McCabe.

27 **CHAIRMAN:** So you weren't aware at the time of the
28 letter?

29 A. No, no, no.

1 **CHAIRMAN:** I am sorry, I just wasn't picking you up
2 right. Thank you.

3 88 Q. **MS. LEADER:** Now, that meeting in December of 2013, I
4 understand it, that was a Garda liaison meeting, is
5 that correct? 10:22

6 A. Yes.

7 89 Q. Where did that meeting take place, do you think?

8 A. Any meetings I attended was at Bailieboro Garda
9 Station. That was generally convenient because I would
10 have had access to the PULSE computer terminal if there 10:22
11 was any issues that needed to be clarified or any -- if
12 the team leader needed any updates on particular
13 investigations, I could log in and check.

14 90 Q. And I don't know if you know this offhand, but when was
15 the previous meeting prior to December 2013? 10:23

16 A. I don't recollect that. It would have been organised
17 by Garda O'Sullivan. Now, I would have attended at it,
18 but I can't tell you what date.

19 91 Q. Do you think there was one in November 2013?

20 A. No, because Guard O'Sullivan left I think on transfer 10:23
21 in February 2013, to the best of my recollection.
22 There may have been a meeting -- no, I don't know, I
23 can't remember before that.

24 92 Q. Do you think there was one in October 2013 --

25 A. I don't recollect now. I honestly have no idea. 10:23

26 93 Q. -- at all. There could have been?

27 A. There could have been. I can't say with any degree of
28 certainty.

29 94 Q. Or September?

1 A. I don't know.

2 95 Q. But somebody might be able to check that out and
3 provide that information.

4 A. There would be records, yes. If I attended a meeting,
5 I would have signed on any of the cases that were 10:24
6 discussed, we would have both signed -- myself and
7 whatever team leader attended the meeting would have
8 signed a sheet off on that. There would be a record,
9 but I can't remember.

10 96 Q. Okay. And in relation to the December 2013 meeting 10:24
11 where Keara McGlone attended, are there notes created
12 in relation to that meeting?

13 A. There would be a joint action sheet signed. It would
14 be -- it was generally filled out by the team leader,
15 she would write -- 10:24

16 97 Q. Ms. McGlone you are referring to?

17 A. Yes, yes, whether the case was closed to social work,
18 whether it was closed to Gardaí or whether it needed to
19 be discussed at the next meeting. We would both sign
20 that sheet then and make a copy of it. 10:24

21 98 Q. Was there an agenda created for that meeting?

22 A. Judge, it on the spreadsheet beforehand and that
23 dictated the list of cases to be discussed. We would
24 bring down our files pertaining to those cases and
25 Social work Department would bring their files 10:25
26 pertaining to them cases.

27 99 Q. So those records, if available --

28 A. They should be at Bailieboro Garda Station, yeah.

29 100 Q. -- can be made available?

1 A. I don't see any reason why they couldn't.

2 101 Q. And that is for all meetings, if there were any,
3 between August and, we will say, May 2014?

4 A. Oh, there would be records, yes, there would certainly
5 be records, yes. 10:25

6 102 Q. But you can't remember?

7 A. No, I can't say with any degree of certainty.

8 103 Q. Okay. Now, if I could then bring you forward to May
9 2014 and a Garda notification would appear to have been
10 received at Bailieboro Garda Station on 7th May 2014, 10:25
11 and that is at page 1750 of the materials at volume 7.
12 Is that in front of you?

13 A. Yes, I can see it, yeah.

14 104 Q. So that is date-stamped the superintendent's office
15 received on 7th May 2014, and it's a notification of 10:26
16 suspected child abuse addressed to the superintendent
17 in charge in Bailieboro Garda Station in relation to
18 Ms. D, do you see that?

19 A. Yes.

20 105 Q. Now, was that brought to your attention in May 2014? 10:26

21 A. No, that is the first time I have seen that document.

22 106 Q. Okay. And you being the Garda liaison person, would
23 that, in the normal course, have been brought to your
24 attention?

25 A. Well, as I explained already the procedure was to 10:26
26 file -- or the notification would come in to the
27 district office and then it would be allocated by the
28 superintendent out to somebody to investigate it if it
29 required an investigation, and a copy would have been

1 filed with Ms. Kenny.

2 107 Q. Okay.

3 A. And that is how I would know to discuss an issue at the
4 next meeting.

5 108 Q. Okay. 10:27

6 A. But that is the first time I have ever seen that.

7 109 Q. So would it be something of surprise to you that a
8 notification would come in from Tusla and you wouldn't
9 be told about it, Sergeant Byrne, would that surprise
10 you? 10:27

11 A. Yeah, that would be unusual, yes.

12 110 Q. You are happy to say that it would be an unusual thing
13 to happen?

14 A. Yes.

15 111 Q. So is it in the normal course you would be aware of all 10:27
16 notifications received from Tusla?

17 A. I would expect so, yes, because copies would be filed
18 with Ms. Kenny.

19 112 Q. Okay. And would Ms. Kenny bring them to your attention
20 immediately? 10:27

21 A. No, no. It may have been in advance of a meeting I
22 would go up and peruse them if necessary, but...

23 113 Q. Okay. And if we could just turn over to page 1751 of
24 those documents, you will see at the very top:
25 10:28

26 *"Ms. D informed her parents of this alleged abuse when*
27 *she was aged eleven to twelve years of age. Ms. D made*
28 *a statement to An Garda Síochána at the time. A file*
29 *was sent to the DPP, however no prosecution was*

1 *directed.*"

2 You see those lines?

3 A. Yes.

4 114 Q. Have you ever seen a reference like that in a Garda
5 notification before? 10:28

6 A. No.

7 115 Q. And if one were to come in to Bailieboro -- I think you
8 are attached to Leitrim -- a Garda station in Leitrim
9 now?

10 A. Carrick-on-Shannon. 10:28

11 116 Q. Carrick-on-Shannon. Would it surprise you to see that
12 in a Garda notification from Tusla?

13 A. Yeah, it would be -- it would be unusual. If the DPP
14 has directed no prosecution, yeah, it would be unusual
15 to come back to be reinvestigated, in my opinion now or 10:28
16 in my experience.

17 117 Q. Okay. So am I correct in saying, Sergeant, that the
18 purpose of Garda notifications is so the guards can
19 investigate an allegation?

20 A. That would be my understanding of their reasoning 10:29
21 behind sending a notification to us, is because they
22 believed there was a potential criminal offence
23 disclosed for us to investigate, yes.

24 118 Q. Okay. And a second notification in relation to a
25 matter or a notification in relation to a matter that 10:29
26 had been investigated, am I correct in saying that
27 would signal to the guards that the HSE were saying
28 this should be reinvestigated?

29 A. In my opinion, the purpose of them sending a

1 notification was because they believed a criminal
2 offence was disclosed and it warranted investigation.
3 Now, if it was already investigated and no prosecution
4 directed, it would be unusual, yes, to see a referral,
5 in my opinion. 10:30

6 119 Q. Now, the Tribunal knows that this notification was
7 dealt with by Superintendent McGinn. Did you at any
8 time discuss Garda notifications with Superintendent
9 McGinn in the Garda station?

10 A. No, no. 10:30

11 120 Q. Did he ever bring this one to your attention?

12 A. No.

13 121 Q. And does that surprise you, considering you were the
14 point of contact between Tusla and the guards?

15 A. It would be unusual that it wasn't filed with -- if it 10:30
16 was to be discussed at further meetings, yeah, it would
17 be unusual I wasn't aware of it.

18 122 Q. Okay. And then if I could turn to page 1799 of the
19 materials, it's also in volume 7, it should be in front
20 of you, you will see that that is also a notification 10:31
21 of suspected child abuse in relation to Ms. D, which is
22 dated the 10th of June 2014 and is date-stamped as
23 having been received by the Gardaí on 24th June 2014.

24 A. Yeah.

25 123 Q. And the heading in that is "*Amended notification.* 10:31
26 *Previously notified on 2nd May 2014.*" You see that?

27 A. Yes.

28 124 Q. And it again relates to the Ms. D notification. Have
29 you seen that before otherwise than in the materials?

1 A. No, that is the first time I have ever seen that.

2 125 Q. Okay. And again, you at that time were the liaison
3 officer?

4 A. Yes.

5 126 Q. Does that surprise you, that you didn't see it before? 10:31

6 A. Yeah, it surprised me it wasn't sent down to be filed
7 with -- as standard notifications are.

8 127 Q. Okay. Now, in 2014, in May and June 2014, you were in
9 Bailieboro Garda Station at that time?

10 A. Yes. 10:32

11 128 Q. Do you remember any talk in the Garda station in
12 relation to Maurice McCabe at that time?

13 A. No.

14 129 Q. Are you certain?

15 A. Yes, I am very certain. 10:32

16 130 Q. And in relation to the notification in particular?

17 A. No, I never discussed Sergeant McCabe in the station.

18 131 Q. Okay.

19 A. And I never heard any talk about any notification or
20 any mention of any notification. 10:32

21 132 Q. With any other sergeants in the Garda station?

22 A. No.

23 133 Q. Okay. Now, if I can bring you forward to 2015, I think
24 you spoke with -- you attended a Garda liaison meeting
25 where Ms. Kay McLoughlin was in attendance, is that 10:33
26 correct?

27 A. That was in October 2015, is it?

28 134 Q. 2015.

29 A. Yes.

1 135 Q. Okay. And who organised that meeting?
2 A. That would have been organised at our behest. As far
3 as I can remember, I emailed Denise Duignan. She
4 worked with the Child and Family Agency.
5 136 Q. Yes. 10:33
6 A. It was emails between us to try and organise a meeting.
7 137 Q. Okay.
8 A. And then we'd send on -- Bridget Kenny sent to me the
9 spreadsheet for the cases to be discussed at the
10 meeting, and then I would have forwarded it on to the 10:33
11 Child and Family Agency, and that would form the agenda
12 then for cases to be discussed at the meeting.
13 138 Q. So you created the agenda with Ms. Kenny for that
14 meeting, is that correct?
15 A. Well, she created it. She would have had the list of 10:33
16 open cases from her files in the office and she would
17 have sent it down to me and then I sent it on to the
18 Child and Family Agency.
19 139 Q. Okay. Was there a method whereby the Child and Family
20 Agency could add items to that agenda? 10:34
21 A. I don't ever recollect that happening now. It was
22 generally -- we seemed to set the agenda, we seemed to
23 initiate the meetings.
24 140 Q. Okay.
25 A. I don't ever recollect a case where they contacted us 10:34
26 and said 'can we discuss this as well' or 'can we
27 discuss this'.
28 141 Q. And was there a section of that meeting whereby any
29 other business could be discussed, that it was formally

1 put on the agenda?

2 A. Not really, no. We'd generally sit in the conference
3 room in Bailieboro Garda Station and we'd go through
4 the list and get out the files and discuss them and
5 then write a note on the action sheet as to what 10:34
6 further action was required or if the case could be
7 closed to Gardaí or if it could be closed to social
8 work, and then which to be copycat to that then, the
9 action sheet.

10 142 Q. I think there might be an example of an action sheet at 10:35
11 page 3051 of the materials. It's at volume 10. Is
12 that in front of you, Sergeant?

13 A. I see one, yes.

14 143 Q. So that is a joint action sheet, and is that the action
15 sheet that would be completed -- 10:35

16 A. It would be similar now. It may not have been that
17 particular format, but something similar, yeah.

18 144 Q. Okay. So it would deal with each case on the agenda
19 individually, is that correct?

20 A. Yes, there would be one completed for each case that we 10:35
21 discussed and then the social work team leader would
22 sign off on it and I would sign off on it.

23 145 Q. And would that contain the Garda reference and the
24 Tusla reference and the meetings, a summary of the
25 matter, and at the very end you will see that there is 10:36
26 a record of whether or not there is a file sent to the
27 DPP, the DPP decision, the charges, the court --

28 A. Yes, that information but not necessarily in that
29 format, but that information would be included on it,

1 151 Q. Did you know Ms. McLoughlin well at that time?
2 A. Yeah, I would have known her. Now, I think I had a
3 previous meeting with her in December 2014, maybe.
4 152 Q. Okay. I think you had written to her on the 1st
5 November 2014 -- 10:38
6 A. Yeah.
7 153 Q. -- introducing yourself to her, is that correct?
8 A. That's correct, yes.
9 154 Q. And you wrote to her with a view to organising a joint
10 agency liaison meeting at her earliest convenience, and 10:38
11 you said to her that the last meeting had been held in
12 December 2013 with Keara McGlone?
13 A. That's correct, yes.
14 155 Q. Okay.
15 A. I did attempt to arrange another meeting with -- I 10:38
16 think I wrote to them in --
17 156 Q. Ms. McAulay?
18 A. Yeah, I wrote to her maybe in July that year.
19 157 Q. Yes, I think there is a letter on -- supplied to us
20 yesterday dated 2nd July 2014 -- 10:38
21 A. Yeah.
22 158 Q. -- whereby you wrote to Ms. McAulay?
23 A. A similar letter.
24 159 Q. A similar letter.
25 A. And we did schedule a meeting, I think, for 24th of 10:38
26 July, but I think she contacted me then by phone two
27 days beforehand to say that she wasn't able to make the
28 meeting. And I think that Ms. McLoughlin was taking
29 over as team leader and I had asked for them just to

1 pass my contact details on and we could organise a
2 meeting again, so it was that November then I wrote.

3 160 Q. Okay. So I think you went through the agenda of the
4 meeting, is that correct --

5 A. Yes. 10:39

6 161 Q. -- in October 2015. And then you had a conversation
7 with Ms. McLoughlin, and when did that conversation
8 take place?

9 A. At the very end of the meeting.

10 162 Q. Okay. 10:39

11 A. We were kind of sitting at the table and I just -- the
12 only reason I remember it, Ms. Kenny had got up and the
13 meeting was over really, I think she had left, and
14 Ms. McLoughlin then made some reference to Sergeant
15 McCabe and having to go speak to him, and I was kind of 10:39
16 a bit taken aback now when I heard mention of his name.
17 And I said to her, look, I -- basically, I don't know
18 anything about Sergeant McCabe or anything to do with
19 Sergeant McCabe, that all happened before I came here.
20 That was more or less the end of the -- 10:40

21 163 Q. Well, what did you think Ms. McLoughlin was asking you
22 about Sergeant McCabe for?

23 A. I assumed -- there had been a lot of -- there was
24 newspaper articles the previous year and I remember a
25 speech in the Dáil then by Deputy Shatter and it was 10:40
26 referring to a particular case in Bailieboro. It was
27 quite prominent in the news at the time. I think I was
28 surprised at the mention of his name at the meeting.
29 There was no -- it was not on any schedule. And I

1 assumed maybe it had something to do with that, but I
2 didn't really want to engage with her because I don't
3 know anything about it and I didn't feel comfortable
4 discussing the issue.

5 164 Q. Did you seek to clarify what exactly she was talking 10:40
6 about?

7 A. No. As I said, I didn't feel comfortable discussing
8 the matter. I had no knowledge of why she had to go
9 talk to him and, as far as I was concerned, there was
10 no referral. There was no reason to discuss him with 10:41
11 her.

12 165 Q. Do you think she might have mentioned the word
13 'referral' to you?

14 A. No, I don't recollect the word 'referral'. I just said
15 she had -- I remember she had the -- she made reference 10:41
16 to having to go speak with him about a matter. I
17 didn't ask because I knew nothing.

18 166 Q. Okay. Because, you see, as far as Ms. McLoughlin was
19 concerned, she had sent a referral to you or her agency
20 had sent -- 10:41

21 A. Yes, a referral had been sent. Yes, I accept that now,
22 yes.

23 167 Q. -- two referrals --

24 A. But I wasn't aware of them and I wasn't prepared to
25 discuss a matter with her that I wasn't aware of or 10:41
26 that I had no knowledge of.

27 168 Q. Okay. But as far as you were concerned at that time,
28 you hadn't received the referrals, isn't that correct?

29 A. I knew nothing of the existence of any referral.

1 169 Q. Yes. But you did know the existence of a criminal
2 allegation made against Sergeant McCabe?
3 A. From nine or ten years back, yeah.
4 170 Q. So did you seek to clarify what exactly Ms. McLoughlin
5 was talking about? 10:42
6 A. No, I wasn't -- I didn't know -- I didn't know
7 enough -- or I knew nothing about the criminal
8 allegation, except that a file had been sent to the DPP
9 and there was no prosecution, that was the end of the
10 matter. I wasn't familiar with the intricate details 10:42
11 of the investigation or the allegation, or anything
12 like that. As I say, I didn't feel comfortable
13 discussing the matter with her.
14 171 Q. It may, from one perspective, have seemed rather
15 strange when Ms. McLoughlin was a professional and she 10:42
16 worked for Tusla, which was an agency there to make
17 sure children were properly looked after and kept safe,
18 and at the end of a Garda liaison meeting she asked
19 you -- she said to you, I have to meet Sergeant McCabe
20 about something? 10:42
21 A. Yeah.
22 172 Q. So did that in any way spark anything with you or a
23 further conversation with any of your superiors?
24 A. No, I never mentioned that conversation again.
25 173 Q. I am sorry? 10:43
26 A. I never mentioned that conversation again.
27 174 Q. Well, that, in one person's perspective, may be hard to
28 believe, considering the fuss and attention that was
29 focused on policing in Bailieboro at the time and also

1 in particular on Sergeant McCabe. Do you understand
2 what I am saying to you, Sergeant Byrne; that that is
3 fairly unusual that a policeman would just ignore that?
4 A. I didn't want to get involved in historical issues
5 relating to Bailieboro Garda Station. 10:43
6 175 Q. Yes.
7 A. And I had no accurate knowledge, I wasn't prepared to
8 discuss a matter with her about which I had no accurate
9 knowledge.
10 176 Q. You didn't think of referring her onwards -- 10:43
11 A. No.
12 177 Q. -- in relation to the matter?
13 A. No.
14 178 Q. Why is that, Sergeant?
15 A. Because I had no knowledge of the matter. I didn't -- 10:43
16 as I say, I didn't feel comfortable discussing it with
17 her.
18 179 Q. Did you think Ms. McLoughlin was simply gossiping about
19 the matter or did you think there was something else to
20 it? 10:44
21 A. No, I was surprised that -- at the matter being raised,
22 but, as I say, I put it down to the fact that he had
23 been the subject of newspaper articles the previous
24 year. That was -- I had no accurate knowledge to be
25 discussing matters like that with her. There was -- it 10:44
26 was -- where the existence and no referral, it wasn't
27 scheduled for the meeting, it took me completely by
28 surprise. As I said, I just didn't feel I was in a
29 position to discuss it with her.

1 **MR. LEADER:** Thanks very much, Sergeant. If you would
2 answer any questions anybody else might have.

3

4 **END OF DIRECT EXAMINATION BY MS. LEADER**

5 **MR. DIGNAM:** Judge, I think the appropriate running 10:45
6 order is probably for Mr. McDowell to go next, or such
7 other parties.

8 **CHAIRMAN:** Yes, I think that is fair, Mr. McDowell.

9 **MR. MCDOWELL:** I will go now.

10 **CHAIRMAN:** I mean, if anything is left out, of course 10:45
11 it can be mentioned again.

12

13 **SERGEANT BYRNE WAS CROSS-EXAMINED BY MR. MCDOWELL:**

14

15 180 Q. **MR. MCDOWELL:** Two things, Sergeant Byrne. First of 10:45
16 all, the original allegation was never investigated in
17 Bailieboro, isn't that right?

18 A. Sorry?

19 181 Q. The original allegation made by Ms. D was never
20 investigated at Bailieboro; there was no file kept at 10:45
21 Bailieboro in relation to that original allegation,
22 isn't that right?

23 A. I have no idea, I don't know -- as I say, I have no
24 idea. I knew very little about the original allegation
25 or investigation. 10:45

26 182 Q. And the notification was sent to Bailieboro in mistake.
27 They thought that it was the Garda station where this
28 had been dealt with, isn't that right, or the area in
29 which the alleged crime had been committed?

1 A. That would be the usual procedure, yes, but I was never
2 aware of it existed, I was never aware a referral had
3 been sent to Bailieboro until now.

4 183 Q. But the point that we dealt with yesterday is, it was
5 the wrong Garda station that this notification was sent 10:46
6 to?

7 A. I don't disagree with that.

8 184 Q. I see. And if you would just go to page 1748.
9 Superintendent McGinn sends a letter on the 7th May
10 2014 to the chief superintendent of the Cavan-Monaghan 10:46
11 division, isn't that right? Do you see that there?

12 A. That is what I see on the screen, yes.

13 185 Q. And he says -- it reads:
14
15 "*On the 7/5/14*" -- that is the day on which this letter 10:46
16 was written -- *a referral was received from* -- Tusla,
17 that should be -- *Child and Family Agency, Monaghan,*
18 *notifying Gardaí of a retrospective adult disclosure*
19 *having been made by an alleged victim named Ms. D.*"
20 10:47

21 So the day it comes in, a letter is sent to the chief
22 superintendent, is that right?

23 A. That -- yes, that is what I see here.

24 186 Q. And Ms. Leader was saying, did you regard it as unusual
25 that there was no -- it wasn't sent to you, 10:47
26 notification wasn't sent to you, but it does appear
27 that Superintendent McGinn immediately took action in
28 respect of this?

29 A. Yes, that appears to be the case, yes, but this is the

1 first sight I have had of this document.

2 187 Q. And then the next line is:

3

4 "Ms. D" -- date of birth blanked out -- "County Cavan 10:47
5 is the daughter of Mr. D who is the sergeant in charge
6 of Bailieboro Station. The referral concerns a
7 disclosure by Ms. D that when she was aged 6/7 years of
8 age she was sexually assaulted by a man she named as
9 Maurice McCabe. Maurice McCabe is a serving member of
10 An Garda Síochána holding the rank of sergeant and he 10:48
11 is currently attached to Mullingar Garda Station."
12

12

13 And the letter goes on:

14

15 "The allegation was investigated from Monaghan Garda 10:48
16 Station by the then-Inspector Noel Cunningham, who is
17 now a district officer at Monaghan. The completed
18 investigation file was submitted to the Director of
19 Public Prosecutions, who directed no prosecution. No
20 copy of the investigation file is held or was held at 10:48
21 Bailieboro district. On interrogation of the
22 correspondence registered here, only
23 records/documentation received here to Maurice McCabe
24 are the DPP's directions, Reference BB84607, and a few
25 other similar types of correspondence. It is believed 10:48
26 the investigation file with all subsequent relevant
27 documentation is held at Monaghan Garda Station."
28

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29 And then Superintendent McGinn says:

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"In light of the referral received on foot of Ms. D's disclosures to a professional, I feel it is appropriate to have the investigation reviewed. I suggest that the file and investigation in its entirety be reviewed at officer level within An Garda Síochána or that it be referred to the Cold Case Unit, National Bureau of Criminal Investigation. In any case, if a review of the case is to be conducted, I suggest it be conducted external of personnel within Cavan-Monaghan division."

- So does that explain to you why it wasn't sent to you?
- A. It would explain, yes. Well, it doesn't appear to have been relevant to Bailieboro district.
- 188 Q. Yes. Effectively, it was batted away and batted upstairs --
- A. It never made it past upstairs, for want of a better description. It was obviously redirected, from what I see here.
- 189 Q. Yes. And can I ask you, arising out of that, were you aware of any conversation between Superintendent McGinn and Ms. D's father that day?
- A. No, absolutely not, no, no.
- 190 Q. I see. Because it appears that there was such a conversation. You weren't told about it?
- A. Between Superintendent McGinn --
- 191 Q. Superintendent McGinn and Ms. D's father?
- A. No, I have no knowledge of that. I certainly wasn't aware of any.

1 192 Q. To discuss this referral form?
2 A. Yeah, no, I had no knowledge of it. I had no knowledge
3 of the referral form until this week.
4 193 Q. Now, you said, in answer to Ms. Leader, that in May 10:50
5 2014 there was never any discussion of Sergeant McCabe
6 in the station at all?
7 A. No, not particularly. I didn't engage in discussion
8 with people about it.
9 194 Q. I mean, let's remember where we were at this time.
10 Commissioner Callinan had retired by this time, May -- 10:51
11 May of 2014. There had been a major discussion of the
12 matter, leading to the resignation of Minister Shatter,
13 I think, in June, was it, or just around that time?
14 A. Yeah.
15 195 Q. And just around that time as well, there was the whole 10:51
16 business of Seán Guerin, Senior Counsel, carrying out a
17 preliminary scoping report. And are you saying in
18 relation to Sergeant McCabe's allegations, which
19 centred on Bailieboro, are you saying that Sergeant
20 McCabe was never discussed in the station at that time? 10:52
21 A. I am not saying he was never discussed. I am saying
22 this particular allegation to Ms. D was never
23 discussed.
24 196 Q. Oh, I see.
25 A. I never discussed that with anybody. 10:52
26 197 Q. I am sorry, I thought you had gone further.
27 A. Yes, there would have been -- we don't live in a bubble
28 down there.
29 198 Q. No, I thought you had gone further and said that he had

1 never been -- his name had --

2 A. Yes, he was certainly a topic of discussion.

3 199 Q. I presume he was a topic of discussion?

4 A. Yes, he was, yes. But in relation to this

5 particular -- 10:52

6 200 Q. Not in relation to the historic thing -- allegation --

7 A. In relation to the historic allegation, I never heard

8 that discussed by anybody down there.

9 201 Q. So then can we move forward to your meeting with

10 Ms. McLoughlin in October of the following year. You 10:53

11 have given evidence, she never attempted to raise the

12 McCabe issue with you in the interval -- or you weren't

13 aware of any attempt to raise the McCabe issue with

14 Bailieboro Garda Station?

15 A. Not with me personally, no, and I can't speak for 10:53

16 anybody else in the station, but there was never any

17 attempt -- I would have had a meeting with her in

18 December 2014. It was never discussed at that. The

19 first time she mentioned his name to me was at that

20 meeting in October 2015. 10:53

21 202 Q. Yes. And at that point she seemed to be operating

22 under the erroneous belief that, somehow, Bailieboro

23 was the place to communicate with in relation to the

24 Ms. D matter, isn't that right?

25 A. That would appear to be the case now, yeah, looking 10:54

26 back.

27 203 Q. But she was at the wrong station and the wrong district

28 completely, isn't that right?

29 A. Yes, counsel, yes.

1 204 Q. And then when she mentioned it to you, there was no
2 context for her to do that?

3 A. I hadn't a clue what she was talking about or why it
4 would come up. As I say, I only associated to him
5 having been in the public arena the previous year. 10:54

6 205 Q. Yes. So that, as far as you were concerned, it was no
7 business of Bailieboro Garda Station's at all --

8 A. Basically, yes.

9 206 Q. -- still less your business, to discuss this matter?
10 A. Even less so mine. 10:54

11 207 Q. And can you do your best just to recollect what did she
12 say to you that sort of made you feel uncomfortable?

13 A. I just -- the only reason I remember the conversation
14 was because she mentioned his name, and by that stage
15 he was a kind of fairly public figure, but I can 10:54
16 basically remember she said something about 'I have to
17 go and talk to Maurice McCabe'.

18 208 Q. I see.

19 A. Or 'I have to go speak with him'. Now, as I say, I put
20 it down to the fact that there had been articles in the 10:55
21 news the previous year, but I didn't engage with her
22 any further.

23 209 Q. Could you just assist me. Mr. McGarry points out to
24 me, at page 1748, the letter I was asking you about --

25 A. Yes. 10:55

26 210 Q. -- from Superintendent McGinn, there is -- if you go to
27 1756, the same letter seems to be appearing there with
28 a different date-stamp from Bailieboro on it - the 8th
29 of May on one and the 7th of May on the other. How

1 would that happen?

2 A. How would it -- a letter with different dates?

3 **CHAIRMAN:** If you actually look on top of the
4 date-stamp, you will find the 8th of May 2014 on one,
5 1756, and if you look at the date-stamp on 1748 it's 10:56
6 the 7th --

7 **MR. MCDOWELL:** It seems the same letter was sent --
8 sorry, it's not quite the same letter because it's
9 redated and sent the following day.

10 **CHAIRMAN:** Is there -- 10:56

11 **MR. MCDOWELL:** Is one a draft?

12 **CHAIRMAN:** Is it a draft?

13 **MR. DIGNAM:** Chairman, I don't want to intervene if
14 Mr. McDowell doesn't want me to, but there is an
15 explanation. 10:57

16 **MR. MCDOWELL:** well, if there is an explanation, maybe
17 I won't proceed --

18 **MR. DIGNAM:** In fact, it's a typographical error,
19 Chairman, that was corrected by Superintendent McGinn,
20 and the letter was then redated the 8th of May. 10:57

21 211 Q. **MR. MCDOWELL:** But the point I am really making is,
22 that the day this document came in from the HSE, it was
23 batted away almost immediately by Superintendent
24 McGinn, with a recommendation that the whole matter be
25 reviewed and possibly an investigation reopened either 10:57
26 with the Cold Case Unit of the National Bureau of
27 Criminal Investigation or at officer level within the
28 force.

29 A. I have no knowledge of any of that. That came from

1 Superintendent McGinn's office. I am not aware of any
2 of it.

3 212 Q. And I think, sorry, I may have misled you slightly. I
4 think 7th of May 2014 was the day that Minister Shatter
5 resigned, so it was --

10:57

6 A. I don't remember the date, but I do remember he
7 resigned.

8 MR. MCDOWELL: I see. Thank you.

9

10 **END OF CROSS-EXAMINATION BY MR. MCDOWELL**

10:58

11

12 CHAIRMAN: Is there any other questions?

13 MR. DIGNAM: I just have a few very brief questions.

14 CHAIRMAN: Can we leave it until after the break? I am
15 really sorry, things are going to get worse before they
16 get better, but I hope to be back in an hour, but I may
17 not be, and I am sorry, that is as most as I can say.
18 I beg your pardon.

10:58

19

20 **THE HEARING THEN ADJOURNED FOR LUNCH.**

10:58

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1 A. I don't recollect any incident where they rang us or
2 made contact or emailed back to say, can we include
3 this case on the agenda. I don't recollect incidents
4 of that.

5 216 Q. And would you have thought that it would be in any way 12:13
6 inappropriate to have done so?

7 A. No, not particularly, no. I would have thought it
8 would be more appropriate, if they had an issue
9 concerned -- or a file they wanted to discuss, I don't
10 see there was any difficulty to add it to the list and 12:14
11 we'd discuss it at the meeting.

12 217 Q. Now, you also told Ms. Leader in describing how the
13 Garda notifications that were received by An Garda
14 Síochána from the HSE or Tusla would come to you, and I
15 think you describe that they be sent to the 12:14
16 superintendent. He would, I think, give it or pass it
17 to Ms. Kenny, is that the name?

18 A. That's correct.

19 218 Q. And then she would bring it to your attention at a
20 meeting at some point in the future? 12:14

21 A. I would see it on the spreadsheet. And in advance of
22 that meeting, in preparing for it I would go through
23 the files to see what was to be discussed. Like, the
24 role I was -- the HSE liaison role at that time was
25 only a very, very small part of my responsibilities in 12:14
26 the station. Like, I was still sergeant with
27 responsibility for a unit and providing a policing
28 service and supervising younger, less experienced
29 guards. So it was only a very small aspect of my role

1 in that station.

2 219 Q. well, I take it from that, that the process didn't
3 involve a notification being received in the
4 superintendent's office and immediately being passed to
5 you? 12:15

6 A. No, no, no.

7 220 Q. No.

8 A. I may not have had sight of them notifications until in
9 advance of a meeting.

10 221 Q. And the Tribunal has asked for assistance and asked you 12:15
11 whether the agendas or the spreadsheets for those
12 meetings would be available, and they can certainly be
13 provided. But can you give us an idea of how often
14 those meetings would have happened, during your time at
15 least? 12:15

16 A. Ideally, they were to be held maybe four times a year,
17 but in reality that was difficult. As I say, I had
18 other duties to perform. I was responsible for a unit
19 and providing a policing service. We were very
20 short-staffed from 2013 on; we were becoming that 12:15
21 short-staffed that, in order to keep providing a
22 service, I would often have to step in and perform the
23 role of a guard, to drive a patrol car or to do station
24 duty. And furthermore, at that time, then, I was
25 commuting from home, maybe an hour and a half, to and 12:16
26 from the station every day. It wasn't possible for me
27 just to drop in on spec maybe on a day that suited
28 Tulsa staff. And again, they were quite busy as well,
29 and there was an issue then with turnover of team

1 leaders, I think, around the end of 2013/2014.

2 222 Q. Yes.

3 A. So it made it difficult. Ideally, yeah, if we could

4 have had a meeting every three months, four months, it

5 would have been ideal, but it just wasn't practical. 12:16

6 223 Q. Yes. Now, Ms. McLoughlin described in her evidence

7 yesterday, and you have dealt with it in your evidence

8 this morning, that her asking you something about

9 Sergeant McCabe at the end or in fact after the meeting

10 had concluded in October 2015? 12:17

11 A. She didn't so much ask as -- my recollection is that

12 she said -- she brought up, she said 'I need to talk to

13 him' or 'I need to speak with him' regarding a matter.

14 224 Q. And you described your response to that. Did she say

15 to you at that stage 'we sent a notification about that 12:17

16 back in' --

17 A. No. I was never aware of any notification. The

18 conversation was very, very brief. As I said already,

19 I didn't feel comfortable or appropriate to be

20 discussing, I didn't know him, I didn't know anything 12:17

21 about the case, it wasn't on the list to be discussed.

22 225 Q. And Ms. McLoughlin said in her evidence yesterday that

23 she didn't pursue it after the meeting. Is that your

24 recollection?

25 A. No, it was the briefest of conversations at the very 12:17

26 end of a meeting, and I remember my parting words to

27 her were, 'look, I know nothing about this, I wasn't

28 here when any of this happened'.

29 226 Q. Did you have any -- were there any other mentions or

1 inquiries on the HSE Tusla side in relation to
2 Sergeant McCabe? In other words, did you get any
3 inquiries or queries from anybody?

4 A. In the six-and-a-half years I was there, I never had a
5 conversation or mention or any inquiry of any nature 12:18
6 from anybody in the Child and Family Agency regarding
7 Sergeant McCabe. As I say, the first I became aware of
8 the controversy was on a 'Prime Time' programme in
9 2017.

10 227 Q. Now, Mr. McDowell asked you was it unusual that you 12:18
11 didn't get the Garda notification that was sent in May
12 2014, and you expressed the view that it was unusual?

13 A. It'd be unusual I didn't see it, yes.

14 228 Q. Yes. I think you also said earlier in your evidence
15 that you had never seen a Garda notification where 12:18
16 there was a reference to the DPP having previously
17 given directions in relation to the matter?

18 A. Yeah, not to the best of my recollection. I have never
19 seen -- I don't ever recall seeing a referral such as
20 that. 12:18

21 229 Q. So would you consider that to be an unusual feature of
22 this particular Garda notification?

23 A. Well, I have never seen it, so, to me, it would be
24 unusual, yes.

25 230 Q. Did you come across many referrals which involved 12:19
26 serving members -- or, sorry, many Garda notifications
27 which involved serving members?

28 A. I never came across it in my life.

29 231 Q. Yes. So that was an unusual feature?

1 A. I never came across this notification. But were I to
2 come across a notification, it would have been unusual,
3 but I have never been in that position before.

4 232 Q. You weren't aware of everything that was happening in
5 May 2014, that we have heard evidence about, in 12:19
6 relation to the notification coming in, it having to be
7 corrected and there being correspondence between Rian
8 in particular and An Garda Síochána, Superintendent
9 McGinn?

10 A. No, I'd absolutely no knowledge of anything of that 12:19
11 nature.

12 233 Q. Yes. So therefore, you weren't aware, I take it -- if
13 I just ask you to look at page 1723. This is a letter
14 from Chief Superintendent James Sheridan to Assistant
15 Commissioner for the Northern Region, where he says on 12:20
16 the 22nd May that the previous referral, that refers to
17 the notification which came in on the 2nd May -- which
18 was dated 2nd May, came in on the 8th May:

19
20 *"... contained incorrect information and should 12:20
21 therefore be withdrawn and replaced with the attached.
22 This is a referral made by Tusla relating to an
23 incident which was reported to and investigated by An
24 Garda Síochána in 2006/2007. The Director of Public
25 Prosecutions directed that there should not be a 12:20
26 prosecution in this case. The attached referral does
27 not disclose any new information/evidence in regard to
28 these matters and therefore at this time does not
29 require any further action by An Garda Síochána."*

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You weren't aware of that letter at the time, were you?

A. No.

234 Q. Have you subsequently become aware of it?

A. That was -- at divisional office level, certainly not, 12:21
no.

235 Q. Yes.

A. I'm not aware of it.

236 Q. So you weren't aware that as early as 22nd May, the 12:21
chief superintendent said there is nothing to
investigate?

A. I didn't even know the referral existed, so I certainly
would have had no knowledge of what was happening at
district office level.

MR. DIGNAM: Thank you, Sergeant Byrne. 12:21

END OF CROSS-EXAMINATION BY MR. DIGNAM

SERGEANT BYRNE WAS QUESTIONED BY THE CHAIRMAN:

237 Q. **CHAIRMAN:** Sergeant, you are a Dublin man, I take it? 12:21

A. That's correct.

238 Q. **CHAIRMAN:** When did you join the Gardaí?

A. I joined in -- I went into Templemore in August 1990 12:21
and I would have been attested or sworn in in October
1991. I was sent to Store Street Garda Station then
until May 2000. In May 2000, I went on a United
Nations mission to Bosnia and I returned in May 2001 to
Store Street. And then in, I think, February 2002 I

1 transferred to Cloone Garda Station in Leitrim.

2 239 Q. **CHAIRMAN:** And how long was it before you made
3 sergeant?

4 A. I was promoted to sergeant in 2010, February 2010.

5 240 Q. **CHAIRMAN:** Okay. So it was ten years? 12:22

6 A. Em...

7 241 Q. **CHAIRMAN:** You were a garda ten years?

8 A. Oh, no, I was a garda 19 years.

9 242 Q. **CHAIRMAN:** 19 years?

10 A. Yes, I joined in 1991 and promoted in 2010. 12:22

11 243 Q. **CHAIRMAN:** Did you have family in the Gardaí, did you?

12 A. Yes. My father is a retired sergeant.

13 244 Q. **CHAIRMAN:** He is a retired sergeant?

14 A. I have a brother, he'd be younger now, he's stationed
15 in Dublin. 12:22

16 245 Q. **CHAIRMAN:** And is he a detective?

17 A. No, just a ranked garda. He's stationed in Irishtown.

18 246 Q. **CHAIRMAN:** It was unusual enough at one stage for
19 Gardaí to be Dubliners, or so it seemed to me anyway,
20 but -- 12:22

21 A. There's plenty in it now.

22 247 Q. **CHAIRMAN:** Is there?

23 A. Not so many in Leitrim, but --

24 248 Q. **CHAIRMAN:** Yes. Okay. And does the tradition of
25 policing go back further in your family? 12:23

26 A. Grandfather would have been a sergeant as well,
27 actually, in Sligo-Leitrim division.

28 249 Q. **CHAIRMAN:** Yeah. And that wouldn't go as far back as
29 the RIC now, would it?

1 A. No. From the foundation of the -- An Garda Síochána.

2 250 Q. **CHAIRMAN:** The State, yes.

3 A. Further than that, I have never searched. I don't

4 know.

5 251 Q. **CHAIRMAN:** Yeah. And the atmosphere in Bailieboro, was 12:23

6 it kind of tolerable when you --

7 A. I found it pleasant -- not pleasant, but it was --

8 there was a relatively good atmosphere. I spent

9 six-and-a-half-years in it. Now I was looking to --

10 obviously return to Leitrim where I was living, but I 12:23

11 found the atmosphere -- there was a good working

12 relationship there between various colleagues in it,

13 between units and sections, and that made it quite

14 bearable, actually, to me, working there.

15 252 Q. Did you have much interaction with Sergeant McCabe? 12:24

16 A. No, I never -- the first time I've ever met Sergeant

17 McCabe was when I saw him here yesterday. I never met

18 him before. He was gone from Bailieboro when I

19 transferred there in 2010.

20 253 Q. **CHAIRMAN:** He had gone to Monaghan, I think, is that 12:24

21 right?

22 A. I believe it was Mullingar. I'm not sure.

23 254 Q. **CHAIRMAN:** Okay. This is a difficult question for you

24 to answer, I know, and I appreciate that, but was there

25 a sense of malice towards him at your rank? 12:24

26 A. Not to --

27 255 Q. **CHAIRMAN:** Look, you know the way, I mean, if you look

28 at this thing, there was at one stage a website with a

29 big rat on it and it was called Maurice.

1 A. I'm aware of that.

2 256 Q. **CHAIRMAN:** You know that, everybody knows that?

3 A. Yes.

4 257 Q. **CHAIRMAN:** But was there a sense of --

5 A. I never experienced it. Now, as I say, when I went 12:24

6 there, everything that had gone on had predated my

7 arrival and when I arrived there, there was five or six

8 sergeants all came at the same time. We had all come

9 from different divisions, transferred into Bailieboro,

10 so we had no connection with what had gone on there, 12:25

11 other than we happen to be working in this station.

12 Certainly, it was a topic of discussion when he came to

13 public prominence, but I can't say there was an air of

14 malevolence or malice towards him. I never experienced

15 it. 12:25

16 258 Q. **CHAIRMAN:** Yeah.

17 A. But again, I had no connection with what had transpired

18 there previously.

19 259 Q. **CHAIRMAN:** Well, you know the way some people spend a

20 lot of time gossiping and gossip tends to be a 12:25

21 currency - you've got to give some in order to get

22 some.

23 A. I'm not one for engaging in gossip, to be honest. I

24 don't -- I never have, and I don't find it -- I don't

25 think -- I'm not one to engage in gossip, if that makes 12:25

26 sense. What had gone on there had preceded my arrival.

27 As I say, I was new in there. I wanted to come in and

28 do my job and eventually get transferred back to

29 Leitrim, and that was my motivation. I just wanted to

1 do my job there and go home, if you understand.

2 260 Q. **CHAIRMAN:** Yeah. Ms. Leader drew your attention to
3 your statement. You said at the end of that that when
4 the whole notion of digital abuse, et cetera, had come
5 along, you were horrified? 12:26

6 A. Yeah, I was.

7 261 Q. **CHAIRMAN:** By what had happened to your colleague,
8 effectively?

9 A. It was a horrific allegation for to be made against
10 anyone. The first I became aware of it was 'Prime 12:26
11 Time' programme.

12 262 Q. **CHAIRMAN:** Was there a general kind of feeling that
13 something had happened in the past or were people
14 skeptical or did they just adopt the attitude, you
15 know, you have to prove things or -- 12:27

16 A. That particular allegation, in my experience there, was
17 never -- it was never discussed. I never had a
18 discussion with anybody about it. Certainly there was
19 discussions about the raising of the penalty points
20 issues, and there was discussions about, I think that 12:27
21 there was a tribunal -- or a commission of inquiry.

22 263 Q. **CHAIRMAN:** And PULSE and all that?

23 A. They would have been topics of discussion, but an
24 allegation like that was never -- not --

25 264 Q. **CHAIRMAN:** In other words, what you seem to be saying 12:27
26 to me is, no one, as far as you know, was saying
27 Maurice McCabe, he is a whatever?

28 A. No, that was never, never, never, never mentioned. Not
29 to me anyway.

1 265 Q. **CHAIRMAN:** Yeah.

2 A. It was certainly a topic of discussion, but never in
3 that respect.

4 266 Q. **CHAIRMAN:** And you would take a skeptical attitude to
5 any such attitude were it expressed to you anyway? 12:27

6 A. I didn't know the man. I wouldn't -- I had never met
7 him before. I would only judge a person when I meet
8 them. I don't pay much heed to gossip, because there's
9 plenty of it out there, and, as I say, I would make a
10 decision when I met a person. It's gossip, yes, there 12:28
11 certainly is plenty of it, but if you were to heed that
12 now you could make a -- it could lead you to make an
13 incorrect judgement on a person, and I wouldn't.

14 267 Q. **CHAIRMAN:** Yeah. Unless you have anything else,
15 Ms. Leader? 12:28

16 **MS. LEADER:** No, Chairman.

17

18 **END OF QUESTIONING BY THE CHAIRMAN**

19

20 **SERGEANT BYRNE WAS CROSS-EXAMINED BY MR. McDERMOTT:**

21

22 268 Q. **MR. McDERMOTT:** Sergeant Byrne, I wonder if I could ask
23 a question. I'm Paul McDermott, I am counsel for
24 Tusla. I don't know if you can see me back here? In
25 relation to the October 2015 conversation with Ms. Kay 12:28
26 McLoughlin, can you just confirm in what capacity you
27 had attended that meeting.

28 A. That was as liaison officer.

29 269 Q. Liaison between the Gardaí and Tusla?

1 A. Child and Family Agency, yes.

2 270 Q. And there's one very small difference in recollection
3 between you and Ms. McLoughlin, it may well be nothing
4 turns on it, and I wanted to say that Ms. McLoughlin
5 was very tentative about her memory, she made it clear 12:29
6 she had very little memory of the conversation, but
7 insofar as she had any memory, she said in her
8 evidence, and it's page 40, question 230, if anybody
9 else wants to look at it, she said:

10 12:29
11 *"whilst it wasn't on the agenda, I just wanted to know*
12 *whether the Gardaí had done anything since we had Garda*
13 *notified them in 2014."*

14
15 And she said her intention was to find out what status 12:29
16 the Garda investigation was at, whether it was open or
17 closed. Do you have any recollection of her raising
18 any issue at all relating to the status of the Garda --

19 A. I don't recollect that, but I can't say that she
20 didn't. I don't recollect it. 12:30

21 271 Q. And she agreed with your evidence that you had
22 indicated it wasn't a case you knew anything about,
23 that matches her recollection. And then at page 41,
24 line 27, she said:

25 12:30
26 *"My understanding is he confirmed there was no*
27 *investigation, that it had been dealt with previously."*

28
29 And I stress she was very tentative about this but she

1 seemed to have some possible recollection that you may
2 have said that the matter had been dealt with. Does
3 that ring any bells now?

4 A. I don't remember saying that. I may have said that I
5 wasn't aware of any investigation, but I don't
6 recollect actually saying it was dealt with. I
7 couldn't stand over that and say I said that.

12:30

8 272 Q. I think in your evidence it was something put to you
9 that, in fact, the Tusla referral had been made to the
10 wrong station or the wrong part of the county
11 completely?

12:31

12 A. That appears to be the case, yeah. It had nothing to
13 do with Bailieboro Garda Station or Bailieboro
14 district.

15 273 Q. I think it's nobody's fault, but, in retrospect, if you
16 had had a longer conversation with Ms. McLoughlin on
17 that occasion that issue might have been clarified. If
18 the conversation had been longer, you might have got an
19 opportunity to say, look, you're actually talking to
20 the wrong person, in the wrong station, in the wrong
21 side of the county, but, as the liaison officer, I'll
22 tell you or I'll find out who you should have this
23 conversation with?

12:31

12:31

24 A. No. I didn't, I didn't have that conversation. As I
25 said, I didn't feel it was appropriate or I wasn't
26 comfortable discussing that matter with her, because I
27 had no knowledge of it. So I ended the conversation
28 fairly, fairly -- I won't say abruptly but fairly
29 quickly.

12:31

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MR. MCDERMOTT: Thank you.

END OF CROSS-EXAMINATION BY MR. MCDERMOTT

MS. LEADER: Nothing arising, Chairman.

12:32

CHAIRMAN: Thank you very much, Sergeant.

THE WITNESS THEN WITHDREW

MR. MARRINAN: Sir, the next witness is Orla Curran,
please. Her statement is to be found in volume 9, page
2593.

12:32

1 MS. ORLA CURRAN, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MR. MARRINAN:

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- 274 Q. MR. MARRINAN: Ms. Curran, would you mind stating your professional qualifications, please. 12:32
- A. I'm a professionally qualified social worker. I completed a BA in social studies in 1999 with a diploma in social work.
- 275 Q. And I think you commenced working as a social worker with the North Eastern Area Health Board, Cavan-Monaghan, in 1999, is that right? 12:33
- A. Yes. I commenced working as a social worker in 1999 with the NEHB in the area of child protection and I remained working in this area until about 2005. In 2005, I was appointed the acting senior social work practitioner with the child sexual abuse assessment and treatment team in Cavan-Monaghan. 12:33
- 276 Q. I think the team consisted of yourself and a Ms. Emer O'Neill, who was a senior clinical psychologist, is that right? 12:33
- A. That's correct.
- 277 Q. And at that time your line manager was the then-principal social worker, Mary O'Reilly?
- A. That's correct.
- 278 Q. I think that you worked with that team until 2010? 12:33
- A. Mm-hmm.
- 279 Q. When you were appointed social work team leader with primary care services safeguarding vulnerable adults in the HSE, is that right?

1 A. That's correct. That is my current role.

2 280 Q. That is your current role. I think in 2006/2007 the
3 Cavan-Monaghan child sexual abuse assessment and
4 treatment team had two main functions, is that right?

5 A. That's correct, yes. 12:34

6 281 Q. What were they?

7 A. The two main functions of the assessment and treatment
8 team were to assess allegations of child sexual abuse
9 and to provide treatment services for young people who
10 had experiences or made allegations around sexual 12:34
11 abuse.

12 282 Q. And who did you receive referrals from?

13 A. The referrals were received to the team from the intake
14 social work team, so people couldn't directly refer
15 into the service, it had to go through the intake 12:34
16 social worker.

17 283 Q. I think that you first became aware of the Ms. D case
18 on the 12th December 2006, isn't that right?

19 A. That's correct. I believe I first became aware of the
20 Ms. D case on that date. I was present at the Child 12:35
21 Protection Team meeting where the case would have been
22 discussed and it was agreed that Ms. D would be
23 referred to the team by the intake social worker.

24 284 Q. I think that was Rhona Murphy, and we have heard
25 evidence from her -- 12:35

26 A. That was Rhona Murphy, yeah.

27 285 Q. -- in relation to this and I don't think that anything
28 arises from that. I think that you believe that the
29 referral that you received from Rhona Murphy came

1 between the 12th December 2006 and the 18th December
2 2006, is that right?

3 A. That's correct. On the 14th December, on the file,
4 there's a record of a fax sheet having been sent with
5 copies of notes from Ms. Murphy. So that would have 12:35
6 activated the referral into the service.

7 286 Q. Now, I think on the 4th January of 2006 you met with
8 Ms. D's parents, isn't that right?

9 A. That's correct.

10 287 Q. And I think that yourself and Ms. O'Neill went through 12:36
11 the background in relation to Ms. D, and we're not
12 going to go into any of the details in relation to --
13 **CHAIRMAN:** I'm sorry, Mr. Marrinan, that has to be
14 2007, doesn't it?

15 **MR. MARRINAN:** 2007, sorry. Did I say 2006? I did. I 12:36
16 beg your pardon.

17 288 Q. And I think that we're not going to go into any of the
18 details, but you got background information and, in
19 particular, you got written consent for copies of the
20 Garda statements that had been made in the Garda 12:36
21 investigation, isn't that right?

22 A. That's correct, yes.

23 289 Q. And it was agreed that Ms. D would attend the service
24 for the purpose of assessment of her treatment needs,
25 isn't that right? 12:37

26 A. That's correct, yes.

27 290 Q. Now, I think on the 24th January of 2007 Ms. D attended
28 for appointment and you saw her along with Ms. O'Neill,
29 isn't that right?

1 A. That's correct, yes.

2 291 Q. And again, the concentration at that time was on the
3 assessment of Ms. D's treatment needs, isn't that
4 right?

5 A. Yes, that's correct. And on that date Ms. O'Neill 12:37
6 would have administered some psychometric testing to
7 Ms. D.

8 292 Q. And we're not going to concern ourselves with that. I
9 think on the 2nd February 2007 you had cause to phone
10 Inspector Noel Cunningham to request copies of the 12:37
11 Garda statements, and they had not yet been received at
12 that time, is that right?

13 A. Yes, I telephoned Inspector Cunningham to ask him could
14 we have copies of the statement because they were
15 required for Ms. D's appointment with us on that day. 12:38

16 293 Q. I think that he arranged with Ms. D's mother to bring
17 copies of the statements to the appointment, isn't that
18 right?

19 A. That's correct, and she did so.

20 294 Q. I think that during the course of that telephone 12:38
21 conversation, that you informed Inspector Cunningham
22 that your service was carrying out an assessment of
23 Ms. D's treatment needs, isn't that right?

24 A. Yes, that's correct.

25 295 Q. In terms of an assessment being carried out in relation 12:38
26 to Ms. D's treatment needs, were you actually carrying
27 out an assessment of the allegation of child sexual
28 abuse that had been made, as to whether it was founded
29 or unfounded or whether it was accurate or not or

1 whether it was reliable, or at that time were you
2 focused on, as you have put it several times in your
3 statement, Ms. D's treatment and how she ought to be
4 treated by your service?

5 A. No, the purpose of our intervention with Ms. D was to 12:39
6 assess her treatment needs.

7 296 Q. And at that time you weren't concerned with assessing
8 the accuracy or reliability of the allegations that she
9 was making?

10 A. It wasn't a matter that we weren't concerned with 12:39
11 undertaking the reliability of the assessment. I
12 suppose to describe a credibility assessment, there's
13 three main components that we look at: the context in
14 which the allegation is made, the background
15 information and collateral information being sought on 12:39
16 the young person's behaviour, and the third component
17 would be an investigative interview. We developed
18 those protocols based on the international practice
19 that was there in 2006. Now, because two statements
20 had been made by Ms. D, we could not accurately conduct 12:40
21 an investigative interview that could safely conclude,
22 given that she had already twice given her story and
23 had been interviewed around that. So we therefore
24 moved to assessing her for her treatment needs, because
25 we were concerned about her presenting behaviours. 12:40

26 297 Q. We have been advised that perhaps there's an additional
27 reason as to why Garda statements would be obtained;
28 namely, that it would obviate the need to have to go
29 over the circumstances that gave rise to the allegation

1 in the first place with the complainant because it
2 would relieve any distress that that would involve?

3 A. That is certainly one aspect of it. Research at that
4 time and the practice that we were following very
5 clearly for adolescents in particular notes that 12:41
6 repeated interviewing can often be highly distressing
7 or young people, it leads to recanting, it leads to
8 contradictions arising. So, for those reasons, we
9 wouldn't have undertaken a credibility assessment.

10 298 Q. Okay. Now, I think that Mrs. D brought copies of the 12:41
11 statements that had been made by her daughter on the
12 5th December 2006 and a later statement dated 21st
13 December 2006, and you were provided with those prior
14 to your meeting with Ms. D, is that right?

15 A. That's correct. 12:42

16 299 Q. And that meeting took place on the 7th February 2007?

17 A. Yes, that's correct.

18 300 Q. Now, I think again on the 21st February of 2007 Ms. D
19 attended for appointment, and at that time she was
20 offered an intervention session treatment with your 12:42
21 service but she declined that offer, is that right?

22 A. That's correct.

23 301 Q. Could you just tell us what you mean by "intervention
24 session"?

25 A. Ms. D, based on her contact with our service, it was 12:42
26 our recommendation that she would attend for some
27 intervention sessions regarding feelings she was
28 expressing, and we offered that service to her but at
29 that time she did not wish to engage with us.

1 302 Q. Again, I think on the 21st March 2007 her parents
2 attended for feedback on their daughter's attendance at
3 the service, is that right?
4 A. That's correct, yes.

5 303 Q. I think that you advised them that their daughter had 12:43
6 been offered the service that you had just described
7 but had declined and that they had some concerns
8 surrounding -- but if they had some concerns
9 surrounding their daughter into the future, they could
10 contact the service at any future juncture, is that 12:43
11 right?
12 A. That's correct.

13 304 Q. I think on the 2nd April 2007 a letter was sent to
14 Ms. Rhona Murphy from yourself and Ms. O'Neill
15 outlining the nature of the contact that you had had 12:43
16 with Ms. D and her parents, is that right?
17 A. That's correct, yes.

18 305 Q. I think the letter outlined that Ms. D had been
19 discharged from the service, that relates to any
20 treatment or future treatment, is that right? 12:44
21 A. Not necessarily any future treatment. The option, if
22 she wished to reattend the service, was there, but it
23 was closing the case to the service at that time.

24 306 Q. Now, on the 24th April 2007 Ms. D's mother contacted 12:44
25 the service and informed Emer O'Neill that the Director
26 of Public Prosecutions had recommended no prosecution
27 and advice was given to her regarding how to discuss
28 this with her daughter, is that right?
29 A. That's correct, yes.

1 307 Q. Now, coincidentally on the same day you were present at
2 a child protection management team meeting in relation
3 to the case, is that right?
4 A. That's correct, yes.

5 308 Q. If we could just have page 1290 put on the screen, you 12:44
6 will see it on the screen there, Ms. Curran. We see
7 the date of the meeting is Tuesday, 24th April 2007 at
8 2:15pm. Had you already received the information in
9 relation to the DPP's direction prior to that meeting?
10 A. It's not recorded on the file the time we took the 12:45
11 telephone call from Ms. D.

12 309 Q. All right.
13 A. And I really can't remember whether that was before the
14 meeting or after the meeting.

15 310 Q. Well, we can see that present at the meeting was Mary 12:45
16 O'Reilly, and then Emer O'Neill and yourself is noted,
17 and Mary Tiernan, Eileen Argue and Rhona Murphy. And
18 Maurice McCabe is put down as person who is to be
19 discussed at the meeting, is that right?
20 A. That's correct. 12:46

21 311 Q. And to your knowledge, had a file been opened in
22 relation to Maurice McCabe or how was it that he came
23 to be discussed at that meeting?
24 A. I have no knowledge that a file was open on
25 Sergeant McCabe and I wouldn't have any knowledge on 12:46
26 files being open on the alleged person of concern
27 because our work was solely focused on the young person
28 and their needs.

29 312 Q. Well, so, this was a meeting of professionals who had

1 got together --

2 A. Yes.

3 313 Q. -- to discuss the Ms. D allegations?

4 A. Yes.

5 314 Q. And this had come in by way of referral as a result, 12:46
6 and we can see it there "*Reasons for referral: Ms. D*
7 *informed the CSA team during recent appointment that*
8 *Mr. McCabe inappropriately touched her*". Isn't that
9 right?

10 A. That's right. 12:47

11 315 Q. And the CSA team is you?

12 A. That's us, that's me.

13 316 Q. And Emer O'Neill. So it would appear that this meeting
14 was convened arising out of something that had been
15 said by Ms. D during the course of your sessions with 12:47
16 her, is that right?

17 A. The meeting wouldn't have been particularly convened
18 because of Ms. D. These were our weekly, our biweekly
19 meetings. We looked at new information, new referrals
20 that came in, and they got allocated out. And if you 12:47
21 refer back to the -- in December where the decision was
22 made to make the referral to the CSA assessment and
23 treatment team, this would have been us feeding back
24 into the meeting. So there would be two components of
25 that meeting: new intake and review. So clearly this 12:47
26 was us updating the meeting on our work.

27 317 Q. And we can see there the reasons for referral, I've
28 read out the first bullet-point, and the second one is:
29

1 *"The file returned from the DPP. No prosecution."*

2

3 Is it possible that you had brought that information to
4 the meeting and conveyed it to the meeting arising out
5 of your discussion with Ms. D's mother? 12:48

6 A. It's very possible, it's very likely, yes. But I'm
7 unsure if the social worker had been told.

8 318 Q. Now it has:

9

10 *"Actions Agreed: Mary O'Reilly to contact Catherine* 12:48
11 *Sweeney, principal social worker in Meath, to ask her*
12 *to nominate a member of her team to deal with*
13 *Mr. McCabe."*

14

15 Do you recall a discussion in relation to that? 12:48

16 A. I can't recall any specific discussion in relation to
17 it. I was at the meeting, it was a decision that was
18 made. But I can't recall the actual meeting and our
19 discussions around it.

20 319 Q. Well, you see, the Tribunal has been given some 12:49

21 information in relation to this insofar as there's a
22 suggestion that perhaps it was being sent to Meath,
23 because Sergeant McCabe was somebody who was known in a
24 professional capacity to people who had attended, or
25 some of the people who had attended, perhaps, at these 12:49
26 conferences. Do you recall that?

27 A. I am aware probably from the Tribunal that that is the
28 information. I cannot recall that.

29 320 Q. You don't --

1 A. I can't recall that meeting.

2 321 Q. You don't remember a discussion there amongst people
3 who were present?

4 A. I don't. And if it wasn't a direct piece of work that
5 I would be undertaking, it's less likely that I was 12:49
6 overly aware of the details of it or -- I would
7 remember clearer if it was something, a task that I had
8 to take out myself.

9 322 Q. Then if we look at bullet-point number 2:
10 12:50
11 *"social worker to offer Mr. McCabe a risk assessment
12 and to inform" -- "him" that should be -- "that the HSE
13 are aware of the allegations against him."*
14

15 That was directed to Rhona Murphy, isn't that right, 12:50
16 who was the social worker?

17 A. That would be the role of the social worker, yes,
18 within the intake team.

19 323 Q. And then the final bullet p-o-i-n-t is:
20 12:50
21 *"Contact the Gardaí re current address for Mr. McCabe."*
22

23 And we see that the minutes were sent to Mary O'Reilly,
24 is that correct?

25 A. That's correct. 12:50

26 324 Q. Insofar as the directions that were given at that
27 meeting on the 24th April 2007, I think you had no
28 remit at all to implement any of the actions that have
29 been outlined?

1 A. No, I would have had no remit in undertaking any of
2 those actions.

3 325 Q. I think that you had no further contact with Ms. D or
4 her parents and you had no further involvement in
5 relation to the processing or otherwise of the file, is 12:51
6 that right?

7 A. That's correct. Once the work was concluded with
8 Ms. D, neither myself nor Ms. O'Neill would have had
9 ongoing involvement.

10 MR. MARRINAN: Thank you very much. Would you answer 12:51
11 any questions.

12 A. Thank you.

13 MR. MCDOWELL: No questions.

14

15 **The WITNESS WAS CROSS-EXAMINED BY MR. DONAL MCGUINNESS:** 12:51
16

17 326 Q. MR. DONAL MCGUINNESS: On behalf of An Garda Síochána,
18 my name is Donal McGuinness, and I would like to ask
19 you a few questions. You mentioned, Ms. Curran, at the
20 start of your evidence that the HSE has two functions; 12:51
21 one is the assessment of the allegations and the other
22 is the provision of treatment services, and you also
23 mentioned in your evidence that you're very much
24 involved in the, at this time, in the provision of the
25 treatment services itself? 12:52

26 A. I was involved in both aspects of those functions.

27 327 Q. But you would --

28 A. At that time.

29 328 Q. At that time.

1 A. Yes.

2 329 Q. But would you accept that a large part of your
3 intervention at this moment in time was dealing with
4 the provision of treatment services?

5 A. With this particular case? 12:52

6 330 Q. With this case.

7 A. With this case, that was the role we were undertaking.

8 331 Q. And the two roles that Mr. Marrinan referred to spring
9 from Section 3 of the Childcare Act 1991, isn't that
10 correct? 12:52

11 A. That's correct.

12 332 Q. And if I could just refer you back to page 1290 and the
13 bullet-points at the bottom of that document:
14

15 *"Mary O'Reilly to contact Catherine Sweeney, principal 12:52*
16 *social worker in Meath, to ask her to nominate a member*
17 *of her team to deal with Mr. McCabe."*

18

19 And then number 2:

20 12:53

21 *"Social worker to offer Mr. McCabe a risk assessment*
22 *and to inform him that the HSE are aware of the*
23 *allegations against him."*

24

25 And then the third one is: 12:53

26

27 *"Contact the Gardaí re current address for Mr. McCabe."*

28

29 Now, would you agree with me that those three

1 bullet-points are linked to what has been referred to
2 as the requirement to meet Mr. McCabe arising out of
3 the Barr judgment?

4 A. Section 3, as I understand it today, has a different
5 set of protocols to what we were working from back in 12:53
6 2006/2007, so I'm not terribly clear on those set of
7 protocols. I am familiar, or was familiar at the time
8 regarding the Barr judgment and the interpretation at
9 that time we were trying to develop. There were no
10 national guidelines at that time. Our interpretation 12:54
11 was to inform alleged persons of concern in order to
12 inform a third party.

13 333 Q. Yes, the Barr judgment, more appropriately called the
14 Gleeson judgment, which was decided by Mr. Justice
15 Barr, was 1997, yes? 12:54

16 A. Mm-hmm.

17 334 Q. And then in 2006 the Murphy Commission was established,
18 as it's known, the Commission to Inquire into Child
19 Abuse in the Diocese of Dublin?

20 A. Mm-hmm. 12:54

21 335 Q. You're familiar with that. And she reported in 2009.
22 Do you remember that?

23 A. 2009?

24 336 Q. 2009.

25 A. If it was 2009, I accept that. I can't remember. 12:54

26 337 Q. It was. The reason I mention these dates is because
27 the Commission was formed in 2006.

28 A. Okay.

29 338 Q. It was looking back at historic, the management of

1 child abuse claims in the diocese of Dublin
2 specifically in relation to priests --

3 A. Mm-hmm.

4 339 Q. -- over a long period of time, but the area in which
5 she was reporting commenced in 2006 and she reported in 12:55
6 2009.

7 A. Okay.

8 340 Q. Now, they investigated the procedures that were in
9 place at the time by the HSE and by the Gardaí and they
10 investigated the issues surrounding the Barr judgment 12:55
11 and what procedures had been put in place on behalf of
12 the HSE as a result of the Barr judgment. If I just
13 might read to you a little excerpt. It's page 107 of
14 the Murphy Commission report of July 2009, it's Part 1.
15 And it states as follows: 12:55

16
17 *"The HSE told the Commission that the judgment in this*
18 *case (generally known as the Barr judgment) had" -- and*
19 *then it quotes directly:*

20 12:56
21 *" -- significant implication for the management of*
22 *child sexual abuse cases by the Health Board/HSE. It*
23 *provided that the Health Board/HSE, except in cases*
24 *where a child is believed to be at immediate risk of*
25 *suspected child sexual abuse, before passing on any 12:56*
26 *information with regard to a suspected child abuser to*
27 *a third party, must give the allegations in writing to*
28 *the alleged perpetrator. The alleged perpetrator must*
29 *then be given the opportunity to respond in person to*

1 *the HSE before the HSE makes its decision on whether or*
2 *not to pass the information on to a third party.*
3 *Recent legal advice is that the opportunity to appeal*
4 *the decision of the HSE to pass on information to a*
5 *third party must also be given to the alleged*
6 *perpetrator."*

12:56

7
8 would you agree with me that this paragraph, which has
9 come from your organisation essentially, to the Murphy
10 Commission, makes it clear that the reason why an
11 alleged perpetrator is to be contacted is for the
12 purposes of ensuring that he is given fair procedures
13 to deal with any allegations that are made against him
14 before a third party is notified?

12:57

15 A. Correct.

12:57

16 341 Q. Now, the possible third parties that might be notified
17 arising out of the allegation against Sergeant McCabe
18 would be third parties concerned for other children,
19 isn't that correct?

20 A. That's correct.

12:57

21 342 Q. Which is the other part of the HSE's obligations under
22 Section 3?

23 A. Correct.

24 343 Q. And one example might be his employer --

25 A. Correct.

12:57

26 344 Q. -- the Gardaí, but they already knew.

27 A. Yes.

28 345 Q. So there was no need to tell them. Another person that
29 might have been informed might have been Mr. McCabe's

1 own wife?

2 A. Yes. She would -- a wife or a husband, depending on
3 whom the allegation was made against --

4 346 Q. Yes.

5 A. -- would be the third party often that was being 12:58
6 informed.

7 347 Q. So the purpose behind the Barr letter, if it ever is
8 sent, and the purpose behind contacting Mr. McCabe,
9 which is a prerequisite to sending the Barr letter, is
10 effectively to get clearance to contact those other 12:58
11 parties that need to be contacted?

12 A. Okay, yes.

13 348 Q. An employer, a wife or maybe a club?

14 A. Mm-hmm.

15 349 Q. Or if there was someone involved in club activities or 12:58
16 something like that. Do you agree with me?

17 A. Yes.

18 350 Q. And it would therefore be important to identify what
19 steps need to be taken and whether or not there is any
20 need to contact third parties at all in relation to an 12:58
21 investigation such as this?

22 A. Yes, it's a very -- it was an area we were trying to
23 develop protocols around at that time, so the protocols
24 at that time were in development, and it was definitely
25 much more straightforward if you had a confirmed 12:59
26 allegation or a conviction. So we were trying to work
27 and adapt best practice insofar as we possibly could,
28 while having regard to the rights of people whom
29 allegations had been made against, while taking on

1 board the needs of children, and that's what we were
2 trying to do.

3 351 Q. Yes. So obviously before you can make a decision as to
4 whether or not any third parties have to be contacted,
5 you conduct a credibility assessment in relation to the 12:59
6 case?

7 A. It the situation allows a credibility assessment to be
8 undertaken. You undertake a credibility assessment not
9 with the specific focus to responding to the alleged
10 person of concern, but around the needs of the child. 12:59
11 Our focus was clearly on the needs of that young
12 person.

13 352 Q. Okay. Well, then would it be safe to say that the
14 credibility assessment is a twofold purpose: one is to
15 deal with the issues surrounding the needs of the 13:00
16 child, but also for the purposes of your general
17 assessment as to whether or not there are any other
18 child protection concerns out there?

19 A. Yes, absolutely, but we did not undertake credibility
20 assessments to satisfy persons of concerns. It was to 13:00
21 focus on the needs of that child, their risks, their
22 needs.

23 353 Q. Yes. But it was identified at the very least that
24 there was going to be contact made with
25 Sergeant McCabe, or there ought to have been contact 13:00
26 made with Sergeant McCabe?

27 A. Yes.

28 354 Q. But the reason for that contact was for the purposes of
29 determining whether or not there was any risk to other

1 children, isn't that correct?

2 A. I think I said earlier, I cannot specifically recall
3 the decision-making rationale around those decisions.
4 Crude though it may seem, when the directions aren't in
5 relation to my work, I would have -- I would have less 13:00
6 focus and awareness around that, so I can't answer you
7 on the rationale we had around that, I'm afraid.

8 355 Q. But you will agree with me that essentially the three
9 bullet-points at the end of the document 1209 indicate
10 that there was a job of work to be done in relation to 13:01
11 contacting Sergeant McCabe?

12 A. Yes, there was a decision that that piece of work
13 should be undertaken.

14 356 Q. And you also agree with me that the purpose behind
15 doing that piece of work was, before you could approach 13:01
16 any third parties in relation to the allegations, you
17 had an obligation to contact Sergeant McCabe before you
18 approached third parties, in accordance with the
19 paragraph I just read out --

20 A. Yes. 13:01

21 357 Q. -- from the Murphy Commission?

22 A. Yes.

23 358 Q. And that job of work essentially wasn't done back in
24 2008?

25 A. 2007, no. 13:01

26 359 Q. Or 2007?

27 A. No, as I understand now it wasn't. I wouldn't have
28 been aware at that time whether it was or whether it
29 wasn't, but I am, for the purposes of the Tribunal,

1 DR. GERARD O'NEILL, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER:

- 3
- 4 361 Q. MS. LEADER: Dr. O'Neill, if you wouldn't mind
5 outlining to the Tribunal your relevant qualifications 13:03
6 and your current role.
- 7 A. Okay. I am director of counselling in a counselling
8 service in the southeast of Ireland with the HSE. My
9 qualifications are a master's in counselling and a
10 doctorate in psychotherapy. 13:04
- 11 362 Q. And I think you're Ms. Fiona Ward's equivalent in the
12 counselling service in the southeast?
- 13 A. That's correct, yes.
- 14 363 Q. For the purposes of this Tribunal, I think you reviewed
15 a file in relation to a person that the Tribunal is 13:04
16 referring to as Ms. D, is that correct?
- 17 A. When you say I reviewed a file, can you just explain --
18 I am aware of the file, yes.
- 19 364 Q. You're aware of the file?
- 20 A. Yes, yes. 13:04
- 21 365 Q. And that file, I think, was transferred to your
22 counselling service in 2014, is that correct?
- 23 A. That's correct, yes.
- 24 366 Q. Do you know when it was transferred in 2014?
- 25 A. Approximately May 2014. 13:04
- 26 367 Q. And I think from your review of the file it appeared to
27 you that it was transferred on the 2nd May 2014?
- 28 A. That would be correct.
- 29 368 Q. Is that correct?

1 A. Yes.

2 369 Q. And that actually appears on a CORE record which was
3 created in your service, is that correct?

4 A. In Waterford -- in the southeast, yes.

5 370 Q. Yes. And that's at page 363 of the materials. It 13:05
6 should be in front of you just shortly.

7 A. Yes.

8 **CHAIRMAN:** Just from the point of view of the press,
9 you said a particular town. We will just leave it at
10 the southeast, if that could be reported as such, 13:05
11 please, and not the town. Thanks.

12 A. That's correct yes.

13 371 Q. **MS. LEADER:** That was Ms. D's file that was
14 transferred?

15 A. Yes. 13:05

16 372 Q. I think it was transferred from your counselling
17 service, Rian, is that correct?

18 A. The call record is the one that was created in the
19 southeast.

20 373 Q. Okay. 13:05

21 A. Yeah.

22 374 Q. Right. Do you know at this stage how the file was
23 transferred to you?

24 A. I can't recall specifically, but standard practice, it
25 would be by standard post or by registered post. 13:06

26 375 Q. And in that regard I take it that it wasn't an unusual
27 thing that files would be transferred between various
28 services?

29 A. If a client had moved between services, a file would

1 follow -- sometimes a file would follow, sometimes it
2 may be just a case summary. In this case it was the
3 full file.

4 376 Q. Now, I think following the transfer of the file your
5 service received a phone call from Laura Brophy of
6 Rian, is that correct? 13:06

7 A. That would be correct, yes.

8 377 Q. And that's apparent from your review of the file?

9 A. Yes. It's the letter, I think, dated 28th May. That
10 would be correct, yeah. 13:06

11 378 Q. And what did Ms. Brophy tell your service during the
12 course of that telephone call?

13 A. I wouldn't have had access to the specific
14 conversation. It probably would -- the conversation
15 was, according to a subsequent letter -- according to 13:07
16 that letter with our administrator at the time, who has
17 since left the service, but at that point she would
18 have raised concerns about an erroneous notification
19 that was in the first file that was sent to the
20 southeast. 13:07

21 379 Q. And what steps were taken by your service when you
22 heard about the erroneous report?

23 A. We waited for the replacement file, because that was
24 part of the conversation between Laura Brophy and the
25 then-administrator. 13:07

26 380 Q. Yes.

27 A. The file in question, the second file, my recollection
28 is that it arrived on the 28th May and there was a
29 letter which was date-stamped 29th May. In that

1 letter, it refers to *"Please find enclosed the full*
2 *replacement file,"* I think.

3 381 Q. Okay.

4 A. So that's --

5 382 Q. That letter is at page 370 of the materials. 13:08

6 A. That's correct.

7 383 Q. So that letter is date-stamped 29th May 2014, the
8 Southeast National Counselling Service, is that
9 correct?

10 A. Yes, yes. 13:08

11 384 Q. And the letter itself is dated 28th May 2014?

12 A. Yes.

13 385 Q. That's correct. And it's:
14
15 *"Re transfer of client from NCS Cavan to NCS* 13:08
16 *southeast."*

17
18 Is that correct?

19 A. That's correct.

20 386 Q. And the letter which Ms. Brophy has already referred to 13:08
21 in her evidence says:
22
23 *"Please find enclosed a full copy of the file allocated*
24 *to Ms. D. I apologise for any prior confusion in*
25 *relation to the partial transfer of her file and the* 13:08
26 *issue in relation to the retrospective report I*
27 *submitted in 2013. I have enclosed the amended and*
28 *correct report as discussed with the administrator in*
29 *the southeast."*

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That's the conversation you were referring to already,
is that correct?

A. Yes.

387 Q. *"And I am grateful for your support in my efforts to* 13:09
resolve this matter."

Is that correct?

A. That's correct, yes.

388 Q. *"And if there are any further queries in relation to* 13:09
this file or documents enclosed, please do not hesitate
to contact me."

A. Correct.

389 Q. And Laura Brophy signs off on that letter?

A. Yes.

390 Q. So what steps were taken by your service at that stage 13:09
in relation to the first file that was transferred?

A. The first file at that stage would have been, the copy
of the first file would have been shredded in the
southeast.

391 Q. Okay. Have you checked your records to ensure that you 13:09
don't have any copy of the first --

A. Well, we don't have a copy of the first file in the
southeast.

392 Q. Okay. Now in relation to the second transfer of the 13:09
file, what was contained with the documentation that
was transferred to your service on the 28th May?

A. It was a full record of the client contact in the
northeast, so it would have taken an initial
assessment, there would have been the call record

1 sheet, there would have been documentation on contact
2 with Ms. D, and relevant -- the corrected and amended
3 retrospective notification form and relevant
4 correspondence around notifying the various personnel.
5 So that would be a complete account. 13:10

6 393 Q. Did you have any conversations with any Rian personnel
7 at that time?

8 A. Not directly. I can't recall any direct conversation
9 with the counsellor involved, Laura Brophy. I may have
10 had conversations with my opposite number in the 13:10
11 northeast, Ms. Fiona Ward. That would really be in
12 relation to if the client would have been waiting for a
13 service in that part of the country, when they
14 transferred to the southeast we would accredit them
15 with that waiting time. So they would start at the 13:11
16 same point in terms of -- so they wouldn't lose out in
17 terms of moving from one --

18 394 Q. I understand.

19 A. Yeah.

20 395 Q. I understand. And did you ever speak to Ms. D? 13:11

21 A. No. It wouldn't be normal in my role that I would have
22 direct contact with the client, unless I was seeing a
23 client myself as a therapist, yeah.

24 396 Q. I think it was Ms. Waters in your service?

25 A. That's correct, yes. 13:11

26 397 Q. And did you supervise Ms. Waters?

27 A. I did, yes.

28 398 Q. Did you speak to her in relation to Ms. D?

29 A. She would have spoken to me in relation to the contact

1 that she had with Ms. D during counselling, and that's
2 part of the regular supervisory structure.
3 **MS. LEADER:** Thank you very much. If you would answer
4 any questions anybody else might have.
5 A. Of course. 13:11
6 **CHAIRMAN:** There's no questions. Thanks, Doctor.
7 That's it.
8 A. Right. Thank you.
9 399 Q. **MS. LEADER:** There is one question I should have asked
10 you. Did you at any time notify the Gardaí in relation 13:12
11 to this matter?
12 A. No. The replacement file that was sent was
13 comprehensive from my perspective in terms of the
14 corrected notification and reviewing the relevant
15 correspondence around that, so... 13:12
16 **MS. LEADER:** Thank you very much.
17 A. Thank you.
18
19 **THE WITNESS THEN WITHDREW.**
20 13:13
21 **MS. LEADER:** Ms. Pamela Armitage, please.
22
23
24
25
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29

1 MS. PAMELA ARMITAGE, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER:

3
4 **MS. LEADER:** Ms. Armitage's statement is to be found at
5 volume 9, page 2839 of the materials. 13:13

6 400 Q. Ms. Armitage, if you can first of all outline your
7 qualifications and your relevant work experience,
8 please?

9 A. I have worked in the Child and Family Agency for the
10 last 13/14 years. I did my regular school 13:14
11 qualifications and then I left school and I studied
12 business and finance and then moved to Ireland and took
13 up work with the Child and Family Agency.

14 401 Q. Okay. I think you worked with the HSE in 2014 in the
15 Cavan office, is that correct? 13:14

16 A. I did, yeah.

17 402 Q. And what was your specific role in the Cavan office in
18 2014?

19 A. I'm clerical admin in the office. And I work in the
20 admin team, dealing with the child protection social 13:14
21 workers.

22 403 Q. Now, if you could first of all explain to the Tribunal
23 the filing system in Cavan in 2014?

24 A. Yeah. We have a system where we have all of the open
25 unallocated cases are based in the main office and 13:14
26 they're all indexed and they run in order from the
27 oldest up to the most current. Any closed files are
28 away in storage. Any files that are allocated to
29 social workers would be with the social worker, whether

1 that be a child in care or a duty case.

2 404 Q. And we have heard some evidence about a system called
3 Measuring the Pressure. would those files be stored
4 separate from other files?

5 A. No, they're not. They're kept within the system, the 13:15
6 open unallocated system.

7 405 Q. We've heard evidence from Ms. Laura Connolly to the
8 effect that some files were kept in the duty social
9 worker's room. Could you explain to the Tribunal a
10 little bit about the filing system in that room, 13:15
11 please?

12 A. There would be a number of files that would be in the
13 duty room and they would be cases that they would be
14 working on at the time. The duty system, if there's a
15 case that has come in and there's information coming in 13:16
16 on it regularly, they would keep it in the duty office
17 so that they have the information there with them. It
18 wouldn't necessarily be -- it's still unallocated, but
19 it's being worked by the duty system.

20 406 Q. Okay. And those files, would they be kept in any 13:16
21 particular order in that room?

22 A. The duty social worker have a system in there where
23 they have cases where they have families waiting to
24 come in for an appointment, so they'd have them in one
25 section. They have the files that are ready to go to 13:16
26 the next referrals meeting and then they may have some
27 files that are waiting for correspondence to come back
28 from professionals that they may have written out to,
29 looking for information.

1 407 Q. So the files that were ready to go to a referrals
2 meeting, were they kept in a tray ready to go to a
3 referrals meeting?
4 A. Yes.
5 408 Q. So they weren't in the filing cabinet? 13:17
6 A. They're in the -- they're all in a cabinet, yes, but in
7 a tray in a cabinet, yeah.
8 409 Q. So there was a tray assigned to the referral meetings
9 in a cabinet?
10 A. Yes. 13:17
11 410 Q. And in relation to files that had tasks to be assigned
12 on them, when were they put into the duty room?
13 A. Sometimes after the referrals meeting.
14 411 Q. Yes.
15 A. If a task is to be carried out with a family or on a 13:17
16 file, it would then -- initially they would come back
17 to admin for us to send out any relevant letters --
18 412 Q. Yes.
19 A. -- to update the Measuring the Pressure as to the
20 status of the case, but if they had duty tasks, the 13:17
21 files would then go back to the duty office for them to
22 carry out the work.
23 413 Q. Okay. would they be put in any particular order into
24 the filing cabinet if it had a task outstanding?
25 A. There wouldn't be any particular order. They would 13:17
26 just be -- I mean, the duty social worker probably puts
27 them in their own order of importance to them.
28 414 Q. Okay. So if somebody phoned up the HSE in Cavan and a
29 file happened to have a task outstanding on it, would

1 you know where to find it at any particular time?

2 A. Yes.

3 415 Q. And how would you know that?

4 A. We have the file index, the card system --

5 416 Q. Yes. 13:18

6 A. -- which was the Excel database. Every file is listed
7 on there, whether it be opened or closed, and where the
8 file is and what date it went.

9 417 Q. Okay. So you would know if it was in the duty room,
10 that it was somewhere in the cabinet, but not 13:18
11 necessarily where?

12 A. Yes.

13 418 Q. And you would just go through the cabinet?

14 A. Yes.

15 419 Q. And find it? 13:18

16 A. Yes.

17 420 Q. Is that correct?

18 A. Yes.

19 421 Q. Now, on the 14th May 2014 I think you took a telephone
20 call in relation to a referral that Laura Brophy had 13:19
21 made from Rian, is that correct?

22 A. Yes, that's correct.

23 422 Q. Do you remember that?

24 A. I do.

25 423 Q. why is it you have a particular memory of that 13:19
26 telephone call?

27 A. I remember it because she was quite anxious when I
28 spoke to her and also because of the content of the
29 error that had been made. It wasn't that it was about

1 whoever it was it was about; it was just that what had
2 happened and the error.

3 424 Q. Okay. I think you made a record of the telephone call
4 you'd received from Ms. Brophy, is that correct?

5 A. Yes, I did. 13:19

6 425 Q. That appears at page 439 of the materials, if it can be
7 brought up in front of you. So is that in front of you
8 on the screen?

9 A. Yes, yes.

10 426 Q. So it's an email from you on the 14th May 2014, is that 13:19
11 correct?

12 A. That's correct.

13 427 Q. And the time of the email is 11:05, is that correct?

14 A. Yes.

15 428 Q. And would that have been proximate to the time that you 13:20
16 received the telephone call from Ms. Brophy?

17 A. Yes, I would say it was just a few minutes after I
18 spoke to her.

19 429 Q. Now, the email is to Eileen Argue, is that correct?

20 A. That's correct. 13:20

21 430 Q. why did you send the email to Ms. Argue in particular?

22 A. Eileen was the team leader at the time.

23 431 Q. was there any thought to sending it to the duty social
24 worker on that day?

25 A. No, I didn't, because it was a serious error and that's 13:20
26 why I thought it was important it went to the team
27 leader.

28 432 Q. Okay. And if you could read out the content of that
29 email, please, Ms. Armitage?

1 A. It says:
2
3 *"Dear Eileen,*
4
5 *Laura Brophy, Rian, just called to say that she has* 13:21
6 *made an error in her report to us re Ms. D. Line (that*
7 *this abuse involved digital penetration both vaginal*
8 *and anal) is an error and should not be in the*
9 *referral. It is in fact a line from another referral*
10 *on another adult that has been pasted in in error.* 13:21
11 *Laura has apologised and is sending us an amended*
12 *report ASAP."*

13 433 Q. Okay. And Ms. Argue was in the same office with you at
14 that time, was she?

15 A. Yes. 13:21

16 434 Q. You regarded that as something serious, is that
17 correct?

18 A. Yes.

19 435 Q. And did you regard it as something that should be
20 corrected immediately? 13:21

21 A. Yes.

22 436 Q. And was that the purpose of you sending that to
23 Ms. Argue?

24 A. Yes.

25 437 Q. Do you remember did you pull out the file or anything 13:21
26 of that nature on that day?

27 A. No, I didn't pull the file on that day. I just sent
28 the information straight through to Eileen.

29 438 Q. Okay. And did Eileen speak to you in relation to the

1 matter? Did she phone you or anything of that nature?
2 A. I don't remember her speaking to me. I just remember
3 her then asking me to print a copy of it out for the
4 file.
5 439 Q. Okay. 13:22
6 A. I think she emailed me back to say 'Could you print
7 this out for the file, please, Pam.'
8 440 Q. And that was on the same day, is that correct?
9 A. Yes.
10 441 Q. So if you printed it out for the file, did somebody 13:22
11 pull the file on that day?
12 A. I think the file was actually with Eileen at the time.
13 442 Q. Okay. Do you have a positive memory of that?
14 A. I don't.
15 443 Q. Okay. 13:22
16 A. No. I can't say that definitely.
17 444 Q. But your impression is, is it?
18 A. Yes.
19 445 Q. Is that correct?
20 A. Yes. 13:22
21 446 Q. Is it your memory that the file was with Eileen?
22 A. Yes.
23 447 Q. And of course the Garda notification would have been
24 sent out on the 2nd May, is that correct?
25 A. Okay, yeah. I wouldn't have had any involvement with 13:22
26 that, so I can't say for sure, but --
27 448 Q. Yes.
28 A. Yeah.
29 449 Q. So it would appear that -- we know from Ms. Connolly's

1 evidence that she was working on the file on the 30th
2 April.

3 A. Mm-hmm.

4 450 Q. And she, on her evidence, put it onto the referrals
5 tray when she was finished working with it on the 30th 13:23
6 April, but your impression, in any event, on the 14th
7 May, is that the file was with Ms. Argue?

8 A. Yeah. Well, that's how I remember. The file, I think,
9 was unallocated. And if something is unallocated and
10 comes into our department that is just not a basic 13:23
11 piece of information, it will go to the team leader.

12 451 Q. Okay. Now, the next piece of documentation I'm going
13 to ask you to look at --

14 **CHAIRMAN:** Ms. Leader, I'm sorry, it's my fault, but I
15 was just a bit unclear. Did the witness actually speak 13:23
16 following the email to Ms. Argue?

17 **MS. LEADER:** Maybe Ms. Armitage could help us on that.

18 452 Q. Did you speak to Ms. Argue after sending the email?

19 A. I don't remember speaking to Ms. Argue about it, no.

20 453 Q. Okay. And your impression is that the file was with 13:24
21 her on that day?

22 A. Yes.

23 454 Q. Is your office near Ms. Argue's office?

24 A. Near enough.

25 455 Q. Okay. Now, if I could turn to page 443 of the 13:24
26 materials. Is that in front of you?

27 A. Yeah.

28 456 Q. Okay. That's a letter you will see addressed to
29 Ms. Argue from Fiona Ward in relation to the error in

1 the retrospective abuse report form. And you will see
2 there is a note on top of that: "*Séamus, please see*
3 *attached*".

4 A. Yeah.

5 457 Q. Do you think that's your handwriting? 13:24

6 A. It is my handwriting.

7 458 Q. It is your handwriting. Okay. If we could turn to
8 volume 9 of the materials, please. There is an actual
9 colour-copy of the documentation. It would appear that
10 is a Post-It note attached to that letter. 13:25

11 A. Yes.

12 **CHAIRMAN:** Just give me the page again, if you wouldn't
13 mind.

14 **MS. LEADER:** The page in the copy is 443.

15 **CHAIRMAN:** And then the one with the Post-It note is? 13:25

16 **MS. LEADER:** Is -- I'm sorry, I just have lost it for a
17 minute.

18 **CHAIRMAN:** I lost it too, so don't worry. I know the
19 thing you're referring to.

20 **MS. LEADER:** Yes. 13:25

21 **CHAIRMAN:** I can practically see it in front of me.

22 **MS. LEADER:** It's page 2407 of volume 9.

23 459 Q. It will come up in front of you now. You see it
24 appears to be a Post-It note attached to a letter?

25 A. Mm-hmm. 13:25

26 460 Q. Addressed to Ms. Eileen Argue, signed by Fiona Ward,
27 asking that the incorrect retrospective report be
28 returned, is that correct?

29 A. Yes.

1 461 Q. Now, do you have any memory of writing that note?
2 A. I don't, but that is my handwriting.
3 462 Q. It's your handwriting?
4 A. Yes.
5 463 Q. Do you sort the post when it comes in in the morning 13:26
6 or --
7 A. I don't.
8 464 Q. Okay.
9 A. We did, years ago, take it on a rota, but now it's just
10 one person that all the post goes to and she 13:26
11 date-stamps it and distributes it.
12 465 Q. So you wouldn't have received that when it came in in
13 the morning?
14 A. No, no, not necessarily.
15 466 Q. Okay. But it would appear from that, that that letter, 13:26
16 for some reason, came to your attention?
17 A. Mm-hmm.
18 467 Q. From the contents of the file as we have it now?
19 A. Yes.
20 468 Q. Could you in any way explain to the Tribunal how that 13:26
21 could have happened?
22 A. I would say that if the information -- if that letter
23 had come in, I would say that I have seen the letter
24 and I don't know why I have asked Seamus to look at it,
25 it's probably that Eileen may not have been there that 13:27
26 day and that's why I have put it for Seamus's
27 attention.
28 469 Q. That would be very close to the day you had received
29 the telephone call from Laura Brophy, is that correct?

1 A. Yes, yes.

2 470 Q. So I don't know if this would make any sense to you,
3 Ms. Armitage, but it may be that you attached some
4 importance to this letter; do you think that could be
5 correct? 13:27

6 A. Probably correct, yes.

7 471 Q. And you brought it to Mr. Deeney's attention, is that
8 correct?

9 A. Yes.

10 472 Q. Was it normal for you to bring items of post to 13:27
11 Mr. Deeney's attention at that time?

12 A. Not always Mr. Deeney because he wouldn't always have
13 been in our -- he's usually based in Monaghan.

14 473 Q. Okay.

15 A. But if things of importance come in that people's 13:28
16 attention needs to be drawn to, then, yes, I would.

17 474 Q. Okay. And how often would he have attended at the
18 Cavan office back in 2014?

19 A. From what I remember, he would have been there probably
20 a few days a week, but is he a principal social worker. 13:28

21 475 Q. Okay. And you don't remember what days of the week he
22 was assigned?

23 A. No, I don't, sorry.

24 476 Q. Okay. That's okay. So you think you would have
25 brought this letter to Mr. Deeney's attention with a 13:28
26 stamped-addressed envelope attached to it?

27 A. No, there wouldn't be a stamped-addressed-attached
28 envelope to it, I wouldn't have thought.

29 477 Q. Well, the letter itself says that "*I enclosed a*

1 *stamped-addressed envelope for the return of the*
2 *report" --*

3 A. Sorry, yes.

4 478 Q. So that do you think you would have brought the file
5 with you if you bringing that piece of correspondence 13:29
6 to Mr. Deeney's attention?

7 A. I don't remember. I have no recollection.

8 479 Q. Put it this way, Ms. Armitage: if you were bringing a
9 letter from a file to one of your superiors, would it
10 have been normal for you? 13:29

11 A. Yes, it would have been so they would know -- sometimes
12 information comes in --

13 480 Q. Yeah.

14 A. -- that isn't always, you need the file to see what
15 it's relating to. So usually when the post comes in, 13:29
16 we would look, do we know the family. If we do,
17 where's the file, pull the file, put the correspondence
18 with the file and bring it to duty social worker's
19 attention or the relevant social worker who may be
20 working it. 13:29

21 481 Q. Okay. Do you remember any conversation you had with
22 Mr. Deeney or anything of that nature?

23 A. I don't, no. Sorry.

24 482 Q. That's all right. Do you know, in fact, if the form
25 was returned to Rian? 13:30

26 A. If it was, I didn't return it.

27 483 Q. Okay. And you're happy about that?

28 A. Mm-hmm.

29 484 Q. Now, in relation to the error that was made in the

1 report, do you remember, besides your conversation with
2 Laura Brophy and you sending the email to Ms. Argue, if
3 you spoke to anybody in the office about it?
4 A. I don't remember discussing it with anybody. I may
5 have said to my colleague that I work with, I've just 13:30
6 taken a phone call from Laura Brophy and she's very
7 concerned about there's been an error. But other than
8 that, no.
9 485 Q. **CHAIRMAN:** By your colleague, do you mean the
10 administrator -- 13:30
11 A. Yes.
12 **CHAIRMAN:** -- who might have been working in the
13 same --
14 A. Yes.
15 **CHAIRMAN:** Just by way of a general chat? 13:30
16 A. Yes.
17 **CHAIRMAN:** Yeah.
18 486 Q. **MS. LEADER:** And was there any protocol in place at
19 that time in relation to dealing with mistakes that had
20 been made on files? 13:31
21 A. Not that I remember, because, to be honest, we hadn't
22 dealt with anything like it before.
23 487 Q. Okay.
24 A. It's not very often that we -- that we get information
25 in that would be incorrect. 13:31
26 488 Q. Okay. Can you remember any other instance of
27 information being received in the HSE --
28 A. I can't.
29 489 Q. -- which was incorrect?

1 A. I can't, no. I haven't.

2 490 Q. Okay. And how long have you worked in the Cavan
3 office?

4 A. I have been there for 14 years.

5 491 Q. Okay. So can I take it from that, Ms. Armitage, that 13:31
6 it was a fairly unusual occurrence and something that
7 you definitely remember?

8 A. Yes.

9 492 Q. Okay. There is one other possibility in relation to
10 that Post-It note: it is possible that Mr. Deeney 13:32
11 could have had the file already and you could have been
12 bringing the post to him to be attached to a file that
13 he already had?

14 A. It's possible, but I can't say for sure.

15 493 Q. You can't say for sure? 13:32

16 A. No.

17 494 Q. If I could then turn to page 444 of the materials.
18 Ms. Brophy sent an email on the 16/5 to Ms. Argue in
19 relation to the report, isn't that correct?

20 A. Yes. 13:32

21 495 Q. And she was informing Ms. Argue that the guards hadn't
22 been informed of the mistake in the file -- in the
23 report, isn't that correct?

24 A. Yes, that's correct.

25 496 Q. Now, that email was forwarded to you on the 2nd June, 13:33
26 is that correct?

27 A. Yes.

28 497 Q. And what did Ms. Argue ask you to do in relation to the
29 matter?

1 A. She asked me to print a copy of it for the file.

2 498 Q. Okay. So if you had been given that instruction --

3 A. Mm-hmm.

4 499 Q. -- you'd have printed a copy, is that correct?

5 A. Yes, that's correct. 13:33

6 500 Q. Would you have put it on the file?

7 A. No. I think the reason Eileen at the time was asking

8 us to print things was because she didn't have any ink

9 in her printer.

10 501 Q. Okay. 13:33

11 A. And the reason I remember is that at the time everybody

12 had their own individual printers and we were having

13 problems getting ink for them.

14 502 Q. Okay.

15 A. So we were printing out quite a lot of different things 13:33

16 for different people.

17 503 Q. Okay. So you were in a separate office to Ms. Argue?

18 A. Yes.

19 504 Q. So you would print as instructed?

20 A. Mm-hmm. 13:33

21 505 Q. Would you then put it in internal post or physically

22 give it to Ms. Argue?

23 A. I would either have given it to her if I had seen her

24 or I would have put it in her own tray. Every one of

25 the social workers has a tray in our office where we 13:34

26 leave post and information for them if they are not

27 around.

28 506 Q. Okay. And then if we could turn to page 445 of the

29 materials, you will see this. Ms. Argue sent an email

1 to Linda Dewhirst, who was in the Monaghan office, as I
2 understand it, is that correct?

3 A. She is, yes.

4 507 Q. And that was on the 7th June 2014, is that correct?

5 A. That's correct. 13:34

6 508 Q. And that was at 2:24. And she says:

7

8 *"Dear Linda, this is an amended Garda notification."*

9

10 which is attached to the email, is that correct? 13:34

11 A. That's correct.

12 509 Q. Then there is: *"Pamela, please print a copy for the*
13 *file"*.

14 A. Yes.

15 510 Q. So what steps do you think you took on foot of that 13:34
16 instruction?

17 A. I would have printed the email and the attachment.

18 511 Q. Okay. And again given it?

19 A. Yes.

20 512 Q. And do you think that was because of the ink shortage 13:35
21 at the time?

22 A. I think it was, because Eileen would have printed that
23 herself otherwise.

24 513 Q. Okay. Now, just generally, there seemed to have been a
25 lot of activity in relation to that particular file 13:35
26 from 30th April 2014 up until into June, and obviously
27 there was the notification from Ms. Brophy, which phone
28 call you took. Do you remember that file being
29 unusually busy around that period of time?

1 A. I can't say, no. I just -- I do remember the phone
2 call with Laura Brophy and passing the information on,
3 but other than that, no.

4 514 Q. I think you also had a role at one stage in relation to
5 Garda liaison meetings, is that correct? 13:36

6 A. No, no, I have never --

7 515 Q. Child protection?

8 A. The case conferences, child protection case
9 conferences. Not liaison meetings.

10 516 Q. And what used you do in child protection conferences? 13:36

11 A. I took the minutes of the meetings.

12 517 Q. And I think in one of those meetings the investigators
13 pointed out to you that Sergeant McCabe was present at
14 the meeting, is that correct?

15 A. Yes. 13:36

16 518 Q. Do you have any memory of that particular meeting?

17 A. No.

18 519 Q. Okay.

19 A. No. At the time I could have been doing three meetings
20 a week and there could have been a different -- well, 13:36
21 there's a different group of professionals at each
22 meeting.

23 520 Q. The details of the minutes of the meeting, they're
24 draft minutes, at page 2863 of the materials.

25 A. Yeah. 13:36

26 521 Q. It should be on the screen in front of you. It will
27 appear that that meeting took place on the 16th April
28 2008. The chairperson was Gerry Lowry, and Maurice
29 McCabe from Bailieboro Garda Station appears to have

1 been present?

2 A. Yes.

3 522 Q. And you have no reason to think that was incorrect in
4 any way?

5 A. No, no, because I would have made a record of all the 13:37
6 people that were in attendance.

7 523 Q. Did you have any memory of meeting Sergeant McCabe at
8 any such meetings?

9 A. No, I don't.

10 524 Q. Or at any time since then in Cavan? 13:37

11 A. No, I haven't.

12 525 Q. Okay. So in relation to the file that had been opened
13 in your office in relation to Sergeant McCabe, did you
14 put that together with the person who had been at child
15 protection conferences years earlier? 13:37

16 A. Sorry?

17 526 Q. Sorry, did you associate the file in your office which
18 was opened in relation to Sergeant McCabe, with the
19 person who had been in child protection conferences?

20 A. No. The fact that he had attended a case conference at 13:37
21 that time, you know, I would have had no memory of that
22 whatsoever.

23 527 Q. Was his name familiar to you because he, at that stage,
24 had a reasonably high media profile?

25 A. Vaguely. It wouldn't really have been a -- at the 13:38
26 time, it was just -- it was the content of the
27 information that was more concerning, rather than
28 anything else, when I spoke to Ms. Brophy on the phone.

29 528 Q. Okay. Is it fair to say that that's your stand-out

1 memory of that file?

2 A. Yes. Yeah.

3 529 Q. Okay. Did you discuss the matter with anybody --

4 A. No.

5 530 Q. -- outside of your office in Cavan? 13:38

6 A. No. Everything that we do in our office is

7 confidential. Nobody discusses anything with anyone

8 outside of the office.

9 531 Q. I suppose, more particularly, did you discuss it with

10 any members of An Garda Síochána? 13:38

11 A. No, definitely not.

12 532 Q. Okay. Now, there is an unsigned case review form at

13 page 2319 of the materials. I don't know if it's in

14 front of you. Is that your writing on that?

15 A. No, that's not my handwriting. 13:39

16 533 Q. I think it may be Ms. Duignan's writing, it appears to

17 be. Do you recognise it?

18 A. I recognise the handwriting, and it's not Ms. Duignan's

19 handwriting, no. It belongs to a social worker who has

20 left the department, she's living abroad now, who I 13:39

21 think at the time was working in the duty office.

22 534 Q. What is her name?

23 A. Louise Burns.

24 535 Q. Louise Burns. And she was working in the duty office?

25 A. She was at the time, yeah. 13:39

26 **MS. LEADER:** If you would answer any questions anybody

27 else might have for you, Ms. Armitage.

28

29 **END OF DIRECT EXAMINATION BY MS. LEADER**

1 MS. ARMITAGE WAS CROSS-EXAMINED BY MR. MCGARRY:

2

3 536 Q. **MR. MCGARRY:** Ms. Armitage, Paul McGarry is my name. I
4 am one of the counsel for Maurice McCabe. I have a
5 couple of questions for you. If I can ask you to bring 13:40
6 up again the two emails that are -- they're in a number
7 of places, but I have them on 1076. I think they're in
8 volume 2 as well. These are the emails on the 14th
9 May, the one that you sent to Eileen Argue at the
10 bottom of the page and then the one that she sent on to 13:40
11 Gerry Lowry at the top. 1076 is what I have.

12 A. Yeah.

13 537 Q. Do you see that at the bottom of the page? Had you
14 been discussing the Ms. D file with Eileen Argue around
15 this time or before this? 13:40

16 A. No.

17 538 Q. Okay. If you just look at what you say in it, it says:

18

19 *"Laura Brophy, Rian, called to say she has made an*
20 *error in her report to us re"* -- and then the redacted 13:40
21 portion is identified as relating to Ms. D. Obviously
22 I don't want you to talk about what is behind the
23 redaction. But it is clear, I think, from that that
24 what is behind the redaction is simply an initial or
25 two initials; it's not a name because of the size of 13:41
26 it, isn't that reasonable to assume?

27 A. Yes.

28 539 Q. Similarly, in the email that she sends on to Gerry
29 Lowry at the top of the page, it's also shortened, so

1 it's not the same as some of the other redactions which
2 contain the name. So --

3 A. We wouldn't normally list full children's names in
4 emails.

5 540 Q. Sure. 13:41

6 A. We put initials in.

7 541 Q. I understand that. It's just that we're aware from the
8 evidence of the other Tusla social workers and
9 Mr. Lowry that there were an awful lot of files in
10 Cavan-Monaghan at this stage, hundreds of files? 13:41

11 A. Mm-hmm.

12 542 Q. And how would Ms. Argue know that you were talking
13 about the Ms. D file if you are simply reporting to her
14 that there's an error made "to us re" and just
15 initials? 13:42

16 A. I can't say for sure. I would imagine after, when she
17 asked me to print that out, she probably would have
18 come to ask me about it.

19 543 Q. You see you said earlier that you were fairly sure that
20 she had the file on her desk at the time, how did you 13:42
21 know that?

22 A. Because she's the team leader, and it would have been
23 listed as unallocated on our system.

24 544 Q. And so the team leader would have all of the
25 unallocated files? 13:42

26 A. No. But they would have responsibility for them, if
27 they are not allocated to a social worker. But they
28 would be the team leader for that team.

29 545 Q. You see, I'm suggesting to you it is just curious that

1 Ms. Argue would be able to tell immediately upon
2 receipt of your email that that relates to Ms. D --

3 A. Mm-hmm.

4 546 Q. -- given the sheer volume of unallocated files at the
5 time. Do you see where I am coming from? 13:43

6 A. I can see where you are coming from, but I don't know,
7 I can't explain any more than that.

8 547 Q. And she then forwards on to Mr. Lowry very shortly
9 afterwards detail in relation to the file, again noting
10 only Ms. D by reference to an or two initials, clearly? 13:43

11 A. Mm-hmm.

12 548 Q. Doesn't that suggest that both Ms. Argue and Mr. Lowry
13 were very familiar with the Ms. D file at this
14 particular point in time?

15 A. Possibly they were. 13:43

16 549 Q. I mean, there's a familiarity with the references in
17 the initialised version of Ms. D --

18 A. Mm-hmm.

19 550 Q. -- which suggests that, isn't that right?

20 A. Yeah. 13:43

21 551 Q. I think you said earlier, did Ms. Argue also have an
22 office in your building?

23 A. She did, yes. In our building.

24 552 Q. On the two emails, her office is identified as being in
25 Rooskey, Monaghan, whereas you are in Cavan? 13:44

26 A. I think at the time she was based between Cavan and
27 Monaghan.

28 553 Q. You said earlier -- you said in your statement that
29 there was a file opened in relation to Maurice McCabe.

1 Am I correct in thinking that there were also files
2 opened in relation to his children?
3 A. I have no knowledge of any files being opened on his
4 children.
5 **CHAIRMAN:** That happened sometime in 2014? 13:44
6 **MR. MCGARRY:** Yes.
7 **CHAIRMAN:** Yes.
8 A. There's no files registered on my system relating to
9 his children.
10 **MR. MCGARRY:** Thank you. 13:44
11 **MR. MCDERMOTT:** Sir, it might be useful to clarify one
12 thing for the witness.
13 **CHAIRMAN:** Yes.
14 **MR. MCDERMOTT:** I think they weren't files on the
15 children, they were intake records on the McCabe file. 13:44
16 I don't know if that will help the witness.
17 **CHAIRMAN:** Yeah.
18 **MR. MCDERMOTT:** But I don't think they were files as
19 such.
20 **CHAIRMAN:** So they were part of the Maurice McCabe file 13:44
21 as such, but intake records in relation to the children
22 as part of the file, yes. Is that fair?
23 A. Yeah.
24 **CHAIRMAN:** Yeah. Thank you. Thank you.
25 **MR. DIGNAM:** No questions. 13:45
26
27 **MS. ARMITAGE WAS RE-EXAMINED BY MS. LEADER:**
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29 554 Q. **MS. LEADER:** In relation to the redaction, just for the

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MR. MARRINAN: As in an hour-and-a-half, maybe two hours.

CHAIRMAN: Is that the last person?

MR. MARRINAN: Yes.

CHAIRMAN: All right. We will try and make whatever progress we can, thanks.

13:46

1 MS. ANNE MASTERSON, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MR. MARRINAN:

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- 558 Q. MR. MARRINAN: Thank you very much for coming. I think, Ms. Masterson, that you are section officer office manager for the National Counselling Service with responsibility for the administration and operational functions of the National Counselling Service, is that right? 13:47
- A. That's correct. 13:47
- 559 Q. And that included freedom of information, data protection and another administrative functions for the department, is that so?
- A. That's correct.
- 560 Q. I think in 2014 you were based at 34 Brews Hill, Navan, County Meath, is that right? 13:47
- A. That's correct.
- 561 Q. Now, I think on the 14th May 2014 you received a phone call from Fiona Ward, who is the director of counselling, regarding the procedures to be followed with the consumer affairs department, following what she described as an error on a child protection report on a Rian client file, is that right? 13:48
- A. That's correct.
- 562 Q. And what did you do then? 13:48
- A. I contacted the consumer affairs office in Cavan and advised them of the -- that there had been an error on a report and asked them what was the procedure to be followed regarding the error, and they advised me that

1 an incident report should be completed regarding the
2 error.

3 563 Q. I think you then contacted Laura Brophy by telephone
4 and advised her to compile an incident work record,
5 isn't that right? 13:49

6 A. That's correct.

7 564 Q. Now, I think that you were copied on a number of emails
8 during the course of a period of time between 14th May
9 and 18th June 2014, between Fiona Ward and Rosalie
10 Lynch-Smyth [sic] -- 13:49

11 A. Yes, that's correct.

12 565 Q. -- amongst others. But you actually had no function in
13 relation to making any decisions, isn't that right?

14 A. That's correct.

15 566 Q. So I'm not going to open those to you, but your name 13:49
16 appears on the emails, but we needn't go through them.
17 If I could then skip to the 18th June 2014. If page
18 883 could be brought up on the screen, please. I think
19 this was a letter that was sent by Fiona Ward, as
20 director of counselling, to Chief Superintendent 13:49
21 Sheridan. It's dated 18th June 2014. I think you
22 signed and posted that letter on behalf of Fiona Ward,
23 isn't that right?

24 A. That's correct.

25 567 Q. I think you didn't have any other dealings with the 13:50
26 file, isn't that so?

27 A. That's correct.

28 568 Q. Now, I have to ask you this question: You didn't bring
29 any knowledge that you had gleaned from the emails that

1 sent to you -- that were sent to you outside the
2 service, you didn't bring it to anybody outside the
3 service, did you?

4 A. No, I did not.

5 569 Q. And I suppose at the time you had no particular 13:50
6 interest in the file or any of the emails that were
7 copied to you?

8 A. No.

9 MR. MARRINAN: Thank you. Would you answer any
10 questions, please. 13:50

11

12 **END OF DIRECT EXAMINATION BY MR. MARRINAN**

13

14 CHAIRMAN: There's no questions, is there?

15 MR. MCGARRY: No questions, Chairman. 13:50

16 MR. MARRINAN: Thank you very much.

17 CHAIRMAN: Thank you Ms. Masterson.

18

19 **THE WITNESS THEN WITHDREW.**

20

21 MR. MCGUINNESS: The next witness, sir, is Ms. Briege 13:51
22 Tinnelly.

23 CHAIRMAN: Is she a long witness, Mr. McGuinness?

24 MR. MCGUINNESS: I'm sorry, Judge?

25 CHAIRMAN: Is she going to be a long witness, 13:51
26 Mr. McGuinness?

27 MR. MCGUINNESS: I don't anticipate.

28 CHAIRMAN: All right.

29 MR. MCGUINNESS: If you want to take a break, Chairman?

1 **CHAIRMAN:** well, I do, but let's get through as much as
2 we can here.

3
4 **MS. BRIEGE TINNELLY, HAVING BEEN SWORN, WAS DIRECTLY**
5 **EXAMINED BY MR. MCGUINNESS:**

13:51

6
7 570 Q. **MR. MCGUINNESS:** I think, Ms. Tinnelly, you qualified
8 as a social worker in the year 2009?

9 A. Yes.

10 571 Q. And I think you commenced working in Cavan as a social
11 worker in June of 2010?

13:51

12 A. I did, yes.

13 572 Q. Is that correct? And what were your duties there at
14 that point in time?

15 A. When I first started working in Cavan I began working
16 on the duty intake team, and I continued working on
17 that team until approximately the end of 2011, start of
18 the 2012. Then I moved to the long-term team with
19 children in care and I have remained just working
20 solely with children in care from then on until
21 present.

13:52

13:52

22 573 Q. Okay. But at the period in 2013 and 2014, were you
23 working on the child protection side, including duty
24 intake?

25 A. I worked on the duty rota.

13:52

26 574 Q. Yes.

27 A. So that was in addition to my role in the children in
28 care team.

29 575 Q. Okay.

1 A. So that was -- I would have completed a week of duty
2 perhaps every six to eight weeks.

3 576 Q. I'm sorry, could you just repeat that answer?

4 A. So I worked on the children in care team at that point.

5 577 Q. Yes. 13:53

6 A. But I also was on the duty rota, so for the duty team,
7 everyone -- every social worker at that point was on
8 the duty rota, so depending on how many social workers
9 were on all the teams at that time, we did a week at a
10 time each, so it could have been a week every six weeks 13:53
11 or seven weeks or eight weeks, that we would just be on
12 duty.

13 578 Q. That would be effectively supporting the intake team
14 and the team leader dealing with that?

15 A. Yes. 13:53

16 579 Q. Whenever you were so assigned?

17 A. Yes.

18 580 Q. And reporting to them?

19 A. Yes.

20 581 Q. And would you be allocated any cases arising from any 13:53
21 of those intakes?

22 A. No.

23 582 Q. Right. It would appear that you were on duty in August
24 2013 when a referral came in?

25 A. Yes. 13:54

26 583 Q. But could I ask you to describe, if you can recollect
27 it, your practice at that time in relation to intake
28 referrals, if you could describe that?

29 A. In relation to taking an intake?

1 584 Q. Yes.

2 A. Yes. So when I was on duty, if a referral came in,
3 whether that would be by letter, by phone or by fax or
4 by a walk-in appointment, the information was put on an
5 intake record and then given to the team leader. 13:54

6 585 Q. All right. And did you engage in any process of
7 dialogue in relation to a referral? Now in this case
8 we know it was a telephone referral, but did you simply
9 record the information or did you engage in any way
10 with the person making the referral? 13:54

11 A. You're talking about the specific referral?

12 586 Q. Yes.

13 A. I don't have an accurate memory of taking this
14 referral. It definitely is a referral that I took.
15 It's the way I would record things, it's my signature. 13:55
16 So I don't have an accurate memory of this exact phone
17 call, but I definitely appear to have spoken to
18 Ms. Brophy and taken that information.

19 587 Q. Perhaps would you describe your practice at the time if
20 you were taking a telephone referral? 13:55

21 A. Sorry, can you ask me that again?

22 588 Q. Can you describe your practice at the time taking a
23 telephone referral?

24 A. Yes. So if I took a telephone referral --

25 589 Q. You'd be in the duty office? 13:55

26 A. I'd be in the duty office. I'd be taking notes as the
27 person is talking to me.

28 590 Q. Yes.

29 A. And then I would be putting that on the intake record.

1 591 Q. And as I understand your practice, you would type the
2 notes rather than handwrite them?

3 A. Yes, I would type them.

4 592 Q. On the duty computer, is that correct?

5 A. Yes.

13:55

6

7 **CHAIRMAN:** Mr. McGuinness, I don't know if we have an
8 exact date in April 2014 for that, do we? Probably we
9 do.

10 **MR. MCGUINNESS:** This is August 2013 we're dealing
11 with.

13:56

12 **CHAIRMAN:** Yeah, we're back there, right.

13 **MR. MCGUINNESS:** Yes.

14 **CHAIRMAN:** It's what date in August?

15 **MR. MCGUINNESS:** It's --

13:56

16 **CHAIRMAN:** Did you say? I can't remember.

17 **MR. MCGUINNESS:** It's 9th August, isn't that right?

18 **CHAIRMAN:** Yes.

19 **MR. MCDOWELL:** The weekend of the 9th.

20 **MR. MCGUINNESS:** Yes.

13:56

21 **CHAIRMAN:** So it's Friday 9th August.

22 **MR. MCGUINNESS:** Yes.

23 **CHAIRMAN:** And then the allocation meeting is Monday
24 12th.

25 **MR. MCGUINNESS:** Yes.

13:56

26 **CHAIRMAN:** Yeah.

27 593 Q. **MR. MCGUINNESS:** And could I ask you to look at that
28 record. It's page 1305, one of the references for it.
29 Do you see that in front of you?

1 A. Yes, I do.

2 594 Q. And I just want to be clear what portions you filled
3 in --

4 A. Yeah.

5 595 Q. -- at the top of 1305. 13:56

6 A. So I filled in the date, 9th August 2013. I filled in
7 the -- although it says "*Details of the child*", we
8 didn't have any forms for adults, so we would
9 differentiate by saying it's adult. So I have written
10 "*Adult Maurice McCabe. Address unknown*". I didn't 13:57
11 know that from the information from Laura Brophy.
12 Again, these forms don't really relate as well to
13 adults, so we wouldn't write in parents of the adults,
14 so they're blank. I didn't write in the household
15 composition of the adult. The reporter is Laura 13:57
16 Brophy, Rian. I have given her contact details.
17 Again, the part about "*Are the parents aware?*" It's
18 not relevant to adults. Then I wrote down the details
19 of what Laura Brophy had reported to me.

20 596 Q. Yes. Were you doing that as she was speaking on the 13:57
21 phone?

22 A. I would be recording as she's telling me, yes.

23 597 Q. Live, as it were?

24 A. Yes.

25 598 Q. I mean, you didn't take handwritten notes beforehand 13:57
26 and then type them up; you're doing this at the
27 computer while on the phone, is that correct?

28 A. I may have written it down, handwritten, and then typed
29 it on the computer. I can't recall.

1 599 Q. Okay. I mean, was that your practice or -- I had
2 understood your statement to indicate that you would do
3 it, as it were, as it was coming in. Am I wrong about
4 that?
5 A. Well, I would be making a note as it's coming in. 13:58
6 600 Q. Yes.
7 A. Whether I handwrote it and then typed it up immediately
8 afterwards, I can't recall.
9 601 Q. Okay. Obviously you're being referred to -- or the
10 referral is in relation to somebody whose name you 13:58
11 know, but we're calling her Ms. D, obviously?
12 A. Yes.
13 602 Q. Were you in a position to check whether there was, in
14 fact, a file in relation to Ms. D?
15 A. Again, I can't recall taking this particular phone 13:58
16 call.
17 603 Q. Yes.
18 A. But normal practice would be that I would phone in to
19 admin and ask do we have a file on this person.
20 604 Q. Okay. 13:59
21 A. And then they could tell me yes or no. So if they told
22 me no, well then that would be a simple no.
23 605 Q. Yes.
24 A. And if they told me yes, well then usually we would get
25 a file, attach it to the referral or look up the file, 13:59
26 see what information was on it.
27 606 Q. Yes. But when you say you would enquire whether there
28 was a file relating to this person, is that the person
29 in respect of whom you have recorded the referral

1 relates to?

2 A. Yes.

3 607 Q. That is Mr. McCabe?

4 A. Yes.

5 608 Q. Okay. And have you any recollection of checking on 13:59
6 that day or at that time you took the call?

7 A. No.

8 609 Q. Okay. would it be your practice, though, to, in fact,
9 check so that you could put a reference on if you knew
10 that there was a file? 13:59

11 A. It would be my practice to check, yes.

12 610 Q. In any event, at the bottom of that page you did
13 include the details of the report. Could you just read
14 that out, what you have included there?

15 A. Read all the details of the report? 14:00

16 611 Q. Yes. *"Laura advised that she has a client at present
17 called Ms. D who is now 21. She self-referred to the
18 service. Ms. D told Laura that she was abused when she
19 was six or seven by Garda Maurice McCabe, who was her
20 father's garda partner at the time (Ms. D's father is a 14:00
21 garda). Maurice McCabe was stationed in Bailieboro at
22 the time and has two daughters who were three and five
23 at the time. Ms. D had blocked out the abuse and it
24 came back to her when she was approximately 11 when she
25 had sex education at school and it was reported to the 14:00
26 Gardaí and there was no prosecution from the DPP. The
27 details of the abuse is, Ms. D was playing hide and
28 seek in Maurice McCabe's house when Maurice put her on
29 the couch, tickled her and touched her inappropriately*

1 *whilst gyrating on top of her with clothes on. Ms. D's*
2 *phone number is --" and then that is blanked out. And*
3 then:

4
5 " -- *Laura agreed to send in the standard notification* 14:01
6 *form."*

7 **CHAIRMAN:** So, in other words, that is the Ms. D
8 allegation as it was actually made.

9 **MR. MCGUINNESS:** Yes.

10 612 Q. And, Ms. Tinnelly, the reference there to it having 14:01
11 been reported to the Gardaí, can you recollect would
12 you have checked or would it have been your normal
13 practice to check whether there was a file created in
14 relation to Ms. D also, as opposed to simply
15 Mr. McCabe? 14:01

16 A. Again, I can't recall this on this date.

17 613 Q. Yes.

18 A. But, generally speaking, at the time that this
19 happened, there would have been an adult file, so if
20 I'd checked to see was there a file on Maurice McCabe 14:01
21 and it came up on the system as no, I would have
22 understood, well, we don't know about the matter.

23 614 Q. Yes. I'm asking the question really in relation to not
24 Sergeant McCabe or Mr. McCabe, as you have recorded
25 him, but in relation to Ms. D, would you have checked 14:01
26 as to whether there was a file open on Ms. D, and, if
27 you had found one, would you put the record or case
28 number on the file?

29 A. Em...

1 615 Q. At the time or soon after you created it?
2 A. Again, I suppose I'm just speculating. I think I may
3 have just checked did we have a file on the adult.
4 616 Q. Okay.
5 A. Because at the time, as well, I took this Ms. D herself 14:02
6 was an adult, so I may have assumed that it wouldn't
7 have had a file.
8 617 Q. All right.
9 A. Because we wouldn't have opened a file on an adult
10 alleged victim. 14:02
11 **CHAIRMAN:** But in any event, the file number is a
12 modern file number. It's the second file of -- I'm
13 going to get this wrong, it's the second file of August
14 2013. So it's 02082013.
15 **MR. MCGUINNESS:** That was created the following week. 14:02
16 We will come to that, perhaps.
17 618 Q. But could I ask you to look at page 1307, which is the
18 third page of the form. There's a section B there,
19 number 12 "*Known to Social Work Department*", and
20 obviously the printed template says: "*Based on* 14:03
21 *information known at that time is the child/family*
22 *known to Social Work Department?*"
23 And there are two boxes "*Yes*" and "*No*", and did you
24 tick that "*No*"?
25 A. I assume I did. 14:03
26 619 Q. Okay. And would you normally only tick that as a
27 result of having checked that?
28 A. Yes.
29 620 Q. It's not something you asked Ms. Brophy and presumably

1 Ms. Brophy wouldn't know that?

2 A. No.

3 621 Q. The handwriting in the next -- in the box underneath
4 that, that is not your handwriting, that is
5 Ms. McGlone's? 14:03

6 A. Yes.

7 622 Q. Did you have a discussion with her about that or were
8 you present when she wrote that on the form?

9 A. I don't recall speaking to Ms. McGlone about it.
10 Generally speaking, if I did an intake record, I 14:03
11 suppose maybe one of two things I may have done: one
12 thing is, I may have done the intake record and left it
13 in the tray --

14 623 Q. Yes.

15 A. -- for Ms. McGlone's attention, or I may have said to 14:04
16 her, there's another intake record in, just letting you
17 know it's there.

18 624 Q. Yes.

19 A. So I may have either told her it was there or just left
20 it in the tray for her. 14:04

21 625 Q. Yes. Certainly there's another box down in part 16
22 which is presumably capable of being ticked by you on
23 the template. It's, on the third box down, "*Notify to*
24 *An Garda Síochána*". It looks as if it has been ticked
25 by hand. 14:04

26 A. I assume that's Keara that has ticked it --

27 626 Q. Yes.

28 A. -- because it is usually a team leader decision.

29 627 Q. Yes. Again, there is an entry there: "*Duty to Garda*

1 *notify and await allocation MTP*". Now, did you discuss
2 that with Ms. McGlone at any stage?

3 A. I don't recall, but I wouldn't necessarily have
4 discussed that with her.

5 628 Q. Yes, okay. 14:05

6 A. Like, at those times we could have been taking in
7 approximately 20 intake records a week.

8 629 Q. Yes.

9 A. It wouldn't always be the case that you would discuss
10 every intake record with the team leader. 14:05

11 630 Q. I understand that. But do you understand that entry to
12 mean that it's the function of the duty social worker
13 to do that?

14 A. Yes.

15 631 Q. Rather than recognising just that it's a general legal 14:05
16 duty. It's something for somebody in the office to do?

17 A. It's a task of the duty worker to do that, yes.

18 632 Q. The duty worker to do that. And in your experience,
19 would that normally or should that normally be done
20 pretty soon after the intake record is approved by the 14:05
21 team leader?

22 A. Em, I suppose it depends on what is in on any given
23 day.

24 633 Q. Yes.

25 A. Sometimes a team leader might leave priority tasks. 14:05

26 634 Q. Yes.

27 A. At the start of your duty week, they might say, well,
28 this is priority for this week.

29 635 Q. Yes.

1 A. Otherwise files are in the cabinet to work at when the
2 time arises, that you are able to get to those.

3 636 Q. Yes. But I suppose I'm just gasping towards the
4 question: was this an instruction given to you? I
5 mean, did Ms. McGlone give you this form back and say, 14:06
6 would you do this notification then?

7 A. I don't assume so. I know for the purpose of the
8 Tribunal I was looking at when this came in, and it
9 came in on a Friday --

10 637 Q. Yes. 14:06

11 A. -- so generally it would have gone to the referrals
12 meeting the next week, which is usually on a Monday.

13 638 Q. Yes.

14 A. And then kind of admin tasks would happen and the file
15 mightn't come back into the duty room for a few days 14:06
16 afterwards.

17 639 Q. Yes.

18 A. So it definitely wouldn't happen that quickly.

19 640 Q. Yes. Where is the referrals meeting held?

20 A. In our office. 14:06

21 641 Q. Yes. But obviously it's not in the duty office?

22 A. No.

23 642 Q. No. That is a much smaller office?

24 A. It's much smaller.

25 643 Q. But it would seem that you must have printed out this 14:06
26 intake form having completed it on your template, is
27 that correct?

28 A. Correct.

29 644 Q. And I take it you have no memory of either handing it

1 to Ms. McGlone or otherwise, but your practice would be
2 to leave it in the referrals tray, there was one
3 such --

4 A. Yes.

5 645 Q. -- in the duty office? 14:07

6 A. Yes.

7 646 Q. Okay. It is both signed, if one turns on to the next
8 page, 1308, it's signed by you there as a sign-off?

9 A. Yeah.

10 647 Q. And then by the team leader giving her approval? 14:07

11 A. Yes.

12 648 Q. It would appear that she was there on the day?

13 A. Mm-hmm.

14 649 Q. You've no particular memory of submitting it to her in
15 person? 14:07

16 A. No.

17 650 Q. Okay. Now, do you know whether you would have been or
18 might have been at the referrals meeting the following
19 Monday?

20 A. I don't know whether I was or not. I may have been, 14:07
21 but I don't know.

22 651 Q. Okay. But can I just ask you about the practice of
23 such meetings? What would the team leader do with this
24 duty intake approved by her at that time, at the
25 referrals meeting? How would it be introduced or what 14:08
26 would happen?

27 A. So we had a big book. It was either blue or green.

28 652 Q. The big blue book?

29 A. Yeah. And all referrals were recorded in that book by

1 hand. So, on the Monday, all the referrals would be
2 taken to the referrals meeting, and generally it was
3 more of an admin task of just writing everything into
4 the book because the business process had come in,
5 usually the decisions to be made were written in within 14:08
6 24 hours. So at this point I think that on the Monday
7 we would just be writing into the book the agreed
8 tasks.

9 653 Q. And I think when you were being interviewed by the
10 investigators, you referred them to the book and you 14:08
11 told them that you would make a copy available of the
12 entry, and you did that; I think it was done perhaps on
13 your behalf?

14 A. I think I have seen that in the disclosures.

15 654 Q. And could I ask you to look at page 2470, which is in 14:09
16 volume 9. It's heavily redacted in relation to third
17 parties, but there's an entry across there.

18 A. Mm-hmm.

19 655 Q. And I'm not sure, are you able to read that out for the
20 transcript? 14:09

21 A. It's kind of hard to read. There's a date that is hard
22 to read.

23 656 Q. Yes.

24 A. Then it says "*Maurice McCabe*".

25 657 Q. Is it dated 12th August? 14:09

26 A. It's hard --

27 658 Q. Okay.

28 **CHAIRMAN:** I would be prepared to accept from prior
29 evidence that it is.

1 **MR. MCGUINNESS:** Yeah.

2 **CHAIRMAN:** Yeah.

3 659 Q. **MR. MCGUINNESS:** It's in handwriting anyway. Is that
4 your handwriting or not?

5 A. No, that is not my handwriting. 14:09

6 660 Q. Was there practice at the referrals meeting for a
7 particular person to enter it into the register, as it
8 were?

9 A. Just we took turns. There wasn't any specific rota of
10 who would write in, we would just take turns. 14:10

11 661 Q. Okay. Obviously we know from the referrals form, the
12 intake form that you completed, that Laura Brophy was
13 going to send in a notification. Is that then
14 something that you would be on the lookout for or
15 expected to get and associate with the file? 14:10

16 A. I suppose I wouldn't specifically be looking out for it
17 because we take our own weeks on duty and we
18 concentrate on the week that we are on.

19 662 Q. Yes.

20 A. Then after that we are back to our own regular duties. 14:10

21 663 Q. Yes.

22 A. I wouldn't necessarily see that, because I mightn't
23 have been on duty again for another six or seven weeks.

24 664 Q. That's what I was going to ask you. Did your duty as
25 an intake on the rota, did that run from Monday to 14:10
26 Friday, so would you have finished on the 19th August?

27 A. Usually speaking, yes, yes.

28 665 Q. Well, could I ask you to look at the referral form, a
29 copy of it that came in at 964. This is the original

1 version from Ms. Brophy which came in. We know there
2 is a light blue date-stamp dated 12th August at the
3 bottom of the page.

4 A. Sorry, this is what Laura Brophy sent in following my
5 conversation with her? 14:11

6 666 Q. Yes.

7 A. Okay.

8 667 Q. Do you recollect seeing that?

9 A. No.

10 668 Q. Okay. Have you ever seen that before, to your 14:11
11 knowledge?

12 A. I may have seen it in all the disclosure information
13 that we got.

14 669 Q. Yes.

15 A. But not before that, I don't think. 14:11

16 670 Q. Okay. In any event, just to be clear, obviously if you
17 cease to be duty intake for that period, it doesn't
18 remain part of your duty to check whether that comes
19 in, where it goes and whether it's placed on a file?

20 A. No. 14:11

21 671 Q. Okay.

22 **CHAIRMAN:** And the precise date of that,
23 Mr. McGuinness, I know we've had it before, just in
24 case there's any change.

25 **MR. MCGUINNESS:** Yes. 14:12

26 **CHAIRMAN:** The date on it.

27 **MR. MCGUINNESS:** And just finally --

28 **CHAIRMAN:** Sorry, Mr. McGuinness, I'm just wondering
29 what was the date?

1 **MR. MCGUINNESS:** I'm sorry, Judge.

2 **CHAIRMAN:** We had it before, I know, but is there any
3 difference in the date given?

4 **MR. MCGUINNESS:** No, no.

5 **CHAIRMAN:** This is the incorrect one? 14:12

6 **MR. MCGUINNESS:** This is the incorrect one, exactly.

7 **CHAIRMAN:** And Ms. Tinnelly had no knowledge of it.

8 **MR. MCGUINNESS:** She has confirmed she never saw it.

9 **CHAIRMAN:** And the date on it is?

10 **MR. MCGUINNESS:** Didn't deal with it. 14:12

11 **CHAIRMAN:** 15th.

12 **MR. MCGUINNESS:** It's the 9th.

13 **CHAIRMAN:** No, it's not. It's the 15th, isn't it?

14 **MR. MCGUINNESS:** Of the actual -- this form that
15 Ms. Brophy sent? 14:12

16 **CHAIRMAN:** The incorrect.

17 **MR. MCGUINNESS:** The incorrect form.

18 **CHAIRMAN:** With the Ms. Y allegation in it.

19 **MR. MCGUINNESS:** Yes.

20 **CHAIRMAN:** That's the 15th, is it? 14:12

21 **MR. MCGUINNESS:** And it arrived on the 12th.

22 **CHAIRMAN:** The same day as the Monday meeting?

23 **MR. MCGUINNESS:** Monday meeting, yes.

24 **CHAIRMAN:** Yes.

25 672 Q. **MR. MCGUINNESS:** I think it shows the date on it there, 14:12
26 does it?

27 A. I think it was at the top.

28 **MR. MCGUINNESS:** Thank you. Perhaps you would answer
29 any questions if there are any.

1 **END OF DIRECT EXAMINATION BY MR. MCGUINNESS**

2
3 **MS. TINNELLY WAS CROSS-EXAMINED BY MR. MCDOWELL:**

4
5 673 Q. **MR. MCDOWELL:** Ms. Tinnelly, Michael McDowell is my 14:13
6 name. I'm a barrister for Sergeant McCabe. Could I
7 ask you in relation to the referrals meeting on Monday
8 12th, have you any recollection of that meeting?

9 A. No, no.

10 674 Q. Do you assume you were there? 14:13

11 A. I don't -- I don't know either way whether I was there
12 or not. I don't know. I may have been there, but I
13 wasn't at every single meeting.

14 675 Q. I see. And is it the case, it's been suggested that 14:13
15 each file is discussed by the attendee -- the people
16 who attend such meetings, is that right?

17 A. Sorry, I'm finding it hard to hear you.

18 676 Q. Each file is discussed briefly by the people attending
19 the meeting?

20 A. Each file wouldn't necessarily be discussed, but it 14:14
21 would be read out, as in, in the book, we would record
22 the name of the -- let's say the child, the address,
23 the reporter and what the action was to be.

24 677 Q. Yes.

25 A. So, you know, it could be very brief. 14:14

26 678 Q. I'm not suggesting there's a debate on the content of
27 every file; I'm just saying that everybody there at the
28 meeting would know that Maurice McCabe was the name on
29 the file and that it was going to be written into a

1 book, is that right?

2 A. If you were there, you would have heard, yes.

3 679 Q. Yes. You had, on the previous Friday, completed the
4 intake form, isn't that right?

5 A. Yes. 14:14

6 680 Q. When you were dealing with Laura Brophy, did you
7 understand that she was making a telephone referral to
8 you or that she was making inquiries about what the
9 consequence of a telephone referral would be?

10 A. I don't remember. All I can say is what I have written 14:15
11 down on the form would be an accurate --

12 681 Q. You've no recollection of the phone call?

13 A. I have no recollection of the phone call aside from
14 what I have written down and signed off.

15 682 Q. Well, I take it that in preparation for giving evidence 14:15
16 here, you saw her side of the equation, that she had
17 made notes of a conversation with you, isn't that
18 right?

19 A. Yes.

20 683 Q. And she didn't note in that, in her note of the 14:15
21 conversation with you, that she was making a formal
22 referral to you?

23 A. Sorry, say that again.

24 684 Q. She didn't -- she didn't in her note of the
25 conversation she had with you on the 9th August 2013, 14:15
26 she made no note of the fact that she was -- that she
27 believed that she was making a telephone referral to
28 you. You saw that?

29 A. I did see some of her notes. I don't know exactly

1 A. I'm aware of that now, yes.

2 692 Q. Yes. And I am just asking, when was it first discussed
3 in your office that Ms. Brophy's written follow-up
4 report contained this appalling error?

5 A. I don't know when it was first discussed. 14:18

6 693 Q. Well, I am just -- can you do your best now to help me?

7 A. Are you asking --

8 694 Q. Was it ever discussed in your office that this had
9 happened?

10 A. Well, from looking at the disclosures, it had to have 14:18
11 been discussed because --

12 695 Q. No, I'm asking, was it ever discussed in your presence
13 that a catastrophic error had been made --

14 A. Well, the first --

15 696 Q. -- in respect of a file that you had taken? 14:18

16 A. Yeah.

17 697 Q. A telephone referral on?

18 A. Yeah.

19 698 Q. And that was a -- the follow-up written report
20 contained a catastrophic error. Was there ever a 14:18
21 verbal discussion between you and any of your
22 colleagues or any of your superiors about that having
23 happened?

24 A. Well, the first of my knowledge was I think around when
25 the 'Prime Time' information was out, that's when I 14:18
26 became aware of it. So I wouldn't have been aware of
27 any conversations before that, because I wasn't aware
28 of the mistake, so --

29 699 Q. That's in 2017, the 'Prime Time' programme, is that

1 right?

2 A. Yes. That's when I first became aware of it. So I
3 assume if I only became aware of it then, I wouldn't
4 have heard conversations around it before then.

5 **CHAIRMAN:** That's February 2017. 14:19

6 **MR. MCDOWELL:** I think so, Judge.

7 700 Q. And are you saying, therefore, that for the years 2014,
8 2015 and 2016 nobody in your office ever adverted in
9 any way conversationally with you to the fact that the
10 Maurice McCabe file had contained this monstrous 14:19
11 mistake?

12 A. Not to me.

13 701 Q. Do you think that it was being kept secret from you?

14 A. No.

15 702 Q. Mmm? 14:20

16 A. You see, I was on a different team at that point. I
17 was on the children in care team. So maybe there was
18 discussions within the Child Protection Team, but I was
19 on a different team, from early 2012 I had a different
20 team leader. Our building is segregated into two 14:20
21 sides, I'm on a different side of the building to where
22 the child protection side is, so maybe there were
23 conversations, but I wasn't part of them.

24 703 Q. I see. And are we to take it then that when in May
25 2014 this catastrophic error was identified as having 14:20
26 occurred, that nobody asked you to confirm your
27 dealings with Laura Brophy at the time?

28 A. I don't recollect any conversation around this, no.

29 704 Q. You see, I'm putting to you that it is strange, if

1 people are looking at how this error occurred and
2 they're wondering whether Ms. Brophy's cut-and-paste
3 version is correct, that they would come back to you
4 and say, well, you dealt with Ms. Brophy that weekend,
5 and are you saying that nobody, none of your superiors 14:21
6 ever mentioned this to you?

7 A. To the best of my knowledge, no.

8 705 Q. So does it follow from that, that as far as you're
9 aware, not merely were you not engaged in a
10 conversation, but even now, looking back, you're 14:21
11 unaware of anybody ever conducting any inquiry into
12 what had happened in the office?

13 A. Sorry, that I am unaware --

14 706 Q. You say you were unaware at the time that there was any
15 problem? 14:21

16 A. Yes.

17 707 Q. But now are you aware of any inquiry having taken place
18 at the time?

19 A. No.

20 708 Q. At all? 14:21

21 A. No.

22 709 Q. I see. You heard Mr. Lowry say that he believes that
23 Louise Carolan told him that there had been a
24 re-referral in respect of Maurice McCabe before April
25 2014 on the basis that it was and would have been known 14:22
26 to be a significant event. Have you heard that?

27 A. I heard Mr. Lowry say that he was told by Ms. Carolan
28 that information, yes.

29 710 Q. Did you regard it as a significant event at the time?

1 A. I didn't know about it at the time.

2 711 Q. I see. It meant nothing to you, is that what you are
3 saying?

4 A. Well, I didn't know about it.

5 712 Q. Well, sorry, let's go back over this. Mr. Lowry has 14:22
6 told this Tribunal that he believes that Ms. Carolan,
7 it was probably Ms. Carolan who mentioned to him that
8 the Maurice McCabe matter had been re-referred and he
9 believes that because it would have been her custom to
10 mention significant events to him, right? 14:23

11 A. Mm-hmm.

12 713 Q. Did you regard it as a significant event when you took
13 the referral?

14 A. Did I think that me taking the phone call was a
15 significant event? 14:23

16 714 Q. Yes.

17 A. No more significant than any referral that I take.

18 715 Q. When did you first become aware of Sergeant McCabe
19 being a person of public significance?

20 A. I'm not really sure, to be honest. I know definitely 14:23
21 from the 'Prime Time' in February 20 --

22 716 Q. That was this year?

23 A. Yes. Definitely from then I was aware.

24 717 Q. I mean, going back, let me help you. For instance, did
25 you know that Minister Shatter resigned? 14:24

26 A. I knew that a minister resigned, yes.

27 718 Q. And did you know that a senior counsel, Séan Guerin,
28 had conducted an inquiry which led to his resignation?

29 A. I don't think I would have known that, no.

1 719 Q. Did you know --
2 A. I would have known, generally speaking, about him
3 resigning. I may have known the term 'whistleblower',
4 but I don't think I would have known anything in
5 greater detail than that. 14:24
6 720 Q. Did you ever hear about Sergeant McCabe being a
7 whistleblower in respect of penalty points?
8 A. I think I knew that there was the term whistleblowing
9 and penalty points. I don't know whether I would have
10 put Maurice McCabe's name to that. 14:24
11 721 Q. I see.
12 A. His name wouldn't have been distinct to me.
13 722 Q. I see. When did his name become of significance to
14 you?
15 A. This year, early this year. 14:25
16 723 Q. This year, the 'Prime Time' programme, is that right?
17 A. Yes.
18 724 Q. And at that point, when the 'Prime Time' programme was
19 broadcast, did you speak to your colleagues about this
20 matter? 14:25
21 A. At the time the 'Prime Time' programme came out, I
22 really wasn't in the office a lot, I was involved in a
23 long-running court case, so I actually wasn't in the
24 office to speak to my colleagues about it.
25 725 Q. Can you elaborate on that? 14:25
26 A. I wasn't in the office really. I was in court nearly
27 every day for a couple of months.
28 726 Q. And is it your sworn testimony here that when these
29 events were described in the 'Prime Time' programme,

1 that your colleagues and yourself, even out of office
2 hours, wouldn't have discussed all of these events?
3 A. I think there may have been reference to, 'did you
4 watch it?' or -- but I can't say in any more great
5 detail what more was discussed other than 'did you see 14:26
6 the 'Prime Time' programme?'
7 727 Q. But did you realise that your own office was centrally
8 involved in this 'Prime Time' controversy?
9 A. I did.
10 728 Q. And did you not ask any of your colleagues what 14:26
11 happened?
12 A. Well, as I said at the time, I actually wasn't in the
13 office, so I didn't -- I wasn't even able to do that.
14 729 Q. Well, did you wonder yourself, given that you knew it
15 was your office that was centrally involved? 14:26
16 A. Em, I --
17 730 Q. Did you wonder yourself had you any walk-on part in
18 this controversy?
19 A. I was definitely interested because it was relating to
20 our office. 14:26
21 731 Q. Yes.
22 A. But a lot --
23 732 Q. Did you ask anybody about it, at work?
24 A. Well, a lot of the information was on 'Prime Time', so
25 I actually had a lot of information from that. But 14:26
26 aside from that, I don't know that I did ask anyone in
27 the office, because, as I said, I actually wasn't
28 really in the office for a couple of months at that
29 time.

1 733 Q. Ms. Tinnelly, this was a major national controversy.
2 A. Yes.

3 734 Q. You knew it referred to your office?
4 A. Yes.

5 735 Q. Are you saying that you never discussed this major 14:27
6 national controversy, which you knew referred to your
7 office, with any of the people with whom you were
8 working?
9 A. Well, as I said, there was probably some discussions
10 of, 'did you see it?' But aside from that -- 14:27

11 736 Q. Yes, 'do you think we were to blame?' Do any questions
12 like that occur to you to ask or discuss. 'whose fault
13 was this? Who messed up? Was it me? Was it somebody
14 else?' Did any of you ever discuss those things?

15 A. Em, I don't know what level it was discussed, and I'm 14:27
16 trying to remember as clear as I can. At the time that
17 'Prime Time' came out, I wasn't in the office at the
18 all -- well, I might have been in for like half an hour
19 a day when I was trying to do my other casework and
20 then I was in court a lot. So it probably was maybe up 14:28
21 to --

22 737 Q. This was a bit of an explosive event for the office?
23 A. It absolutely was. But at the time, professionally, I
24 was extremely busy, so perhaps if I was in the office I
25 might have been involved in more discussions, but I 14:28
26 wasn't.

27 738 Q. Do you recall -- what page are we dealing with here?
28 At page 963, did you look at the note made by Laura
29 Brophy of her telephone conversation with you preparing

1 for this Tribunal?

2 A. Sorry, which bit am I looking at here?

3 739 Q. 963.

4 A. Child protection.

5 740 Q. The bottom excerpt. 14:29

6 A. *"I phoned social work today and spoke with duty social*

7 *worker, Briege Tinnelly."*

8 741 Q. Sorry, first of all, did you read this before today?

9 A. Em, I don't know whether I read the specific thing. I

10 got a lot of information, I tried to read as much of it 14:29

11 as I could but --

12 742 Q. Let's forget about reading it for a moment.

13 A. Yeah.

14 743 Q. Have you prepared for this Tribunal? Have you been to

15 meetings to discuss the kind of evidence you're going 14:29

16 to give?

17 A. I was, I had one meeting with the legal team, that was

18 about three weeks ago, and there was another meeting

19 that I was unable to attend.

20 744 Q. I see. And were you told by anybody that your name 14:30

21 appeared on a note of a telephone conversation on the

22 9th August 2013.

23 A. I wasn't told about this contact sheet, no.

24 745 Q. Sorry?

25 A. I wasn't told about this contact sheet. 14:30

26 746 Q. Nobody pointed that out to you to assist you in

27 preparing for this, for this Tribunal, that you had

28 been named in that, in that note?

29 A. No.

1 a re-referral?

2 A. Sorry, say that again.

3 752 Q. You are now aware that it was something that had
4 already been with you ten years previously?

5 A. Yes. 14:32

6 753 Q. And did you check out -- check up on this? She said
7 you already knew about it.

8 A. Well, as part of --

9 754 Q. Sorry, your office already knew about it?

10 A. As part of the disclosures, I'm now aware that we had a 14:32
11 file on it.

12 755 Q. Put it this way: would it not have been an unusual
13 feature of the case when it was discussed at the
14 referrals meeting on the following Monday that this,
15 according to Ms. Brophy, was already a matter that had 14:32
16 been referred to you some ten years previously?

17 A. Unusual in what way?

18 756 Q. Unusual in that these things don't come back in again
19 after ten years?

20 A. We often get information in at later stages or from 14:33
21 different people, from different sources. So it
22 wouldn't necessarily be unusual.

23 757 Q. And could you have told Ms. Brophy that this was a
24 matter in which it was likely that a report would be
25 made to An Garda Síochána? 14:33

26 A. I don't know. I don't think I would have went into
27 those specifics, but again I can't say for definite
28 because I don't remember taking this phone call.

29 758 Q. Then tell me this, Ms. Tinnelly: if a decision was

1 made to refer it to An Garda Síochána, presumably that
2 would have been -- that decision would have been made
3 on the basis that they were unaware of it previously,
4 isn't that right?

5 A. I assume so. 14:34

6 759 Q. So on Monday 12th August it must have been, at some
7 stage during that day, clear to Ms. McGlone that it had
8 been referred previously to An Garda Síochána?

9 A. It appears to have been known to her.

10 760 Q. Can you think of any reason why she wouldn't have noted 14:34
11 that on the intake document?

12 A. I don't know.

13 761 Q. I suggest to you it would have been a sensible thing to
14 do, given that there was a manuscript direction to
15 Garda -- to Garda report the matter, and that that 14:35
16 appears to have been -- that manuscript appears to have
17 been made on the 9th or 12th August?

18 A. Sorry, what is your question?

19 762 Q. I am suggesting to you that it would have been a
20 sensible thing to do, once Ms. McGlone understood that 14:35
21 the guards already knew about this matter, to go back
22 to the intake file and to record the fact that this had
23 been previously noted and notified to An Garda
24 Síochána?

25 A. Perhaps it may have been. I know, again just from the 14:35
26 disclosures, that she had written to the Gardaí to try
27 and find --

28 **CHAIRMAN:** But, Mr. McDowell, isn't it all over the
29 place that DPP directed no prosecution?

1 **MR. MCDOWELL:** Yes.

2 **CHAIRMAN:** And I suppose the only people normally
3 communicating, apart from the late Judge Frank Martin,
4 with the DPP would be the Garda Síochána.

5 **MR. MCDOWELL:** Yes. 14:36

6 763 Q. I am just mystified as to how it would be the case,
7 bearing in mind what was known at the meeting on the
8 12th August, or by the end of that day, why the file
9 was not altered to reflect the fact that it was now
10 clear that the guards knew about this already? 14:36

11 A. I don't know. I can't answer that.

12 764 Q. I see. And are we to take it then that, until the
13 'Prime Time' programme, you remained in total ignorance
14 of what had happened in respect of this file?

15 A. Yes. 14:37

16 765 Q. And that until the 'Prime Time' programme was
17 broadcast, you say you weren't aware of the
18 significance of Maurice McCabe, is that right?

19 A. I didn't relate any significance of Maurice McCabe to a
20 file we had. Again, I don't know if I did know his 14:37
21 name, I can't be sure whether I did or not know his
22 name from the media, but definitely didn't relate it to
23 any file that we had.

24 766 Q. And it's quite clear that some of the people who later
25 dealt with the file thought that the allegation related 14:37
26 to digital penetration, and others were aware that that
27 was a mistake?

28 A. Yes.

29 767 Q. And is the Tribunal to take it from your testimony that

1 this was never discussed or alluded to at any time from
2 May 2014 to February 2017 in your service?

3 A. Well, not with me. I can't speak for conversations
4 that happened when I wasn't there. But not with me.

5 **MR. MCDOWELL:** Thank you. 14:38

6 **CHAIRMAN:** There's no other questions, is there?

7 **MR. MCDERMOTT:** Chairman, I just wanted to clarify one
8 thing.

9 **CHAIRMAN:** Yes, please.

10 **MR. MCDERMOTT:** Given the slightly accusatory tone of 14:38
11 the cross-examination, my understanding is there is no
12 suggestion Ms. Tinnelly did anything wrong. She took a
13 phone call, filled in a form and never had anything
14 else to do with the case. And just in terms of her
15 reputation, it's perhaps important to record that. She 14:38
16 seems to have had a very limited role, which she did,
17 and she filled in the form and that was it. I just
18 wanted to clarify that for her sake lest there --

19 **CHAIRMAN:** That seems to be it. I don't think there's
20 any question being raised that Ms. Tinnelly's 14:39
21 application to it is anything other than exemplary. I
22 mean, she didn't make any mistake or didn't make a mess
23 of correcting anybody else's mistake. I think it's
24 fair to say that. Now, what chat there was and why
25 that's important is an open question, but the witness's 14:39
26 answers on that are absolutely clear. Thank you,

27 Mr. McDermott.

28 **MR. MCGUINNESS:** Thank you.
29

1 THE WITNESS THEN WITHDREW

2
3 **CHAIRMAN:** All right. I'm going to take break. I know
4 breaks are disastrous for the throughput of work, but
5 I'm going to take a break for half an hour because I 14:39
6 need to consult with my own legal team in relation to
7 two matters, and then we will go on to 3:45 and then we
8 will stop, right? Okay. Thanks.

9
10 THE HEARING TOOK A SHORT ADJOURNMENT AND RESUMED 15:13

11 AS FOLLOWS:

12
13 RULING OF THE CHAIRMAN:

14
15 **CHAIRMAN:** Mr. McGuinness, just before we go on to the 15:17
16 next witness, I just want to mention the application
17 that we had this morning in relation to Ms. D. So I
18 just want to briefly reference that.

19
20 As is well known under Section 2 of the Tribunals of 15:17
21 Inquiry (Evidence) Act 1921 as amended in 2002, the
22 requirement on the Tribunal is that:

23
24 *"It shall not refuse to allow the public, or any*
25 *portion of the public, to be present at any of the* 15:17
26 *proceedings of the Tribunal unless, in the opinion of*
27 *the Tribunal, that it is in the public interest*
28 *expedient to do so for reasons connected with the*
29 *subject matter of the inquiry or the nature of the*

1 *evidence to be given and, in particular, where there is*
2 *a risk of prejudice to criminal proceedings."*

3
4 Now, in relation to Ms. D, there is no risk in relation
5 to criminal proceedings or them being prejudiced, but 15:18
6 there is an issue as to the subject matter of the
7 inquiry or the nature of the evidence to be given.
8 There have been a number of cases in relation to the
9 clarification of the duty of courts to hear evidence in
10 public under Article 38 of the Constitution, of which 15:18
11 it seems to me the M.A.R.A. decision and the decision
12 in Sunday Newspapers v. Gilchrist stand out. And
13 basically what those cases establish is that the courts
14 have to be mindful of the fact that it can be difficult
15 for people to give evidence and if we are in a 15:18
16 situation where that difficulty may stand in the way of
17 justice being done, in other words that a person may
18 find it very difficult or impossible to come to court
19 unless there is a restriction, then the courts may
20 impose a restriction. But in doing so, it seems to me 15:19
21 whether it is a tribunal or court, and the same
22 principles apply, the courts have to be mindful and the
23 Tribunal has to be mindful of actually precisely
24 titrating an order in such a way as to enable the role
25 of the press as representatives of the common good in 15:19
26 terms of being the watchdog of how the courts or a
27 tribunal might behave to actually be present and to
28 report, if necessary, within the bounds of reason and
29 accuracy as to anything the Tribunal might do which

1 might be wrong or which might be worthy of public
2 attention.

3
4 I am mindful of the fact that in some cases it is
5 possible to restrict evidence by reason of the nature 15:20
6 of what is given and the 2007 Criminal Justice
7 Miscellaneous Provisions apply there. I am mindful
8 also of how particular kinds of cases are dealt with in
9 some aspects of criminal proceedings, and I am mindful
10 also that Ms. D and her family have been in contact, as 15:20
11 has been mentioned in Tribunal, with social work and
12 social services over a period of time, including from
13 2005, and that therefore it is going to be very
14 difficult for her to give evidence, and I am sure that
15 everyone will treat her and her family with great 15:21
16 respect and offer appropriate consideration, but that,
17 in the circumstances, is not enough. I feel that a
18 large room such as this, filled as it is with members
19 of the legal profession, with representatives of the
20 press and media and also with members of the public, is 15:21
21 a very intimidating room to face, apart from the
22 difficulty in itself of giving evidence, which of
23 course all the witnesses to date have had to face, and
24 I therefore feel there has to be something done in
25 terms of making the circumstances easier in terms of 15:21
26 Ms. D and her family, given the background that I have
27 mentioned. Now, can I just first of all say that apart
28 from what I have said in relation to the press and
29 their very important role as representatives of the

1 public in ensuring that the courts or the Tribunal is
2 or are held to account, that, in addition, members of
3 the public who come here and listen are, to put it
4 mildly, welcome, and I do welcome every single one of
5 them in fulfilling what is an important constitutional 15:22
6 duty in attending on court proceedings, because,
7 without that, we would be in a situation where legal
8 proceedings might be held in private which is an
9 obnoxious aspect of certain regimes which do not follow
10 a Christian and democratic substratum to their 15:22
11 constitutional provisions.

12
13 Having mentioned that, therefore, it seems to me that
14 the right thing to do in relation to Ms. D would be the
15 following: 15:22

16
17 Firstly, I do exclude the public.

18
19 Secondly, I will ask Mr. Philip Barnes, who is the
20 Manager of the Tribunal, to make arrangements in 15:23
21 relation to coming and going of Ms. D and her family,
22 just to make it easier. I know that he would extend
23 that courtesy not just to Ms. D but to anyone else who
24 needs his assistance and that has been so thus far in
25 the Tribunal. I thank him for it. 15:23

26
27 I am also making an order that the identities of Ms. D
28 and her immediate family should remain anonymised, that
29 no identifying details which are not already mentioned,

1 such as being in the southwest, being in Cavan, that
2 nothing more specific than that will be reported.

3
4 In relation to the photographers, with whom at this
5 stage I am practically on friendly terms because I meet 15:23
6 them every single morning and they seem to me to be
7 great people and the people taking video footage, I'm
8 sorry, but, on Monday, it seems the weather forecast is
9 good and I'm ordering them to take the day off. They
10 can go somewhere else. I don't mean any disrespect to 15:24
11 them in that regard. But that seems to me to be the
12 only safe of doing things.

13
14 As will be appreciated, a person in the position of
15 Chairman of the Tribunal will have a document against 15:24
16 which everything is measured, and that is of course the
17 Terms of Reference. I'm not entitled to go outside it,
18 I'm not entitled to discuss matters of present public
19 moment or matters which have not been put down in black
20 and white by the Oireachtas as matters that I am 15:24
21 required to inquire into. And therefore, it seems to
22 me that when we come to Ms. D, we are not focused on
23 2005, 2006, 2007. I am not asked to make a decision in
24 relation to the allegation that originally was made, or
25 indeed what happened in 1998, if that be the right 15:25
26 date, because that is not within the terms of
27 reference, and the parties should be aware that any
28 questioning should not be extraneous to the Terms of
29 Reference. It may be that there will be some mention

1 of that, but it should be borne in mind, please, at all
2 times, as was agreed by all the parties to this
3 Tribunal in a private sitting of the Tribunal with a
4 view to getting this worked out, that I am not tasked
5 with that. Now, given that that is the case and given 15:25
6 also, finally, that the Tribunal has distributed
7 documents to parties, not for general public
8 consumption but for use in the Tribunal by way of a
9 number of memory sticks, the parties will have noted,
10 no doubt, that there are many blank or blacked out 15:26
11 areas on that, where, for instance, a name is replaced
12 by Ms. D or Ms. Y, as the case may be, or that
13 counselling notes which are irrelevant to anything we
14 are doing here have been blacked out, it is clear that
15 the Tribunal is, as a matter of principle, entitled to 15:26
16 do that in order to preserve the dignity of the
17 counselling client relationship, in order to ensure an
18 appropriate respect for privacy as guaranteed under our
19 constitution and in order to ensure as well that we
20 concentrate on what we are about, which is the Terms of 15:26
21 Reference, which have been explained by the Tribunal
22 and are on the Courts website. So therefore, although
23 it is highly exceptional given that we have made
24 redactions already, it seems to me that the Tribunal
25 retains the power (a) to edit the transcript before it 15:27
26 is released onto the web to ensure that we keep within
27 the parameters of what I have said; and secondly, that
28 if there is an extraordinary circumstance whereby
29 matters are mentioned which are not simply irrelevant,

1 because a lot of stuff has been mentioned which may be
2 irrelevant, it happens in every court proceedings, but
3 which operate as an infringement of her privacy and are
4 not necessary to the work of the Tribunal or are
5 outside the Terms of Reference, that it may be 15:27
6 necessary for the Tribunal to say that cannot be
7 reported, and I will do that if that happens, but I
8 don't expect it will happen. So those, it seems to me,
9 are the terms, and Mr. Barnes will make the appropriate
10 arrangements and I'm sure everyone will respect them. 15:27

11
12 There is only one other matter that was mentioned by
13 people, who is a *bona fide* representative of the press.
14 Look, I'm going to leave that to Mr. Barnes, and in the
15 event that there is any issue, of course I'm going to 15:28
16 allow that person in in private session and we will
17 hear what they have to say if there is any query in
18 relation to it. I am sure most press people do carry
19 cards, but if they wouldn't mind, if they are not
20 already known, doing that on Monday. 15:28

21 So I think that is it.

22 **MR. MCGUINNESS:** Thank you, Chairman. I think just to
23 confirm matters from an administrative point of view, I
24 think it is intended by the Tribunal that it should sit
25 at 12pm on the Monday. 15:28

26 **CHAIRMAN:** Yes, because of other duties, that is the
27 case.

28 **MR. MCGUINNESS:** Very good.

29 **CHAIRMAN:** Yeah.

1 **MR. MCGUINNESS:** The next witness then is Ms. Clair
2 Tobin.

3

4 **MS. CLAIR TOBIN, HAVING BEEN SWORN, WAS DIRECTLY**

5 **EXAMINED BY MR. MCGUINNESS:**

15:28

6

7 768 Q. **MR. MCGUINNESS:** Ms. Tobin, I think you're a qualified
8 social worker employed by the Child and Family Agency?

9 A. I am, yes.

10 769 Q. I think you qualified with BSS honours degree in social 15:29
11 studies and a national qualification in social work in
12 TCD in 2008?

13 A. Yes.

14 770 Q. I think you have been employed in Tusla since March 15:29
15 2010, and have you been a regional social worker on the
16 Sexual Abuse Regional Team since June 2016?

17 A. That's correct, yes.

18 771 Q. And that is the position you currently hold?

19 A. That's correct, yes.

20 772 Q. Could you just assist us in this regard: Were you 15:29
21 recruited to that team or how did your appointment to
22 the team come about?

23 A. My team leader, Lisa O'Loughlen, was my previous team
24 leader on the Long-Term Child Protection Team which I
25 was a member of, and during my maternity leave she 15:30
26 advised that the Sexual Abuse Regional Team would be
27 set up and asked if I would be interested in being a
28 member of that team. As, while we worked together on
29 the Long-Term Child Protection Team, my role on that

1 team I would have dealt with a lot of retrospective
2 cases in terms of adults of concern or sexual abuse
3 cases.

4 773 Q. Okay. So she was your team leader at that time in
5 relation to those duties, this new unit was being 15:30
6 established and she knew you had the experience, is
7 that it?

8 A. That's correct, yes.

9 774 Q. And can I ask you when you then first learned of the
10 establishment of the team, just to be clear about that? 15:30

11 A. It was by April I think.

12 775 Q. Okay. We've seen different dates in different
13 documents, but you learnt about it in April, was it
14 established in April?

15 A. Around April/May, I know there was talk about it. I 15:31
16 can't be sure. I was on maternity at the time. I know
17 there was discussions around the need for a team
18 within -- the service director, Linda Creamer had
19 identified that a lot of the cases in terms of
20 retrospective allegations were sitting on waiting lists 15:31
21 in local duty social work departments and needed a
22 response. I can't be sure as to what --

23 776 Q. Can I ask you this: When did you return to June?

24 A. June. The end of June 2016.

25 777 Q. Was it up and running at that point in time? 15:31

26 A. Yeah, yeah. Yes. It was.

27 778 Q. And is there a regional team for each region of the
28 country?

29 A. No. No. There would be, I suppose, a specialist

1 inquiry team in Cork, there would be different social
2 workers in different areas assigned to retrospective,
3 but it's not a national kind of direction.

4 779 Q. And had you a particular responsibility for the
5 Cavan-Monaghan area? 15:32

6 A. The regional team is a Dublin northeast, so it would be
7 Cavan, Monaghan, Louth, Meath and everything north in
8 Dublin, north of the Liffey in Dublin.

9 780 Q. Okay. So it wasn't established, as it were, specially
10 to deal with any delays in Cavan-Monaghan? 15:32

11 A. Not particular to Cavan-Monaghan.

12 781 Q. No.

13 A. Particular to the region.

14 782 Q. Okay. Now, can you help us in this regard: When were
15 you allocated to the case of Ms. D? 15:32

16 A. With regard to retrospective work it would have been
17 the case of Maurice McCabe.

18 783 Q. Maurice McCabe.

19 A. So it would have been in August, I believe.

20 784 Q. Okay. You've referred to it as the case of
21 Ms. D/McCabe in your statement? 15:32

22 A. Yes.

23 785 Q. Is that the way you regarded it at that time?

24 A. When we started the regional team it was quite apparent
25 that different areas were managing the retrospective 15:32
26 cases quite differently. Some areas would have a file
27 on the complainant, some areas would have just a file
28 on the adult of concern, other areas would have a file
29 on both, so it was appropriate, I suppose, to refer to

1 795 Q. You see, I'm not clear as to what you were then given.
2 I mean, did somebody in fact produce a file to you on
3 some date?

4 A. Yeah. I remember correctly, it was I think the 28th
5 June, because I had just returned to work on the 27th 15:34
6 June. We -- when I say "we", myself and my team
7 leader, Lisa O'Loughlen went to the Cavan Social work
8 Department and met with Michael Cunningham who was the
9 then duty social work team leader, and he had a number
10 of files that he wished for us to view to see if they 15:34
11 were acceptable in terms of meeting the criteria for
12 allocation to SART. And it was on that occasion that
13 he would have given us a very brief synopsis of the
14 files that he had, and in that number of files was the
15 Ms. D and Maurice McCabe file. 15:35

16 796 Q. Again, I'm trying to be very precise myself, are you
17 talking about the 2013 file?

18 A. Yes, that's correct.

19 797 Q. And we haven't seen any documentation from
20 Mr. Cunningham in relation to that. Did he provide you 15:35
21 with a summary of it?

22 A. It was more, he the files set in a duty room for us to
23 go through. There was no formal hand over, because we
24 hadn't agreed that we would take all the cases, because
25 we had to screen them to see if they would be 15:35
26 appropriate in terms of what our role would be. We
27 were specific in terms of, I suppose, that would we
28 would be working only with historical allegations,
29 retrospective work, not with current concerns that

1 relate to children, if that makes sense.

2 798 Q. And is it the case that you have no recollection of
3 whether he mentioned the CSA file in relation to Ms. D?
4 A. I don't recall.

5 799 Q. Would you agree with me that that must have been a 15:36
6 relevant file for you to have?
7 A. Yes, I agree. Yeah.

8 800 Q. And it became evident to you, I think, from the actual
9 Ms. D file that the file had been closed, isn't that
10 correct? 15:36
11 A. The 2005?
12 801 Q. Yes.
13 A. Yes.

14 802 Q. And did you speak to Rhona Murphy or Mary Tiernan --
15 A. No. 15:36
16 803 Q. -- or Mary O'Reilly --
17 A. No.

18 804 Q. -- to determine the circumstances in which that came
19 about?
20 A. No. 15:36
21 805 Q. Can I ask you this: Can you recollect what date you
22 commenced your review on?
23 A. When you talk about review, can you just clarify what
24 you mean?

25 806 Q. Well, you say you were allocated to the case of 15:37
26 Ms. D/Maurice McCabe in August 2016, "*upon allegation*
27 *to the case I reviewed the file*"?
28 A. Yes.

29 807 Q. So was that -- can you help?

1 A. Yeah.

2 808 Q. I'm trying to find out when in August that was?

3 A. Review is, like, social work speak. So when I get a
4 file my practice would be to read the file, to look at
5 what information is on that file and what would be 15:37
6 relevant in terms of my work going forward. I suppose
7 it's an undocumented review. So it's to take note of
8 what information is on file.

9 809 Q. Okay.

10 A. I suppose the formal review would have happened later 15:37
11 on --

12 810 Q. Okay.

13 A. -- or documented review for better words.

14 811 Q. Well, did you see that Ms. McLoughlin had conducted a
15 review of the file herself on the 26th February 15:38
16 following receipt of Mr. Costello's letter?

17 A. That wasn't on the file.

18 812 Q. That wasn't on the file?

19 A. No.

20 813 Q. Did you ever see that? 15:38

21 A. No. I recall seeing a review around May 2015, when a
22 decision was made to make contact with Mr. McCabe in
23 relation to the allegations that had been made.

24 814 Q. Okay. Perhaps could I ask you just to look at that
25 document Ms. McLoughlin reviewed, 2439 is the number of 15:38
26 the document. It appears in a number of places.

27 A. That's an email, yes.

28 815 Q. Yes. And at the bottom there, it's being sent to
29 Mr. Lowry, but it sets out what she had earlier sent

1 him. Did you ever see that before?

2 A. No.

3 816 Q. Okay. Did you ever see a five-step plan, as it were,
4 set out by Mr. Lowry?

5 A. I recall something in relation to a five-step plan with 15:39
6 regard to Ms. McLoughlin being told what she needed to
7 be to address --

8 817 Q. Yes.

9 A. Yeah.

10 818 Q. Okay. Now can I ask you to turn to page 511? This is 15:39
11 headed "*serious incident other than HIQA and risk*
12 *escalation*", is that a document that you prepared?

13 A. No.

14 819 Q. Is that a document that was given to you for the
15 purpose of your review? 15:39

16 A. No.

17 820 Q. Did you assess the accuracy of it in any respect?

18 A. No.

19 821 Q. Have you seen it before?

20 A. For the purpose of this Tribunal I have seen it, yes. 15:40

21 822 Q. Okay. So this is apparently prepared by Ms. O'Loughlin,
22 is that correct?

23 A. That's correct, yes.

24 823 Q. It's dated 2nd August 2016?

25 A. Yes. 15:40

26 824 Q. And it's some four pages?

27 A. Yeah.

28 825 Q. Was this not perhaps relevant to your review, whether
29 the review you were about to conduct with the files and

1 her.

2 829 Q. Okay. Is this addressed to Linda Creamer, the regional
3 director?

4 A. That's correct, yes.

5 830 Q. Okay. I see on page 514 it said "*sent to all the* 15:42
6 *following email addresses mikecorcoran@Tusla.i.e.*",
7 Mike Corcoran was he Linda Creamer's line manager, or
8 do you know?

9 A. I don't know.

10 831 Q. Okay. 15:42

11 A. I believe he's in national office but I couldn't tell
12 you what his role is.

13 832 Q. Okay. Did you check -- you never saw this at any stage
14 for the purpose of your review?

15 A. No. No. 15:42

16 833 Q. Okay. And have you reviewed it for its accuracy since?

17 A. I've looked at it for the purpose of this Tribunal,
18 yeah.

19 834 Q. Yeah. And would you agree with me it's inaccurate?

20 A. Yes. 15:42

21 835 Q. Yeah?

22 A. Yes.

23 836 Q. And what --

24 A. There's an inaccurate date on it.

25 837 Q. Pardon? 15:42

26 A. An inaccurate date.

27 838 Q. An inaccurate date?

28 A. Yeah.

29 839 Q. And is that all?

1 A. If you can just scroll up so I can see the document.

2 840 Q. Yes, I'm sorry, go back to page 511. Do you see any
3 inaccuracies on that page?

4 A. I suppose I have noticed that Ms. O'Loughlen has
5 referred to Sergeant Maurice McCabe as "*Detective* 15:43
6 *Sergeant Maurice McCabe*" and that's, of course, an
7 inaccuracy.

8 841 Q. Okay. And the next paragraph?

9 A. The "*DS*" obviously referring to --

10 842 Q. Yes? 15:43

11 A. -- detective sergeant.

12 843 Q. Obviously there is a mistake about the date in the
13 first instance?

14 A. Yes, yes, yes, yes.

15 844 Q. 2014 -- 15:43

16 A. Yeah.

17 845 Q. -- that should be 2013?

18 A. That's correct, yes.

19 846 Q. And did you understand that Ms. D had been referred in
20 2013 or '14 yourself? 15:43

21 A. 2013.

22 847 Q. Right. Did you get that from the original referral
23 form or the amended one?

24 A. The original referral form I believe.

25 848 Q. Okay. The statement there that "*sw department received* 15:44
26 *a copy of Ms. D's garda statement taken on the 5th*
27 *December 2006 and used this to write to DS McCabe in*
28 *December 2015,*" do you know that to be inaccurate?

29 A. I don't know what Lisa O'Loughlen means by that, because

1 I do understand part of our practice, if somebody has
2 given consent to utilise their Garda statement as part
3 of our assessment we would use that to write to a
4 person, but it would only be someone's consent.

5 849 Q. Yeah? 15:44

6 A. So I don't know what that means. You would have to ask
7 Lisa O'Loughlen about that.

8 850 Q. But from what I understand is, you yourself would make
9 an assumption that the statement of the person, which
10 has been made to the Guards will be used and is 15:44
11 normally used to base the Barr letter?

12 A. Can you just --

13 851 Q. Is that right?

14 A. Can you clarify that, please?

15 852 Q. I am asking you about your previous answer. 15:45

16 A. Yes.

17 853 Q. You seem to be implying that a Garda statement, a
18 statement that has been made to the Gardaí would be
19 used to base the letter to the alleged perpetrator?

20 A. It wouldn't form the basis of it, but it might be 15:45
21 supporting documentation for example.

22 854 Q. Yes.

23 A. Yeah.

24 855 Q. Well now, the phrase is "*used this*", so she seems to
25 have believed or assumed that it was used to write the 15:45
26 letter?

27 A. And I don't know what she has based that assumption on,
28 you'd have to clarify that with Lisa.

29 856 Q. And do you know whether that's correct or not?

1 A. whether that was the case, that it was used? No.

2 857 Q. Yeah.

3 A. Oh, I do know it wasn't used. Well, I don't know.

4 Like, I can only assume because the information that

5 was sent to Mr. McCabe was not information from the 15:45

6 Garda statement.

7 858 Q. Yes. Did you conclude that in your review? Did you

8 point out this error in your review?

9 A. The error that's on the risk escalation?

10 859 Q. Yes. 15:46

11 A. No, because I didn't see it.

12 860 Q. But did you in fact document that Ms. D's statement

13 hadn't been used and wasn't available to Ms. McLoughlin

14 when she wrote the letter of the 29th?

15 A. No. Because I wouldn't have been aware that that was 15:46

16 an assumption that had been made.

17 861 Q. No. Forget about Ms. O'Loughlen's report, I am asking

18 you, did you document in your review that

19 Ms. McLoughlin hadn't used the Garda statement --

20 A. No. 15:46

21 862 Q. -- as the basis for the letter?

22 A. No.

23 863 Q. Why is that?

24 A. I really don't understand what you are asking.

25 864 Q. Well, I am wondering what the purpose of your review 15:46

26 was. Is it to identify the errors that had taken

27 place --

28 A. No, no.

29 865 Q. -- or is it some other purpose?

1 A. I suppose the purpose of the review at the time in
2 which it was written up, we were quite conscious that
3 Mr. McCabe's solicitors had sought answers to questions
4 in relation to how the errors had come about, we had
5 requested our legal team to liaise with Mr. McCabe's 15:47
6 solicitors. It became apparent, I suppose, at some
7 point that they hadn't received a response, so it was
8 agreed that we would write a chronology of events in
9 terms of how it came about that the false information
10 had been sent to Mr. McCabe, but also what our role 15:47
11 would be in terms of SART team on the case.

12 866 Q. Yeah. But what I am not clear about it was: was it
13 intended to be a full review of any errors or handling
14 of it within the Social Work Department in Cavan?

15 A. It was more to do with the errors before it came to 15:47
16 SART, if that makes sense.

17 867 Q. Well, yes. But errors within the Cavan area, is that
18 right?

19 A. That's correct, yes.

20 868 Q. Or was it conducted on the basis that you had to find a 15:48
21 solution to what hadn't been done either in 2006 or
22 earlier than it was coming to you at?

23 A. It probably had a dual function in terms of identifying
24 what had or hadn't happened on the file, but also to
25 indicate what needed to happen. 15:48

26 869 Q. Yeah. Well, was there any document or guidance in
27 writing provided to you setting out the purposes of the
28 review?

29 A. No.

1 870 Q. Is there any record of it anywhere that you know of?
2 A. With regard to any document or guidance?
3 871 Q. Yes. The purpose of the review.
4 A. No.
5 **MR. MCGUINNESS:** I see, Chairman, it is gone to the 15:48
6 time where you said it was --
7 **CHAIRMAN:** we let's maybe carry on until four, is that
8 all right with you, Mr. McGuinness, and then we will
9 stop?
10 **MR. MCGUINNESS:** I have no difficulty if nobody else 15:49
11 objects.
12 872 Q. So, what was the first documented thing that you did?
13 A. I think what I would have done -- before I was
14 allocated to the case I know myself and Lisa O'Loughlen
15 would have done a brief audit on the files to see what 15:49
16 had and hadn't been done in terms of our policy. And
17 that was to look at -- it's a form, and I don't think
18 my name was signed on it, it has -- it is in the
19 documents that have been furnished to the Tribunal. So
20 that was the first documented thing that I would have 15:49
21 done on the file before I was allocated.
22 873 Q. When did you do that?
23 A. I can't recall exactly when, but it would have been, I
24 think, probably at the time when we were in Cavan. We
25 did spend some time going through some of the files we 15:49
26 had, and we did take some of them away, so I can't
27 particularly remember when I completed that form
28 exactly.
29 874 Q. And does that commence by referring to the two

1 referral, the dates of the two referral reports, or
2 what sort of a form is that on?

3 A. I can't recall. It is in the documentation that we
4 received recently, volume 9 and 10 in terms of the
5 files. There's a Tusla logo on it. 15:50

6 875 Q. Just to help me with the date of that; when do you say
7 you completed that?

8 A. Well, I can't recall the exact date but we would have
9 completed some of those reviews or audit templates --

10 876 Q. Well, it's not the document at 2309 because that's your 15:50
11 formal review finished in September, isn't that
12 correct?

13 A. That's correct. No, it's a handwritten document.

14 877 Q. So is it at 2312, perhaps we will look at that?

15 A. No, no. 15:51

16 878 Q. Okay.

17 A. It's a handwritten document.

18 879 Q. Okay.

19 A. It should be --

20 880 Q. 2312 seems to be a handwritten form? 15:51

21 A. No, I can see that. No. It might be following some of
22 those pages.

23 881 Q. What I am interested in is: In this discussion with
24 Lisa O'Loughlen what did you identify as the audit
25 issues? 15:51

26 A. I suppose, we queried whether, I suppose whether we had
27 any legitimacy in terms of our role in SART in terms of
28 taking the file on and doing a section 3 assessment,
29 given that the concerns had already been raised back in

1 2006. So we sought to clarify that. I suppose we
2 clearly identified the error that the wrong information
3 had been sent to Mr. McCabe.

4 882 Q. But did you identify the process by which any error or
5 multiple errors had occurred within the department 15:52
6 which led to that?

7 A. The file that we received, I know I have seen a lot of
8 documentation for the purpose of the Tribunal.

9 883 Q. Yes?

10 A. And I will give an example: I didn't see any signed 15:52
11 sent Garda notifications on the file at that time, so I
12 assumed no Garda notification had been made. There's
13 also a number of email threads missing from that file
14 that I have since seen from the Tribunal. So I suppose
15 the thing, the main error that I would have picked up 15:52
16 on would have been the fact that the file remained
17 unallocated for specific periods of time and also that
18 the wrong information had been sent to Mr. McCabe.

19 884 Q. Perhaps we'll come to the issues in sequence. At that
20 point in time did you see the initial intake referral 15:52
21 form, if can I put it that way?

22 A. The one from 2013?

23 885 Q. Yes.

24 A. I did, yes.

25 886 Q. And did you see that Ms. McGlone had instructed "duty 15:53
26 to notify", and that that didn't appear to have been
27 done at that point in time?

28 A. I did see that, yes.

29 887 Q. Now, did you consider that to be an error in any way or

1 not yourself?

2 A. In terms of whether or not to notify the Gardaí?

3 888 Q. Yes.

4 A. Our practice, and my practice from being a social
5 worker in Dublin, in terms of dealing with 15:53
6 retrospective allegations is that we wouldn't notify
7 the Gardaí on foot of a referral coming through the
8 through the door, we would wait until we meet the
9 person, we would clarify the information and have some
10 grounding to the information that has come in for our 15:53
11 attention.

12 889 Q. So did you enquire as to whether the practice was
13 different in Cavan?

14 A. I suppose the practice is different throughout the
15 region, and that is something that we did notice. 15:53
16 while it is not wrong to do that we are from a
17 retrospective point of view -- and I suppose it is one
18 of the purposes of our team, trying to get consistency
19 throughout the region that, that doesn't happen until a
20 point. And I think that has been agreed at regional 15:54
21 meetings that we have had since; that areas do not
22 notify Gardaí about a retrospective allegation until it
23 has been confirmed with the person that the contents of
24 the referral we have received are true and accurate.

25 890 Q. Okay. So do you consider it to have been an error if 15:54
26 they in fact notified the Garda Síochána in Bailieboro
27 without having done that?

28 A. Yes.

29 891 Q. Okay. And you have mentioned there in your answer to

1 my question four answers ago, that you didn't see any
2 signed Garda notification. So, you assumed that they
3 hadn't notified the Gardaí?

4 A. I did, yes.

5 892 Q. And do you know that that assumption is incorrect? 15:54

6 A. I do, yes.

7 893 Q. And were you aware that the Garda notifications folder
8 was maintained in Monaghan by Ms. Dewhirst?

9 A. I wasn't no.

10 894 Q. Did you know that that was a place to which you could 15:55
11 have resort to see was there a record of a Garda
12 notification in possession of Ms. Dewhirst under
13 Mr. Deeney's control?

14 A. I didn't, no.

15 895 Q. So, is it correct then that at this stage in August, 15:55
16 you wrongly assumed there had been no Garda
17 notification?

18 A. That's correct, yes.

19 896 Q. Okay. And when did you discovery it to be different?

20 A. I remember when the Prime Time thing came out I was 15:55
21 quite shocked, because I didn't recall seeing it on the
22 file.

23 897 Q. Yes.

24 A. So it was when the story hit the media --

25 898 Q. Yes? 15:55

26 A. -- that it became apparent to me that the notification
27 had been sent.

28 899 Q. Now, the Tribunal obviously has to hear from
29 Ms. Dewhirst but she has produced a letter of

1 instruction as to how Garda notifications are to be
2 dealt with in the Monaghan office in terms of keeping a
3 file copy and sending a copy to Cavan, etcetera. And
4 it doesn't appear to have actually been put on the file
5 or at least any version of the file that we have seen, 15:56
6 but are you confirming to the Tribunal that there was
7 no such signed copy of the amended Garda notification
8 on the file relating to Maurice McCabe?

9 A. Yes.

10 **CHAIRMAN:** Can I just stop you there, Mr. McGuinness? 15:56
11 I beg your pardon. Ms. Tobin, were you aware that the
12 matter had been referred to the DPP and the DPP had
13 made a decision?

14 A. Through different letters that were on file it was
15 apparent that there was no DPP -- but there was no 15:56
16 specific -- I suppose, I know in my review I would have
17 noted that the 2006 file that I reviewed, there was no
18 notification from the Gardaí that the DPP had
19 instructed no prosecution on the basis that no criminal
20 offence had taken place. And I know that might be a 15:57
21 little bit confusing in terms of my review, but I
22 suppose it was important for us to note that we hadn't
23 received that specific information; that the DPP had
24 instructed that no specific criminal offence had taken
25 place. 15:57

26 900 Q. **MR. MCGUINNESS:** Okay. Well, can I ask you to look at
27 document 257? This is the minutes of a management
28 meeting on the 21st April of 2007, in which it is noted
29 that the file returned from the DPP no prosecution. I

1 don't know, do you see that, in the middle of it?

2 A. Yes, I can see that.

3 901 Q. Okay. Did you see that document?

4 A. No. I don't recall seeing that document.

5 902 Q. Okay. Are you in a position to say whether that was on 15:57
6 the Ms. D file or not?

7 A. I'm not, no. It certainly wasn't on the Maurice McCabe
8 file.

9 903 Q. Okay. Well, let's go back to another document that was
10 on the Ms. D file, page 255. These appear to be -- I 15:58
11 think they are Rhona Murphy's contact notes. Did you
12 consider those?

13 A. I don't recall seeing them.

14 904 Q. I don't know if you can make out the writing there, but
15 it records on that date, which is coincidentally the 15:58
16 date of the management meeting, that "*Garda Inspector*
17 *Noel Cunningham called out to the house today and*
18 *informed Ms. D that the DPP had come back and said*
19 *there will be no prosecution.*" Do you see that?

20 A. No, I can't see it, you need to scroll down. 15:58

21 905 Q. You can't see it, I'm sorry.

22 A. Yeah.

23 906 Q. Are you in a position to read that?

24 A. Is it a typed document?

25 907 Q. No. 15:59

26 A. It's not in front of me.

27 908 Q. Page 255. Just bear with us for a moment, thank you.

28 A. Yes. It was there a second ago.

29 909 Q. I am being whispered it is perhaps 254.

1 A. No. It must be 256 because that has gone back up a
2 page, and what I can see in front of me is a typed
3 document.

4 **CHAIRMAN:** Mr. McGuinness, why don't we go to this
5 tomorrow.

15:59

6 **MR. MCGUINNESS:** Very good, Chairman. Very good.
7 Thank you.

8

9 **THE HEARING THEN ADJOURNED UNTIL FRIDAY, 14TH JULY 2017**
10 **AT 10:00AM**

16:00

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