

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

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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT  
1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE  
ON TUESDAY, 29TH MAY 2018 - DAY 81

81

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 29TH MAY  
2 2018:

3  
4 MS. LEADER: Today's witness, Sir, is former  
5 Commissioner Nóirín O'Sullivan. 10:00

6  
7 MS. NÓIRÍN O' SULLIVAN, HAVING BEEN SWORN, WAS DIRECTLY  
8 EXAMINED BY MS. LEADER:

9  
10 1 Q. MS. LEADER: Ms. O'Sullivan, you have already given 10:00  
11 evidence to the Tribunal, mostly concerned with your  
12 time as Acting Commissioner and Commissioner and this  
13 morning we will be dealing with the allegations made by  
14 Superintendent David Taylor, which is mostly to do with  
15 your time as Deputy Commissioner with the Guards. 10:00

16 A. Yes, Ms. Leader.

17 2 Q. All right. Now, I think you were appointed Assistant  
18 Commissioner HRM on 31st October 2008?

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

20 3 Q. And thereafter you had, in the normal course of your 10:01  
21 duties, a query from Sean Costello solicitors in  
22 relation to Sergeant McCabe and that had to be dealt  
23 with by you, isn't that correct?

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

25 4 Q. And I think arising out of that query, you sought a 10:01  
26 report from Chief Superintendent Terry McGinn, and that  
27 you received in November 2008?

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

29 5 Q. All right. And if we could have page 878 of the

1 materials up.

2 A. Yes, I have that here, Ms. Leader.

3 6 Q. Yes. If we could first of all perhaps, the beginning  
4 of that document is at page 871 of the materials.

5 A. Yes, I have that here. 10:02

6 7 Q. And it's a confidential memo addressed to you as  
7 Assistant Commissioner of Human Resource Management and  
8 its purpose is set out at the beginning of the report.  
9 The purpose of the report is to provide an update on  
10 the status of the investigations into the various 10:02  
11 allegations made by Sergeant Maurice McCabe and another  
12 guard in Bailieboro Garda Station?

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

14 8 Q. And that report is dated 26th November 2008. It's at  
15 the very last page of the materials. 10:03

16 A. Yes, that's correct, Chairman, yes.

17 9 Q. And you'll see then that in that report there's  
18 reference to what we refer to as the allegations made  
19 by Ms. D. And that appears at page 878 of the  
20 materials. 10:03

21 A. Yes, that's correct, Chairman.

22 10 Q. And essentially the information available to you at  
23 that time was that Sergeant McCabe alleges that Mr. D  
24 referred to an incident at a barbecue, I think, and  
25 then on 5th December 2006 an allegation of indecent 10:03  
26 assault was made against Sergeant McCabe by Ms. D of  
27 County Cavan. She's the daughter of Mr. D, who was  
28 then stationed at a named station, is that right?

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

1 11 Q. And then the detail of that is set out in the following  
2 paragraph:  
3  
4 "Ms. D alleged that when she was six years old she was  
5 indecently assaulted on one occasion by Sergeant 10:04  
6 Maurice McCabe when he was visiting her house while off  
7 duty. An investigation file on the matter was prepared  
8 by Inspector Cunningham and submitted to the Law  
9 Officers for direction, who directed on 11th April 2007  
10 that there was no basis for a prosecution. In May 2007 10:04  
11 Sergeant McCabe was informed by Inspector Cunningham  
12 that there would be no prosecution in the matter".  
13 A. That's correct, Chairman.  
14 12 Q. And just in relation to that report, can you confirm  
15 it's the first time you heard anything in relation to 10:04  
16 the D allegation?  
17 A. Yes, Chairman. And it's the first time I became aware  
18 of Sergeant McCabe and the allegations and the  
19 complaints that he had made.  
20 13 Q. All right. And in relation to the D matter, did you 10:04  
21 make any further queries, aside what was contained in  
22 that report?  
23 A. No, Chairman.  
24 14 Q. Did you seek a copy of the Garda investigation file?  
25 A. No, Chairman, I'd have no reason to. 10:05  
26 15 Q. Or the DPP's directions at that time?  
27 A. No, Chairman.  
28 16 Q. And did you discuss the matter of the D allegation with  
29 anybody at that time?



1 A. No, Chairman.

2 17 Q. All right. Now, I think sometime in 2009 you were  
3 appointed Assistant Commissioner Crime and Security?  
4 A. That's correct, Chairman, yes.

5 18 Q. And just in relation to that role, did you have any 10:05  
6 cause to have any dealings in relation to Sergeant  
7 McCabe or with Sergeant McCabe?  
8 A. No, not at all, Chairman. I was in charge of,  
9 basically, Crime and Security-related issues.

10 19 Q. Right. And then in 2011 you became Deputy Commissioner 10:05  
11 of Operations, is that right?  
12 A. That's correct, Chairman, yes.

13 20 Q. And just in the meantime, in December 2010 Martin  
14 Callinan had been made Commissioner of An Garda  
15 Síochána, is that correct? 10:06  
16 A. Yes, Chairman.

17 21 Q. Now, just in relation to your relationship with  
18 Commissioner Callinan, how would you describe it?  
19 A. We would've had -- obviously when I was appointed  
20 Deputy Commissioner, and probably even before that, as 10:06  
21 Assistant Commissioner in Crime and Security I would've  
22 been reporting to Deputy Commissioner, as he was then,  
23 Callinan. And then when Commissioner Callinan -- or  
24 when I was subsequently appointed Deputy Commissioner  
25 Operations in 2011, I would've been reporting to the 10:06  
26 then-Commissioner Callinan as his deputy.

27 22 Q. Okay. So would you have had a fairly interactive  
28 working relationship?  
29 A. Yes, because of the positions we both held, we would've

1 had an interactive relationship is a good way to  
2 describe it.

3 23 Q. And maybe daily communications or every other day  
4 communications?

5 A. Yes, I would say pretty much daily communications. 10:06

6 24 Q. All right. We then have Superintendent Taylor being  
7 appointed to the Press Office in July 2012.

8 A. That's correct, Chairman.

9 25 Q. And could you set out to the Tribunal what you knew of  
10 Superintendent Taylor at that time? 10:07

11 A. When I was Assistant Commissioner in Crime and Security  
12 from 2009, from around April 2009 until March 2011, I  
13 would've been aware that Superintendent Taylor was then  
14 a Detective Inspector attached to Liaison Protection  
15 Section. I would never have had any direct dealings 10:07  
16 with him, but I would've been aware he was a member of  
17 staff of the section.

18 26 Q. Would you have known him on a basis to see or talk to?

19 A. I would know him to see and perhaps say hello to. But  
20 I wouldn't have any direct dealings with him. 10:07

21 27 Q. Right. Okay. And in relation to his appointment to  
22 the Press Office, did you have any thoughts on that, on  
23 his suitability for the role or anything of that  
24 nature, or did you discuss the matter with Commissioner  
25 Callinan, as he then was? 10:07

26 A. In the normal course of events, the Commissioner would  
27 decide on the allocation of superintendents and he  
28 would've chosen Superintendent Taylor to allocate to  
29 the Press Office. I suppose it came as a surprise,

1 knowing that his background was in the Liaison  
2 Protection section, but it was Commissioner Callinan's  
3 decision.

4 28 Q. Okay. And when you say his appointment came as a  
5 surprise, do I take it from that that you regarded 10:08  
6 there may have been more suitable candidates for the  
7 role of Press Officer?

8 A. Well, he wouldn't have had experience in that, in that  
9 type of an environment and even in dealing with members  
10 of the public to a large extent or in dealing with, for 10:08  
11 example, you know, major crime scenes or different  
12 events like that.

13 29 Q. Okay. Because as I understand former Commissioner  
14 Callinan's evidence, he thought his background would  
15 actually make him somewhat suitable for the Press 10:08  
16 Office, being involved in liaison protection. That  
17 isn't a view you share, is it?

18 A. Well, I've read Commissioner Callinan's evidence and  
19 absolutely it's his choice as to who he appoints. I  
20 probably would've had a different criteria. 10:09

21 30 Q. All right. And your criteria for Press Officer would  
22 be what?

23 A. I think what I would be looking for, and subsequently  
24 did, was, I suppose there were a couple of points; that  
25 people that would be used to engaging with major crime 10:09  
26 scenes, that would understand the complexities of  
27 investigations that had to be dealt with and the  
28 importance of preserving the integrity of operations  
29 and investigations that would be ongoing, people that

1 would understand, I suppose, a lot of the community  
2 relations as well in terms of what the impact of  
3 certain crime types would have on communities and what  
4 the key messages that were, that needed to be given out  
5 at a particular point in time.

10:09

6 31 Q. And when it came to you appointing a Press Officer in  
7 2014 I think it was - we've heard from Superintendent  
8 Moran - how did you pick him out as Superintendent  
9 Taylor's replacement in the Press Office?

10 A. Well, at that stage, Chairman, in September 2013  
11 Mr. McAndrew, there had been a gap in having -- so the  
12 Press Office, from a Garda Inspectorate report and a  
13 review that was done, a strategic review was to be  
14 headed up by a civilian head, and it was part of the  
15 imperative around civilianisation of An Garda Síochána,  
16 which I was, I felt I was very much committed to and I  
17 was indeed very much committed to. Mr. McAndrew had  
18 joined us in, I believe, September 2013 as a civilian  
19 head of the Press Office and I felt I needed somebody  
20 who would empower Mr. McAndrew as the civilian head to  
21 allow him to implement his strategic vision and to move  
22 the Garda Press and Public Relations Office to more of  
23 a strategic communications unit.

10:10

10:10

10:10

24  
25 I was impressed with -- I was aware that Superintendent  
26 Moran, as he then was, had actually gone on secondment  
27 and was the only officer to go on secondment from An  
28 Garda Síochána to the PSNI and certainly the feedback  
29 that I got from colleagues in the PSNI was that he was

10:10

1 an excellent ambassador for An Garda Síochána. I also  
2 had seen him in action at a number of different -- he  
3 was involved in various sporting events and I saw how  
4 he behaved as an ambassador for An Garda Síochána at  
5 those different events and represented Ireland and An 10:11  
6 Garda Síochána. I also was aware of the work that he  
7 was doing as a superintendent, a District Officer in  
8 Ballymun and particularly the engagement that he had  
9 with the community, and I also had seen him in action  
10 around fronting up a number of serious crime 10:11  
11 investigations and incidents and events that had  
12 happened.

13 32 Q. Okay. So if we go back to 2012, I think in or around  
14 October 2012 the fixed charge penalty notices became an  
15 issue for An Garda Síochána, is that correct? 10:11

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

17 33 Q. And at that time you were the Deputy Commissioner of  
18 Operations. And what involvement, if any, had you with  
19 that matter that was beginning to gain some traction?

20 A. I became aware in around October 2012 that a number of 10:12  
21 matters relating to the FCPN penalty points issue had  
22 been brought to the attention of the Department and had  
23 been brought to the attention of the then-Commissioner  
24 Callinan. I had very little involvement in it  
25 thereafter. The Commissioner appointed Assistant 10:12  
26 Commissioner John O'Mahony to head up the investigation  
27 and Assistant Commissioner O'Mahony carried out that  
28 investigation.

29 34 Q. Okay. Did you have any involvement with the

1 investigation or with Assistant Commissioner O'Mahony  
2 while he was investigating the matter?

3 A. No, very little, Chairman.

4 35 Q. All right. I think in 2013, because of the retirement  
5 of Assistant Commissioner Rice, you took up his 10:12  
6 portfolio, along with your own as strategy and change  
7 management?

8 A. That's correct, Chairman. On 31st May 2013, I believe,  
9 Deputy Commissioner Rice retired, so I took on that  
10 additional portfolio. 10:13

11 36 Q. All right. And I also think you became aware of a  
12 Pulse direction sometime in 2013 issued by former  
13 Commissioner Callinan relating to Sergeant McCabe?

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

15 37 Q. And how is it you became aware of that, was it in your 10:13  
16 role as Deputy Commissioner, is that -- am I correct in  
17 saying that?

18 A. I believe, but if I could maybe just, Ms. Leader, if  
19 you have a reference to the papers? I believe that I  
20 may have become aware of it through correspondence from 10:13  
21 the Assistant Commissioner in the eastern region, which  
22 came through, was administered through my office.

23 38 Q. And that was Assistant Commissioner?

24 A. I believe it would've been Gerry Phillips at the time,  
25 yes. 10:13

26 39 Q. I don't think it's contained -- you make a reference to  
27 it in your interview with the investigators.

28 A. Yes, yes.

29 40 Q. Also, in 2013 there were preparations underway for the

1 PAC hearings in Dáil Éireann, is that correct?

2 A. I think the pre-PAC preparation briefings would've been  
3 in 2014.

4 41 Q. Well, maybe in 2013 there was an issue about the  
5 whistleblowers providing documentation? 10:14

6 A. Yes, I would say that's correct, Chairman, yes.

7 42 Q. And were you aware of that?

8 A. I would have been aware that there was a PAC meeting,  
9 we were informed of a PAC meeting for the January of  
10 '14. 10:14

11 43 Q. Okay. Were you aware of Commissioner Callinan's  
12 correspondence with Mr. McGuinness and Mr. Hawkes in  
13 relation to the provision of documentation?

14 A. Yes, Chairman, I would've been aware of that. I  
15 would've been aware that there was ongoing 10:14  
16 correspondence between the Data Protection  
17 Commissioner, Mr. Hawkes at the time, Commissioner  
18 Callinan and subsequently with the PAC.

19 44 Q. All right. And I wonder could you explain to the  
20 Tribunal were these matters discussed between yourself 10:15  
21 and Commissioner Callinan or at management meetings  
22 generally?

23 A. There would've been discussions around the concerns,  
24 what format the PAC meeting was going to take, there  
25 certainly would've been discussions - and I think this 10:15  
26 was probably more going into 2014, from my memory, but  
27 there may have been some in very late 2013 - around the  
28 Commissioner wanted to get legal advice in terms of  
29 understanding what his role was as data controller for

1 the organisation and what impact this would have on the  
2 organisation and particularly on, as I say, his role as  
3 data controller and also the impact on sensitive  
4 personal information potentially being put into the  
5 public domain.

10:15

6 45 Q. Right. I wonder could we have page 1304 of the  
7 materials up on screen please? You'll see that's a  
8 letter to the Data Protection Commissioner, Mr. Hawkes,  
9 in relation to unauthorised disclosure of data to the  
10 Committee of Public Accounts.

10:16

11 A. I'm sorry, Ms. Leader, 1344?

12 46 Q. 1304.

13 A. Oh, I beg your pardon. Yes, Chairman, I have that  
14 here.

15 47 Q. Yes. That's Commissioner Callinan writing to  
16 Mr. Hawkes, referring to an article which appeared in  
17 the Irish Examiner on 9th November 2013:

10:16

18  
19 "The report states that one of the Garda whistleblowers  
20 in respect of cancellation of fixed charge penalty  
21 notices has provided Mr. McGuinness with files  
22 containing data which relate to monies lost to the  
23 State through improper cancellation of such notices.  
24 This newspaper report appears to be a continuum of  
25 claims by one of two persons, one a serving member of  
26 An Garda Síochána and the other now a retired member,  
27 regarding the discretionary system in place to allow  
28 the cancellation of fixed charge notices by the  
29 deployment of prosecutorial discretion."

10:16

10:17



1 And then if we just skip the next paragraph and turn to  
2 page 1305:

3  
4 "Having taken legal advice from the Attorney General, I  
5 now propose to proceed as follows: Write to Deputy 10:17  
6 McGuinness indicating that I have reported the matter  
7 to you in my capacity as data controller and request  
8 that all data be returned to me forthwith; indicate to  
9 Deputy McGuinness that the data was furnished to him  
10 without my authorisation and accordingly there is 10:17  
11 potentially a breach of the Data Protection Acts;  
12 inform Deputy McGuinness that any such disclosure of  
13 such personal data is, in my opinion, an unauthorised  
14 disclosure."

15  
16 So were you aware of that? 10:18

17 A. Yes, Chairman, I was.

18 48 Q. And had the matter been discussed between you and the  
19 Commissioner at that time?

20 A. Yes, Chairman. 10:18

21 49 Q. And in relation to legal advice from the Attorney  
22 General's office, were you involved in that transaction  
23 or those interactions?

24 A. I would have been copied on some of the advices,  
25 Chairman, yes. 10:18

26 50 Q. Was it a matter which was a pressing concern of An  
27 Garda Síochána at the time?

28 A. Yes, Chairman, it was a concern. And I suppose it was  
29 unprecedented insofar as there was sensitive personal

1 data, as I say, potentially going to be put into the  
2 public domain, the nature and extent of the content of  
3 that data was not known and the Commissioner had  
4 concerns around the disclosure of that information and  
5 had sought to seek legal advices.

10:18

6 51 Q. All right. And we see then, if we go to page 1306, we  
7 see the Commissioner writing to John McGuinness. And  
8 if we just go to the last paragraph of that letter,  
9 which is on page 1307, he states that:

10  
11 "Having taken legal advice from the Attorney General, I  
12 now request that you return all such personal data to  
13 me forthwith."

10:19

14  
15 So there was a very strong stance being taken by An  
16 Garda Síochána at that time in relation to data  
17 provided to Mr. McGuinness?

10:19

18 A. Yes, Chairman.

19 52 Q. So I think that sequence of events continued up until  
20 just before Christmas 2013?

10:19

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

22 53 Q. So there was a letter from Mr. Hawkes to John  
23 McGuinness, and that's on 19th November, it's at page  
24 1308 of the materials, and a letter from the Clerk to  
25 the Committee to Commissioner Callinan on 18th  
26 December, noting, if we just go down to the bottom of  
27 that:

10:19

28  
29 "The Committee notes your concerns as to data

1 protection considerations which necessarily arise. The  
2 Committee has taken legal advice on this issue and,  
3 having viewed the documentation in private session in  
4 order to ascertain whether the material contained  
5 therein properly falls within the Committee's remit, 10:20  
6 has now arranged for the redaction of all sensitive  
7 personal information from the documentation and for the  
8 information contained therein to be compiled into  
9 anonymised statistical information relevant to its  
10 consideration of the fixed charge notice system." 10:20  
11

12 And there the position was left.

13 A. Yes, that's correct, Chairman.

14 54 Q. And then we see Commissioner Callinan's response to  
15 that, which is just before Christmas 2013, on page 10:20  
16 1311. But in essence, he's explained to us that he  
17 couldn't see how it could be dealt with other than by  
18 individuals being recognised from the context of what  
19 was being discussed.

20 A. Yes, that certainly was a concern, Chairman, yes. 10:21

21 55 Q. Yes. And was that a position you knew to be the case?  
22 Had the matter been discussed between yourself and  
23 Commissioner Callinan at that time?

24 A. Yes, Chairman.

25 56 Q. All right. So is it the case, Ms. O'Sullivan, that 10:21  
26 there was a conversation between yourself and the  
27 then-Commissioner in relation to the upcoming PAC  
28 hearing and the matter of data being given to Deputy  
29 McGuinness?

1 A. Not just to Deputy McGuinness, Chairman, the concern  
2 was more around personal sensitive information being  
3 put into the public domain and not knowing what the  
4 nature and extent of that was and the potential to  
5 identify individual citizens. 10:21

6 57 Q. And in relation to your particular role there, were you  
7 being consulted on it as Deputy Commissioner or the  
8 person in charge of Strategy and Change Management? I  
9 wonder could you assist the Tribunal in that regard?

10 A. Well, probably both, Chairman. Because as Deputy 10:22  
11 Commissioner, in my guise as, or in my portfolio as  
12 Deputy Commissioner, Governance and Strategy I would've  
13 had the Assistant Commissioner who was in charge of  
14 data protection at the time reporting to me. And this  
15 was a data protection issue, as such, so it would have 10:22  
16 been -- probably in both. And as Deputy Commissioner  
17 Operations, I would've obviously had an interest in  
18 anything to do with the FCPN policy and any breaches of  
19 the FCPN policy.

20 58 Q. All right. And you were, in due course in January, 10:22  
21 part of the Garda delegation who went to the Public  
22 Accounts Committee public hearings, isn't that right?

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

24 59 Q. So you must've been intrinsically involved in the whole  
25 thing at that stage, is that correct? 10:22

26 A. I would've been involved in the preparation for the PAC  
27 meeting, yes.

28 60 Q. Yes, all right. Now, in relation to Commissioner  
29 Callinan's attitude to the Garda whistleblowers at that

1 stage, what was your impression of his attitude to  
2 Sergeant McCabe at that stage?

3 A. My impression was and my overall observations were that  
4 Commissioner Callinan was very concerned about the  
5 issues that were being put into the public domain. He 10:23  
6 was also concerned about the impact that this was  
7 having on the organisation and the potential impact  
8 that it may have on individual members of the public  
9 who had the potential to be identified or indeed named,  
10 even inadvertently, in the public domain. 10:23

11 61 Q. All right. Well, did you ever get the impression, for  
12 instance, that Commissioner Callinan was getting  
13 somewhat frustrated by Sergeant McCabe and the fixed  
14 charge penalty notice issue?

15 A. I never believed that Commissioner Callinan was 10:23  
16 personalising it to Sergeant McCabe, but he was  
17 certainly concerned about the issues that were being  
18 raised and the manner in which they were being raised  
19 and the, as I say, the potential impact it would have  
20 on confidence in the organisation and the potential 10:24  
21 impact it could have on individual members of the  
22 public.

23 62 Q. Okay. So in relation to the preparation for the Public  
24 Accounts Committee, I think you -- when the protected  
25 disclosures were first made, you wrote to Mr. Justice 10:24  
26 O'Neill in relation to the matter and you explained to  
27 him that there were a series of meetings held at Garda  
28 Headquarters in the run-up to the Commissioner's  
29 appearance on 23rd January 2014 at the Public Accounts

1 Committee?

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

3 63 Q. And I think you said to him - this is at page 711 of  
4 the materials - that at no point during the meetings  
5 you attended were there any references to any campaign 10:24  
6 or direction to undermine Sergeant McCabe or impugn his  
7 character?

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

9 64 Q. Yes. And I wonder can you, from your memory first of  
10 all, tell the Tribunal what was discussed at those 10:25  
11 meetings, those pre-PAC meetings?

12 A. From my memory, Chairman, and to the best of my  
13 recollection the focus was on, I believe it was chapter  
14 7 of the C&AG's report, who had reported. And that was  
15 the purpose of the PAC meeting, was to examine chapter 10:25  
16 7 of the Comptroller & Auditor General's report.

17 65 Q. Yes.

18 A. And the focus was on comparing that to the findings of  
19 the O'Mahony investigation and then looking at what  
20 potential difference there was between those two 10:25  
21 reports and where was there was any difference in the  
22 findings. There was also a discussion, as I said,  
23 around what does this mean in the context of  
24 information getting into the public domain and the --  
25 and that was the general focus of the preparation for 10:25  
26 the 2014 PAC meeting.

27 66 Q. And in relation to discussions about whistleblowers and  
28 in particular Sergeant McCabe, there were discussions  
29 about them during those meetings?

1 A. Yes, Sergeant McCabe and -- the name certainly would  
2 have come into it. But it wasn't about Sergeant McCabe  
3 personally, it was more about the issues that Sergeant  
4 McCabe was bringing into the public domain, as opposed  
5 to Sergeant McCabe personally. 10:26

6 67 Q. Right. Now, I think in relation to those meetings,  
7 there were a series of meetings; there was one on 6th  
8 January, 9th January, 14th January, 16th January, 21st  
9 January and 22nd January. Does that sound about right  
10 to you? 10:26

11 A. Yes, Chairman. I don't have that here in front of me,  
12 but I wouldn't disagree, yes.

13 68 Q. Yes. And I think in actual fact you don't seem to have  
14 attended the first meeting on 6th January?

15 A. No, I've checked my diary, Chairman, and I was on  
16 annual leave. 10:27

17 69 Q. Right. And in relation to notes, did you take any  
18 notes of those meetings?

19 A. No, Chairman.

20 70 Q. All right. Now, in your interview with the  
21 investigators, which is at page 764 of the materials,  
22 echoing what you said to Mr. Justice O'Neill, you said  
23 you'd no notes of the meetings and you weren't aware of  
24 any other persons in attendance having notes, "the  
25 matters referring to Sergeant McCabe related to his  
26 forthcoming appearance before the PAC and the  
27 appropriateness or otherwise of him appearing in  
28 uniform. In addition, other matters during  
29 conversations would be data protection concerns." 10:27

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And you refer to the meetings being professional and focused on the fixed charge penalty issue and the examination and findings of the allegations made.

A. That's correct, Chairman, yes.

10:27

71 Q. And I think at the bottom of page 765 of the materials you were asked whether there was loose talk, gossip or disparaging views expressed in relation to Sergeant McCabe while you were in attendance at such meetings and you said no, the meetings were professional in nature and focused on organisational issues.

10:28

A. That's correct, Chairman, yes.

72 Q. Now, no doubt you're aware that there was reference to the D allegation at those meetings at this stage?

A. Well, I've read the evidence and I have seen the notes. But I have no memory and I don't believe that the Ms. D allegation was ever mentioned at those meetings in my presence.

10:28

73 Q. All right. Well, maybe if we could go to Assistant Commissioner Nolan's notes of the meeting of 9th January, which is at page 1245 of the materials.

10:28

A. Yes, Chairman, I have that.

74 Q. They're both handwritten you'll see. And on the next page, 1245A, you see there's a typed version of that meeting there.

10:29

A. Yes.

75 Q. And he has a checklist of matters that it would appear we dealt with at that meeting and in amongst those issues are Wilson/McCabe issues, you see that there?



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

2 76 Q. Yes. So I wonder at this remove are you able to help  
3 the Tribunal in relation to what Wilson/McCabe issues  
4 were dealt with at that meeting?

5 A. I think it was the general issues, from my memory it 10:29  
6 was the general issues in relation to the matters that  
7 were brought into the public domain, so particularly  
8 around the data that had been given over and what that  
9 data contained and, as I said in my statement to the  
10 Tribunal investigators, also in terms of Sergeant 10:30  
11 McCabe as a serving sergeant appearing at the PAC, and  
12 there was most certainly discussion around whether it  
13 would be appropriate that Sergeant McCabe would appear  
14 in uniform or not. But they were the issues -- the  
15 issues were around the FCN issues and what data had 10:30  
16 been given over to the PAC.

17 77 Q. All right. And then we see on 21st January 2014, we  
18 see Assistant Commissioner Nolan's note of that  
19 meeting, it's at page 1246 and the typed version is  
20 1246A of the materials. 10:30

21 A. Yes, Chairman, I have that here.

22 78 Q. And you see there on -- it's a meeting you attended,  
23 according to the schedule we've been provided with.  
24 And you see at the very beginning of the meeting we  
25 have: "Start Sergeant McCabe 2006." 10:30

26 A. Yes, Chairman, I see that.

27 79 Q. Yes. So it would suggest that the 2006 D allegation  
28 was referred to at that meeting.

29 A. Chairman, I've absolutely no memory of Ms. D allegation

1 being referred to at that meeting. There certainly was  
2 mention of the allegations that had been -- or the  
3 complaints that had been made by Sergeant McCabe and  
4 where were they at, and that would've been in the  
5 context -- in the case that at the PAC meeting that 10:31  
6 there was a question in relation to where are the -- or  
7 what is the status of the investigations in relation to  
8 the complaints that Sergeant McCabe had made? But I  
9 certainly have no memory of the Ms. D allegation ever  
10 being mentioned. 10:31

11 80 Q. All right. And if we turn over to the next page of  
12 that, Assistant Commissioner Nolan's memo, we see at  
13 page 1247 --

14 A. Yes.

15 81 Q. -- we see the motivation of whistleblowers and a 10:31  
16 question-mark being raised there.

17 A. Yes, Chairman, I don't know what that is. Unless it's  
18 a question that Assistant Commissioner Nolan had for  
19 himself.

20 82 Q. All right. And then we have immediately afterwards: 10:32  
21 "Sergeant McCabe, 2010 Derek Byrne investigation."  
22 A. Yes, Chairman. And I recall there was a mention of  
23 the, as I say, the complaints that were made by  
24 Sergeant McCabe and the status of those complaints,  
25 lest a question would be asked by a member of the PAC. 10:32

26 83 Q. All right. Well, you see, you were already aware of  
27 the D matter from, we know, from 2008?

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

29 84 Q. And you knew what it was about at that stage and what

1 had happened in 2006?

2 A. Yes, Chairman. And I was also aware that the DPP had  
3 said there was no basis for a prosecution.

4 85 Q. Yes. And here we have, in Assistant Commissioner  
5 Nolan's memo of a meeting on 21st January 2014, we have 10:32  
6 Sergeant McCabe and 2006 being linked together again.

7 A. Well, I don't know what that note relates to, Chairman,  
8 but I don't have any memory of the Ms. D allegation  
9 being introduced at the PAC meeting, or the  
10 preparation -- the pre-PAC meeting. 10:33

11 86 Q. And on the next page we have the word "motivation",  
12 which appears again in the O'Higgins Commission matter,  
13 the motivation of whistleblowers and Sergeant McCabe's  
14 name listed underneath it. So in essence, according to  
15 Assistant Commissioner Nolan, we have matters relating 10:33  
16 to Sergeant McCabe from 2006 more or less topping and  
17 tailing that meeting, if you understand what I'm saying  
18 to you?

19 A. No, Chairman, I see the note, but I can only give you  
20 what my recollection of the meeting is, and I have no 10:33  
21 memory of it being introduced at the meeting.

22 87 Q. All right. We also have a reference to it in  
23 Mr. McLindon's note of that meeting of 21st January  
24 2014 at page 1282 of the materials. You see there it's  
25 at the very top of the page? 10:34

26 A. Yes, Chairman, I see that.

27 88 Q. And again, at the very beginning of the meeting we  
28 have, third line down: "2006 first incident, sergeant  
29 serving". And Mr. McLindon has, I think, accepted that

1 that's a reference to the D allegation of 2006.

2 A. Well, Chairman, as I say, I see Mr. McLindon's note,  
3 but I don't have any recollection of the Ms. D incident  
4 being discussed at the meeting or introduced in my  
5 presence. 10:34

6 89 Q. All right. Well --

7 CHAIRMAN: If I could just intervene, Ms. Leader?  
8 Because in terms of the chronology, Commissioner,  
9 nothing happened in 2006 about which Sergeant McCabe  
10 complained. 10:34

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

12 CHAIRMAN: The Kingscourt bus incident, which is  
13 February 2007, is the first. So 2006 has to refer to  
14 the D matter, unless there's something that I'm missing  
15 in terms of understanding this. That's the question 10:35  
16 that Ms. Leader is asking you.

17 A. Yes, Chairman, and I absolutely take the point. But I  
18 can only tell you that I have absolutely no  
19 recollection of it ever being discussed in my presence.  
20 If it was discussed, sometimes I may be in and out of a 10:35  
21 meeting, sometimes I may be late to a meeting, I can't  
22 say on 21st January at what stage of the meeting that I  
23 arrived or whether I was there for the entire meeting,  
24 but I certainly have no recollection of the  
25 matter being, the Ms. D matter being discussed. As I 10:35  
26 say, there was certainly discussions in relation to the  
27 complaints made by Sergeant McCabe and the status of  
28 those complaints.

29 90 Q. MS. LEADER: All right. I suppose there are a number

1 of interpretations one could put on that. First of  
2 all, you may have been gone out of the meeting at the  
3 very beginning of the meeting/the very end of the  
4 meeting when it was discussed. But that would seem  
5 fairly unlikely, that you left at those precise times, 10:36  
6 you understand?

7 A. Yes.

8 91 Q. Yes. Or you could've simply forgotten about it?

9 A. I don't believe I would forget about it. I've no  
10 recollection of it is the strongest I can put it, of 10:36  
11 the Ms. D allegation specifically being discussed or  
12 introduced at those meetings.

13 92 Q. Or they could have been matters that were being talked  
14 about so much that you just simply switched off during  
15 the meeting, you could say 'well, here we go again'? 10:36

16 A. No, Chairman, that isn't the case. Because from the  
17 time I was in HRM in 2008 right up to the beginning of  
18 the O'Higgins Commission, I don't ever remember those  
19 matters being discussed again in any detail anywhere.

20 93 Q. Yes. Well, it would seem an awful lot of other people 10:36  
21 knew about them, say in Dáil Éireann and the like, and  
22 maybe it's a bit unrealistic to suggest that at this  
23 stage, Ms. O'Sullivan.

24 A. Well, Chairman, all I can give you is my account. And  
25 from my knowledge, I was aware of the matters in 2008 10:36  
26 from the file that we have read and the synopsis I was  
27 provided with and the update from Chief Superintendent  
28 McGinn and again, I was not aware of those matters  
29 until such time as the O'Higgins Commission commenced.

1 94 Q. Okay. Well, say, for instance, if we take what  
2 Mr. McLindon said; he had no reason to know about them  
3 other than attending at these meetings?  
4 A. Yes. Yes, that's correct.

5 95 Q. And he has noted them as arising at those meetings. 10:37  
6 A. Yes.

7 96 Q. Yes. So it would seem that they were discussed at the  
8 meetings, because he has no other way of knowing about  
9 them?  
10 A. Well, as I say, Chairman, I have no recollection of 10:37  
11 those matters being discussed in my presence at the  
12 meetings.

13 97 Q. Right. And I think there was one final meeting on 22nd  
14 January, prior to the Public Accounts Committee meeting  
15 in the Dáil and then on 23rd January there was the 10:37  
16 Public Accounts Committee meeting at the Dáil?  
17 A. That's correct, Chairman, yes.

18 98 Q. Now, it would appear that -- well, it's obvious that  
19 former Commissioner Callinan referred to the activities  
20 of the whistleblowers as disgusting at that meeting. 10:38  
21 A. Yes, Chairman, the word "disgusting" was used.

22 99 Q. Yes. And in your statement to the Tribunal you said  
23 you didn't think that was a very good idea - and I'm  
24 paraphrasing here - and you passed a note to him and  
25 asked him to clarify that? 10:38  
26 A. Yes, Chairman, Commissioner Callinan had used the word  
27 and the sense in the room was palpable and I passed him  
28 a note to say withdraw/clarify. And -- yes.

29 100 Q. Yes. That note hasn't been retrieved anywhere at this

1           remove, is that correct?

2           A.    No, Chairman.

3 101 Q.    Well, it would appear to be a very strong term to use  
4           in a public meeting in relation to the activities of  
5           the whistleblowers. 10:39

6           A.    Well, as I said in my statement, I believe that the use  
7           of the word was misinterpreted or was perhaps misused  
8           in the context. And the palpable feeling in the room  
9           was that it was certainly taken out of context in what  
10          I felt was meant by it. And that's why I passed the 10:39  
11          then-Commissioner the note. And after the meeting, I  
12          also said to him that he needed to make sure that he  
13          clarified the remark, because it certainly had been  
14          taken out of context in my opinion.

15 102 Q.    All right. When had you found out that there was a 10:39  
16          possibility that Sergeant McCabe might be appearing  
17          before the Public Accounts Committee?

18          A.    I can't remember the exact date, Chairman, but it  
19          predated the PAC meeting.

20 103 Q.    All right. 10:39

21          A.    Yes.

22 104 Q.    And was that something that was occupying the  
23          Commissioner and An Garda Síochána in general?

24          A.    Well, again from my memory, at that stage it was, in my  
25          opinion, a fait accompli that Sergeant McCabe was going 10:40  
26          to appear and the issue was whether the appearance  
27          would be in public or private.

28 105 Q.    All right. Okay. And in relation to the evidence that  
29          the Tribunal has heard from Deputy McGuinness,

1 Mr. McCarthy and also Mr. Deasy in relation to remarks  
2 made by the -- they say were made by the former  
3 Commissioner, what do you say about that?

4 A. As I have said in my statement, Chairman, I was not --  
5 I can certainly -- if I take it in sequence, I 10:40  
6 certainly recall that morning meeting Deputy Deasy.

7 106 Q. Yes.

8 A. And I believe I was the person that introduced him  
9 to --

10 107 Q. That's Deputy Deasy's evidence. 10:40

11 A. Yes, and I would agree with that evidence. I  
12 introduced him to Commissioner Callinan. I wasn't  
13 privy to their discussion and I wasn't present for it,  
14 I would've been talking within a group of other people  
15 at the time. I have no knowledge of the conversation 10:40  
16 that happened between Mr. McCarthy and Commissioner  
17 Callinan. And at the end of the PAC meeting, I  
18 certainly have no recollection and I don't believe that  
19 I was present for any of the alleged conversations that  
20 took place. 10:41

21 108 Q. All right. Now, I think your evidence to the Tribunal  
22 is you heard of the D allegation in 2008 and thereafter  
23 you heard nothing about it until pre-O'Higgins  
24 Commission?

25 A. I'm going to say pre-O'Higgins Commission, Chairman. 10:41  
26 In the build-up perhaps to the O'Higgins Commission. I  
27 can't remember exactly the chronology, but I don't  
28 recall hearing it in general between those times.

29 109 Q. Okay. And that's, we will put it at February 2015, the



1 build-up to the O'Higgins Commission?

2 A. Roughly, Chairman, yes.

3 110 Q. In or around. But it could be later, it could be May. 10:41

4 Even on Commissioner Callinan's evidence to the

5 Tribunal, certainly the matter of Sergeant McCabe being

6 investigated in relation to an indecent assault, sexual

7 assault was mentioned by, for instance, Mr. McCarthy.

8 You understand what I'm saying?

9 A. Yes, I've heard the evidence, or I've read the

10 evidence, yes. 10:42

11 111 Q. According to Commissioner Callinan, it was something

12 brought up by Mr. McCarthy. Also, what Commissioner

13 Callinan said, it was mentioned by Deputy McGuinness,

14 albeit something Deputy McGuinness already knew about.

15 That's former Commissioner Callinan's account of what 10:42

16 happened.

17 A. Yes, Chairman.

18 112 Q. Now, so, at the very least, it was discussed that day,

19 on 23rd January; you understand what I'm saying to you?

20 A. Yes, Chairman, I've read the evidence. But I wasn't 10:42

21 party to those discussions.

22 113 Q. Yes. But what I'm suggesting to you is, even on former

23 Commissioner Callinan's recounting of events, it was a

24 matter that was spoken about that day and we know it

25 was something that was raised on 21st January 2014 in 10:43

26 the pre-PAC meeting, along with the motivation of the

27 whistleblowers. So what I'm suggesting to you is it's

28 a bit unrealistic to say that you heard nothing about

29 it at all until just before the O'Higgins Commission

1 report.

2 A. Well, Chairman, I've absolutely no recollection of  
3 having heard anything to do with the Ms. D allegation  
4 specifically. Certainly, as I say, there were  
5 conversations in relation to where we were at with the 10:43  
6 complaints made by Sergeant McCabe and the updates in  
7 relation to that, but I have no memory and no  
8 recollection of hearing anything about the Ms. D  
9 allegation from the time I was in HRM up to the  
10 preparation of the O'Higgins hearings. 10:43

11 114 Q. Did you hear anything about Sergeant McCabe being  
12 investigated in relation to the matter of an indecent  
13 assault or a sexual assault?

14 A. No, Chairman.

15 115 Q. Never mentioned? 10:43

16 A. No, Chairman, not in my presence, no.

17 116 Q. All right. Do you think people were not mentioning it  
18 on purpose in front of you?

19 A. I can't say that Chairman. But I can only say that I  
20 didn't hear it, it was never mentioned in my presence. 10:44

21 117 Q. All right. I think that day at the Public Accounts  
22 Committee hearing, if you could explain to the Tribunal  
23 what was your role in being there in particular? We  
24 know former Commissioner Callinan was the accounting  
25 officer, Superintendent Taylor the Press Officer, 10:44  
26 Assistant Commissioner O'Mahony was the person who  
27 investigated the matter. I wonder could you explain --

28 A. Well, Chairman, the format that the Public Accounts  
29 Committee would take, the hearings, was that the

1 Commissioner, as accounting officer, would appear  
2 before the Committee and then the Commissioner would  
3 decide who he wanted with him. So I was there and my  
4 role was as his deputy. I had no speaking part,  
5 ordinarily the Commissioner of the day would take the 10:44  
6 role of the speaking part. And Assistant Commissioner  
7 O'Mahony was there to answer any questions in relation  
8 to the penalty points investigation. So other than  
9 being asked to accompany the Commissioner as his  
10 deputy, that was my role. 10:45

11 118 Q. Okay. Now, the matter of Sergeant McCabe appearing  
12 before the Committee had to be dealt with at that  
13 stage, isn't that right?

14 A. Yes, Chairman.

15 119 Q. All right. And we've heard from former Commissioner 10:45  
16 Callinan that you accompanied him back to Garda  
17 Headquarters after the PAC meeting.

18 A. Yes, Chairman. I'm not sure if we travelled together,  
19 but we both went back to Headquarters, yes.

20 120 Q. I think he specifically said you did travel -- 10:45  
21 A. Yes, I may have, I just can't recall it.

22 121 Q. And we know that evening that the former Commissioner  
23 drafted a letter to be sent to John McGuinness in  
24 relation to the appearance of Sergeant McCabe before  
25 the Public Accounts Committee and his suggestion for 10:45  
26 dealing with same.

27 A. Yes, Chairman.

28 122 Q. Okay. Was that discussed amongst you?  
29 A. Yes, there would've been discussion around the, as I

1 say, the use of the word "disgusting" and the need to  
2 clarify it. We also had some discussions, from my  
3 memory, around the referral of the matter to GSOC, to  
4 the Garda Síochána Ombudsman Commission, and also then  
5 the suggestion by -- at the Public Accounts Committee, 10:46  
6 publicly Mr. McGuinness had suggested that the  
7 Commissioner may contact Sergeant McCabe and there  
8 would've been some discussion and I know there was some  
9 advices obtained in terms of the drafting of those  
10 letters by the Commissioner. 10:46

11 123 Q. Okay. And the advice is from the Attorney's office?  
12 A. Well, through the Head of Legal Affairs is my  
13 understanding.

14 124 Q. So was there a meeting to discuss all of those matters  
15 when the Public Accounts Committee hearing finished 10:46  
16 that day, even an informal meeting of sorts?  
17 A. I don't remember a meeting, a formal meeting as such,  
18 but there was certainly some discussions and some tasks  
19 given to people, such as the Head of Legal Affairs, to  
20 complete. 10:46

21 125 Q. All right. If we look at the draft letter that the  
22 former Commissioner prepared, it would appear to be  
23 that evening after the Public Accounts Committee  
24 meeting. It's at page 1314 of the materials.  
25 A. Yes, Chairman, I see that. 10:47

26 126 Q. He thanks, first of all, Deputy McGuinness for the  
27 opportunity to address the Auditor General's report and  
28 also he then says he wishes to address "the specific  
29 issue of your intention to call Sergeant McCabe before

1 the Commissioner of the Public Accounts on, as I  
2 understand it, Thursday next 30th January 2013. I have  
3 this evening taken legal advice" - so that would've  
4 been the evening, as we understand, of 23rd. Yes?

5 A. Yes, Chairman.

10:47

6 127 Q. "On this issue and in an effort to avoid having to  
7 exercise those legal rights, would be obliged if the  
8 Committee would consider the following proposal as  
9 outlined below.

10  
11 As I indicated to the Committee today, I was satisfied  
12 that it was always open to Sergeant McCabe and without  
13 prejudice to his rights under the Garda Síochána  
14 confidential reporting of corruption and malpractice  
15 regulations to report internally any issues, either 10:48  
16 criminal or discipline, and they would be fully  
17 examined. However, for the avoidance of any doubt, I  
18 have now formally written to Sergeant McCabe with the  
19 following proposal; I will appoint a chief  
20 superintendent of his preference to meet him and 10:48  
21 discuss any issues he wishes to raise and direct that  
22 chief superintendent to report directly to me in  
23 relation to any issues that require further  
24 investigation. If Sergeant McCabe fails to nominate a  
25 chief superintendent, I will nominate a chief 10:48  
26 superintendent to meet him and discuss any issues he  
27 wishes to raise and direct that the chief  
28 superintendent report directly to me in relation to any  
29 issue that requires further investigation."

1 And then there's an assurance that Sergeant McCabe is  
2 continuing to be afforded all rights and protections  
3 which a confidential reporter would be entitled to  
4 under the relevant regulations. And then he reiterates  
5 his concerns in relation to calling Sergeant McCabe 10:49  
6 before the Public Accounts Committee and asks them to  
7 postpone the decision to invite Sergeant McCabe to  
8 attend before them.

9 A. Yes, Chairman.

10 128 Q. So was that your understanding of where matters were on 10:49  
11 the evening of 23rd?

12 A. Yes, Chairman, yes.

13 129 Q. Yes. That letter had been shared with you and the  
14 matter of discussions and advice had been considered,  
15 is that correct? 10:49

16 A. Yes, Chairman.

17 130 Q. All right. And also I think the former Commissioner  
18 had copied those two letters to you, is that correct?

19 A. He may not have copied them himself, but I believe they  
20 were copied to me, yes. 10:49

21 131 Q. That's certainly what he says in his statement.

22 A. Yes.

23 132 Q. All right. So we go then to 24th January 2014 and the  
24 Commissioner's meeting with Deputy McGuinness in the  
25 car park -- 10:50

26 A. Yes, Chairman.

27 133 Q. -- as it's referred to here. Now, your position is, in  
28 relation to that meeting, is that you didn't know it  
29 ever happened?

1 A. No, Chairman.

2 134 Q. And when did you find out that it happened?

3 A. I found out when Deputy McGuinness aired the fact of  
4 the meeting publicly.

5 135 Q. All right. Now, we've heard what Commissioner Callinan 10:50  
6 says about that meeting; it was prompted as a result of  
7 Deputy McGuinness's comments made at the Public  
8 Accounts Committee meeting about suggesting he talk to  
9 Sergeant McCabe in relation to the matter and also to  
10 discuss the proposal that had been set out in the draft 10:50  
11 letters drafted on 23rd January 2014.

12 A. Yes, Chairman, I've read the Commissioner's evidence,  
13 yes.

14 136 Q. Yes. And as matters turned out at that meeting,  
15 because of - this is on former Commissioner Callinan's 10:51  
16 recounting of the matter - he didn't see the point in  
17 sending the letters, because he knew what Deputy  
18 McGuinness's attitude to calling Sergeant McCabe was.

19 A. Yes, I've read his evidence, Chairman, yes.

20 137 Q. Yes. And we see -- and maybe page 1436 of the 10:51  
21 materials. so as I understand it, you spent all of  
22 23rd dealing with Public Accounts Committee matters and  
23 Sergeant McCabe matters?

24 A. Sorry, Ms. Leader, I'm just going to get out the page.

25 138 Q. Am I correct in that? So all of 23rd is spent in the 10:51  
26 Dáil and dealing with proposals to deal with Sergeant  
27 McCabe's concerns in relation to the fixed charge  
28 penalty notice?

29 A. Well, some of it, yes, because we would deal -- even --

1 always after coming back from the Public Accounts  
2 Committee there would be, I'll call it the day-to-day  
3 business to deal with as well, so there would be a  
4 focus on that. So yes, we had spent a considerable  
5 portion of that day in the Dáil at the Public Accounts 10:52  
6 Committee and then we would've come back and, as I say,  
7 the Head of Legal Affairs would've been tasked with  
8 preparing drafts, yes.

9 139 Q. Yes. And did you have an input into the solution that  
10 was proposed by former Commissioner Callinan about 10:52  
11 appointing a chief superintendent so as to deal with  
12 Sergeant McCabe's issue?

13 A. My focus would have been really on making sure that, or  
14 encouraging the word that he had used to be clarified  
15 and also making sure that there was a referral to GSOC. 10:52  
16 And as I say, I would've been copied on these drafts  
17 and asked for any opinions I had.

18 140 Q. Okay. Well, it's very similar to what was eventually  
19 done in relation to dealing with Sergeant McCabe, a  
20 superintendent was actually appointed under your 10:52  
21 stewardship in 2014 to deal with his issues, isn't that  
22 correct?

23 A. Yes, Chairman.

24 141 Q. Superintendent O'Brien.

25 A. Chief Superintendent O'Brien, yes. 10:52

26 142 Q. And that was on your, as I understand it, your  
27 suggestion that Sergeant McCabe appoint a senior garda  
28 so as he could deal with various complaints he had?

29 A. Yes, and that he would nominate a person, yes.



1 143 Q. Yes. And that was exactly what former Commissioner  
2 Callinan had suggested in his draft letter to Deputy  
3 McGuinness as a way out of calling Sergeant McCabe to  
4 the Public Accounts Committee?  
5 A. Yes, Chairman. And I'm not so sure it was a way out of 10:53  
6 calling Sergeant McCabe --  
7 144 Q. A solution?  
8 A. A solution or maybe an additional measure to engage  
9 with Sergeant McCabe. Because I think the issue that  
10 was raised was, well, was there no, I'll call it, 10:53  
11 normal engagement with Sergeant McCabe? So the proposal  
12 was an effort to make sure there was a level of  
13 engagement with Sergeant McCabe and that he would have  
14 somebody he could meet with.  
15 145 Q. Okay. And was that proposal, was it discussed amongst 10:53  
16 you?  
17 A. It would've been discussed, yes.  
18 146 Q. All right. So that was where matters lay on 23rd; the  
19 proposal was discussed, the draft letter was sent to  
20 you? 10:53  
21 A. Yes, Chairman.  
22 147 Q. All right. And on 24th, we've heard what former  
23 Commissioner Callinan says about his day that day and  
24 meeting Deputy McGuinness in the car park and he says  
25 he didn't discuss the meeting with you in any way. And 10:54  
26 I just want to formally put to you, say, the meeting --  
27 the phone calls on 24th January between the two of you.  
28 So we have a phone call from former Commissioner  
29 Callinan to you at quarter past two, which may not have

1 gotten through - it's just three seconds - then a phone  
2 call at half past three lasting seven minutes, 12  
3 seconds, and then there's a phone call at half past  
4 five lasting six minutes, at a time when he most  
5 probably was travelling back from the car park meeting, 10:54  
6 then a phone call from you to former Commissioner  
7 Callinan at five to ten for a very short period of  
8 time, and there's also a phone call from you to former  
9 Commissioner Callinan at half past six for a very short  
10 period of time and a second one just after half past 10:55  
11 six lasting nine minutes.

12  
13 So former Commissioner Callinan has said these were to  
14 discuss security issues, but I'm suggesting to you  
15 that -- where did you think that letter, the draft 10:55  
16 letter of the 23rd had disappeared to, if it was never  
17 actioned on or anything of that nature?

18 A. I didn't -- you know, Chairman, the events often  
19 overtake letters or draft letters or draft proposals  
20 that would be on the table. And as it transpired, the 10:55  
21 meeting went ahead with Sergeant McCabe and I don't  
22 know where the letters went to. But it wouldn't be  
23 unusual that events would overtake proposals.

24 148 Q. Well, I understand the event that overtook this  
25 proposal was Commissioner Callinan's meeting with 10:56  
26 Deputy McGuinness in the car park.

27 A. Or Sergeant McCabe appearing before the PAC in private.

28 149 Q. Which was the week after?

29 A. Yes.

1 150 Q. Yes. So as I understand it, that letter was so as  
2 Sergeant McCabe wouldn't appear before the Committee?  
3 A. No, Chairman, I don't think it was. It was actually --  
4 my understanding of what it was was to make sure that  
5 there was a level of engagement with Sergeant McCabe. 10:56  
6 My memory and my understanding of the situation was  
7 that the decision had been made that Sergeant McCabe  
8 was going to appear before the PAC. The only issue was  
9 whether that meeting would take place in public or in  
10 private, which obviously was of concern. And the 10:56  
11 purpose of that letter was to ensure that there was a  
12 level of engagement with Sergeant McCabe in, I'll call  
13 it the normal supervisory course, so that's why a chief  
14 superintendent was to be appointed, or that suggestion  
15 was put forward. 10:57  
16 151 Q. Well, maybe if we just look at the second-last  
17 paragraph of that letter at page 1315 of the materials.  
18 It says:  
19  
20 "In light of my proposals" - which was the meeting with 10:57  
21 the chief superintendent and dealing with Sergeant  
22 McCabe's concerns that way - "outlined above, I would  
23 formally request that the Committee of Public Accounts  
24 would postpone its decision to invite Sergeant McCabe  
25 to attend before you. I will be more than happy to 10:57  
26 return to you at a future date and update the Committee  
27 on the outcome and developments that occur from such a  
28 meeting."  
29

1 So my understanding of that letter was that the chief  
2 superintendent being nominated would deal with Sergeant  
3 McCabe's concerns and thereafter Commissioner Callinan  
4 would report back to the Public Accounts Committee in  
5 relation to what Sergeant McCabe had to say about the 10:58  
6 fixed charge penalty notice. Do you understand what  
7 I'm saying?

8 A. Yes, I understand, Chairman. But my understanding was  
9 that this was in addition to anything that the Public  
10 Accounts Committee may decide to do. So Sergeant 10:58  
11 McCabe, my understanding is, was going to appear one  
12 way or the other and the issue that we were really  
13 dealing with was whether it would be in public or  
14 private.

15 152 Q. Okay. Well, that isn't addressed in that letter at all 10:58  
16 I don't think. I can't see any reference to that in  
17 that letter.

18 A. No, Chairman, I see that. And perhaps there was a hope  
19 that it would delay or postpone the appearance of  
20 Sergeant McCabe. But my understanding was, was to 10:58  
21 action Deputy McGuinness's suggestion that there would  
22 be some form of engagement with Sergeant McCabe.

23 153 Q. All right. So I suppose just coming back to my first  
24 question about all of this, where did you think that  
25 proposal had gone to, or how did you think matters had 10:58  
26 overtaken it or developments had overtaken that letter  
27 without discussing the meeting Commissioner Callinan  
28 had with Deputy McGuinness with Commissioner Callinan?

29 A. Well, I had no discussion on the meeting, in relation

1 to the car park meeting. And as I say, my  
2 understanding was that events had been take overtaken,  
3 because Sergeant McCabe had appeared the following week  
4 at the Public Accounts Committee and, therefore, the  
5 letter -- and I'm saying the letter wasn't sent, I now 10:59  
6 know the letter wasn't sent. But I wouldn't have been  
7 involved in the sending of the letter anyway.

8 154 Q. Yes. Well, I have to suggest to you, considering your  
9 level of involvement with preparing for the PAC  
10 meetings, your attendance there, your discussing the 10:59  
11 matter afterwards with Commissioner Callinan that  
12 maybe -- that that isn't an answer which really is  
13 satisfactory, Ms. O'Sullivan.

14 A. Well, Chairman, I can only say what I know. And I can  
15 say that I was not informed of the PAC meeting. I 11:00  
16 wasn't in Dundalk that day and I wasn't informed of the  
17 fact that, or consulted in relation to Commissioner  
18 Callinan meeting Deputy McGuinness and I wasn't told  
19 about it afterwards either.

20 155 Q. All right. Now, if we move on to February 2014. Two 11:00  
21 journalists called to Ms. D's house, Ms. McCann and  
22 Eavan Murray. And we think that's in late February  
23 2014 in relation to those two. Now, Ms. O'Reilly, who  
24 is a journalist, has told the Tribunal that she had a  
25 discussion with Ms. McCann which suggested to her that 11:01  
26 you told Ms. McCann about the D matter, if I can put it  
27 that way. And that is an allegation which was repeated  
28 by Brendan Howlin in the Dáil in 2017. So I don't know  
29 if you want to deal with that?

1 A. Yes, Chairman, I'm aware of the allegation. The first  
2 I became aware of that allegation was when Deputy  
3 Howlin raised it in the Dáil in February 2017 and I  
4 found myself in the position of having to issue a  
5 statement at the time expressing my surprise at it and 11:01  
6 the fact that actually I knew nothing about what he was  
7 talking about. And I most certainly did not give  
8 Ms. McCann, or anybody else, any information in  
9 relation to Ms. D.

10 156 Q. All right. Now, in relation to Ms. McCann, I think you 11:01  
11 do know her, is that correct?

12 A. Yes, Chairman, I do.

13 157 Q. And if you would just outline to the Tribunal how that  
14 has come about?

15 A. Yes, Chairman, Ms. McCann -- firstly, I would know 11:01  
16 Ms. McCann's father was, is now a retired detective  
17 superintendent, obviously within An Garda Síochána, or  
18 superintendent John McCann, and I would know him. In,  
19 I believe in November 2012 Ms. McCann, through the  
20 Garda Press Office, had requested an interview with me 11:02  
21 when I was Deputy Commissioner Operations, it followed  
22 an award I had received and she requested an interview  
23 with me. And at that stage I didn't facilitate the  
24 interview. And in, again in, I just can't recall the  
25 date, but in 2013, in early 2013 Ms. McCann again 11:02  
26 requested an interview with me. And again I didn't  
27 facilitate that interview.

28  
29 I then met Ms. McCann for the very first time, I would

1 have met her face-to-face, I believe, at a book launch  
2 and that was around mid-November 2014, I think maybe  
3 12th November 2014, I met Ms. McCann, I was introduced  
4 to her. And that was the first time I believe I met  
5 her face-to-face. And subsequent to that, on my 11:03  
6 appointment as Commissioner, after 25th November 2014  
7 Ms. McCann made contact with me again and asked me  
8 would I give her a profile piece or an interview piece  
9 and she provided me with a number of questions that she  
10 was interested in, nothing which touched off the terms 11:03  
11 of reference, it was general issues in relation to the  
12 organisation and where I saw it go as Commissioner.  
13 They were short questions. And I responded to her by  
14 telephone with answers to the pre questions that she  
15 had given me. 11:03

16 158 Q. All right. And I think your contacts with journalists  
17 have been circulated from page 7372 of the materials.  
18 I don't think you actually need to get them. But there  
19 are no mobile telephone contacts in any event with  
20 Ms. McCann. 11:03

21 A. No, Chairman, I don't believe there are.

22 159 Q. Yes. I think it was with three other journalists that  
23 your contacts were with.

24 A. Yes, Chairman.

25 160 Q. Now, in relation to the Paul Williams matter and Paul 11:03  
26 Williams interviewing Ms. D, the Tribunal has heard  
27 from Mr. Williams that this contact came about through  
28 Superintendent Reilly.

29 A. Yes, Chairman, I've read that evidence.

1 161 Q. Yes. And do you know superintendent Reilly?  
2 A. Yes, Chairman, I do. He would've been the detective  
3 superintendent in the Northern Region.  
4 162 Q. And did you at any time discuss the D matter with  
5 Superintendent Reilly? 11:04  
6 A. No, Chairman.  
7 163 Q. Do you know Superintendent Reilly was friendly with  
8 Mr. D?  
9 A. No, Chairman, I would have no knowledge of that.  
10 164 Q. Did you have any contact with Superintendent Reilly 11:04  
11 around the time that Mr. Williams went up to interview  
12 Ms. D?  
13 A. No, Chairman, I would've had very minimal contact with  
14 Detective Superintendent Reilly, only in an operational  
15 capacity. 11:04  
16 165 Q. All right. So I think in relation to the sequence of  
17 events around Mr. Williams attending at the D  
18 household, it would appear from his phone records,  
19 which are circulated at page 7421 of the materials  
20 which he provided to the Tribunal. It's one page. 11:05  
21 A. Yes, Chairman, I have that.  
22 166 Q. So we see from Mr. Williams that he phoned Mr. D on 6th  
23 March 2014. You see that?  
24 A. Yes, I do.  
25 167 Q. The first non-redacted version. 11:05  
26 A. Yes.  
27 168 Q. Then there's a phone call to Superintendent Taylor on  
28 7th March 2014.  
29 A. Yes, Chairman.



1 169 Q. Then we have the phone call to Caoimhe Gaskin, who  
2 attended with him at the D household, on 8th March  
3 2014.

4 A. Yes, Chairman, I see that.

5 170 Q. Which is the actual day that Ms. D was interviewed? 11:06

6 A. Yes, Chairman.

7 171 Q. So on 5th March he had attended at the D household,  
8 according to his evidence, to speak with Ms. D's  
9 parents. On 8th March the interview with Ms. D took  
10 place. Then we have no contact between Mr. Williams 11:06  
11 and Superintendent Taylor, on the basis of this  
12 printout. We have three phone calls to Ms. D on 9th  
13 March from Superintendent Taylor -- from, sorry, Paul  
14 Williams, I beg your pardon. And on 10th he phones  
15 Ms. D and immediately afterwards on 10th, after that 11:06  
16 phone call, he phones Superintendent Taylor and spends  
17 one minute on the phone. And then there are a number  
18 of phone calls to Mr. D on 10th March. And on 11th  
19 March we see he phones Ms. D. And then he phones  
20 Superintendent Taylor on two occasions and on the 11:07  
21 second time he spends five minutes on the phone to  
22 Superintendent Taylor, and thereafter he phones Mr. D.  
23 You see that?

24 A. Yes, Chairman.

25 172 Q. I think that would appear to be the case. So if we 11:07  
26 look at the material which has been circulated this  
27 morning, Superintendent Taylor's evidence is that he  
28 received a telephone call from Paul Williams, who said  
29 he was at the D house. Okay? That's his evidence in

1 relation to the matter.

2 A. Yes, Chairman.

3 173 Q. And thereafter -- which was a Saturday he said,  
4 Superintendent Taylor puts it as a Saturday because he  
5 was at home that night. And the Saturday is 8th March 11:08  
6 2014. If you follow me?

7 A. Yes, Chairman, yes.

8 174 Q. So on Superintendent Taylor's evidence, he receives a  
9 call from Paul Williams on 8th March and, thereafter,  
10 he sent you and Commissioner Callinan a text and you 11:08  
11 phoned him afterwards to discuss the matter. That's  
12 Superintendent Taylor's evidence in relation to the  
13 matter. Okay? But if we see that there doesn't appear  
14 to have been any contact on 8th March between Paul  
15 Williams and Superintendent Taylor. 11:08

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

17 175 Q. On 8th March we have a phone call from you to  
18 Superintendent Taylor at 20:38, if you see that, which  
19 lasts four minutes.

20 A. Yes. Yes, Chairman, I see that. 11:09

21 176 Q. Do you have any recollection of what that phone call  
22 was about?

23 A. No, Chairman, but it may well be -- or would be to do  
24 with some operational matter. If 8th March was a  
25 Saturday night, it would normally be, Saturday nights 11:09  
26 would normally be updates in relation to perhaps  
27 incidents that were happening or maybe something that  
28 was going to, some press queries for the Sunday papers  
29 or something on that, of that nature.

1 177 Q. All right. So did you -- do you remember at any time  
2 Superintendent Taylor discussing Ms. D's interview with  
3 Paul Williams with you on the phone?  
4 A. Absolutely not, Chairman, no.  
5 178 Q. In any event, it would appear from Paul Williams' phone 11:09  
6 records that he didn't telephone Superintendent Taylor  
7 on 8th March, which was the Saturday night.  
8 A. That's correct, Chairman, yes.  
9 179 Q. So from that, it would appear that he couldn't have  
10 been talking to you about Paul Williams being in the D 11:10  
11 household, unless another phone was used, that's the --  
12 A. No, Chairman, and he was not talking to me about  
13 anything to do with Mr. Williams and Ms. D.  
14 180 Q. Okay.  
15 A. At any stage. 11:10  
16 181 Q. At any time?  
17 A. At any stage.  
18 182 Q. All right. So I just want to organise my papers. Now,  
19 we know that an article appeared in the Independent on  
20 12th in relation to the Paul Williams article. 11:11  
21 A. On 12th April? Yes, Chairman.  
22 183 Q. 12th April 2014.  
23 A. Yes.  
24 184 Q. Do you remember seeing that article?  
25 A. Vaguely, Chairman, yes. 11:11  
26 185 Q. At that time?  
27 A. Or in around that time perhaps, yes.  
28 186 Q. What was your reaction to seeing it?  
29 A. I suppose it was a general reaction in terms of what

1 did this mean in the context of the organisation and  
2 what did it mean in the context of the individual and  
3 were there any organisational issues arising for us?  
4 187 Q. well, if you could explain that, please?  
5 A. well, basically, again from my memory - and there were 11:11  
6 a number of articles in and around that time about  
7 people who were not satisfied with the way their  
8 complaints and their investigations had been dealt with  
9 by An Garda Síochána, and this was another one - and  
10 what impact did that have on the organisation? But 11:11  
11 that was the -- would've been my general reaction to  
12 articles of that nature appearing.  
13 188 Q. All right. well, did you do anything -- did you  
14 realise that it was Sergeant McCabe that that article  
15 was about? 11:12  
16 A. Not necessarily at that time. But subsequently I  
17 would've become aware it was in relation to that issue,  
18 yes.  
19 189 Q. How did you become aware of that?  
20 A. Again, I can't remember the exact sequence, Chairman, 11:12  
21 but I would have been aware that that issue -- shortly  
22 after that, it became evident that the person at the  
23 centre of that was going to meet with the leader of one  
24 of the parties.  
25 190 Q. Yes. 11:12  
26 A. And also, I believe in or around that time I was aware,  
27 or subsequently became aware, that there had been a  
28 complaint made to GSOC.  
29 191 Q. Okay. Do you remember discussing that article with

1           anybody in An Garda Síochána at the time?

2           A.    No, Chairman.

3 192 Q.    So you kept your concerns to yourself, is that what you  
4           are --

5           A.    No, Chairman, what I would do is, we would go through 11:13  
6           the press articles and I would read them and just  
7           distill them down for myself into what were the issues  
8           arising for us. There didn't appear to me to be  
9           anything that needed to be done with that particular  
10          article because there wasn't sufficient detail in 11:13  
11          relation to it.

12 193 Q.    Did you think about establishing detail around it?

13          A.    No, Chairman.

14 194 Q.    Well, on 25th March, Mr. Callinan had retired as  
15          Commissioner of An Garda Síochána and you had been 11:13  
16          appointed Acting Commissioner.

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

18 195 Q.    And matters were very topical at that time in relation  
19          to whistleblowers, Sergeant McCabe and generally what  
20          was going on in relation to the circumstances of the 11:13  
21          Commissioner's retirement?

22          A.    Yes, Chairman, but maybe just to put it in context, if  
23          I may. When I took up at that time, actually there  
24          were a lot of other burning issues and probably very  
25          immediate issues as well that had contributed to the 11:14  
26          situation and there were a lot of very pressing matters  
27          that I was dealing with in relation to other very  
28          high-profile matters that required my immediate  
29          attention.

1 196 Q. All right. well, but this was something that was one  
2 of those burning matters, isn't that right, the matter  
3 of whistleblowers and Sergeant McCabe, in or around  
4 that time?

5 A. well, probably at that particular juncture of time, 11:14  
6 there were more pressing matters, Chairman, and  
7 particularly to do with issues that were in the public  
8 domain around -- and there were reports required in  
9 relation to other matters urgently for the Department.

10 197 Q. Could we go to the -- your management meeting of the 11:14  
11 8th April 2013. It's at page 6288 of the materials.

12 A. Yes, Chairman.

13 198 Q. So that's your first management meeting as  
14 Commissioner, am I correct in that?

15 CHAIRMAN: well, it has to be '14, doesn't it? 11:15

16 MS. LEADER: Sorry, yes, I beg your pardon.

17 199 Q. They are the beginning of the management meetings.  
18 It's the -- I am lost in papers --

19 A. would it be --

20 200 Q. 6305. It's the 11th April 2014. The first page of 11:15  
21 that meeting is at 6301 of the materials.

22 A. Yes, Chairman, I have it here.

23 201 Q. So that is a meeting which took place in Waterford  
24 Garda Station, it would appear?

25 A. Yes, that's correct, Chairman. 11:15

26 202 Q. And you are welcomed at the beginning, at the very  
27 beginning of the meeting.

28 A. Yes, Chairman.

29 203 Q. Yes. As the new Commissioner, new Acting Commissioner.

1 A. Yes, Chairman.

2 204 Q. All right. And if you turn -- most of that is  
3 redacted, dealing with other materials, but this is,  
4 just to put it in context, a meeting of the management  
5 of An Garda Síochána, so it's a very high-level 11:16  
6 meeting, is that correct?

7 A. Yes, Chairman, it would be the assistant commissioners  
8 and the civilian equivalents.

9 205 Q. All right. And it would be a meeting to keep an eye on  
10 where the organisation was going and deal with matters 11:16  
11 into the future and organise the organisation on a  
12 macro level, is that correct?

13 A. That's correct, Chairman. And I suppose to put this in  
14 context, this probably would have been the very first  
15 meeting we would have had since Commissioner Callinan's 11:16  
16 sudden retirement.

17 206 Q. Retirement.

18 A. Yes.

19 207 Q. And if we go to page 6305 of that meeting.

20 A. Yes. 11:16

21 208 Q. We have -- "DOC" is?

22 A. Probably Dónall Ó Cualáin.

23 209 Q. Dónall Ó Cualáin.

24

25 "Have to be ready for the forthcoming reports to come. 11:16  
26 Management -- manage communications. Andrew to  
27 manage."  
28

29 So that relates to media events, is that correct?

1 A. Yes, it --

2 210 Q. Mr. McLindon being Andrew?

3 A. Yes, it would be Mr. McLindon, but the reports would  
4 relate to other reports that we had coming down -- so  
5 we had lots of reports from GSOC, the Garda 11:17  
6 Inspectorate and other reports that we were expecting.

7 211 Q. Yes. So we have you recorded there as saying:  
8  
9 "Number of reports."  
10 11:17  
11 It's the next line.  
12  
13 "Number of reports over next 12 months. None will be  
14 good. John Cooke report, Roma report. Agenda is  
15 racial profiling in the media. Seán Guerin's report. 11:17  
16 Need to be ready for this. Manage bad news and build  
17 on good news".  
18  
19 So certainly the matter of Mr. Guerin's report, which  
20 was dealing with Sergeant McCabe's complaints in 11:17  
21 particular, isn't that correct, was very much an issue  
22 to be dealt with at that time?

23 A. Yes, Chairman, in relation to the complaints about  
24 practices in Bailieboro.

25 212 Q. In Bailieboro? 11:18  
26 A. Yes.

27 213 Q. Yes.  
28 A. And we were already aware, even from previous reports,  
29 that that wasn't likely to be good news.



1 214 Q. Yes.

2 A. Yes.

3 215 Q. And they were complaints made by Sergeant McCabe, isn't  
4 that right?

5 A. That's correct, Chair, yes. 11:18

6 216 Q. And what is being discussed here is managing the  
7 communications in the aftermath of those reports, isn't  
8 that right?

9 A. Yes, Chairman --

10 217 Q. It would appear to be? 11:18

11 A. Yes. And making sure that actually we were taking  
12 proactive actions to address what we anticipated were  
13 going to be the identified failings in those reports.

14 218 Q. All right. So we then have a discussion in relation to  
15 how the -- how the aftermath of those reports were to 11:18  
16 be managed in relation to the matter, and if we just  
17 turn then in relation to what is the next page, at page  
18 6306 of the materials, it seems to be the Commissioner:  
19

20 "We engage with lots of very diverse groups of people." 11:19  
21

22 Do you see where I am?

23 A. Sorry, Ms. Leader, can you just guide me to it.

24 219 Q. It's kind of -- just over halfway down the page, "We  
25 engage". 11:19

26 A. Yes. Sorry. I see it, yes.

27 220 Q. "We engage with lots of very diverse groups of people.  
28 We need them to say it rather than us, engage with them  
29 and get them to become our advocates."

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So that was the signal that was meant to go out. And further down the page, what you are saying is you "help people to understand our position and why we do things. You have -- move away from racial profiling --"

11:19

That is in relation, maybe, to the Roma matters.

"-- and what the Minister said at the superintendents' conference."

11:19

So there is an active discussion going on about how to manage, in the future, the Guerin Report, amongst other reports?

A. Amongst other reports, Chair, yes.

11:20

221 Q. Okay. So that's on the 11th April 2014.

A. Yes, Chairman.

222 Q. And then the very next day, what appears in the paper is Paul Williams' article in relation to the D allegation, isn't that right?

11:20

A. That's correct, Chairman, yes.

223 Q. And that was circulated to you as one of the press clippings and it's something you have already told the Tribunal that you were aware of and it was something that you thought, what am I going to do about this from an organisational point of view, is that correct?

11:20

A. Yes, Chairman, in the mix of all of the articles that would have been coming to us at that time, so it wasn't singled out as a particularly special article; it was

1 just, here is another article, because at that time we  
2 were just receiving so much criticism from so many  
3 quarters and particularly in relation to letting people  
4 down and people feeling dissatisfied with the service.

5 224 Q. All right. So if I could just then turn to your text 11:21  
6 communication with Mr. Williams.

7 A. Yes, Chairman.

8 225 Q. And that is at page 1019 of the material -- or your  
9 phone -- your billing records in relation to  
10 Mr. Williams. 11:21

11 A. Yes, Chairman.

12 226 Q. So we have exchanges in August 2012, October 2012,  
13 November 2012, December 2012, January 2013, April 2013,  
14 and then we almost have a period of a year when there's  
15 no communications between the two of you, so we go to 11:21  
16 the 21st February 2014. Am I right? It's number 24.

17 A. 24, yes, Chairman.

18 227 Q. So if you look at 23, it's the 28th April 2013, is a  
19 call to Mr. Williams, and then we go to the 21/2/2014.

20 A. Yes, Chairman. 11:22

21 228 Q. A year later.

22 A. Yes.

23 229 Q. And then we see a series of calls in February 2014 with  
24 Mr. Williams?

25 A. Yes, Chairman. 11:22

26 230 Q. And then we see a series of interactions -- we have the  
27 22nd March 2014 and the 31st March 2014 with  
28 Mr. Williams, and then we have a text, a call and a  
29 text on the 4th April 2014, and on the evening the

1 article appears in the Independent, which is the day  
2 after the management meeting where you are managing the  
3 output of the Guerin Report as one of the matters  
4 referred to, you have a text to Mr. Williams?

5 A. Yes, Chairman. 11:23

6 231 Q. Do you see that?

7 A. Yes.

8 232 Q. So can you tell the Tribunal what that is about? Did  
9 you text him about the article in the Independent?

10 A. No, Chairman, no. I can't recall what the text was 11:23  
11 about, but I certainly didn't text him about the  
12 article in the Independent.

13 233 Q. Okay. Well, how can you be so sure about that?

14 A. Well, Chairman, maybe if I just explain in context and 11:23  
15 the -- I'm conscious of Mr. Williams' privacy as well,  
16 but -- and it's a matter of public record. These  
17 calls, a lot of them would relate to matters and  
18 concerns that Mr. Williams quite understandably had  
19 about his own personal security arrangements, and,  
20 because of various decisions that had been taken, there 11:23  
21 had to be reviews of security arrangements for  
22 protected individuals, and I know that a lot of these  
23 interactions would have been in relation to that. I  
24 can't say that about the April 2014 one, I simply don't  
25 know, but what I do know is that the majority of these 11:24  
26 contacts would have been in relation to matters  
27 relating to those type of things.

28 234 Q. Okay. But you can't say for definite, is that correct,  
29 what that text was about, am I right about that?

1 A. Well, Chairman, I can say for definite it's not in  
2 relation to the article, but I don't know what the text  
3 is. Ordinarily, if I was texting somebody, it would be  
4 in response to something that they had sent me.

5 235 Q. Okay. All right. So then we have, in May 2014, you -- 11:24  
6 in relation to Sergeant McCabe, you have restored his  
7 pulse access, something you have already dealt with in  
8 your evidence to the Tribunal in January of this year.

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

10 236 Q. Could I then turn to your management meeting of the 9th 11:24  
11 May 2014, which is at page 6312 of the materials.

12 A. Sorry, Ms. Leader, 6312?

13 237 Q. Yes.

14 A. Yes.

15 238 Q. It's the management meeting of the 9th May? 11:25  
16 A. Yes, Chairman.

17 239 Q. You see the first thing that is dealt with on that  
18 management meeting is the Guerin Report.

19 A. Yes, Chairman.

20 240 Q. So: 11:25  
21  
22 "Focus on what we need to address as a result of its  
23 findings. Change of culture. No sight of report yet.  
24 No statement or pre-release."  
25  
26 Is that correct? 11:25

27 A. Or maybe "press release", is it?

28 241 Q. "Press release". And then:  
29

1 "Time --"  
2 A. "To consider it".  
3 242 Q. "Time to consider it. 11 a.m. published."  
4  
5 was it published on that day, I think, is that -- 11:25  
6 A. From my memory, Chairman, I think that's correct, yes.  
7 243 Q. And that is at half past ten, so it's before that.  
8  
9 "May have to redefine priorities identified in the  
10 College." 11:26  
11  
12 Is that correct?  
13 A. Yes, Chairman.  
14 244 Q. "Focus on priorities. Lack of consistence --"  
15 A. "Lack of consistency and standards". 11:26  
16 245 Q. " -- consistency and standards around the country.  
17 Clear guidelines, governance. Audits of cases/"  
18 immigration --  
19 A. No, sorry, "investigations".  
20 246 Q. "Investigations". Sorry. 11:26  
21  
22 "Peer support for people coming forward."  
23 A. "Coming forward", yes.  
24 247 Q. And is that a reference to Sergeant McCabe there, do  
25 you think? 11:26  
26 A. Not just Sergeant McCabe, but people -- empowering  
27 people to speak up.  
28 248 Q. "Feedback from management teams".  
29 A. "And each AC".

1 249 Q. And each assistant commissioner?  
2 A. Yes.  
3 250 Q. "What we need to do, signal strongly our intent" re  
4 "issues, need to be mindful, are we doing the right  
5 things, are we doing them?" 11:26  
6  
7 Is that right?  
8 A. Yes, that is "IR issues".  
9 251 Q. All right. And then later on during that meeting, at  
10 page 6315 of the materials, we see "HRM Commissioner", 11:27  
11 is that correct?  
12 A. Or is it -- yes, it could be "HRM", yes.  
13 252 Q. Okay. And then:  
14  
15 "Policies, practices, procedures, supervision, 11:27  
16 leadership, oversight, generic issues."  
17  
18 And then:  
19  
20 "Criticism of Superintendent Clancy, separate incidents 11:27  
21 identified, Guerin identifies inadequacies."  
22  
23 And then we just go down a little bit, I think it's  
24 "NOS", am I correct in that?  
25 A. That could be Northern Region. 11:27  
26 253 Q. It could be Northern Region?  
27 A. Yes.  
28 254 Q. Okay. See here we have:  
29

1 "Moving on to Commission of Investigation."

2 A. Yes.

3 255 Q. So, at that time, the guards, as an organisation, are  
4 considering moving on to the commission of  
5 investigation as a result of Guerin, isn't that right? 11:28

6 A. Yes, Chairman, I would say so.

7 256 Q. And then:

8

9 "Commissioner: Things we need to do immediately. Have  
10 to consider this, 300 and report." 11:28

11 A. No, Chairman, I can explain the context of that, if  
12 that's helpful.

13 257 Q. Yes.

14 A. So not alone did we have the Guerin Report, but the way  
15 we were able to anticipate what was going to come in 11:28  
16 Guerin was, we had the Garda Inspectorate report in  
17 relation to crime and investigation and there had been  
18 a number of recommendations made, and one of the  
19 imperatives I had when I took up the role as Acting  
20 Commissioner was to go all the way back to 2005, to the 11:28  
21 Garda Síochána Act, the Morris Report and all of the  
22 reports that had been made into An Garda Síochána since  
23 that time, including all of the Garda Inspectorate  
24 reports. My memory of the 300 there is, there were 300  
25 recommendations in the Garda Inspectorate's report and 11:28  
26 it was to pull all of those together and to begin a  
27 programme of improvement, and part of the cultural  
28 change and the cultural reform we wanted to bring about  
29 was making sure that we addressed all of those and that



1 we demonstrated that we were clearly identifying  
2 anything that hadn't been addressed before.

3 258 Q. All right. Then we go down:

4

5 "Important to say Guerin has made in paragraph 3.4 no 11:29  
6 determination."

7

8 And then there is a comment accredited to you:

9

10 "Commissioner: Embrace whistleblowers." 11:29

11

12 You see that?

13 A. Yes, Chairman.

14 259 Q. And there is:

15

16 "HRM Pulse access for Maurice McCabe." 11:29

17 A. Yes, Chairman.

18 260 Q. So certainly Sergeant McCabe is being discussed, as is  
19 Guerin, at a management level?

20 A. Oh, yes, Chairman, yes. 11:29

21 261 Q. Yes. At a management level.

22 A. But if I can explain, Chairman, not in relation to  
23 Sergeant McCabe personally, I was making sure that the  
24 Pulse access was restored, that the supports were in  
25 place for Sergeant McCabe, but also that we were making 11:29  
26 sure that the tone was set from the top in terms of  
27 whistleblowers, and I mentioned that previously in my  
28 evidence, not alone was I doing but I wanted to make  
29 sure the management team were doing it as well.

1 262 Q. If we can turn to the next page, 6316, we see the --  
2 halfway down the page:  
3  
4 "Commissioner: Maurice McCabe's Pulse access was not  
5 taken away. DPC website differentiates between issues 11:30  
6 and sensitive personal data."  
7 Computer clear --  
8 A. It's a "complex area".  
9 263 Q. Yes. It's a "complex area".  
10  
11 And then there is discussion about that. And just down 11:30  
12 at -- towards the bottom of the page:  
13  
14 "Commissioner: Get KK."  
15  
16 That is Kieran Kenny, an assistant commissioner, is 11:30  
17 that correct?  
18 A. Yes, Chairman.  
19 264 Q. "KK and MC", is that correct?  
20 A. Mark Curran, maybe. He would have been -- so Kieran 11:30  
21 Kenny and Mark Curran would have been Sergeant McCabe's  
22 assistant commissioner and chief superintendent.  
23 265 Q. All right.  
24  
25 "Tick tack with HRM in relation to welfare support. 11:30  
26 Reassure him that there is a dedicated POC."  
27 A. Point of contact.  
28 266 Q. Communicate decision to him via letter to be given  
29 him", is that --

1 A. "To be given to him".

2 267 Q. "To be given to him".

3

4 So -- and the meeting continues then. And at the very

5 end of that, there is, at page 6317 of the materials: 11:31

6

7 "Awaiting AG's advice re Pulse access."

8 A. Yes, Chairman.

9 268 Q. And then you are to meet again the week of the 19th

10 May, report for Minister in response. 11:31

11 A. Yes, Chairman.

12 269 Q. So, at a very high level, at the beginning of May,

13 Sergeant McCabe is being discussed at a management

14 meeting and the outcome of the Guerin Report and

15 embracing Sergeant McCabe as being a welcome and valued 11:31

16 member of the organisation?

17 A. Yes, Chairman, and from the 5th April onward it was my

18 intention to speak out and make sure, as I did in the

19 College on the 5th April, that people knew that

20 whistleblowers -- that dissent was not disloyalty, that 11:32

21 people had an obligation and a duty to speak up. And

22 part of the visible manifestation of that was to make

23 sure that Sergeant McCabe's access to Pulse was

24 restored. And the reference in the notes that we read

25 there, just to put context, was, the Data Protection 11:32

26 Commissioner had been involved in the decision to

27 remove the access to Pulse for complex personal

28 sensitive data issues and we needed to make sure that

29 advice was received and, also, that all of the advices

1 were received in order to restore Pulse and the  
2 necessary safeguards put in place.

3 270 Q. Okay. So the -- then, in May 2014, the reassignment of  
4 David Taylor from the Press Office?

5 A. Yes, Chairman. 11:32

6 271 Q. We have already dealt with that. And if we go into the  
7 16th May, which is exactly a week after that discussion  
8 in relation to Maurice McCabe, we have the Tusla  
9 notification being received by your office?

10 A. That's correct, Chairman, yes. 11:33

11 272 Q. So if we could turn to page 891 of the materials, we  
12 see Sergeant Duffy is sending on correspondence to you  
13 from Kieran Kenny, who was at the management meeting  
14 the week before, am I correct in saying that?

15 A. That's correct, Chairman, yes. 11:33

16 273 Q. Yes. So he's now sending you on, a week later, the  
17 attached report from chief superintendent -- it's 892,  
18 sorry -- to you:

19

20 "The attached report from Chief Superintendent 11:34  
21 Sheridan, Monaghan, is forwarded for your information.  
22 It contains a notification of suspected child abuse  
23 received by Superintendent McGinn, Bailieboro, from  
24 Tusla Child and Family Agency on the 7th May. You will  
25 note that the allegation identifies the alleged 11:34  
26 perpetrator as Mr. Maurice McCabe and the victim as  
27 Ms. D. I'm considering this matter at the present time  
28 and I will keep you informed of developments."  
29

1 And you'll see enclosed with that is the letter from  
2 Chief Superintendent Sheridan at page 893.

3 A. Yes, Chairman.

4 274 Q. And what Superintendent Sheridan is saying to Assistant  
5 Commissioner Kenny is that: 11:34

6

7 "The allegations have been the subject of a previous  
8 Garda investigation, that Ms. D has made a complaint  
9 based on the allegations set out in the attached  
10 referral form to Micheál Martin, that he has 11:35  
11 subsequently referred the matter to An Taoiseach,  
12 Mr. Enda Kenny, and the Ombudsman, and, in the  
13 circumstances, he is recommending that we await further  
14 communication from the parties listed above prior to  
15 commencing a review of the investigation." 11:35

16

17 So that's what is in mind at that stage, some sort of  
18 review at some stage into the future?

19 A. That's what is on the correspondence, Chairman, yes,  
20 yes. 11:35

21 275 Q. Yes. And we are very familiar with the notification,  
22 but what it describes is a case of rape of a child in  
23 relation to the matter.

24 A. Yes, Chairman.

25 276 Q. So I suppose what I'm asking you is, did this not come, 11:35  
26 or why didn't it, if it didn't - you are, the week  
27 before, discussing reaching out to Sergeant McCabe, to  
28 managing the outcome of the Guerin investigation, you  
29 are looking ahead to a commission of investigation

1 arising out of the Guerin investigation. Linked in  
2 with that is Superintendent Sheridan telling you that  
3 Ms. D had gone to Micheál Martin and who had referred  
4 the matter on to the Taoiseach, who has some control  
5 over the terms of a commission of investigation, and 11:36  
6 also a complaint to GSOC, so what was your reaction to  
7 receiving this at that particular time?

8 A. Well, Chairman, maybe just -- I know maybe I have given  
9 this in my evidence previously, Ms. Leader, but the --  
10 this report was received at my office, so even though 11:36  
11 it's addressed to Commissioner, just to understand the  
12 way matters come in, they come into the general  
13 administration office. I have read Superintendent  
14 Walsh's evidence in relation to this matter and I know  
15 Superintendent Walsh recalls bringing it to my 11:36  
16 attention. I don't recall that, but -- I don't recall  
17 him bringing this to my attention, but it was received  
18 in my office and the -- so I have no recollection of  
19 actually seeing or reading the content of this file.

20 277 Q. Okay. Well, first of all, maybe let's look at 11:37  
21 Superintendent Walsh's letter that he sent back to  
22 Assistant Commissioner Kenny, at page 890 --  
23 CHAIRMAN: Just before you go on, Ms. Leader, can I  
24 just clarify one thing, if you don't mind, please. The  
25 D allegation was that there was a game of hide and seek 11:37  
26 and they were both in or around the sitting room.  
27 There was an encounter on a couch. There was no  
28 question of any clothing being removed. The allegation  
29 was of some kind of rubbing from behind, body to body,

1 which lasted a very short time, allegedly someone  
2 coming down the corridor, it stopped. But this  
3 particular allegation, which of course is completely  
4 incorrect because it's not Ms. D's allegation at all,  
5 it's a -- I am asked to say it is a transcription error 11:37  
6 whereby a genuine person who had an actual rape offence  
7 involving digital penetration of the anus and vagina,  
8 as a child, by somebody else, was, in fact, falsely  
9 ascribed to Sergeant McCabe due to just cut from that  
10 and used it as a template, pasted into that, but the 11:38  
11 lady in question just didn't change it at all. So, in  
12 terms of -- we are all familiar with, if you like, a  
13 ladder of sexual assaults, and when you are at the top  
14 of the ladder - I know it's kind of wrong to classify  
15 these things, but there has to be some method of doing 11:38  
16 it - if you are at the top of the ladder, you -- say  
17 you are on step 10. The DPP decided vis-à-vis the D  
18 allegation that it wasn't even at the ladder. Nothing  
19 happened that, if it happened at all, would have  
20 constituted even an assault or a sexual offence. But 11:38  
21 here, someone has taken off someone else's clothing,  
22 there has been digital penetration and it is ascribed  
23 through the Commissioner of the Northern Region to  
24 Sergeant McCabe. Now, that moves us on to the ladder  
25 and it moves us up to maybe step 9 of the ladder in 11:39  
26 terms of sexual assault. That's why this is important  
27 and that's why Ms. Leader is asking you about your  
28 reaction to it.

29 A. Yes, Chairman.

1 CHAIRMAN: And what I need to clarify now, if you don't  
2 mind, is, how far did you read into it, because the  
3 first letter just says, here is the alleged  
4 perpetrator, here is the alleged victim. And then you  
5 go on to page 894 and there is a recommendation from PL 11:39  
6 McGinn, and if you go on to 896 you have the whole  
7 thing, what I have described. So, if you look at it,  
8 896:

9  
10 "Ms. D is attending counselling with Rian, and during 11:39  
11 the course of counselling she alleged she experienced  
12 sexual abuse in childhood and this abuse involved  
13 digital penetration, both vaginal and anal."

14  
15 And it is a mix-up of Ms. X allegation and Ms. D 11:40  
16 allegation, but it puts it on the ladder and it puts it  
17 up at step 8 or 9 of the ladder. So that is why this  
18 is important. So, Ms. Leader, I will leave it to you.  
19 It's to clarify that you actually got this document --

20 A. Yes, Chairman. 11:40

21 CHAIRMAN: -- alleging, on the ladder, at step 8 of the  
22 ladder, as opposed to the Ms. D allegation, which was  
23 never even on the ladder.

24 A. Yes, Chairman.

25 278 Q. MS. LEADER: So what Superintendent Walsh says, first 11:40  
26 of all, is, at page 890, he wrote at the time -- he  
27 managed your office, is that correct?

28 A. That's correct, Chairman. He would have been the  
29 private secretary.



1 279 Q. Yes. So in a private -- a letter headed "Private and  
2 Confidential", he says:  
3  
4 "I am directed by the Commissioner..." 11:41  
5  
6 So that suggests that you were telling him to do it,  
7 okay.  
8  
9 "... to refer to the email correspondence from your  
10 office of the 16th May 2014, the content of which has 11:41  
11 been noted by the Commissioner."  
12 A. Yes, Chairman.  
13 280 Q. So it's quite clear that he has shown it to you. He  
14 has said in his evidence here to the Tribunal that he  
15 showed it to you. He has recorded at the time that you 11:41  
16 noted it and that you directed him to write back to the  
17 Assistant Commissioner of the Northern Region,  
18 Mr. Kenny.  
19 A. Well, Chairman, maybe if I can explain. The first  
20 paragraph of this page 890 is actually a pro forma type 11:41  
21 of response. It's almost a template that is there, "I  
22 am directed by the Commissioner", by virtue of the  
23 office it comes to, "and which has been noted by the  
24 Commissioner." Ordinarily, in the ordinary course of  
25 correspondence, and I have read Superintendent Walsh's 11:41  
26 evidence, it would be saying "seen and noted by the  
27 Commissioner", which would normally differentiate the  
28 fact that the Commissioner had personally seen and  
29 would be noted by the Commissioner. And ordinarily, as

1 would be my practice, if I had seen the document, I  
2 would have some instruction rather than just say that  
3 you are considering the matter, I would give some  
4 instruction, and that would be my normal practice. As  
5 I said, I have no memory of seeing this document. I 11:42  
6 have read the superintendent's evidence; I'm not in a  
7 position to dispute it, but I have no memory of seeing  
8 this document. And taking the Chairman's point, it was  
9 something that I would have been very conscious of, if  
10 I had seen a document like this, I would have read it 11:42  
11 in its entirety and I would have been aware from my  
12 2008 synopsis of events that there was a difference in  
13 the allegation that was made and then I would direct a  
14 different type of action.

15 281 Q. Right. well, if we go on to what -- how Superintendent 11:42  
16 Walsh has dealt with the matter in -- on the 17th July.  
17 At page 889 of the materials, what he says is:

18  
19 "I am directed by the Commissioner to refer to previous  
20 correspondence from your office of the 16th May 2014 in 11:43  
21 the above and to inquire on the current status of the  
22 matter."

23  
24 And then we have Mr. Kenny replying to that on the 28th  
25 July 2014, and he is saying: 11:43  
26

27 "I held a meeting with Chief Superintendent Sheridan  
28 and Superintendent McGinn in relation to the matter.  
29 As a result of the meeting, I will be consulting with

1 Mr. Ken Ruane, Head of Legal Affairs, in relation to  
2 this matter. Chief Superintendent Sheridan will be  
3 liaising with the HSE to establish what their  
4 intentions are in relation to the referral."

11:43

5  
6  
7 And then we have on the 31st July:

8  
9 "I am directed again by the Commissioner to refer to  
10 yours of the 28th July, the content of which has been  
11 noted by the Commissioner."

11:43

12  
13 So there is an active chasing up of what is going on  
14 with the notification and reinvestigating or reviewing  
15 the original D investigation. Do you see that there?

11:44

16 A. Yes.

17 282 Q. And this is at a time when there is an active thinking  
18 about, at a management level, where Mr. Kenny is also  
19 sitting at the management meetings, about managing the  
20 fallout from Guerin, working forward to a commission of  
21 investigation and also a reaching out to  
22 whistleblowers, so they all are dealing with the same  
23 thing, in essence, is what I'm saying to you,  
24 Ms. O'Sullivan?

11:44

25 A. Yes, Chairman, they are, yes.

11:44

26 283 Q. Yes. So it's slightly incredible to think that this  
27 wouldn't immediately jump out at you when you'd see it  
28 on your desk?

29 A. Well, Chairman, that is -- that is my point: I'm not

1 in a position to dispute Superintendent Walsh's  
2 evidence. I have read his evidence. And I accept if  
3 he says that he showed it to me, he showed it to me.  
4 But ordinarily I would read correspondence that would  
5 be shown to me and I would identify things in the 11:45  
6 correspondence that needed to be actioned, as opposed  
7 to just pro forma forwarded on, and those updates would  
8 be just pro forma updates required through the  
9 administrative system.

10 284 Q. All right. And added to that, I suppose, we also have 11:45  
11 Mr. Williams' articles which were appearing in the  
12 Independent at that time; it wasn't just one article?  
13 A. Yes, Chairman, the April article.

14 285 Q. So we have the April article -- on the 12th April we  
15 have an article; then we have an article on the 15th 11:45  
16 April 2014 in relation to Ms. D meeting Micheál Martin;  
17 we have an article again on the 16th April 2014: "F.F.  
18 leader to meet woman at centre of claims that she was  
19 abused by garda."  
20 So there are a whole series of articles in relation to 11:46  
21 the -- to Mr. Williams. There is also an article on  
22 the 3rd May 2014 entitled "Kenny to set up probe into  
23 Garda sex abuse claim."  
24 A. Yes, Chairman.

25 286 Q. So what I'm suggesting to you is, that whatever about 11:46  
26 overlooking it in the normal event, you actually went  
27 on to meet Sergeant McCabe with Assistant Commissioner  
28 Kenny on the 7th August 2014, isn't that right?  
29 A. That's correct, Chairman, yes, I had reached out to

1 Sergeant McCabe in May 2014, had his Pulse restored,  
2 and in June 2014 I had reached out to him after he  
3 contacted my office in relation to my appearance - and  
4 I know I have touched on this evidence before - my  
5 appearance before the Justice and Defence Committee. 11:47  
6 And between June and August I was endeavouring to set  
7 up a face-to-face meeting with Sergeant McCabe through  
8 his legal advisers.

9 287 Q. So we have the same personalities involved; there is  
10 you and Assistant Commissioner Kenny and Sergeant 11:47  
11 McCabe and this ongoing issue, which has been received  
12 into your office in May, June and July 2014?  
13 A. That's correct, Chairman, yes.

14 288 Q. And also articles appearing in the paper --  
15 A. Yes, Chairman. 11:47

16 289 Q. -- written by Mr. Williams.  
17 A. Yes, Chairman, I accept that.

18 290 Q. Yes, yes. So did you make a decision just to park the  
19 Tusla notification?  
20 A. No, Chairman. Absolutely not. 11:47

21 291 Q. Well, another, maybe, reasoning for the matter being  
22 left as it was is, maybe you decided that too much  
23 attention had been given to the D allegation in or  
24 around the time of the Public Accounts Committee and  
25 you were happy just to leave it there, to give it no 11:48  
26 attention at all?  
27 A. No, Chairman, that is not the case. My entire focus  
28 was on making sure that there were supports in place  
29 for Sergeant McCabe and that Sergeant McCabe, and not

1 just Sergeant McCabe, and I think this is very  
2 important: in terms of what I was trying to change in  
3 the culture of An Garda Síochána was in terms of being  
4 able to make sure that people knew that they could be  
5 empowered to speak up and that they would be supported, 11:48  
6 and that, from the very top, that all of the assistant  
7 commissioners and the executive directors knew that  
8 that was the stance that we were going to take and that  
9 that would continue.

10 292 Q. All right. well, maybe that supports the theory that 11:48  
11 perhaps you wanted the D matter to be left where it was  
12 in 2006 and 2007 and not deal with the matter again  
13 other than to leave it there?

14 A. No, Chairman, I am not sure how it supports that  
15 proposition. 11:48

16 293 Q. Yes.

17 A. As far as I was concerned, from the knowledge I had in  
18 2008, the D matter had been directed upon by the  
19 Director and -- who said that there was no basis for a  
20 prosecution. So the matter did not arise again. As I 11:49  
21 say, in this correspondence, if I had seen it and read  
22 it in detail, I would have instructed or directed a  
23 different action, which was to contact the HSE and make  
24 sure that the matter was clarified immediately.

25 294 Q. well, I think the information you had was that there 11:49  
26 were consultations to happen with the HSE, that  
27 certainly would seem to be the case from the letter of  
28 the 28th July 2014?

29 A. Yes, but I wouldn't have allowed it just to continue to

1 be notified in the normal course, I would have directed  
2 that immediate contact be made and the matter be  
3 clarified immediately.

4 295 Q. Yes. Well, I suppose another possibility is that you  
5 decided that the matter should be dealt with at the 11:49  
6 Commission of Investigation and you were leaving it  
7 until then to leave the Commission deal with all  
8 matters in relation to Sergeant McCabe and his  
9 motivation?

10 A. No, Chairman, that is not the case. My understanding 11:50  
11 of the Commission of Investigation was always as a  
12 result of the recommendations of the Guerin Report and  
13 the matters that would be dealt with by the Commission  
14 of Investigation would relate to the complaints that  
15 Sergeant McCabe made in relation to practices in 11:50  
16 Bailieboro.

17 296 Q. So the matter was just left, in any event, in your  
18 office, in July 2014?

19 A. Yes, Chairman, the file only came to my attention when  
20 we were seeking to reply to a request from the 11:50  
21 Department in February 2017.

22 297 Q. Yes. And that was as a result of Sergeant McCabe's  
23 questions that he had put to the Minister, is that  
24 correct?

25 A. Yes, Chairman, that is correct. 11:50

26 298 Q. Yes.

27 CHAIRMAN: Just to put that into context,  
28 Ms. O'Sullivan. If you note, okay, this is May, but in  
29 June, which is the following month, Mr. Shatter told

1 the Dáil that he thought the D allegation should be put  
2 into the review, whatever the review was going to be,  
3 and it was only in November 2014 that counsel for the  
4 IRM, the Independent Review Mechanism, said, look, the  
5 D case is not suitable for any commission of inquiry 11:51  
6 which was then being set up, and, in fact, started, it  
7 got its terms of reference very shortly afterwards, but  
8 started under Mr. Justice O'Higgins on the 3rd of  
9 February. So the whole -- the reason Ms. Leader asked  
10 you the question, the whole issue was, was the D thing 11:51  
11 going to be looked at by the O'Higgins Commission, was  
12 very much live at that time.

13 A. Yes, Chairman.

14 299 Q. MS. LEADER: Now, as it happens, Mr. Kenny was the  
15 first suggested liaison officer for the O'Higgins 11:51  
16 Commission, isn't that correct?

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

18 300 Q. All right. So we again have the same personalities  
19 involved in the O'Higgins Commission involved in the  
20 management meetings dealing with the aftermath of the 11:52  
21 Guerin investigation, and the same person who was  
22 liaising with you and your office with regard to the  
23 Tusla notification and indeed meeting Sergeant McCabe  
24 in August 2014?

25 A. Yes, Chairman, maybe if I can just explain. In 2014, 11:52  
26 the management corps was severely depleted, so a number  
27 of people had double and indeed triple portfolios  
28 and -- as well as everybody else. Assistant  
29 Commissioner Kenny had responsibility for the Northern



1 Region, which related to, obviously, Bailieboro and the  
2 issues surrounding there. He had responsibility for  
3 the eastern region, wherein Sergeant McCabe was  
4 attached to Mullingar station, and he also had partial  
5 responsibility for part of our risk management  
6 processes as well. 11:52

7 301 Q. I suppose -- that is really besides the point,  
8 Ms. O'Sullivan. What I'm saying to you is, it's really  
9 inconceivable that the two of you wouldn't have had a  
10 conversation around the Tusla notification, considering 11:53  
11 all that you had to do with Sergeant McCabe, the Guerin  
12 inquiry, the Commission of Investigation, the Tusla  
13 notification arriving in, and managing the HR issues  
14 with Sergeant McCabe, meeting him in August 2014 and  
15 what thereafter developed, as you have already dealt 11:53  
16 with in your evidence in January of this year. So what  
17 I'm saying to you is, it just simply, I'd suggest to  
18 you, can't be the case that this Tusla notification  
19 wasn't followed up or suggested by, if not you, by  
20 Assistant Commissioner Kenny? 11:53

21 A. Assistant Commissioner Kenny never mentioned it to me,  
22 Chairman, and it wasn't discussed between us at all.

23 302 Q. You see, it would suggest that people are dealing with  
24 things on different spheres, that for some reason the  
25 Tusla notification was totally taken out of everything 11:54  
26 got to do with Sergeant McCabe, Guerin and O'Higgins,  
27 and what I'm suggesting to you is, that cannot be  
28 credible?

29 A. Well, Chairman, one matter I noted when we did

1 discover, I will call it the Tusla portion of the file,  
2 was that when it came into the Commissioner's office it  
3 was allocated a separate file number, which was what  
4 took us some time to discover it in the February 2017  
5 collation of materials to respond to the Department, 11:54  
6 and it was allocated a different file number, so it  
7 wasn't attaching to any file relating to Sergeant  
8 McCabe and it was a completely different file heading.  
9 So I can't account for how that happened, but what I  
10 can say, it was not discussed and it was discovered 11:54  
11 when we were trying to collate materials to respond  
12 wholesomely and fully to the request from the  
13 Department for information.

14 303 Q. But whatever about file numbers and where things are  
15 stored, Assistant Commissioner Kenny was attending 11:54  
16 meetings dealing with this matter and you were  
17 receiving correspondence dealing with this matter, and  
18 you, in turn, were dealing with Sergeant McCabe, do you  
19 see what I'm saying to you?

20 A. Yes, Chairman, I see the point, but I can't put it 11:55  
21 further. It wasn't discussed with me by Assistant  
22 Commissioner Kenny and I didn't discuss it with him  
23 because I wasn't aware of it.

24 304 Q. Okay. And I would have to suggest to you,  
25 Ms. O'Sullivan, that there is a little bit of a theme 11:55  
26 emerging here, because from January of 2014 your  
27 evidence to the Tribunal has also been that you never  
28 heard mention of the D allegation, whether it be in the  
29 pre-PAC meetings or anything former Commissioner

1 Callinan may or may not have said to you, do you  
2 understand what I'm saying? It seems to be just wiped  
3 from everything, bar the mention of it in 2008?  
4 A. Well, I can only give my account, Chairman, and I  
5 certainly did not have any or was not present for any 11:55  
6 discussions where the Ms. D allegation -- as I say,  
7 there were several discussions around the complaints  
8 made by Sergeant McCabe, about the investigation and  
9 the updates in relation to those complaints, in  
10 relation to what could be done in terms of supporting 11:56  
11 Sergeant McCabe, but Ms. D and the Ms. D allegation was  
12 not mentioned in my presence.  
13 305 Q. Or the matter of an investigation for indecent assault?  
14 A. No, Chairman.  
15 306 Q. All right. In relation to former Commissioner 11:56  
16 Callinan, if what Mr. McCarthy and Mr. McGuinness says  
17 is true, and also Mr. Deasy, he was talking to  
18 everybody about the D allegation or the investigation  
19 into sexual assault, do you understand what I'm saying  
20 to you, if what they are saying is true? 11:56  
21 A. I understand what you are saying, Ms. Leader, yes.  
22 307 Q. Yes. So did you ever discuss the matter with former  
23 Commissioner Callinan?  
24 A. In relation to Ms. D?  
25 308 Q. Yes. 11:56  
26 A. No, Chairman. Never.  
27 309 Q. Or hear him say that?  
28 A. No, Chairman.  
29 310 Q. Did you get from him that he was frustrated or annoyed

1 with matters that Sergeant McCabe was bringing up?  
2 A. He was certainly very concerned. I think -- yes, I  
3 think at times he was frustrated about the matters that  
4 were being raised and the manner in which they were  
5 being raised, but I didn't get the sense that the 11:57  
6 frustration was focused personally on Sergeant McCabe.  
7 It was more in relation to how the issues were being  
8 dealt with and how they were being brought into the  
9 public domain, but I would say he was very concerned,  
10 yes. 11:57  
11 311 Q. Okay. And did that -- did he ever lose his temper  
12 about the matter?  
13 A. No, Chairman, I wouldn't have seen him lose his temper.  
14 As I say, he was concerned and at times he may have  
15 been frustrated by the fact that this -- these matters 11:57  
16 were being put into the public domain in the manner in  
17 which they were.  
18 312 Q. I suppose we can only see him in public, and certainly  
19 he was prepared to go as far as to say the activities  
20 of the whistleblowers were disgusting in public, so 11:58  
21 that would suggest, if that happened in public, that  
22 there may have been stronger matters or stronger  
23 emotions vented in private amongst his deputy  
24 commissioner or assistant commissioners; did you see  
25 anything of that sort? 11:58  
26 A. No, Chairman, I did not, but maybe if I can put it in  
27 context. You know, by virtue of our positions, we  
28 would have worked very closely together, Commissioner  
29 Callinan and I.

1 313 Q. Yes.

2 A. I would not be a person that Commissioner Callinan  
3 would behave in that manner in front of, and certainly  
4 any of my interactions with Commissioner Callinan would  
5 have been professional and would have been on a 11:58  
6 professional basis.

7 314 Q. Okay. Well, I suppose even on a professional basis,  
8 sometimes people get frustrated if they are under  
9 pressure, such as he was on the day of the Public  
10 Accounts Committee meeting? 11:58

11 A. Yes, he was frustrated. It was a very tense meeting,  
12 yes. And, as I say, he was concerned in relation to  
13 the matters that were put before the Committee.

14 315 Q. All right. Now, we have already dealt with the period  
15 in 2015 in relation to the O'Higgins matter, but I just 11:59  
16 want to ask you some questions about the RTÉ broadcast  
17 on the 9th May 2016.

18 A. Yes, Chairman.

19 316 Q. When did you get the O'Higgins Report, the final one  
20 and the draft one? 11:59

21 A. To the best of my recollection, Chairman, we would have  
22 got an initial draft O'Higgins Report in and around  
23 February, probably early to mid-February 2016.

24 317 Q. Yes.

25 A. And we would have made submissions in relation to that 11:59  
26 draft report.

27 318 Q. To the Commission?

28 A. To the Commission, yes, Chairman.

29 319 Q. All right. And in relation to the final report, when

1 did you get it?

2 A. I believe in and around the 21st April 2016.

3 320 Q. All right. And that report was made available to you,  
4 is that correct?

5 A. To An Garda Síochána and to a number of other 12:00  
6 interested parties.

7 321 Q. Yes.

8 A. Yes, Chairman.

9 322 Q. Were there any meetings held in relation to that report  
10 in Garda Headquarters or amongst the management group 12:00  
11 of An Garda Síochána?

12 A. No, to the best of my recollection, not in relation to  
13 the unpublished draft report, but the final report  
14 would have been actioned. I would have given it to  
15 Deputy Commissioner Twomey to action in line with other 12:00  
16 work he was doing arising from Guerin and, as I  
17 mentioned earlier, arising from implementing the  
18 recommendations of the Inspectorate reports.

19 323 Q. So when you say 'actioned', do you mean to consider the  
20 recommendations or the findings and take appropriate 12:00  
21 steps on foot of those?

22 A. Yes, Chairman, actioning the recommendations and the  
23 findings.

24 324 Q. Okay. And then what about dealing with the media  
25 interest in relation to the matter? 12:00

26 A. Yes, Chairman, and I understand from some of the papers  
27 I have read, there was a meeting. From my memory, I  
28 was out of the country from the 23rd April until the  
29 5th May 2016 on official business, but I know that

1           there was a meeting, I just can't recall the date.

2 325 Q.    Yes.

3           A.    But there was a meeting to put together a holding  
4           statement, so to speak.

5 326 Q.    Okay. And that's -- Superintendent Ferris refers to           12:01  
6           that in his statement to the Tribunal, he says that  
7           there was a meeting on the 25th April 2016 in relation  
8           to the O'Higgins Report, and he was standing in for Mr.  
9           McLindon on that date.

10          A.    Yes, Chairman.    12:01

11 327 Q.    You weren't at that meeting?

12          A.    No, Chairman.

13 328 Q.    We know that Superintendent Ferris put together a draft  
14          statement, and that's at page 3250 of the materials.

15          A.    Yes, Chairman, I have that here.                            12:02

16 329 Q.    "The Garda Commissioner welcomes the publication of  
17          Mr. Justice O'Higgins' Commission of Investigation  
18          Report today. The Garda Commissioner accepts the  
19          findings of this report and its recommendations. The  
20          Commission of Investigation found that allegations of           12:02  
21          corruption to be unfounded and recognised those hurtful  
22          complaints unfounded and those against whom such  
23          complaints were made had to live for many years under  
24          the strain of those allegations. Garda management  
25          remains committed to the protected disclosure system to   12:02  
26          ensure that everyone involved is treated with kindness  
27          and sensitivity, as acknowledged in the matters  
28          considered by the Commission of Investigation. The  
29          Garda Commissioner shares the Commission's views in

1 hoping that the closing of this inquiry will enable the  
2 gardaí in the areas, can put the unhappy events the  
3 subject matter of this inquiry behind them, learning  
4 lessons where appropriate and to faithfully discharge  
5 the duties of a member of An Garda Síochána.

12:03

6  
7 As Garda Commissioner, I am committed to addressing all  
8 of the lessons learned identified in the Commission  
9 Investigation Report and these include the following:

10  
11 Review of the terms and conditions of the role of the  
12 sergeant in charge; introduction of performance  
13 management system; appropriate recording of incidents  
14 and adequate note-taking; delays in having material  
15 examined by the computer crime unit; provision of  
16 templates to division officers to cover all possible  
17 breaches of discipline; the lack of adequate  
18 communications with the victims of crime."

12:03

12:03

19  
20 Have you seen that document before?

12:03

21 A. I don't recall this specific, but I have no dispute  
22 with it. It would have been along the general lines,  
23 yes.

24 330 Q. All right. And is that a document you may have  
25 approved later on or --

12:03

26 A. Given that I was out of the country, it may have been  
27 read to me or I may have approved it later on, yes.

28 331 Q. And we have gone through your statements that you made  
29 post-publication already in your evidence to the



1 Tribunal, but I suppose what I'm asking you is, did you  
2 at any time discuss the matter with Mr. Reynolds?  
3 A. No, Chairman, never.  
4 332 Q. Yes. You had access to the report, isn't that correct?  
5 A. Yes, Chairman, I would have read the report. 12:04  
6 333 Q. Yes. And did you print off a copy of it?  
7 A. No, Chairman, it would have been printed for me to  
8 read, but I wouldn't have copied it again.  
9 334 Q. Did you ever hand it to him?  
10 A. No, Chairman, never. 12:04  
11 335 Q. Or discuss the matter?  
12 A. Not in any way at all, Chairman.  
13 336 Q. Yes. If we just look at your contacts with  
14 Mr. Reynolds for the two thousand and -- the period  
15 when David Taylor was Press Officer. Sorry, I have 12:04  
16 just lost the page. It's attached to your interview  
17 with the investigators. I think you know Mr. Reynolds,  
18 if we start it that way?  
19 A. Yes, Chairman, I do, yes.  
20 337 Q. How do you know him? 12:05  
21 A. I would know Mr. Reynolds, along with a number of other  
22 journalists, for over 30 years. We would have more or  
23 less grown up together in our respective professions.  
24 338 Q. And you have his phone number in your phone?  
25 A. Yes, Chairman, I would. 12:05  
26 339 Q. And you have contact with him on a regular or  
27 semi-regular basis?  
28 A. Yes, Chairman -- well, maybe not a regular basis, but  
29 on occasion, yes, Chairman.

1 340 Q. On occasion?  
2 A. Yes.  
3 341 Q. And there is a synopsis of your billing records on the  
4 screen in front of you. It's at page 1018 of the  
5 materials, sorry. 12:06  
6 A. Yes, Chairman, I have that here.  
7 342 Q. Yes. So you will see there that there is, we have  
8 September 2012, January 2013, December 2013, January  
9 2014, February 2014, March 2014, April 2014 and May  
10 2014. 12:06  
11 A. Yes, that's correct, Chairman.  
12 343 Q. So some contacts in that period --  
13 A. Yes, Chairman.  
14 344 Q. -- of time. And if we look at your -- the FSNI report  
15 on SM12, which was one of your phones, at page 4652 of 12:06  
16 the materials, I think it might be volume 17.  
17 A. Sorry, 4652?  
18 345 Q. Yes, 4652 of the materials.  
19 A. Yes, I have that.  
20 346 Q. And we see there October 2016, there is a text from 12:07  
21 Paul Reynolds, a text to Paul Reynolds, a text from  
22 Paul Reynolds, and then there are comments in relation  
23 to your attendance at the Justice and Equality meeting,  
24 and then we have a text from Paul Reynolds on the 12th  
25 October 2016. Do you see that? 12:08  
26 A. Yes, Chairman.  
27 347 Q. Now, these texts are redacted because Mr. Reynolds is  
28 claiming a form of privilege over them, but I think  
29 you've had the opportunity to look at those texts and

1           they don't relate to the O'Higgins Commission, is that  
2           correct?

3           A.   Not at all, Chairman.  Actually that particular day I  
4           was appearing before the Justice and Defence Committee  
5           and they all relate to my appearance before the Justice  12:08  
6           and Defence Committee, but nothing whatsoever touching  
7           off the terms of reference.

8   348   Q.   All right.  And then we see a text from Mr. Ruane, who  
9           is the legal adviser to the guards at that time, on the  
10          15/11/2016, which is around the time that the protected  12:08  
11          disclosures were made, am I correct in that?  It's  
12          later, later; it would have been October 2016 the  
13          protected disclosures were made.

14          A.   Oh, yes.  Sorry, I beg your pardon, Chairman.  Yes, I  
15          received the protected disclosures from Mr. Justice  12:08  
16          O'Neill, I believe, on the 25th October '16, yes.

17   349   Q.   Yes.  And he required you to answer certain questions  
18          in relation to them --

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

20   350   Q.   So we have Mr. Ruane saying:  12:09  
21  
22          "I have no record of any queries received by myself or  
23          by the Press Office on the 8th or 9th of May from  
24          Mr. Paul Reynolds from RTÉ on the O'Higgins Report.  It  
25          would be worth checking with Superintendent Gerry  12:09  
26          Murphy, Press Officer at this time, to see if he  
27          received any calls or emails from Mr. Reynolds on this  
28          matter.  
29          Regards,

1 Andrew. "

2

3 So it may have been Mr. McLindon who was actually using  
4 the phone, is that correct?

5 A. Yes, Chairman, I would have asked Mr. Ruane to check in 12:09  
6 with Mr. McLindon to see if there was any normal press  
7 queries received, and it would have been probably  
8 Mr. McLindon's response being forwarded to me by  
9 Mr. Ruane.

10 351 Q. Okay. And then we have, in December 2016, a series of 12:09  
11 exchanges between yourself and Mr. Reynolds in relation  
12 to other matters bar the very last one, which is a  
13 reference to Mr. Howlin in the Dáil, isn't that right?  
14 There is one in 2017.

15 A. Yes, Chairman, that's correct, yes. 12:10

16 352 Q. Yes. So Sergeant McCabe suggests in his evidence that  
17 Mr. Barrett said that it would have been Block 1 who  
18 influenced the broadcasts in RTE on the 9th May 2016,  
19 which I understand is the Commissioner's block of Garda  
20 Headquarters, is that correct? 12:10

21 A. Well, Chairman, there are a lot of people contained in  
22 Block 1, but yes, colloquially, sometimes some people  
23 would refer to the Commissioner's office as Block 1,  
24 yes.

25 353 Q. All right. And in relation to -- Mr. Barrett says that 12:10  
26 simply didn't happen, so Mr. Barrett would appear not  
27 to be supporting the proposition that you somehow  
28 influenced Mr. Reynolds, but did you seek to influence  
29 RTE in their coverage of the O'Higgins Report?

1 A. No, Chairman, I have never sought to influence RTÉ in  
2 relation to their coverage of anything at all, but  
3 specifically in relation to the O'Higgins Report, not  
4 at all, and I have no idea how anybody would come to  
5 that conclusion. 12:11

6 354 Q. All right.

7 CHAIRMAN: Sorry, Ms. Leader, if I could summarise just  
8 where we are at the present time. Obviously the  
9 O'Higgins Report had to be circulated because it was  
10 under the Pergamon Press thing, circulate the report, 12:11  
11 get people's comments, yes, the draft report. So that  
12 would have been happening, presumably, January,  
13 February, maybe March.

14 MS. LEADER: I think February onwards.

15 CHAIRMAN: February onwards, yes. And then the report 12:11  
16 was circulated finally on the 25th April, the leaked  
17 report was discussed on RTÉ on the 6th May and the  
18 official report was then published by the Department of  
19 Justice and Equality on their website on the 11th May,  
20 so five days later. The RTÉ was the 6th -- 12:11

21 MS. LEADER: The 9th of May.

22 CHAIRMAN: There are no communications, texts, with  
23 Paul Reynolds at that time?

24 MS. LEADER: Not that we can see.

25 CHAIRMAN: At the target time there is nothing? 12:12

26 A. No, Chairman.

27 MS. LEADER: Not that we can see.

28 355 Q. And in relation to meetings that could have been held  
29 in Garda Headquarters, I understand the position, which

1 will be confirmed by the Office of the Chief State  
2 Solicitor, that management meetings between February  
3 2016 to the 9th May 2016, there is no reference in it  
4 to the draft O'Higgins Report, as I understand the  
5 position?

12:12

6 A. That would be correct, Chairman. It wasn't actioned  
7 until such time as we received the final published  
8 report from the Department. And if I could explain,  
9 Chairman, there was one request from the Department,  
10 from my memory, looking to know was there any reason,  
11 so between the unpublished draft being received in  
12 April, I believe, the 21st April '16, there was a  
13 request from the Department to know if there was any  
14 reason that would prohibit the publication of the  
15 report, and I would have asked Mr. Ruane, from my  
16 memory, to action that, and he reported no, there was  
17 no reasons from a legal point of view, from An Garda  
18 Síochána's perspective, that the report should not be  
19 published.

12:12

12:12

20 356 Q. And there was a second query sent to the office of the  
21 Chief State Solicitors asking was it referenced at any  
22 other meetings, other than management meetings, between  
23 February 2016, when the draft report was sent out, to  
24 the 9th May 2016, and inquiries are continuing in  
25 relation to that, but we know it was referred to in the  
26 meeting Superintendent Ferris was at?

12:13

12:13

27 A. Yes, Chairman, that is my understanding, yes.

28 357 Q. And do you know of any other meetings -- did you attend  
29 any meetings where --

1 A. No, Chairman, other than after the 9th May when the  
2 report was published, I would have tasked Deputy  
3 Commissioner Twomey.

4 358 Q. Okay. And we have -- in the aftermath of the  
5 publication and the leaks, there were a number of 12:13  
6 meetings, but we have already dealt with those in  
7 evidence?

8 A. Yes, Chairman, in relation to formulating press  
9 responses to, if I call it the fallout from the  
10 O'Higgins Commission. 12:14

11 359 Q. But, in any event, they post-date the RTÉ --

12 A. Yes, Chairman, yes.

13 360 Q. Were you ever actually briefed on the report?

14 A. I would have read the report, Chairman.

15 361 Q. Okay. 12:14

16 A. Yes. And I would have had -- obviously, Chief  
17 Superintendent Healy would have briefed me in relation  
18 to the lead-up to the report, but I would have read the  
19 report myself.

20 362 Q. Yes. And did you discuss the report after reading it 12:14  
21 with anybody?

22 A. No, Chairman. I would have read it myself and then  
23 just identified actions that we needed to action  
24 arising from it.

25 363 Q. All right. And I think at some stage in June 2016, 12:14  
26 your legal team prepared a document which compared and  
27 contrasts the Byrne/McGinn findings and the report's  
28 findings and Seán Guerin's findings?

29 A. That's correct, Chairman, and that was in the interests

1 of completeness to make sure the actions that we were  
2 implementing actually addressed all of the issues and  
3 we left nothing out.

4 364 Q. And that document is dated 10 June 2016 and was  
5 circulated with the materials with the O'Higgins 12:15  
6 Commission at page 3999 of the materials. But insofar  
7 as that could be considered to be a briefing document  
8 in relation to policing in Cavan-Monaghan in the  
9 various reports, is there any other document that could  
10 resemble a briefing document in relation to the 12:15  
11 O'Higgins Report?

12 A. No, Chairman, not that I am aware of, no, and I don't  
13 believe there is.

14 365 Q. Okay. Did you at any time see a summary of the report,  
15 or anything like that? 12:15

16 A. No, Chairman, I would have read the report from cover  
17 to cover.

18 MS. LEADER: All right. If you'd answer any questions  
19 anybody else has.

20 A. Thank you, Ms. Leader. 12:15

21

22 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL:

23

24 366 Q. MR. McDOWELL: Ms. O'Sullivan, Michael McDowell is my  
25 name, and I am appearing among counsel for Sergeant 12:16  
26 McCabe. Could I ask you at the outset, Ms. O'Sullivan,  
27 just to recapitulate what your evidence is in relation  
28 to the Ms. D allegation. When did you first become  
29 aware of it?



1 A. Chairman, my first -- my recollection is I first became  
2 aware of it in my capacity as Assistant Commissioner  
3 HRM in 2008, when I requested a briefing document from  
4 Chief Superintendent McGinn, who was the chief  
5 superintendent in Donegal at that time. 12:16

6 367 Q. That is Chief Superintendent Terry McGinn, is that  
7 right?

8 A. Yes, Chairman, that's correct.

9 368 Q. And your attitude at that stage was that this was a  
10 matter which had been fully investigated and there was 12:16  
11 nothing to it, is that right?

12 A. Well, Chairman, insofar as it was contained in a  
13 document, which I am afraid I don't have it here in  
14 front of me, but it was a paragraph in a document which  
15 I think extended to eight or ten pages, and that was my 12:17  
16 understanding of the synopsis of the document, yes.

17 369 Q. I am asking you a different question. Your attitude to  
18 the allegation was that this was something which had  
19 been investigated and there was nothing to it, are you  
20 agreeing with that proposition? 12:17

21 A. Well, certainly, Chairman, if I can just get out the  
22 page, perhaps, Mr. McDowell.

23 CHAIRMAN: It's page 878.

24 A. Thank you, Chairman. My memory was that, yes, that's  
25 what was contained in Chief Superintendent McGinn's 12:17  
26 synopsis, yes.

27 370 Q. MR. McDOWELL: Are we talking about the paragraph which  
28 heads "On the 5th December 2006"?

29 A. If I can just -- yes, Chairman, that's it. It's

1 about -- it begins four paragraphs down that page.  
2 It's page 878, or page 8 of Chief Superintendent  
3 McGinn's report.

4 371 Q. And I take it from that that your view was that there  
5 was no basis for a prosecution, is that right, because 12:18  
6 that is what is said in the third-last line there?

7 A. Yes, Chairman.

8 372 Q. So is it fair to say that your attitude was that this  
9 was an allegation which needn't concern you any  
10 further? 12:18

11 A. Yes, Chairman, my -- I got this document in order to be  
12 able to respond to correspondence that was received  
13 from Mr. Costello's office.

14 373 Q. Yes. But the point I'm making, I'm asking you about  
15 your attitude to the Ms. D allegation. What did you 12:18  
16 consider was the upshot of the allegation being made?

17 A. Well, that the matter had been adjudicated on by the  
18 DPP and that there was no basis for a prosecution.

19 374 Q. Yes. And thereafter, when did you after that -- when  
20 did it next come on to your radar screen, if I may put 12:19  
21 it that way?

22 A. Is that in relation to Sergeant McCabe, Mr. McDowell,  
23 or in relation to Ms. D?

24 375 Q. Either of them. Either of them. I am trying to work  
25 out your awareness of this allegation. 12:19

26 A. Well, during my time in HRM, from October 2008 until  
27 April 2009, I would have dealt with correspondence  
28 mostly emanating from Mr. Costello's office in relation  
29 to Sergeant McCabe on a number of occasions. I can't

1 recall at this point in time the number of occasions,  
2 but on a number of occasions.

3 376 Q. I see. And these were to do with threats of litigation  
4 and litigation, and the like, is that right?

5 A. Well, they would have been dealt with by -- some of 12:19  
6 them would have, yes, but most of those would have been  
7 dealt with by legal actions. My involvement would have  
8 been in relation to HRM matters, so human resource  
9 matters.

10 377 Q. I see. So how long were you assistant commissioner 12:20  
11 with responsibility for HRM?

12 A. From, I believe, the 31st October 2008 until early  
13 April '09.

14 378 Q. I see. And thereafter, you went into a different  
15 sphere, is that right? 12:20

16 A. Yes, Chairman, I transferred to Crime and Security  
17 section.

18 379 Q. And when you became deputy commissioner, you reassumed,  
19 on the ladder of responsibility, resource issues as  
20 well, is that right? 12:20

21 A. No, Chairman, human resources would have come under  
22 deputy commissioner governance and strategy.

23 380 Q. And that was Nacie Rice, was it?

24 A. Or strategy and change management it was at the time.  
25 Yes, that would have been Commissioner Rice, yes, 12:20  
26 Chairman.

27 381 Q. So when the penalty points system began to come to  
28 public awareness, were you conscious of the fact that  
29 Sergeant McCabe was complaining about the way in which

1 the penalty points system had been used or abused?

2 A. At some stage I would have become aware it was Sergeant  
3 McCabe, but I can't recall what precise time I became  
4 aware it was Sergeant McCabe and another person.

5 382 Q. And I'm just asking, is it your evidence that you 12:21  
6 never, ever discussed Ms. D's allegation against  
7 Sergeant McCabe with any other person in the force for  
8 all of those years?

9 A. Yes, Chairman. I had no reason to -- I don't remember  
10 any correspondence coming across my desk in relation to 12:21  
11 it after my time in HRM and I would have no reason to  
12 involve myself in it in my other portfolio.

13 383 Q. And in 2013, we have evidence here from some witnesses  
14 at least that that allegation was being spoken about  
15 widely in Garda Headquarters. Are you saying that 12:21  
16 nobody ever mentioned it to you?

17 A. Well, Chairman, yes, I am, nobody ever spoke to me in  
18 relation to it.

19 384 Q. And so we can take it that, for the whole of 2013, as  
20 far as you were concerned, this was simply something 12:22  
21 that was never mentioned to you at all?

22 A. Yes, Chairman, I'm just trying to think where I was in  
23 2013 and what stage we were at in terms, but I do not  
24 recall the Ms. D allegation and it being mentioned any  
25 time during that period of time. 12:22

26 385 Q. Can you account, I'm just asking you can you account to  
27 the Chairman for the fact that a number of witnesses  
28 have told us that this was being widely discussed in  
29 Garda Headquarters, and that nobody ever mentioned it

1 to you, given that Sergeant McCabe was, and I'm using  
2 inverted commas around this, 'making trouble' for the  
3 force in respect of the penalty points issue?

4 A. Well, Chairman, I wouldn't agree that Sergeant McCabe  
5 was making trouble for the force and I don't agree with 12:22  
6 that comment. Sergeant McCabe was --

7 386 Q. Those are my inverted commas.

8 A. Oh, sorry. Sergeant McCabe was raising legitimate  
9 issues around weaknesses in the penalty points system  
10 that he identified, and, as a result of those issues, 12:23  
11 we were focused on what needed to be corrected in the  
12 penalty points system, so I wouldn't agree that  
13 Sergeant McCabe was making trouble whatsoever in any  
14 way, inverted commas or otherwise. Sergeant McCabe was  
15 raising legitimate issues. 12:23

16 387 Q. Were you ever made aware of the Commissioner's view  
17 that Sergeant McCabe had not cooperated with the  
18 O'Mahony report, which was compiled from -- from late  
19 2012 into 2013, did he ever tell you about that, that  
20 his view was that Sergeant McCabe hadn't cooperated? 12:23

21 A. I would have been aware of the public commentary in  
22 relation to it, but I would have never discussed it in  
23 any detail with anybody.

24 388 Q. Well, you see, that is the point. As I understand it,  
25 Assistant Commissioner O'Mahony was asked to 12:23  
26 investigate the complaints made by Sergeant McCabe?

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

28 389 Q. And it subsequently was put into the public domain by  
29 the Commissioner of An Garda Síochána, among others,

1           that Sergeant McCabe had not cooperated with the  
2           O'Mahony investigation.

3           A.    Yes, Chairman.

4 390 Q.    Well, were you aware of that?

5           A.    I was aware it was in the public domain, yes, Chairman, 12:24  
6           I was.

7 391 Q.    Well, did you ever discuss that with -- since you were  
8           concerned with rectifying things, did you ever discuss  
9           with the Commissioner his view that Sergeant McCabe was  
10          not cooperating? 12:24

11          A.    No, Chairman, I wasn't involved with the investigation  
12          in relation to the penalty points and I had very  
13          minimal discussions with anybody in relation to the  
14          investigation, and where I was involved was in relation  
15          to making sure that the policy was reviewed and was 12:24  
16          actioned accordingly.

17 392 Q.    I see. Did it come as a surprise to you then when the  
18          allegation was made that Sergeant McCabe had not  
19          cooperated with the O'Mahony investigation?

20          A.    I wouldn't call it a surprise, but it was just -- it 12:25  
21          was brought into the public domain and I subsequently  
22          saw Sergeant McCabe's correction of that position, and  
23          that's how I became aware of it.

24 393 Q.    Well, going back to December 2012, were you aware that  
25          the Commissioner had sent a direction to Sergeant 12:25  
26          McCabe not to consult the Pulse system?

27          A.    Yes, Chairman, I would have been aware of the general  
28          direction, yes, I was.

29 394 Q.    And did he discuss that with you before he made that

1 direction?

2 A. No, Chairman, I believe I would have become aware of it  
3 through correspondence being sent from the assistant  
4 commissioner in the eastern region through my office,  
5 reporting back to the Commissioner. 12:25

6 395 Q. I see. And when the O'Mahony report was published,  
7 were you aware of the fact that Sergeant McCabe had  
8 complained that nobody had approached him in relation  
9 to the matter, that Assistant Commissioner O'Mahony had  
10 never telephoned him even? 12:26

11 A. Yes, Chairman, I can't remember in sequence whether it  
12 was before or after the publication of the report, but  
13 I became aware when Sergeant McCabe issued his, I  
14 forget whether he issued a statement or whether it was  
15 made public, that he disputed the fact that he hadn't 12:26  
16 cooperated with the investigation.

17 396 Q. That was much later. Were you aware -- were you aware  
18 that he was in correspondence with the Minister and  
19 that he was -- and that Mr. Flahive wrote back to him  
20 telling him that he could raise the issue through 12:26  
21 various channels but he'd either have to come forward  
22 with evidence or cease making complaints about the  
23 O'Mahony commission --

24 A. No, Chairman.

25 397 Q. -- or report. Were you aware of that? 12:27

26 A. No, Chairman.

27 398 Q. And were you aware, for instance -- you weren't aware  
28 at all that Mr. Flahive actually invited him to bring  
29 the matter further and gave him a number of options,

1 including an Oireachtas Committee?

2 A. I have seen those papers now, Chairman, but I wasn't  
3 aware of that at the time.

4 399 Q. I see. Well, did you ever discuss with the  
5 Commissioner in those months, which is -- what I am 12:27  
6 describing now is from May 2015 to December -- sorry,  
7 May 2013 to December 2013, the question of Sergeant  
8 McCabe and the penalty points issue?

9 A. No, Chairman. And maybe if I can, Mr. McDowell, to put  
10 this in context: There were a number of very, very 12:27  
11 serious issues going on at the time, so the penalty  
12 points issue was very important and it was a very  
13 serious issue, but we had a number of other issues that  
14 were going on at the time. So I know the perception  
15 has been created that the entire focus of the entire 12:28  
16 Garda organisation related to the FCPN issue and  
17 Sergeant McCabe. That wasn't the case. There were  
18 several things going on.

19 400 Q. And I absolutely accept that, that it wasn't the one  
20 and only issue, the burning issue of the day, but it 12:28  
21 was an important issue, wasn't it?

22 A. Yes, Chairman, it was an important issue, and an  
23 assistant commissioner had been appointed to  
24 investigate it.

25 401 Q. Yes. 12:28

26 A. And a number of actions were taken as a result of that.

27 402 Q. And I am asking you, did you ever have discussions with  
28 the Commissioner in relation to the actions that were  
29 being taken, the reaction to the O'Mahony report, did



1 you ever have any discussion with him on these matters?  
2 A. There would have been discussions certainly in relation  
3 to the findings of the O'Mahony report, and, as I said  
4 earlier, comparing it to the findings of the  
5 Comptroller & Auditor General report and also there 12:28  
6 would have been -- the Garda Inspectorate did a report.  
7 403 Q. Hold on a second. That is later, that is -- that -- we  
8 are going into 2014 now. In 2013, I am just asking you  
9 did you and the Commissioner discuss the issues that  
10 had arisen? 12:29

11 A. Me and the Commissioner personally, I don't believe so,  
12 Chairman. There could have been discussions generally  
13 in relation to the findings of the O'Mahony report, but  
14 I can't recall them at this stage.

15 404 Q. For instance, in late 2013, did you become aware that a 12:29  
16 journalist had called to Commissioner Callinan's house  
17 to check out was he the only person of his name at that  
18 address in relation to a cancellation of penalty  
19 points?

20 A. No, Chairman, I wasn't aware of that 'til much long 12:29  
21 after the fact.

22 405 Q. And, you see, I am trying to work out the extent of  
23 mutual engagement between yourself and Commissioner  
24 Callinan. You were his deputy, isn't that right?

25 A. I was one of his deputies at that stage, yes, Chairman. 12:29

26 406 Q. And I am just trying to work out in my own mind why it  
27 would be that he wouldn't discuss things such as, 'you  
28 won't believe what happened last week, my wife was  
29 door-stepped and I was very angry about it'?

1 A. Well, Chairman, I suppose everybody has their  
2 individual styles, and Commissioner Callinan's style  
3 was not to discuss things personally with me. He  
4 didn't raise his -- all of his concerns with me. And  
5 even in relation to that matter, he didn't raise it 12:30  
6 with me. I became aware of it, as I say, much long  
7 after the fact.

8 407 Q. Do I get the impression then that the working  
9 relationship between yourself and Commissioner Callinan  
10 was a professional one but not a close personal 12:30  
11 friendship type of relationship?

12 A. Yes, Chairman, we would have been professional  
13 colleagues, yes, and we wouldn't have had a close  
14 personal relationship, no.

15 408 Q. I see. I don't know whether you do go out the odd time 12:30  
16 for a drink, but you wouldn't be drinking pals, or  
17 anything like that, is that what you are telling me?

18 A. On occasion we would socialise together at events, and  
19 we would have obviously, because of our respective  
20 positions, been together at events, but we wouldn't 12:31  
21 socialise closely together as friends.

22 409 Q. I follow. So, in 2013, is it fair to say that you were  
23 wholly unaware of any dissatisfaction with the -- on  
24 the part of the Commissioner with the fact, for  
25 instance, that certain politicians were naming people 12:31  
26 for whom penalty points had been cancelled, were you  
27 aware of that?

28 A. Well, I certainly know that Commissioner Callinan, as I  
29 said earlier, Chairman, was very concerned about

1 information relating to private citizens being put into  
2 the public domain and the manner in which it was being  
3 put into the public domain and the potential that had  
4 to damage An Garda Síochána.

5 410 Q. And did he discuss that with you? 12:31

6 A. Yes, certainly in terms of his concerns about the  
7 personal sensitive data that was being put into the  
8 public domain and the manner in which it was being put  
9 into the public domain.

10 411 Q. I take it that was before Christmas 2013, is that 12:32  
11 right?

12 A. Yes, Chairman, that would be correct.

13 412 Q. I see. So when did -- when did you first become aware 12:32  
14 that Sergeant McCabe firstly had been in contact with  
15 the Public Accounts Committee and, secondly, that there  
16 was an issue as to whether he would be called as a  
17 witness by the Public Accounts Committee?

18 A. Again, Chairman, I can't recall the exact sequence of  
19 this, but it was sometime towards the end of 2013, we  
20 would have been informed that the C&AG, I think it was 12:32  
21 chapter number 7 in relation to the FCPN issue was  
22 going to be discussed before the Public Accounts  
23 Committee, and around that time there was also the fact  
24 that Sergeant McCabe had made documents available, or  
25 was intending, I can't remember which, to make 12:33  
26 documents available to the Public Accounts Committee,  
27 so it was in around that whole sequence.

28 413 Q. Yes.

29 CHAIRMAN: Mr. McDowell, I think -- really it's a long

1 morning, so half past one. Thank you.

2  
3 THE HEARING ADJOURNED FOR LUNCH.

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1 THE HEARING RESUMED AS FOLLOWS AFTER THE LUNCHEON

2 ADJOURNMENT:

3  
4 CHAIRMAN: Apologies for the delay.

5 414 Q. MR. McDOWELL: Ms. O'Sullivan, I was asking you about 13:45  
6 your knowledge of, or your interaction with other  
7 gardaí in which the D allegation might or might not  
8 have been mentioned, and I take it your evidence is  
9 that nobody ever mentioned it to you and you never  
10 mentioned it to anybody until when? When do you think 13:45  
11 you first discussed it?

12 A. I would think, Chairman, it was in the lead-up to the  
13 preparation for the O'Higgins Commission, and I was  
14 gathering materials in relation to that, from my  
15 memory. 13:45

16 415 Q. I see. So in the preparation for the O'Higgins  
17 commission, is that right?

18 A. In the lead-up, yes.

19 416 Q. And, I mean, can I ask you then, had you any impression 13:45  
20 in your own mind about this allegation, whether it was  
21 the allegation that the Chairman described or whether  
22 it was a grave sexual assault on step nine or ten of  
23 the ladder? Had you any impression what the allegation  
24 was yourself?

25 A. Well, Chairman, again if I may refer back to it, in 13:46  
26 terms of what was contained in Chief Superintendent  
27 McGinn's synopsis --

28 417 Q. Yes.

29 A. -- and, as I say, Chief Superintendent McGinn's

1 synopsis was not just about that, the Ms. D allegation  
2 is only two paragraphs within, I think it's eight  
3 pages. But that would have been the totality of my  
4 knowledge in relation to it. So it certainly didn't  
5 flag it as a serious or grave offence.

13:46

6 418 Q. I see. And then when you -- in early 2014, coming up  
7 to the PAC hearings, as I understand it you weren't  
8 going to have any speaking role at the PAC, is that  
9 right?

10 A. No, Chairman, that would be normal.

13:46

11 419 Q. And you were really only there for support, is that  
12 right?

13 A. Yes, Chairman, as the deputy.

14 420 Q. And it's your evidence that although it would appear  
15 that he -- that, on their evidence, Martin Callinan  
16 spoke in derogatory terms to three people on the  
17 morning of the PAC meeting, you were in the vicinity,  
18 but you didn't hear anything said, is that right?

13:47

19 A. Yes, Chairman, that's correct.

20 421 Q. And he never mentioned to you anything about  
21 frustration with Sergeant McCabe?

13:47

22 A. No, Chairman, as I say, certainly he would have raised  
23 his concerns with me about the matters that I have  
24 discussed earlier with Ms. Leader, and certainly in  
25 relation to the matters that were being put into the  
26 public domain and the manner in which they were being  
27 put into the public domain.

13:47

28 422 Q. When he used the word 'disgusting' to describe the  
29 manner in which they had acted, the whistleblowers had

1 acted, did this come as a surprise to you and a shock?

2 A. As I said, Chairman, what came as a surprise to me was  
3 the manner -- or, sorry, the way in which the word was  
4 interpreted in the room, and there was a palpable sense  
5 that it was being misconstrued from what I believed was 13:48  
6 being actually said, and I felt that it had been, so  
7 that's why I said withdraw or clarify the remark.

8 423 Q. I see. And do you think that his subsequent efforts to  
9 clarify it were in response to your advice?

10 A. I don't know, Chair, because, as I say, the meeting was 13:48  
11 very intense. I can't say if Commissioner Callinan saw  
12 the note or not, but I would have passed the note to  
13 him and I know he subsequently did clarify the matter.

14 424 Q. And I understood from Superintendent Taylor's evidence 13:48  
15 that there was a meeting after the PAC meeting at which  
16 he did not attend. Did you attend that?

17 A. Is that the reference to a meeting in Garda  
18 Headquarters, Mr. McDowell?

19 425 Q. Yes.

20 A. Yes, I may have. It wouldn't be uncommon that when we 13:49  
21 would return from a PAC meeting, that we would perhaps  
22 have a meeting, an informal type of meeting as a kind  
23 of an informal debrief. It wouldn't be uncommon.

24 426 Q. Yes. And have you any recollection at that meeting of 13:49  
25 the 'disgusting' remark or the impact it might make  
26 being made -- any discussion taking place?

27 A. Yes, certainly I would have not just at that meeting,  
28 but even in the media aftermath of the PAC, I would  
29 have said to Commissioner Callinan that that was a

1 mistake and that it needed to be clarified, and clearly  
2 clarified. Even though he had attempted to clarify it  
3 on the record, I didn't think it was understood. And  
4 also at that meeting or in the aftermath of the PAC  
5 meeting, we would have discussed then the necessity to 13:49  
6 send the matter to -- to refer the matter to GSOC.

7 427 Q. I see. To refer which matter to GSOC now?  
8 A. The FCPS report.

9 428 Q. I see. And am I to understand that you were totally in  
10 the dark, left totally in the dark by Superintendent 13:50  
11 Taylor about the fact that he was in some form of  
12 telephonic discussions with Paul Williams about going  
13 to Ms. D's home?  
14 A. Yes, Chairman.

15 429 Q. And as far as you know, the Commissioner never 13:50  
16 mentioned that to you either at the time?  
17 A. No, Chairman.

18 430 Q. Wouldn't you have expected Superintendent Taylor, if he  
19 was doing his job, to bring that to your attention?  
20 A. No, Chairman, not necessarily. There were a number of 13:50  
21 things that Superintendent Taylor didn't bring to my  
22 attention, normal operational matters that I would have  
23 thought he would. But most certainly, something -- I  
24 would have thought it odd if Superintendent Taylor made  
25 contact with me to tell me such a thing. 13:50

26 431 Q. You see, by any standard, if Mr. Williams was working  
27 on a story which involved the publication of Ms. D's  
28 allegations, it was going to be of huge significance to  
29 the general public, bearing in mind the controversy



1 that surrounded the PAC and the 'disgusting' remark,  
2 isn't that right?

3 A. Yes, Chairman, potentially, yes.

4 432 Q. And I'm suggesting to you that any Press Officer who  
5 was aware that such a story was being generated would 13:51  
6 owe a clear duty to tell his superiors that this was  
7 happening; it would be very strange indeed if he said  
8 absolutely nothing and the first you saw about it was a  
9 story in the newspapers.

10 A. Well, he didn't tell me, Chairman. 13:51

11 433 Q. Would you agree that he was in the habit of sending  
12 duplicate texts, one to the Commissioner and one to  
13 you, on many occasions?

14 A. Yes, Chairman, I would.

15 434 Q. And if he notified the Commissioner about the Paul 13:51  
16 Williams interview with Ms. D, can you think of any  
17 reason why you would be left out of the loop?

18 A. Well, Chairman, as I say, there were a number of items  
19 of interest, not in relation to Sergeant McCabe and not  
20 in relation to anything to do with Ms. D, but general 13:52  
21 operational policing matters which Superintendent  
22 Taylor didn't tell me about but would have told the  
23 Commissioner and perhaps others about, and on previous  
24 occasions I would have had occasion to raise that.

25 435 Q. Were you aware that on Monday, the 24th February, 13:52  
26 Sergeant McCabe had issued a statement contradicting  
27 news stories to the effect, which had been broadcast by  
28 RTÉ, that he had failed to co-operate with the O'Mahony  
29 process, despite being directed to do so?

1 A. Yes, Chairman, I would have been aware of that when it  
2 was raised in the media, yes.

3 436 Q. And were you made aware that he had issued a statement  
4 to RTÉ strongly refuting it and giving a transcript of  
5 his meeting with the Chief Superintendent in Mullingar 13:53  
6 when he was given an oral direction?

7 A. Yes, Chairman, I became aware of that through the  
8 media.

9 437 Q. And did you discuss that with the Commissioner?

10 A. Yes, I am sure we would have, Chairman, but at this 13:53  
11 point I can't remember the nature of that discussion,  
12 but, yes, we would have discussed the fact that the --  
13 obviously the transcript of a meeting between the chief  
14 superintendent and superintendent -- sorry, I beg your  
15 pardon, and Sergeant McCabe had been played on the 13:53  
16 airwaves, and we would have discussed in general terms  
17 that, yes.

18 438 Q. And did the pair of you come to the conclusion that the  
19 story that had been run on RTÉ was most unjust to  
20 Sergeant McCabe? 13:53

21 A. No, Chair, and I don't want to give the impression it  
22 was the pair of us, as in the Commissioner and I. So  
23 it wasn't the case that the Commissioner and I were  
24 sitting in the corner of the room having this deep  
25 conversation. 13:53

26 439 Q. You've said you had a discussion with him about  
27 Sergeant McCabe's reputation?

28 A. Yes, but I wouldn't like to give the impression --

29 440 Q. I am just trying to work out did either of you

1 acknowledge that an injustice had been done to him on  
2 the airwaves on the afternoon of 24th February?

3 A. Well, Chairman, I can't remember the exact content of  
4 the conversation, but I don't want to give the  
5 impression it was some type of a furtive discussion 13:54  
6 between Commissioner Callinan and I.

7 441 Q. No, I am not suggesting anything furtive. I'm  
8 suggesting that if you had a discussion with him, you  
9 must have said something to the effect, oh, well, he  
10 seems to have a perfectly good explanation and the news 13:54  
11 story seems to have been wrong.

12 A. I don't think, Chairman, that we discussed it in any  
13 particular detail. It was the topic. As with all of  
14 the topical issues, they would be discussed. There  
15 could have even been other people present, I can't 13:54  
16 recall at this point.

17 442 Q. You see --

18 CHAIRMAN: I'm missing something here, Mr. McDowell,  
19 and what it is seems to be the reference to a recording  
20 being played on the airwaves. I may be taking that up 13:54  
21 wrong but --

22 MR. McDOWELL: A transcript of a recording.

23 CHAIRMAN: which one now are we talking about?

24 MR. McDOWELL: This was on Prime Time, the evening of  
25 24th February 2014. 13:55

26 CHAIRMAN: And who is talking to whom on --

27 MR. McDOWELL: what had happened, as I understand it,  
28 Chairman, is that at some stage in the afternoon, a  
29 story had appeared on RTÉ's website, which was

1 subsequently repeated by a voiced account by Paul  
2 Reynolds on news bulletins on the hour that day,  
3 suggesting that Sergeant McCabe had been directed to  
4 co-operate with O'Mahony and hadn't done so and that it  
5 was a serious matter for a guard to disobey an 13:55  
6 instruction.

7 CHAIRMAN: All right. Yes, we have certainly had that.

8 MR. McDOWELL: You have had that, yes.

9 CHAIRMAN: Yes. And second paragraph certainly is --  
10 no, I know, I remember it. 13:55

11 MR. McDOWELL: If I can just --

12 CHAIRMAN: But, sorry, what --

13 MR. McDOWELL: I can show --

14 CHAIRMAN: Sorry, Mr. McDowell, my only difficulty is,  
15 please don't worry about that, but I may be getting 13:55  
16 totally the wrong end of the stick, which is that am  
17 I -- are we talking here about somebody talking to  
18 somebody else and Sergeant McCabe has recorded it or --

19 MR. McDOWELL: Yes.

20 CHAIRMAN: well, what is it that we are talking about? 13:56

21 MR. McDOWELL: If I could bring you, Judge, to, in the  
22 book of papers, volume 11, pages 3031 to 3035 -- or  
23 3036, rather.

24 CHAIRMAN: Yes, no, I understand Sergeant McCabe's  
25 statement in February 2014, that's fine. 13:56

26 MR. McDOWELL: And then you go to 3033.

27 CHAIRMAN: Yes.

28 MR. McDOWELL: To a thing headed "Correspondence from  
29 the Commissioner". That was appended to a statement,

1 Judge.

2 CHAIRMAN: All right. This is the thing we have  
3 already had then, where --

4 MR. McDOWELL: Yes.

5 CHAIRMAN: -- the Chief Superintendent reads out the 13:57  
6 direction which basically says, you are not to be  
7 taking people's sensitive data and giving it to people.

8 MR. McDOWELL: Exactly.

9 CHAIRMAN: And it ends up by saying, if you have any  
10 further concerns, the place to go is the O'Mahony 13:57  
11 commission.

12 MR. McDOWELL: Yes.

13 CHAIRMAN: It's not a direction; it's, if you like, an  
14 invitation.

15 MR. McDOWELL: well, Judge, I'll come back to that 13:57  
16 maybe in submissions later, but anyway --

17 CHAIRMAN: No, don't leave it go, Mr. McDowell, please,  
18 because if I've got the wrong end of the stick, it  
19 could actually lodge in my mind.

20 MR. McDOWELL: well, Judge, what you have to have 13:57  
21 regard to is the material that RTÉ had published  
22 earlier that day.

23 CHAIRMAN: Yes.

24 MR. McDOWELL: which said that he had received a  
25 written direction to co-operate with the O'Mahony 13:57  
26 investigation -- or report process and that he hadn't  
27 done so and that the Garda Síochána was a disciplined  
28 force and failure to comply with a written direction  
29 was a serious matter for --

1 CHAIRMAN: No, no, I get that.

2 MR. McDOWELL: You remember that, Judge, yes.

3 CHAIRMAN: well, we've been calling it the  
4 direction/invitation. And the invitation bit is, if  
5 you have any further concerns, without prejudice -- 13:58

6 MR. McDOWELL: Concerns, yes.

7 CHAIRMAN: -- to your rights under the confidential  
8 reporting mechanism, such matters can be brought to the  
9 attention of the Assistant Commissioner O'Mahony, who  
10 will fully deal with these matters. No, I understand 13:58  
11 the thing now.

12 MR. McDOWELL: You understand the point.

13 CHAIRMAN: Yes. But given that that is the focus,  
14 maybe you would just ask your question again. And I am  
15 sorry for interrupting, but I didn't grasp it. 13:58

16 443 Q. MR. McDOWELL: You were aware that Sergeant McCabe had  
17 issued that statement and had backed it up with his  
18 transcript of what happened on the evening, isn't that  
19 right?

20 A. Yes, Chairman, I became aware of it, yes. 13:58

21 444 Q. And I'm asking you, did you discuss that with the  
22 Commissioner?

23 A. Yes, Chairman, but I can't recall when and I'm trying  
24 to recall in my memory when, but we certainly would  
25 have discussed it at some stage, yes. 13:58

26 445 Q. And I'm just asking, did one or both of you consider  
27 that an injustice had been done to Sergeant McCabe in  
28 suggesting that he had failed to co-operate?

29 A. Not that I recall, Chairman. I don't recall it. But I

1 don't recall the content of the discussion that we had.  
2 we certainly would have discussed the issue and the  
3 fact that the Prime Time programme had taken place. I  
4 don't even recall how soon it was after, but we would  
5 have discussed it, yes. 13:59

6 446 Q. Yes. And it would appear that this item was on the RTÉ  
7 website at 2:28 p.m. on the afternoon of that day.

8 A. I take your word for that Mr. McDowell, I don't know.

9 447 Q. That's what I'm told, anyway, and that it was on the  
10 news, the hourly news thereafter for the rest of that 13:59  
11 evening.

12 A. Again, Mr. McDowell, I will take your word if that's  
13 what you say, yes.

14 448 Q. But it would also appear, if we can go to page 1018 in  
15 volume 11. 13:59

16 A. Sorry, Mr. McDowell, this volume 11 appears to start at  
17 2770.

18 449 Q. Sorry, it's 1018, it wouldn't be volume 11. It would  
19 be volume 4 probably, 3 or 4.

20 A. Probably 3. 14:00

21 450 Q. 3. The second-last, or third-last item in volume 3.

22 A. Yes, Chairman, I have that here.

23 451 Q. It would appear that that afternoon you had a phone  
24 call with Paul Reynolds, who was handling this story,  
25 at item 10 in that billing record. 14:00

26 A. Yes, I see that.

27 452 Q. Do you think it's possible you discussed this story  
28 with him on the day?

29 A. No, Chairman, I didn't.

1 453 Q. Have you a clear recollection of what you did discuss  
2 with him or are you just saying that from recollection  
3 you didn't discuss that topic?  
4 A. Well, Chairman, what I can do is I can check and see  
5 what was happening on the 24th February. I don't 14:01  
6 recall it from here, but I know that I have never  
7 spoken to Mr. Reynolds in relation to matters  
8 pertaining to the direction, or otherwise, to desist  
9 from using Pulse and the direction to comply with John  
10 O'Mahony investigation. 14:01

11 454 Q. I see. Could I ask you to go to page 4644 in volume  
12 17, please? These are texts recovered by the Forensic  
13 Service of Northern Ireland from a phone which was in  
14 your possession.  
15 A. Yes, Chairman, I have that here. 14:01

16 455 Q. And could I ask you in relation to item 15 there, which  
17 is a text, it appears to come from somebody called  
18 Tess. Is that Terry Prone?  
19 A. Yes, it is, Chairman.

20 456 Q. And what was her function in relation to you at that 14:02  
21 time?  
22 A. She was providing advices in relation to media and  
23 press communications through the Press Office.

24 457 Q. I see. And would it be fair to say - I mean, I don't  
25 want to overly exaggerate it - but one of her functions 14:02  
26 was to give you strategic advice in respect of how  
27 stories were handled in the media?  
28 A. In relation to strategic communications, yes, Chairman.

29 458 Q. And she was paid for that function, was she not?



1 A. For the assisting the Press Office, yes, Chairman.

2 459 Q. And could I just bring you to the next page. You're  
3 sending a text to her in the early hours of 10th  
4 October.

5 A. Sorry, Mr. McDowell, what number is that, please? 14:03

6 460 Q. Item 18.

7 A. Yes, I see that.

8 461 Q. And you say:  
9  
10 "Why are you not in bed? I will check precisely this 14:03  
11 morning."  
12  
13 And then you say:  
14  
15 "I took up on 26th March 2014," and I think that means 14:03  
16 "and moved him on the first available opportunity,  
17 which I believe was 9th June 2014."  
18 A. Yes, Chairman.

19 462 Q. That, I take it, was a reference to Superintendent  
20 David Taylor being moved out of the Press Office? 14:03

21 A. Yes, Chairman.

22 463 Q. So is it fair to say that you took the first available  
23 opportunity as soon as you became Commissioner to  
24 remove him from his function in the Press Office?

25 A. Yes, Chairman. 14:04

26 464 Q. And could you tell the Tribunal what it was that  
27 motivated you at that point that you had to take the  
28 first available opportunity to, so to speak, get rid of  
29 him?

1 A. Well, Chairman, I was, as I said, when I took up as  
2 interim acting Commissioner from the 25th March, my  
3 intention from 5th April onwards was that we would  
4 institute a cultural reform in the organisation, we  
5 would move the organisation to more of a strategic 14:04  
6 focus, and some of the issues that Ms. Leader raised  
7 earlier, particularly around tightening up and the  
8 governance issues, and it's reflected in the minutes of  
9 the meeting that I went through with Ms. Leader  
10 earlier, some of the imperatives that I had. And part 14:04  
11 of that was, and it wasn't just in relation to  
12 Superintendent Taylor, I want to be very clear, it was  
13 in relation to the cultural shift of that sense of  
14 entitlement to people to remain in positions. And I  
15 felt that there was an opportunity for us to put the 14:04  
16 right people into the right places and to make sure, as  
17 has been referenced in the minutes of the meeting, that  
18 we're doing the thing right.

19 465 Q. But doesn't that text show, Ms. O'Sullivan, that you  
20 must have been very unhappy with the way he was 14:05  
21 performing his function if you took the first available  
22 opportunity to get rid of him?

23 A. Well, I felt that Superintendent Taylor's experience  
24 would be better deployed in a more tactical deployment  
25 to the traffic unit in Dublin Castle. I felt, as I 14:05  
26 have explained earlier to Ms. Leader, I wanted somebody  
27 in that role who had more understanding and probably  
28 more strategic focus where the organisation could go  
29 and, in particular, I wanted somebody who would be

1 inclusive and who would be in a position to empower and  
2 assist Mr. McLindon in carrying out his functions.

3 CHAIRMAN: Sorry, I am going to intervene now. It's  
4 not helping me if you relapse into  
5 public-relations-type speak. I'm learning absolutely 14:05  
6 nothing from your answer. I mean, I mean no disrespect  
7 of any kind whatsoever, but, you know, he clearly  
8 couldn't stand you and it may be you couldn't stand  
9 him. And do you know what? If that was the case, you  
10 are absolutely entitled to. So I really want to know 14:06  
11 why you moved him. And the other thing that is a  
12 mystery to me is why anyone put him in the job in the  
13 first place. So those are very simple questions, and  
14 Mr. McDowell is asking them, and I'd like an answer as  
15 opposed to being told a whole load of things about 14:06  
16 inclusivity and all the rest of it.

17 A. Well --

18 466 Q. MR. McDOWELL: Can I, first of all, rephrase it to you.

19 A. Yes.

20 467 Q. I am suggesting to you that what you have just said, 14:06  
21 that you were concerned about having a  
22 strategically-adept person in the Traffic Unit, was not  
23 the reason that you moved him at the first available  
24 opportunity.

25 A. Sorry, Chairman, I didn't say strategically adept; I 14:06  
26 said that I thought his skills would be more suitable  
27 to a tactical deployment, and I met him after I decided  
28 that. But, Chairman, maybe if I can revert to your  
29 point, please. The issue was that I did not trust

1 Superintendent Taylor, I did not feel comfortable in  
2 his company, and the position of press advisor -- or,  
3 sorry, press officer is somebody that I would have to  
4 have very close day-to-day working relationships with  
5 and I would have to have implicit trust in that  
6 individual, and I didn't have that with Superintendent  
7 Taylor.

14:07

8 468 Q. And, well, thank you for that answer. I think that  
9 clarifies things somewhat. So you were determined to  
10 get rid of him as soon as you became Commissioner?

14:07

11 A. I wouldn't use the phrase 'get rid of him'. And as I  
12 say, Mr. McDowell, it was not just about Superintendent  
13 Taylor, there were a number of people moved. The  
14 organisation had become very stagnant. Some of that  
15 stagnation had resulted around people believing they  
16 had an entitlement to remain in positions and in  
17 offices, and I was determined what we would do was move  
18 people around, re-energise the organisation.

14:07

19 CHAIRMAN: I mean, all of that re-energising, and all  
20 the rest of it, I mean, it's kind of vocabulary I am  
21 not familiar with because I haven't studied public  
22 relations, but again, it is not helping me,  
23 Commissioner. I mean, the plain reality is, if -- I  
24 took your last answer at face value, you didn't trust  
25 him.

14:07

26 A. No, I didn't trust him.

27 CHAIRMAN: And, look, if the person that is supposed to  
28 be representing you to the general public through the  
29 press is someone who you cannot trust, I mean, it's

1 very important that you have someone there who you can  
2 trust, and clearly there was someone there who you  
3 could trust and you decided to put that particular  
4 individual in place, and he's given evidence here and  
5 he seems to have been a great kind of a guy. So, I 14:08  
6 mean, whatever about other strategic considerations, I  
7 mean, that would seem to be the situation.

8 A. But, Chairman, I just wanted to make the point it  
9 wasn't just in relation to Superintendent Taylor.

10 CHAIRMAN: No, no, maybe it wasn't, but clearly it was 14:08  
11 pretty much a priority of yours.

12 A. Yes, it was.

13 469 Q. MR. McDOWELL: You see, I have got to put it to you  
14 that, at the time, it's quite clear from that text that  
15 you were aware that Superintendent Taylor had made a 14:08  
16 disclosure which was hostile to you.

17 A. Well, Chairman, I was aware, and I need to just check  
18 my records, but, if I'm not mistaken, the reason for  
19 the early hour of that text, I was actually in the -- I  
20 had just landed in the US and there was a complete 14:09  
21 explosion of the -- Superintendent Taylor had made his  
22 protected disclosure towards the end of September, but  
23 this matter had completely exploded and that's -- yes,  
24 so that was my -- the reason for that text.

25 470 Q. And the text goes on and you said: 14:09  
26  
27 "Also some very interesting tweets from Michael O' Tool e  
28 of The Star last night wondering when somebody will  
29 blow the whistle on the misogynistic and vile smear

1 campaign that went on against me."  
2  
3 First of all, I think there were sexist remarks made in  
4 the media about you, isn't that right?  
5 A. Not just in the media, Chairman. 14:09  
6 471 Q. Yes. Well, did you feel there was a sexist or --  
7 agenda against you in An Garda Síochána among some  
8 people?  
9 A. Well, Chairman, I suppose not everybody would have been  
10 pleased with the fact that I was appointed as 14:09  
11 Commissioner and not everybody in an organisation such  
12 as An Garda Síochána would be comfortable or perhaps  
13 confident, but certainly not comfortable with a woman  
14 in such a senior leadership role.  
15 472 Q. And did you include Superintendent Taylor in that 14:10  
16 group?  
17 A. Yes, Chairman, I would.  
18 473 Q. So when you used the phrase about blowing the whistle  
19 on the misogynistic and vile smear campaign that went  
20 on against you, you were semi referring to 14:10  
21 Superintendent Taylor, among others?  
22 A. No, Chairman. This -- the content of this text is  
23 actually just referencing a tweet from another  
24 individual, and it was the tweet from that individual  
25 that suggested that. I wasn't suggesting that. 14:10  
26 474 Q. I see. Well, you weren't differing with it, put it  
27 that way?  
28 A. I probably would not use the same terminology,  
29 Chairman, but I do think that a lot of people were not

1 comfortable with having, and probably not ready is  
2 maybe a better way to put it, with having a female or a  
3 woman in such a senior leadership position.

4 475 Q. And later that day, Ms. Prone sends you a text saying:

5  
6 "Any news about whether or not whistleblowing is gonna  
7 surface?"

14:11

8  
9 Does that enable you to locate those two messages in  
10 terms of the public revelation that there had been  
11 protected disclosures made?

14:11

12 A. I'm sorry, Chairman, I may be out of sync with being  
13 out of the US because actually, yes, I remember the  
14 protected disclosures very well. The protected  
15 disclosures were made, as I understand it now, in or  
16 around the 30th -- sorry, I beg your pardon, the 25th  
17 and the 29th September. My understanding is that - I  
18 understand this now, I didn't of course know it then -  
19 that they went to the Minister for Justice in around  
20 the 3rd October, and thereafter, as I say, there was a  
21 complete explosion. I was scheduled to appear - I am  
22 just looking at the next text, number 20 - I was  
23 scheduled to appear at the Justice and Defence  
24 Committee on 12th October, but in between that, and my  
25 memory is, from the morning of the 5th October the  
26 allegations contained in the protected disclosures, and  
27 which I can make clear, at that stage I was not aware  
28 of who the disclosers were and I was not aware of the  
29 content of the disclosures. However, on, I believe it

14:11

14:11

14:12

1 was the 5th October, the media started reporting  
2 virulently on those, the content of those disclosures.

3 476 Q. Yes. And, well, certainly if you go back to 18, it's  
4 quite clear that you strongly suspected that  
5 Superintendent Taylor was one of the disclosers at that 14:12  
6 stage, isn't that right, because you are referring to  
7 moving him at the first available opportunity?

8 A. Yes, Chairman.

9 477 Q. So would it be --

10 A. Sorry, I beg your pardon, Mr. McDowell, if I may, and I 14:12  
11 am just going on my memory, Chairman, but I believe  
12 that certainly Superintendent Taylor, before the 10th  
13 October, was identified in one, if not more, media  
14 piece in relation to being the discloser.

15 478 Q. And what I'm suggesting to you is that effectively, 14:13  
16 from the day you became Commissioner, you had made your  
17 mind up that he was no longer going to be Press  
18 Officer, because for the very simple reason that you  
19 didn't trust him and you didn't believe he was doing a  
20 good job. 14:13

21 A. Yes, Chairman. And I take your point, Chairman, about  
22 I don't want to take organisational talk, but also, I  
23 had made a commitment to the government to implement  
24 the very necessary reforms in An Garda Síochána and  
25 part of those reforms -- 14:13

26 CHAIRMAN: I will take that as a given, honestly, I'll  
27 take your word for that, that's fine. But, I mean, I'm  
28 more interested in, and I keep coming back to this in  
29 my mind, what had you got against David Taylor? And



1 what Mr. McDowell is asking you was, was it a protected  
2 disclosure? was it only that? was it something else?  
3 You said you didn't trust him, you couldn't have him  
4 around. So I don't know what you are talking about.  
5 So that's the problem that I have. 14:14

6 479 Q. MR. McDOWELL: well, quite clearly it couldn't have  
7 been the protected disclosure because that came --

8 A. Yes, that's correct.

9 480 Q. -- two years later, isn't that correct?

10 A. Yes, that's correct, Chairman. 14:14

11 481 Q. So was it -- did you attribute to Superintendent Taylor  
12 the poor state of Garda PR at the time and the  
13 embattled state that your predecessor was in?

14 A. No, Chairman, I was very concerned about the lack of  
15 strategic communications, so I was very concerned about 14:14  
16 the manner in which the Press Office was being managed.  
17 We had had a number of complaints about leaks to the  
18 media, including indeed commentary from the Chief  
19 Justice of the time in relation to -- in the build-up  
20 to that period in relation to leaks to the media, we 14:14  
21 had a number of -- unofficial leaks to the media. We  
22 had a of complaints from individual citizens, we had a  
23 number of complaints from various members of the  
24 judiciary in relation to the potential compromise. And  
25 I was very concerned with the manner in which the Press 14:15  
26 Office was being run. I knew that Mr. McLindon had  
27 come in in September 2013, I knew he brought experience  
28 and I knew that he had an understanding of how a  
29 strategic communications unit should be established and

1 should be set up and he needed to have a team that he  
2 could rely on and that he could trust to be in a  
3 position to put that into place.

4 482 Q. And did you discuss with Mr. McLindon whether you'd  
5 keep on Superintendent Taylor or whether you'd get rid 14:15  
6 of him?

7 A. Chairman, I have read Mr. McLindon's evidence and, yes,  
8 I would have had a discussion with Mr. McLindon. I  
9 would have told him I was making a number of moves in  
10 the organisation and I told him I was considering 14:15  
11 moving Superintendent Taylor.

12 483 Q. I see. And I just want to be clear on one thing. I  
13 mean, we can speak at a high level about general  
14 dissatisfaction or leaks. Did you personally suspect  
15 Superintendent Taylor of organising improper leaking of 14:15  
16 Garda information to the media?

17 A. No, my concerns at that time, Chairman, and obviously I  
18 know a lot more now, but my concerns at that time was  
19 that he was not doing a good job at managing the  
20 relationships with the media and, in fact, it was the 14:16  
21 media managing the relationship with the Garda Press  
22 Office as opposed to the other way around.

23 484 Q. And just to translate that into slightly more ordinary  
24 language, you said you were concerned about leaks to  
25 the media and the Chief Justice giving out about them 14:16  
26 at the time, so can I just ask you, did you believe  
27 that Superintendent Taylor was leaking to the media?

28 A. I didn't know it at that time, Chairman. As I say,  
29 I've learned a lot more now. But I was certainly very

1 concerned about the structure around how the media  
2 relations were being managed, if I can put it like  
3 that, and I was certainly concerned that there would be  
4 a more structured approach to it, that there would be  
5 more openness and more fairness in relation to  
6 journalists and that we would manage the relationship  
7 with the media in a much more professional manner.

14:17

8 CHAIRMAN: I know, and sorry for intervening,  
9 Mr. McDowell and Commissioner, but, I mean, if you  
10 spoke to even a few people in the Garda Press Office  
11 who have given evidence here, I mean, the evidence has  
12 been that a journalist comes on the phone and  
13 Superintendent Taylor moves out of the room. I've also  
14 had evidence that one of them said to someone in the  
15 Garda Press Office, from whom information was being  
16 sought: ah, sure, you don't need to tell me any more,  
17 I have it all already from Superintendent Taylor. And  
18 this is talking about stuff that related to  
19 investigations. And both of us know if you let out  
20 particular details in relation to investigations, then  
21 an accused, for instance, confesses. If an issue is in  
22 relation to the veracity of that confession, if  
23 everything is in the newspaper, of course it can be  
24 said, well, I read it all in the newspaper and  
25 responded to pressure by just putting it down there.  
26 So, I mean, it's a very, very serious matter, and if  
27 you had suspicions or if you talked to people, you  
28 basically had to know you had a problem on your hand.

14:17

14:17

14:17

14:18

1 Now, the other possibility is that you were aware of  
2 Superintendent Taylor and his machinations in relation  
3 to Maurice McCabe and you were basically fed up and  
4 wanted to get rid of him over that. So that's what I  
5 want to know.

14:18

6 A. Yes. Well, Chairman, what I was concerned about was  
7 the first issue that you raise, was the whole issue in  
8 relation to the manner in which -- and shortly after I  
9 taking up as Commissioner, I had cause to bring a  
10 number of people together, a number of operational  
11 people together, because I was very concerned about the  
12 potential compromise to investigations and operations  
13 and the potential safety of members who were engaged in  
14 those operations because information was getting out  
15 too quickly. I have learned since the commencement of  
16 this stage of the hearings a lot of the -- from the  
17 evidence of a lot of members of the Garda Press Office.  
18 I wouldn't have been privy to that at the time and the  
19 interactions with Superintendent Taylor. But certainly  
20 the feedback from people on the ground was that when  
21 information got to Headquarters, it was certainly  
22 making its way into the media much quicker than the  
23 investigators and the operators and the operational  
24 people would have liked. So that was a concern for me,  
25 yes.

14:18

14:18

14:19

14:19

26 485 Q. MR. McDOWELL: And, I mean, you then mentioned to the  
27 Chairman, you mentioned that information should be  
28 distributed fairly.

29 A. Yes.

1 486 Q. Were you concerned that there was favouritism among  
2 journalistic sources?  
3 A. Occasionally we would get complaints from journalists  
4 that they were not being given information which they  
5 felt they were entitled to. I always felt -- on a 14:19  
6 principle, I have always had, throughout my operational  
7 career, was that the investigation and the operation  
8 must come first. Of course in the public interest  
9 information must be disseminated, but that should be  
10 done in a structured fashion and in a controlled way in 14:19  
11 the public interest, of course, but also balancing it  
12 with the interest of the operation and the  
13 investigation.  
14 487 Q. Did you see or read the evidence given to the Chairman  
15 by Sergeant Mullan, who was in the Press Office? 14:20  
16 A. Sorry, Mr. McDowell, Sergeant?  
17 488 Q. Sergeant Mullan?  
18 A. Would it be Sergeant Molloy?  
19 489 Q. He gave evidence on Day 71. Sorry, Sergeant Molloy.  
20 A. Sergeant Molloy, yes, Chairman. 14:20  
21 CHAIRMAN: Sergeant James Molloy. He was in the Press  
22 Office from 2000 on, so he has a lot of experience.  
23 A. Yes, I would have read that.  
24 490 Q. MR. McDOWELL: You've read that. And, I mean, I'm not  
25 going to put the detail to you because I don't want to 14:20  
26 waste your time, but it does appear that, from what he  
27 said, that at least he, in the Press Office, was aware  
28 that some journalists who were taking a favourable view  
29 of Sergeant McCabe were being isolated. Were you

1 conscious of that?

2 A. No, Chairman. My concern, as I say, was in relation to  
3 the proper dissemination of information in the public  
4 interest. But I wasn't -- as I say, I have become  
5 aware of a lot of things since the commencement of this 14:21  
6 session of the hearings at the Tribunal, but I wasn't  
7 aware specifically of what Sergeant Molloy had said  
8 before that.

9 491 Q. Well, if I may put it this way: your hunch that  
10 Superintendent Taylor was not the man for the job has 14:21  
11 been confirmed in your eyes by what you've heard in  
12 recent weeks in this Tribunal, is that right?

13 A. It has been reconfirmed --

14 492 Q. Or re-confirmed.

15 A. -- Mr. McDowell, yes. 14:21

16 493 Q. Yes. And so can I ask you then, going back to late  
17 2013/early 2014, you have seen evidence that  
18 politicians had heard about the D allegation, that it  
19 was being discussed and rumours about it were  
20 circulating in Garda Headquarters, that Superintendent 14:21  
21 Frank Walsh was aware of rumours that were circulating  
22 about it, as he said himself in his evidence. I'm at a  
23 lost to understand, and I just want you to explain if  
24 you can, how it was that you seem to be the only person  
25 who was unaware of these rumours and never heard them 14:22  
26 and nobody ever imparted them to you in any shape or  
27 form?

28 A. Well, Chairman, I think anybody that knows me knows  
29 that I am not a person throughout my career who engages

1 in idle gossip or idle chatter about individuals. And  
2 I've referenced that in my statement to Mr. O'Neill.  
3 And I can't account for why other people didn't see fit  
4 to tell me, but, as I say, anybody that would know me  
5 would know that I am not a person who would engage in 14:22  
6 that and I wouldn't give it any time.

7 494 Q. You see, the point is that you were aware of the D  
8 allegation going back many years.

9 A. Yes, Chairman, that's correct.

10 495 Q. You hadn't forgotten about it? 14:22

11 A. I wouldn't say I hadn't forgotten about it,  
12 Mr. McDowell, but it wasn't in the foremost of my  
13 consciousness.

14 496 Q. I see. And I've got to suggest to you that, for  
15 instance, if it was to resurface against Sergeant 14:23  
16 McCabe in the media at the time, it was bound to have a  
17 dramatic effect on public opinion?

18 A. Sorry, Mr. McDowell, I am not --

19 497 Q. That if the D allegation was suddenly going to be taken  
20 out of the bottom drawer again and re-heated for public 14:23  
21 consumption, that it was bound to have a very  
22 significant effect on public opinion?

23 A. Well, it's not something that I even considered,  
24 Chairman.

25 498 Q. Well, when you -- we'll come to the -- you say you'd no 14:23  
26 idea and you were never given any information that Paul  
27 Williams had gone down to Ms. D's house?

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

29 499 Q. And as I understand it, when you first saw the first

1 article that Mr. Williams published, not using Sergeant  
2 McCabe's name, you weren't even aware that it was  
3 Sergeant McCabe he was writing about?

4 A. Well, Chairman, I would have read the articles amongst  
5 a number of other articles. I don't remember did I 14:24  
6 read them that day. That was, I think, am I right, a  
7 Saturday? Sometimes the clippings would gather  
8 together and you would read them all together, so I  
9 can't remember when I became aware of the various  
10 articles. 14:24

11 500 Q. Well, put it this way: you received a daily clipping  
12 service of Garda stories, isn't that right?

13 A. Yes, Chairman.

14 501 Q. And this was among them, presumably? It wouldn't have  
15 been taken out? 14:24

16 A. No, it would have been, yes.

17 502 Q. From your --

18 A. It would be, yes.

19 503 Q. -- material? And I just want to be absolutely clear on  
20 this; is it your understanding that when you first saw 14:24  
21 the first of Mr. Williams' articles, you were unaware  
22 that it was Sergeant McCabe that he was writing about?

23 A. I remember reading the article. As I say, I remember  
24 at the time the IRM, as we called it, the Independent  
25 Review Mechanism process was going on, and I can't 14:25  
26 remember did I consciously know that it was Sergeant  
27 McCabe or at some stage later did I become aware it was  
28 Sergeant McCabe. I just can't remember the sequence of  
29 that. But at some stage I became aware, of course, it



1 was in relation to Sergeant McCabe.

2 504 Q. Well, I don't want to waste too much time on it, but  
3 there was a succession of articles from Mr. Williams,  
4 isn't that right?

5 A. Yes, Chairman. 14:25

6 505 Q. And he - and this is my phrase - he ramped up the story  
7 by introducing her to various political people and  
8 arranging meetings, isn't that right?

9 A. I accept there were a series of articles, Chairman,  
10 yes. 14:25

11 506 Q. And you were aware, I take it -- can you assist the  
12 Chair at all in saying when you became aware that Mr.  
13 Williams was, so to speak, on Sergeant McCabe's case,  
14 that he was promoting the D allegation against Sergeant  
15 McCabe? 14:26

16 A. I'm not sure I ever became aware of it in that fashion,  
17 Chairman. I certainly became aware that there were a  
18 series of articles and, as I said earlier, that the  
19 person at the centre of this, the lady or the woman at  
20 the centre of this was going to meet with the Chairman 14:26  
21 -- or, sorry, I beg your pardon, the leader of the  
22 Opposition.

23 507 Q. Well, you see, I am suggesting to you that if what  
24 you're saying now is correct, you must have been one of  
25 the very few people who didn't immediately understand 14:26  
26 that Sergeant McCabe -- sorry, very few people in Garda  
27 Headquarters who didn't immediately understand that  
28 these articles referred to Sergeant McCabe.

29 A. Well, Chairman, it became -- I think it became clear as

1 the series of articles unfolded, so to speak.

2 508 Q. well, what article was it you say that sort of rang the  
3 bell in your mind that, ah, that's Sergeant McCabe they  
4 are writing about?

5 A. well, I'd have to go through all of the articles again, 14:26  
6 Chairman, in the sequence, and, as I said, I was also  
7 aware that GSOC were investigating certain matters and  
8 it may well have been have been the reference to GSOC.  
9 I don't know, I just can't recall at this point.

10 509 Q. I see. 14:27

11 CHAIRMAN: Do GSOC, by the way, tell you, like, we are  
12 investigating, and in this case it would have been  
13 Superintendent Cunningham and his investigation? Does  
14 that go into Headquarters? It does?

15 A. Yes, Chairman, it would, yes. 14:27

16 CHAIRMAN: And just, sorry, Mr. McDowell, I know I am  
17 intervening, but you did mention Sergeant James Molloy,  
18 and it may be important just to ask you about what he  
19 said. He said vis-à-vis anything he spoke about  
20 against Sergeant McCabe and in the Garda Press Office 14:27  
21 and David Taylor, it was about speaking out rather than  
22 any issue about a sex assault. But he said, look, as  
23 for David Taylor, if there was a side to be taken - and  
24 this was his very strong impression - David Taylor was  
25 not on his side, he was uncomplimentary about him and 14:27  
26 also uncomplimentary about any journalist or politician  
27 who seemed to be on his side, that is the Maurice  
28 McCabe side of things. So that -- Mr. McDowell had  
29 asked you about that and said he wasn't going to put it

1 to you, but I think maybe I should --

2 510 Q. MR. McDOWELL: Had you any inkling of that?

3 A. I wouldn't have had the same direct interaction with  
4 Superintendent Taylor as sergeant -- or, sorry, I beg  
5 your pardon, Sergeant Molloy would have. So I 14:28  
6 absolutely accept Sergeant Molloy's evidence on what he  
7 observed in his interactions. But certainly  
8 Superintendent Taylor would -- I wouldn't disagree with  
9 Sergeant Molloy's evidence, but he never manifestly  
10 expressed any of that to me. 14:28

11 511 Q. I see. Do you accept now that Superintendent Taylor  
12 was capable of spreading the D allegation when the  
13 opportunity arose among journalists?

14 A. Well, I accept now that there were a lot of things  
15 about Superintendent Taylor that I wasn't aware of at 14:28  
16 the time and a lot of the activities he had. I am not  
17 still aware of any facts relating to Superintendent  
18 Taylor spreading the Ms. D allegation to journalists,  
19 but certainly in terms of what I have read in the  
20 evidence there are a lot of things I have become aware 14:29  
21 of that I wasn't aware of previously.

22 512 Q. I see. Could I ask you to go to Volume 24 and page  
23 6361, please.

24 A. Sorry, Mr. McDowell, would you give me that page number  
25 again, please? 14:29

26 513 Q. Sorry, Volume 24, 6361.

27 A. 6361?

28 514 Q. Yes. This was the first of Mr. Williams' articles,  
29 which, as you pointed out, was printed on a Saturday,

1 April 12th, 2014. By this stage you were Acting  
2 Commissioner, isn't that right?

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

4 515 Q. Now, do I understand that when you read the first  
5 article, which you see there on that page, that you 14:30  
6 didn't in any way consider that this was Sergeant  
7 McCabe?

8 A. Chairman, not to the best of my recollection. But as I  
9 say, I would have read it with a lot of other articles  
10 about a lot of things at the time, so I wasn't sure 14:30  
11 which investigation we were talking about here.

12 516 Q. I see. And we read towards the end of it at the top of  
13 the next page:  
14

15 "Last night a Garda spokesman said he could not 14:30  
16 comment."

17 A. Yes, Chairman.

18 517 Q. We do know from Mr. Williams, and you don't have to  
19 take it from Superintendent Taylor, that he had  
20 confirmed to Mr. Williams, Superintendent Taylor had, 14:30  
21 that there had been an investigation of Sergeant McCabe  
22 for a sexual assault.

23 A. I've read that in the evidence, Chairman, yes.

24 518 Q. And there's a statement at the end:  
25 14:31  
26 "Last night, a Garda spokesman said that he could not  
27 comment."  
28  
29 So you, as Acting Commissioner, weren't even curious

1 about this article?

2 A. Well, Chairman, the normal line in the Press Office  
3 would be we would not comment on individual persons or  
4 individual investigations, so that would be a normal  
5 'we won't comment'.

14:31

6 519 Q. But surely you'd call in Mr. McLindon or Superintendent  
7 Taylor and say: 'what's this story about? They are  
8 alleging we've covered up a sexual assault on the  
9 daughter of a member of An Garda Síochána by another  
10 guard?

14:31

11 A. Well, Chairman, if I can put it in context, as I say,  
12 we were dealing with so many, if I use the parlance,  
13 fire-fighting so many issues at the time outside of  
14 Sergeant McCabe, and certainly I had a lot more  
15 pressing matters around that particular time. We had a  
16 lot of issues that we were dealing with and that would  
17 have been what I would have been speaking to anybody  
18 about. So this issue, as I say, subsequently with the  
19 other series of articles it became clearer, but I don't  
20 recall talking to anybody about this particular  
21 article.

14:32

22 CHAIRMAN: There's just one thing about that article,  
23 and I must say I have the same questions in my mind as  
24 Mr. McDowell is articulating, there is a reference at  
25 the end to whistleblowers and there weren't very many  
26 of them. I mean, take your pick, I think it was one  
27 out of about two at that point.

14:32

28 A. Yes, Chairman. No, I see that now, and, yes, I accept  
29 that.

1 CHAIRMAN: And that had to be, it had to be Maurice  
2 McCabe.

3 A. And that may well be.

4 CHAIRMAN: I mean, the only thing there was in relation  
5 to Garda Wilson seemed to relate to a horse. 14:32

6 A. Yes, and it may well be reading those articles combined  
7 that I picked up on that, Chairman. I certainly became  
8 aware it was Sergeant McCabe at some stage.

9 MR. McDOWELL: well, you see, the point is, if we go to  
10 the second article there, "Alleged Garda sex victim 14:32  
11 wants to meet Martin", which was the following Tuesday,  
12 again you're dealing with an allegation which doesn't  
13 mention Sergeant McCabe. But, I mean, is there  
14 anything in that article that you -- for instance, if I  
15 bring you to the second-last paragraph: 14:33

16  
17 "She added that she is seeking legal advice about  
18 taking a civil case against the Garda authorities and  
19 her alleged attacker. The whistleblowers' controversy  
20 brought back to me the whole anger about what happened 14:33  
21 to me and reinforced the reason that I hadn't  
22 originally come forward, because I was afraid of not  
23 being believed."

24  
25 Did you -- when you read that, did you say, hmm, 14:33  
26 that's --

27 A. Yes, Chairman, I think that is the article. But I  
28 think my point is, I may have read both of those  
29 articles together, I may not have got to read the

1 Saturday article on the Saturday and I may have read it  
2 with the Tuesday, and that would often happen, the  
3 weekend articles would build up. But certainly that  
4 is, I would say the meeting of the leader of the  
5 Opposition was when I became aware, or came to suspect 14:33  
6 it was Sergeant McCabe, yes.

7 520 Q. And by May 3rd, it's "Kenny to set up probe into Garda  
8 sex abuse claims". I presume at that stage you're  
9 concerned the Taoiseach is about to set up a probe of  
10 some kind if Mr. Williams' slightly over-ambitious 14:34  
11 headline is to be believed?

12 A. Yes, Chairman, and that's --

13 521 Q. Did you ask around, what is this about?

14 A. At that stage there were a number of cases which were  
15 being referred to, as was called, the IRM or the 14:34  
16 Independent Review Mechanism process, and they were  
17 being handled by the Department. We had a liaison  
18 officer appointed, but we weren't getting all of the  
19 details of all of the cases, but there were several  
20 cases being referred at that stage. 14:34

21 522 Q. Well, I do have to ask you, though, at what point did  
22 you, in your own mind, say that Sergeant McCabe is now  
23 the subject of a series of articles by Paul Williams  
24 designed to bring about a re-opening of an allegation  
25 made against him? At what stage did you say this man 14:35  
26 is now being brought into the public spotlight and  
27 somebody is demanding a re-investigation of the claim?  
28 When did you come to that conclusion?

29 A. At some stage in reading the sequence of articles.

1 523 Q. And what was your reaction to finding that this was  
2 happening?  
3 A. My reaction was that it was going to be put in or  
4 potentially put into some process, but it was being  
5 reviewed by the Department and there were a number of 14:35  
6 people involved in it at that stage in the political  
7 arena, and, like all of the other cases with the IRM  
8 process, that it would come to us in some fashion to  
9 deal with, and, as I say, also the fact that the GSOC  
10 referral had been made. I didn't know who was going to 14:35  
11 adjudicate where it was going to lie.

12 524 Q. Well, can you tell the Chairman now, knowing that  
13 efforts were being made to bring it into the political  
14 arena, to open up a new inquiry and to send the matter  
15 to GSOC, what was your view in relation to Sergeant 14:36  
16 McCabe, the man who you said you were reaching out to  
17 and encouraging and admiring him for his stance as a  
18 whistleblower?

19 A. Well, Chairman, and I know I've attempted to explain  
20 this in my previous evidence to the Tribunal, to my 14:36  
21 mind this was a separate but not unrelated matter to  
22 Sergeant McCabe. My engagement with Sergeant McCabe  
23 began sometime around, I believe, the end of June and  
24 continued, as I say, until the meeting of the 7th  
25 August, but certainly -- and maybe again if I can, 14:36  
26 Chairman, just to put some context around this, at that  
27 period of time there were so many people coming forward  
28 alleging and claiming, and some of them quite rightly,  
29 that their cases had not been dealt with properly,



1 claiming that they wanted reviews of their cases, and  
2 we were inundated, and the Department indeed were  
3 inundated, with requests, so much so that the IRM  
4 process was going on almost on a parallel track to An  
5 Garda Síochána and a number of cases were being  
6 considered for inclusion, or otherwise, and we  
7 weren't -- as An Garda Síochána, we weren't really  
8 involved in that process or adjudicating upon what was  
9 to be reviewed or included or not.

14:37

10 525 Q. But there was another parallel process going on, and  
11 that was that Kieran Kenny, the Assistant Commissioner  
12 for the northern division, had written to you and had  
13 indicated that the Tusla allegation had been made  
14 against Sergeant McCabe, isn't that right?

14:37

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

14:37

16 526 Q. And in that context, surely you began to see that a  
17 number of separate strands were coming together in a  
18 strange way in 2014?

19 A. Well, Chairman, as I say, and I will and can repeat my  
20 evidence from earlier, but I don't recall -- sorry,  
21 Assistant Commissioner Kenny never spoke to me in  
22 relation to that matter, he never had any conversation  
23 with me in relation to it. And certainly in terms of  
24 what -- the material that came into the office, I have  
25 no memory of ever seeing it.

14:38

26 527 Q. You see, I've heard your evidence and I've heard what  
27 you say you recall and what you don't recall, but you  
28 saw what Detective Superintendent Frank Walsh, who was  
29 your, effectively your private secretary at the time,

14:38

1           said about the material that came in from Kieran Kenny.

2           A.    Yes, Chairman, I did.

3 528 Q.    And he said a number of things, and I think it's

4           worthwhile just looking at it. He said:

5

6           "During my tenure --"

7           A.    Sorry, Mr. McDowell, do you have that page number?

8 529 Q.    Page 3216.

9           A.    Yes.

10 530 Q.   Halfway down the page, he says:

11

12           "During my tenure as private secretary and acting chief

13           superintendent, I had many dealings with Sergeant

14           Maurice McCabe, including one-to-one meetings and

15           several telephone conversations, all of which are

16           referenced --"

17           A.    Sorry, Mr. McDowell, I am sorry for interrupting you.

18           3216?

19 531 Q.    Sorry, 3216, yes, in my book.

20           A.    This is volume 12, 3216, but it's a different matter.

21 532 Q.    Oh, maybe I'm taking it from the wrong volume.

22           CHAIRMAN: If you just read it out nice and slowly

23           because it's going to take us about ten minutes to get

24           that onto the system, I think.

25           MR. McDOWELL: Maybe if I read it slowly.

26           A.    That is perfect.

27           CHAIRMAN: well, whatever the highlights are. You

28           don't have to read the whole thing, Mr. McDowell, I am

29           familiar with it already.

1 MR. McDOWELL: He said -- I don't want to read the  
2 whole statement, so I want to be --  
3 CHAIRMAN: well, as I recall his evidence,  
4 Mr. McDowell, and indeed I do have it here, he passed  
5 you what you got from Assistant Commissioner Kenny in 14:40  
6 the Northern Region, you looked through it and you said  
7 not a word. Now, you say today, well, I didn't read on  
8 or in detail at (c), digital penetration of the various  
9 orifices that are mentioned. But actually, pretty  
10 shortly after that you had a face-to-face meeting with 14:40  
11 Maurice McCabe with a view to basically putting  
12 everybody back on the same track and all moving in the  
13 same direction. But his evidence was, you made  
14 absolutely no comment of any kind whatsoever on it.  
15 That was what he said. 14:41  
16 A. Yes, Chairman.  
17 CHAIRMAN: Now, that doesn't differ, Mr. McDowell,  
18 there, I presume?  
19 MR. McDOWELL: Not significantly. I've got to suggest  
20 to you that whereas you say you're not going to 14:41  
21 contradict him, his recollection is that, firstly, he  
22 verbally synthesised the file that he brought to your  
23 attention, and secondly, that he handed it to you and  
24 that you read it.  
25 A. Well, Chairman, if I had read that document from cover 14:41  
26 to cover, I would have taken a different course of  
27 action, and if it had been put to me that this was --  
28 appeared to be a new allegation, but again, and I don't  
29 want to put words in Superintendent Walsh's mouth, but

1 the fact is that, on the first -- having read it now,  
2 the first couple of pages, it seems to be that the  
3 chief superintendent is suggesting that it's the same  
4 allegation. I accept the point it's completely  
5 different, but I would have taken a different course of 14:41  
6 action and I would have directed Assistant Commissioner  
7 Kenny to meet immediately with the HSE to clarify the  
8 issues.

9 533 Q. So I want to be clear about this; as I understand it,  
10 superintendent Kenny told you that they had agreed that 14:42  
11 he would liaise with the Garda legal adviser,  
12 Mr. Ruane, isn't that right?

13 A. That is what was advised in the correspondence, Chair,  
14 yes.

15 534 Q. And secondly, that Chief Superintendent Sheridan would 14:42  
16 liaise with the HSE about the matter?

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

18 535 Q. So what would you have done differently if, as you say,  
19 you'd read it and discovered --

20 A. That there was such -- 14:42

21 536 Q. -- the gravity of the allegation?

22 A. I would have directed Assistant Commissioner Kenny to  
23 meet immediately with the HSE and to clarify the issue  
24 beyond any doubt.

25 537 Q. I see. And what do you mean, 'clarify the issue beyond 14:42  
26 any doubt'?

27 A. Was it the previous allegation, which was completely  
28 different, or was this a completely new allegation?  
29 But that would have been the purpose, was to clarify

1 this issue and to clarify it once and for all.

2 538 Q. I see. But you did send a couple of reminders asking  
3 them what they were doing?

4 A. Yes, Chairman. As I explained earlier to Ms. Leader,  
5 they are pro forma. We have what we call a BF system, 14:43  
6 brought forward system, in the administrative office,  
7 and a pro forma reminder is generated automatically.

8 539 Q. Yes. So, I mean, to be fair to you, you are saying  
9 that the "I am directed by the Commissioner "is like  
10 the old civil service letter saying "I'm directed by 14:43  
11 the Minister to say" --

12 A. Yes, Chair, yes.

13 540 Q. And the second thing is, you say that those reminders  
14 were a semi-automatic administrative step, is that  
15 right? 14:43

16 A. Yes, well, they are obviously generated by the  
17 administrative staff in the office, but, yes, they  
18 would be on a system; they would pop up as a reminder  
19 that there is a reminder required.

20 541 Q. But, I mean, you knew that, by this stage, that the 14:43  
21 Ms. D allegation was being put into the public domain  
22 by Mr. Williams, isn't that right? You knew that?

23 A. Yes, Chairman, I was aware of that from the articles.

24 542 Q. And, I mean, from the point of view of Sergeant McCabe,  
25 as somebody to whom you were reaching out, did it ever 14:44  
26 occur to you to say, look, what's happening here?

27 A. No, Chair.

28 543 Q. Did it ever occur to you to have any discussion with  
29 him of any kind whatsoever?

1 A. I did have discussions with them in relation to --  
2 544 Q. But on this issue?  
3 A. No, Chairman.  
4 545 Q. And just now in retrospect, looking back at the  
5 situation, what do you think he felt about all of this? 14:44  
6 A. Well, Chairman, if I had have been aware of it at the  
7 time, I would have still felt that it was a matter for  
8 the HSE to actually address it with Sergeant McCabe,  
9 and certainly my concern would always have been, as  
10 was, was in relation to providing Sergeant McCabe with 14:44  
11 all the necessary reports, and Sergeant McCabe never  
12 raised the issue in relation to any of the media  
13 articles with me, because, if he did, we would have  
14 attempted to address that as well.  
15 546 Q. I see. So therefore, I mean, when Minister Shatter 14:45  
16 suggested that this should be the subject of a public  
17 inquiry in the Dáil after his resignation, this didn't  
18 ring any bell with you? You didn't say this man is  
19 being hounded?  
20 A. Well, Chairman, there were a lot of things in relation 14:45  
21 to a lot of people being discussed and debated and  
22 articulated in the Dáil, and it wasn't for me to  
23 interfere with pronouncements in the Dáil.  
24 547 Q. No, I'm not asking you to interfere with a  
25 pronouncement. It's your personal reaction. Here is a 14:45  
26 man who you are concerned about and reaching out to and  
27 providing supports for, and yet all about him there are  
28 wolves gathering trying to attack his reputation?  
29 A. Well, Chairman, what I was trying to do was to provide

1 supports to Sergeant McCabe and to make sure that any  
2 issues or concerns he had were fully addressed, and  
3 that's why we went to appoint -- we went on to appoint  
4 Chief Superintendent Barry O'Brien to sit down with him  
5 and address any concerns that he had in relation to any 14:46  
6 matters.

7 548 Q. But if the allegation as mistakenly set out in the  
8 material you'd received from Assistant Commissioner  
9 Kenny was true, it would undoubtedly have led to  
10 Sergeant McCabe's re-arrest, would it not? 14:46

11 A. Well, it would be an entirely different matter,  
12 Chairman. It would be entirely different.

13 CHAIRMAN: Well, I'm not sure about that, Mr. McDowell.  
14 But just, look, it may help both Mr. McDowell and  
15 yourself if I just read my note in relation to what 14:46  
16 Superintendent Walsh said, which was actually Day 16,  
17 so it's a very long time ago; in fact, it was on the  
18 25th July, if I'm not mistaken, last year. So he said:

19  
20 "I got the file with the incorrect information on the 14:47  
21 16th May 2014. I read it and I didn't notice that it  
22 had incorrect information in it. I didn't look back to  
23 the 2006 allegation which had been summarised in Terry  
24 McGinn's report of 2008. "

25  
26 He said: 14:47

27  
28 "I brought this file to the notice of the Commissioner.  
29 I'd have given her a brief summary and she read the

1 file. I drew her attention to the false allegation  
2 which I assumed was an accurate just repetition of the  
3 2006 allegation. She showed no reaction that I  
4 remember. I'm not sure that the Commissioner read the  
5 summary of the 2006 allegation because I'm not sure 14:47  
6 that I did, but certainly I drew the digital issue to  
7 her attention."

8  
9 That's what he said.

10 A. Yes. And I don't recall that at all, Chairman. 14:47

11 549 Q. MR. McDOWELL: You see, what I have to put to you is  
12 that, you know, you're dealing with this sergeant,  
13 Sergeant McCabe, you're extending supports to him. He  
14 has been the subject of public controversy, to put it  
15 at its mildest. And you're saying that Superintendent 14:48  
16 Walsh's statement to the effect that he drew your  
17 attention to the digital aspects didn't register with  
18 you?

19 A. Well, Chairman, and that's why I say if that had have  
20 been brought to my attention or if I had read it, it 14:48  
21 would have resonated with me that it was entirely  
22 different to the 2006 allegation, because I was aware  
23 of the synopsis from Chief Superintendent McGinn, and,  
24 most certainly, I would have taken a different course  
25 of action if that had have been the case. 14:48

26 550 Q. I see. Now, could I ask you in relation to the  
27 situation in relation to your telephones, just could  
28 you tell us is it the case - and I don't want to  
29 exaggerate it - but you had six Garda phones given to



1           you during two years, and five of them have been lost  
2           in your home, is that it?

3           A.     In?

4 551 Q.     In your home or somewhere?

5           A.     Well, Chairman, I don't know -- if I could explain, 14:49  
6           Chairman, and I just don't have the -- do you have a  
7           reference number, Mr. McDowell?

8 552 Q.     Well, I think it's in volume 16 it's all dealt with.

9           A.     Yes.

10 553 Q.    And Superintendent Michael Flynn, on Day 71, gave 14:49  
11           evidence about this.

12          A.     So, Chairman, the way that I would approach phones  
13           generally is in terms of they are communications  
14           devices. As soon as they no longer work or the system  
15           no longer operates, they're changed by the telecoms 14:49  
16           section, and that would be -- usually, in my case, the  
17           phones are no longer working and then I would change  
18           them and they're discarded or they're no longer useful.

19 554 Q.    But that is a fairly high attrition rate, though, isn't  
20           it; six phones over two years and five malfunctions, or 14:50  
21           whatever?

22          A.     Well, Chairman, I can only account for it as it is.  
23           Sorry, what page number is that, Mr. McDowell?

24 555 Q.    It's --

25           MS. LEADER: There is a summary on page 4494. 14:50

26           MR. McDOWELL: Page 4494, yes. Maybe we could look at  
27           that on the screen.

28          A.     Oh, sorry. Thanks, Ms. Leader. 4494. Yes, Chairman.  
29           And some of those would be phones, as I said here, were

1           intermittently used, so they would be phones that would  
2           be used? Others were phones that -- for example, the  
3           HTC Desire are ones I would have changed with telecoms  
4           section, and the others, I think, would be ones that I  
5           used until they were no longer serviceable. 14:50

6           MR. McDOWELL: well, can we be clear about one thing:  
7           You think you may have used more than one phone at the  
8           same time -- sort of during the same period of time?

9           A. No, Chairman, it would be physically impossible. No, I  
10          did not use -- I only ever at any stage had one phone, 14:51  
11          which was my official Garda phone.

12        556 Q. So each of the lost phones, the phones which are now  
13          lost, had some kind of accident, was it, which made it  
14          disappear?

15          A. well, they didn't disappear, Mr. McDowell; they were no 14:51  
16          longer serviceable and no longer usable and they were  
17          changed for that reason.

18        557 Q. And did you ever hand any of them in to be repaired?

19          A. Yeah, I'm sure, Chairman, yes, if they were repairable  
20          or in repairable condition, but a lot of the phones 14:51  
21          were probably easier or cheaper to replace than repair.

22        558 Q. You see, the point is that, I mean, if you handed them  
23          in for repair, they'd be up in Garda Headquarters  
24          somewhere, wouldn't they be?

25          A. Yes, Chairman, but I don't think that the phones -- 14:52  
26          again, I don't know and I would defer to the technical  
27          experts, but I think it's probably cheaper to replace  
28          phones than repair them, but maybe somebody else can  
29          confirm that.

1 559 Q. Well, now, as a parent of sons, I've seen phones with  
2 cracked faces on them, cracked panels on the front of  
3 them, these things happen with young gentlemen, but I  
4 don't think you could possibly -- or the average parent  
5 would get very impatient if he had to replace a phone 14:52  
6 six times in two years?

7 A. Well, maybe, Chairman, if I could suggest maybe the --  
8 my phones got more use than the average teenager's  
9 phone.

10 CHAIRMAN: You are not in the habit of chucking your 14:52  
11 phone against the wall when you feel annoyed?  
12 Certainly I feel like that sometimes but try to resist  
13 it.

14 A. I share that sentiment, Chairman.

15 560 Q. MR. McDOWELL: But you think that you use a phone more 14:52  
16 than a teenager? I wonder about that. You'd have very  
17 little time, I think, for your job if that is the case.  
18 But in any event, I am suggesting to you that, you  
19 know, this is a very high attrition rate for your  
20 phones? 14:53

21 A. I don't think so, Chairman. I would know people that  
22 would use more phones than that. And as I say, I just  
23 use my phones until they no longer work. When they  
24 don't work, they are replaced.

25 561 Q. Could I ask you again to go to volume 8, page 1961. 14:53  
26 A. Yes, Chair.

27 562 Q. And this is a letter written to the Tribunal by  
28 Assistant Commissioner Michael Finn.

29 A. Yes, Chairman.

1 563 Q. And he states in it that he was tasked with meeting  
2 Bernard McCabe, while you were Commissioner, on the 4th  
3 January 2017; that's an uncle of Sergeant McCabe's.  
4 A. Sorry, Mr. McDowell, I was just putting away one of the  
5 volumes. Oh, sorry, it's over the page on 1962? 14:54

6 564 Q. Yeah.  
7 A. Yes, that's right. But not tasked by me, Mr. McDowell;  
8 is that what you said?

9 565 Q. No, well, who would have tasked him on the 15th  
10 December 2016? 14:54

11 A. From reviewing this correspondence, it would have been  
12 the deputy commissioner in charge of policing and  
13 security.

14 566 Q. And he spent two hours with Mr. McCabe?  
15 A. That's correct, Chair, yes. 14:54

16 567 Q. That's a very senior officer spending two hours with a  
17 gentleman. Did you ever receive any report back in  
18 relation to that?  
19 A. I don't -- I can't recall, Chair, but it may well have  
20 been received at the office, but it would probably most 14:55  
21 likely have been received at the office of deputy  
22 commissioner of operations or policing and security.

23 568 Q. Well, could we have slightly more certainty about this?  
24 Do you think you would have been briefed about a  
25 meeting between an Assistant Commissioner and Mr. 14:55  
26 Bernard McCabe which lasted two hours? As a matter of  
27 probability, would you have been briefed about that?  
28 A. Well, Chairman, maybe if I could provide some context.  
29 A number of individuals would ring the Commissioner's

1 office, so the general Commissioner's office, not my  
2 personal office, they would ring the general  
3 Commissioner's office with a variety of matters, and,  
4 as a matter of course, what would happen is, it would  
5 be sent to, depending on what the issue was, if it was 14:55  
6 an operational policing issue it would be sent to  
7 deputy commissioner policing and security; if it was  
8 more of an organisational issue it would be sent to  
9 governance and strategy and they would be asked to deal  
10 with the matter, and somebody would be -- they would 14:56  
11 normally then assign somebody to go meet with the  
12 individual concerned and we wouldn't control it.  
13 CHAIRMAN: Yes, I know, but the whole point of this,  
14 and Mr. McDowell is coming to it and I'm not going to  
15 try and -- well, I suppose I am trying to foreshorten 14:56  
16 it in a way. Look, people can have relations who don't  
17 like them, and this seems to be such a case, and this  
18 individual who lives nearby clearly does not enjoy good  
19 relations, and vice versa, and made all kinds of  
20 allegations, going up and down the Erne, cattle, sheep, 14:56  
21 goats, lifestyle beyond what would be expected for a  
22 Garda sergeant, and it went on and on and on, and it  
23 makes highly entertaining reading provided you don't  
24 take it too seriously. But the big point about it is,  
25 I don't want to say anything against any of the 14:56  
26 individuals involved because there was more than one,  
27 but if it's cranky stuff, why wouldn't an ordinary  
28 garda go up as opposed to an assistant commissioner?  
29 That is the basic point.

1 MR. McDOWELL: Yes.

2 A. Yes, Chairman. And I've read the materials for the  
3 Tribunal and it would have been processed through my  
4 office. There would be no awareness that there had  
5 been the previous interaction with Mr. Bernard McCabe 14:57  
6 by the people that processed it in the office and there  
7 would be nothing to correlate the two. So, yes, that's  
8 -- but it would be -- I could give several examples of  
9 similar situations where individuals ring the office.  
10 And as you say, Chairman, it is often people who have 14:57  
11 disgruntled relationships with somebody in the  
12 community or with a closer family member.

13 569 Q. MR. McDOWELL: But it was roughly a month and a half  
14 after the protected disclosures were made and it was  
15 obviously dealt with as a serious matter? 14:57

16 A. It would be dealt with in the normal course, Chairman,  
17 and I don't think I can emphasise that enough. There's  
18 nothing extraordinary about sending it in to the deputy  
19 commissioner to deal with, and they would then, or his  
20 staff would then appoint somebody to deal with it. 14:58

21 570 Q. Ms. O'Sullivan, could I bring you to volume 26, page  
22 7224. This is one of a set of reports, one about  
23 Sergeant McCabe and the other about -- by then-retired  
24 Garda John Wilson.

25 CHAIRMAN: So this is a report which the FSNI found in 14:58  
26 the Garda Commissioner's system, and it seems to date  
27 from in or around December 2013, and basically, it goes  
28 through -- someone has taken the trouble to go through  
29 every possible complaint about, you know, you arrest

1 someone outside a pub and they claim they were kicked  
2 by you, whereas, in fact, they punched the garda in the  
3 face, that kind of thing.

4 A. Yes, Chairman.

5 CHAIRMAN: But it also includes the Ms. D thing. In 14:58  
6 other words, if you look at this, any garda in the  
7 frontline doing his or her duty might have similar  
8 stuff, but why compile it and stick it together?  
9 That's what this is about.

10 571 Q. MR. McDOWELL: I was going to ask you, under what 14:59  
11 circumstances would it be justifiable to do a kind of a  
12 trawl for controversy/dirt on a member of the force?

13 A. No, it wouldn't be at all, Chairman.

14 572 Q. Well, have you any explanation for this document?

15 A. Well, Chairman, I have read the previous evidence in 14:59  
16 relation to this document and I have viewed the  
17 document through counsel. This is a chronology of  
18 facts relating to Sergeant McCabe. I know this was  
19 dealt with previously by Superintendent Walsh as well  
20 and he was cross-examined by -- or, sorry, led by 14:59

21 Mr. Marrinan in relation to it, and it is a chronology,  
22 it appears to me to be a chronology of two documents  
23 which emerged, one which is a HRM document and one  
24 which is what is called the CR or confidential  
25 recipient file in the Commissioner's office, and it's 15:00  
26 merged as two documents, from its appearance to me.

27 573 Q. But if we date it, if we agree to date it, at least in  
28 its final form, to the year 2013, casting your mind  
29 back to that period, can you see any useful purpose

1 that could have been served by such a document, other  
2 than to damage Sergeant McCabe?

3 A. Well, again, Chairman, if I may, I refer back to the  
4 evidence given by Superintendent Walsh, and my  
5 understanding of his evidence was that if he had this 15:00  
6 document compiled as, I'll call it a file index - I  
7 can't just recall what he called it - to assist him in  
8 being able to track the file in relation to Sergeant  
9 McCabe, which had become very -- in the Commissioner's  
10 office, which had become very voluminous. 15:00

11 574 Q. So it was a kind of an index, a lengthy index or a  
12 digest of the file, is that what you think it was?

13 A. Yes, Chairman. And maybe if I can, if it's helpful, I  
14 can explain. In complex, let it be operational or 15:01  
15 administrative matters, there would often be, I'll call  
16 it a file index or a Ready Reckoner compiled - where  
17 does this file start? What -- various things. And  
18 again referring back to Superintendent Walsh's  
19 evidence, my understanding is that he found it a useful  
20 document to be able to cross-reference the file which 15:01  
21 had developed on Sergeant McCabe, and particularly in  
22 relation to the allegations that Sergeant McCabe was  
23 making under the confidential recipient process.

24 575 Q. Well, as I read his statement, he said that the report  
25 was last modified -- the report was last modified on 15:01  
26 the 12th June 2013, with the second report being an  
27 updated version.

28  
29 "I believe these to be reports from the Garda Human



1 Resource Management, now Human Resources and People  
2 Development, which were forwarded to the personal  
3 assistant to the Commissioner on the 30th May 2013. I  
4 have inquired with the relevant department and am  
5 informed that there is no written request for this file 15:02  
6 on record. It may have been the result of a request  
7 made otherwise than in writing or may have arisen at a  
8 meeting, but I can't say with any certainty how or why  
9 this record was forwarded."

10 A. Yes, Chairman. 15:02

11 576 Q. It does appear to have been tabled at one of the  
12 pre-PAC meetings, but I think it was one which you may  
13 not have attended, the 6th January one, is that right?

14 A. I wasn't at the 6th January meeting, Chair.

15 577 Q. Did you ever see it at any of the pre-PAC meetings? 15:02

16 A. No, Chairman.

17 578 Q. And now, just again, it does appear that it was a trawl  
18 for everything negative about Sergeant McCabe?

19 A. No, Chairman, I wouldn't hold that view. I think, as  
20 Superintendent Walsh has described it, I think it's a 15:02  
21 chronology document giving a chronology of all of the  
22 matters relating to Sergeant McCabe, including all of  
23 the complaints that Sergeant McCabe made under the  
24 confidential recipient process.

25 579 Q. I see. And how was it relevant in that context that 15:03  
26 various members of the public had made unfounded  
27 allegations of assault against him?

28 A. I would imagine, Mr. McDowell, and I don't know who the  
29 author of this document is or who created this

1 document, but I would imagine it's a merger of a HRM  
2 document, which would contain that material, and a  
3 merger of the confidential recipient file in the  
4 Commissioner's office.

5 580 Q. Well, the only thing we really know about it was the 15:03  
6 Forensic Service of Northern Ireland found it. If it  
7 had the utterly innocent purpose that you're  
8 suggesting, it's strange that it didn't exist in a  
9 physical form.

10 A. Well, perhaps it was an electronic file, Chairman. I 15:03  
11 don't know.

12 MR. McDOWELL: I see. Thanks very much,  
13 Ms. O'Sullivan.

14 A. Thank you, Mr. McDowell.

15 CHAIRMAN: You are all right? Do you need to take a 15:04  
16 break, or anything like that?

17 A. No, no, I'm fine, Chairman. Thank you.

18

19 MS. O'SULLIVAN WAS CROSS-EXAMINED BY MR. MICHAEL  
20 O'HIGGINS: 15:04

21

22 581 Q. MR. MICHAEL O'HIGGINS: Good afternoon. I'm going to  
23 call you, if you have no objection, 'Commissioner  
24 O'Sullivan'. It's just a useful nomenclature.

25 A. Yes, Mr. O'Higgins. 15:04

26 582 Q. My name is Michael O'Higgins, and I am counsel on  
27 behalf of Superintendent Taylor. Commissioner Callinan  
28 was asked as to why he had appointed Superintendent  
29 Taylor to the position in the Press Office, and I'm

1 going from my recollection here, which I hope is  
2 correct; he'd instanced his prior career, which  
3 involved a wide range of service and disciplines and  
4 was of the view he had performed those functions very  
5 well, and, in the light of what went before, that was 15:05  
6 what encouraged him to make the appointment. May I  
7 take it that whatever about Superintendent Taylor's  
8 merits as a Press Officer, there's nothing hanging over  
9 him in terms of his previous activities; he'd had a  
10 very distinguished career? 15:05

11 A. Yes, Chairman, I would not disagree with that.

12 583 Q. Now, you were being asked questions by Mr. McDowell  
13 this afternoon and an issue came out about  
14 Superintendent Taylor's tenure as head of the Press  
15 Office, or at least the Garda head of the Press Office. 15:05  
16 And in the course of that, you outlined some concerns,  
17 and just give me one minute. I think the concerns  
18 highlighted by you were that you were concerned about  
19 leaks, you were concerned about the strategy, you were  
20 concerned about civilian complaints and you also said - 15:06  
21 I didn't take this down fully or maybe correctly - that  
22 there were some complaints from the judiciary.

23 A. That's correct, Chair, yes.

24 584 Q. And Mr. McDowell then went on to say: well, did you  
25 have a concern that Superintendent Taylor was leaking? 15:06  
26 And you said to him: No, I didn't. My concern was  
27 that - again, I'm paraphrasing here - but that the  
28 media needed to be managed and it was more a question  
29 of the tail wagging the dog.

1 A. Yes, Chair.

2 585 Q. So that was your concern at that time?

3 A. Yes, Chairman.

4 586 Q. Now, would you describe yourself, Commissioner - and I  
5 appreciate this is a somewhat broad question, and if 15:07  
6 you want me to narrow it down I'll do my best - I mean,  
7 you've talked about being anxious as Commissioner to  
8 have a culture of transparency; would you regard  
9 yourself as a person who is upfront with people?

10 A. Yes, Chairman, I would. 15:07

11 587 Q. You would. And you would regard that as important?

12 A. Yes, Chairman.

13 588 Q. Right. Now, I think you were made Assistant  
14 Commissioner in 2007?

15 A. Yes, Chairman, yes, that's correct. 15:07

16 589 Q. I think there are eight assistant commissioners, two  
17 deputies and a Commissioner, is that correct?

18 A. At that time, yes, that would be correct, Chairman,  
19 yes.

20 590 Q. And in 2008 you had a stint in the Human Resources 15:07  
21 Management section?

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

23 591 Q. And would I be correct in thinking that that is -- you  
24 would be involved in the management of, for want of a  
25 better description, industrial relations issues? 15:08

26 A. Yes, Chairman.

27 592 Q. And would you have acquired some knowledge from your  
28 stint there about how, if a guard's work falls below a  
29 certain standard, how that is to be processed?

1 A. Yes, Chairman.

2 593 Q. For instance, if a complaint were being made about how  
3 a guard was carrying out his work, you'd be entitled to  
4 be informed about it?

5 A. As assistant commissioner HRM? No. 15:08

6 594 Q. Well, in general?

7 A. Yes, Chairman.

8 595 Q. And even if a guard's conduct was, I suppose, in an  
9 objective sense patently outside that which is  
10 acceptable, he would still have to have the allegation 15:08  
11 fully set out and an opportunity to consider it and  
12 reply to it, isn't that right?

13 A. Yes, Chairman, if there was a formal process, yes.

14 596 Q. And that's all, it's all well understood, that's all  
15 about people's rights and natural justice and because 15:09  
16 of the importance of somebody's job and so forth, isn't  
17 it?

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

19 CHAIRMAN: well it doesn't happen in private industry,  
20 of course. But you run criminal trials if you say 15:09  
21 something's wrong with the Garda.

22 597 Q. MR. MICHAEL O' HIGGINS: Now, after in 2008 you went on  
23 to other areas, isn't that right?

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

25 598 Q. And you took over as Acting Commissioner from -- as 15:09  
26 Acting Commissioner from Commissioner Callinan, isn't  
27 that right?

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

29 599 Q. And the text, I think, demonstrated that you had formed

1 an immediate view that Superintendent Taylor was  
2 someone you wished to move?

3 A. I beg your pardon, Mr. O'Higgins, which text?

4 600 Q. Sorry, Superintendent Taylor was someone you wished to  
5 move? 15:10

6 A. But, sorry, I thought you referred to a text?

7 601 Q. Well, there was a text read out by Mr. McDowell --

8 A. Oh, yes. I beg your pardon, yes. Yes.

9 602 Q. -- confirming that that was so.

10 A. Well, confirming that I moved Superintendent Taylor at 15:10  
11 the first available opportunity.

12 603 Q. At the first available opportunity.

13 A. Yes, Chairman.

14 604 Q. And that triggered a line of inquiry from Mr. McDowell,  
15 confirming that that was your intention. 15:10

16 A. Yes, Chairman, at that time.

17 605 Q. And probing some of the circumstances which I've just  
18 considered. Now, if you were dissatisfied with  
19 Superintendent Taylor and his performance, why didn't  
20 you set out to him what your complaint was? 15:11

21 A. Because, Chairman, there were a number - and this is  
22 what I was explaining earlier - there were a number of  
23 people moving, it represented an opportunity to, to use  
24 a phrase, shake up the organisation, and Superintendent  
25 Taylor was one of those people that I felt he would 15:11  
26 benefit from moving and the organisation would benefit  
27 from his moving.

28 606 Q. Yes, but some people might just be moved because you  
29 think they could perform their tasks better, some

1 people might be moved because you might form the view  
2 that they had given everything they had to that  
3 particular job and would benefit from a new challenge.  
4 But in this instance you actually had issues about  
5 Superintendent Taylor's competency and I'm suggesting 15:11  
6 to you that you would, in ordinary course, have  
7 indicated to him your lack of confidence in him and  
8 allowed him to respond.

9 A. Well, I wouldn't say it was a lack of confidence,  
10 Mr. O'Higgins. I did meet with Superintendent Taylor 15:12  
11 at his request and I did explain to him why I was  
12 moving him to the Traffic Department and I did explain  
13 to him that I thought his skills would benefit the  
14 Traffic Department in terms of what he had learned in  
15 the Press Office and also that he would be a good 15:12  
16 addition to the very experienced Chief Superintendent  
17 and the superintendent that were there at the time.

18 607 Q. Yeah, but did you at any stage say to him 'Look, you're  
19 doing a bad job, the tail is wagging the dog' or words  
20 to that effect? 15:12

21 A. No, I told him I thought his skills would be better  
22 suited to the Traffic Department and he had a  
23 significant contribution to make there.

24 608 Q. Yes. I mean, I think the exact statement that you said  
25 in that regard was that: 15:12

26  
27 "I believe Superintendent Taylor's experience and skill  
28 set could contribute to the reform of the Garda Traffic  
29 Corps and its transition to a roads policing unit.

1 Superintendent Taylor sought a meeting with me at that  
2 time to query why he was being transferred. I met with  
3 him and advised him of my rationale."

4  
5 But you see, that wasn't your rationale, was it? 15:13

6 A. Yes, it was, Chairman. My rationale was that  
7 Superintendent Taylor, as a superintendent -- and I  
8 think maybe, Mr. O'Higgins, if I can explain; the  
9 traditional way superintendents would be moved was at  
10 the direction of the Commissioner. And I did 15:13  
11 Superintendent Taylor the courtesy of meeting him and  
12 telling him that I believed that his skills would be  
13 suited to the Traffic Corps. And I still remain of  
14 that view, that that was where his skills were more  
15 suited than where they were suited to. 15:13

16 609 Q. Well, rather than get in a semantic exercise as to what  
17 kind of job he might do better, you were taking him  
18 away from a job that he had been doing and you were not  
19 drawing to his attention that you did not believe he  
20 was performing it competently. 15:14

21 A. Well, I was moving him to another superintendent's  
22 position. So it wasn't as if I was demoting him from  
23 the position of superintendent, he was moving to  
24 another responsible superintendent's position, but in  
25 the Traffic Department. 15:14

26 610 Q. You see, I would have to suggest that when you -- when  
27 he came to meet you and you explained the rationale,  
28 presenting it as almost a promotion that the Garda Road  
29 Traffic Unit was going to become a unit policing agency



1 and that he was best suited to that, you were  
2 misleading him.

3 A. No, Chairman, I never presented it as a promotion.  
4 That wouldn't be the case, and Superintendent Taylor  
5 would be well aware of that. It was merely a lateral 15:14  
6 deployment of superintendents, and he wasn't the only  
7 superintendent moved.

8 611 Q. And I'm also suggesting to you that the significance of  
9 this, the significance of summoning him -- or not  
10 summoning him, he asked for the meeting; the 15:15  
11 significance of having a meeting and telling him 'This  
12 is about something that's better for you' and not  
13 alerting him to 'I do not believe' or 'I think there  
14 are serious issues about your competency to do the job  
15 that you're doing', that you were, in effect, avoiding 15:15  
16 any confrontation on that front.

17 A. No, Chairman, I always anticipated not just with  
18 Superintendent Taylor, but all of the moves I made,  
19 that there was going to be some significant pushback.  
20 I probably didn't just anticipate exactly how much. 15:15

21 612 Q. And I also suggest to you that the reason why you  
22 wanted to avoid confrontation was that had you  
23 challenged him on his competence, that might have  
24 provoked an adverse reaction from him.

25 A. No, Chairman, as has come to pass, the adverse reaction 15:15  
26 was provoked and prompted by his move, which he saw as  
27 a sideways move.

28 613 Q. And correctly, I would suggest. And could I suggest to  
29 you that the reason why you wanted Superintendent

1 Taylor out of the Press Office was influenced by the  
2 fact that one of his last acts on behalf of  
3 Commissioner Callinan was to leak a document which was  
4 destined to the Minister for Justice; do you remember  
5 that?

15:16

6 A. I remember, certainly remember it, Chair, but I was not  
7 aware of that until such time as the protected  
8 disclosures were made in October 2016.

9 614 Q. Well, you were aware the leak had occurred?

10 A. Yes, Chairman, I was.

15:16

11 615 Q. And was there a very strong reaction from the  
12 Department of Justice?

13 A. Well, I think I had a very strong reaction, Chairman,  
14 because I felt it was a complete breach of trust and I  
15 felt that it was absolutely wrong and improper to do  
16 it.

15:17

17 616 Q. No one's taking issue with that. But you were aware,  
18 you were very put out by it and am I correct in saying  
19 the Department of Justice was equally put out by it?

20 A. Well, Chairman, we were dealing with those very  
21 sensitive issues at that time with the Department of  
22 Justice. I've read the evidence of Superintendent  
23 Taylor. I don't remember the Department being overly  
24 exercised about it, it was certainly something that I  
25 was exercised about, because we were dealing in the  
26 most sensitive way with the issues that we were dealing  
27 with with the department and that was where my focus  
28 was at that time.

15:17

15:17

29 617 Q. And if Superintendent Taylor is of the view that he

1 was, in effect, unemployable from that point on and was  
2 going to be pushed out because, inter alia, he was seen  
3 as being too close to Commissioner Callinan,  
4 Commissioner Callinan's man and the number one suspect  
5 for leaking this document, he's wrong about that? 15:18

6 A. Yes, Chairman, that's the superintendent's view,  
7 Superintendent Taylor's view and I accept that. But  
8 I've outlined Superintendent Taylor remained as the  
9 Press Officer up until 9th June and was present with me  
10 on a number of occasions and actually me formulating my 15:18  
11 decision to actually move him would have been largely  
12 influenced by events around different things that I  
13 observed. That was the first time I had an opportunity  
14 to observe him more closely in terms of his  
15 interactions with various parties. 15:18

16 618 Q. Well, you see, strangely enough, your text says from  
17 the moment of your appointment you wanted to get rid of  
18 him.

19 A. Well, Chairman, what I wanted to do was change the  
20 organ -- yes, and he was part of it, yes. 15:18

21 619 Q. I mean, just to be clear, Commissioner, why this might  
22 or might not be relevant, I'm not here to advocate any  
23 unfair dismissal or unfair treatment of my client, I'm  
24 here to highlight that the manner of dealing with him  
25 was one of subterfuge and did not accord with the 15:19  
26 reality of the situation.

27 A. No, I don't believe it was subterfuge. What I wanted  
28 Superintendent Taylor to do was to make a contribution  
29 to the Traffic Department in Dublin Castle and to work

1 with the Chief Superintendent there as part of a team  
2 and that's what I wanted him to do and that's what I  
3 told him I wanted him to do.

4 620 Q. And moreover, it is, I suggest, a feature of Garda  
5 management that what is said above the waterline, i.e. 15:19  
6 'Your skills would be better used in the Traffic  
7 Department' and what's happening below the waterline  
8 are actually two completely different things.

9 A. No, Chairman, I wouldn't agree with that.

10 621 Q. Can I ask you - I know Mr. McDowell touched on this 15:19  
11 earlier - what was the nature of your working  
12 relationship with Commissioner Callinan; was it one in  
13 which he was very open with you, was it one where he  
14 held his cards very close to his chest, or was it  
15 something in between? 15:20

16 A. Well, as I said earlier, Chairman, everybody has their  
17 own individual styles and I would've had a professional  
18 working relationship with Commissioner Callinan and, by  
19 virtue of the positions that we both held, we would've  
20 worked closely together. 15:20

21 622 Q. So what was his style in terms of taking you into his  
22 confidence?

23 A. I probably wouldn't be one of his close confidants,  
24 Chairman.

25 623 Q. Well, again, if you're classifying it on the very open, 15:20  
26 sharing everything, or the left hand not doing what the  
27 right hand, knowing what the right hand is doing, where  
28 on that scale do you think your relationship would  
29 fall?

1 A. I would say that we would've had a professional working  
2 relationship.

3 624 Q. Yes, but again the Chairman has commented on certain  
4 phraseology. I would like to know, if you understand  
5 my question, I may have phrased it too clumsily, 15:21  
6 between the very open discussion and the left hand not  
7 knowing what the right hand was doing, where do you say  
8 he falls in that scale?

9 A. I would say professionally somewhere in the middle.

10 625 Q. In the middle. So I would interpret that as saying you 15:21  
11 had a good working relationship with him, you trusted  
12 him and you regarded him as reasonably open. would  
13 that be a fair summation?

14 A. In some instances, Chairman, yes.

15 626 Q. Were there instances where he held things back from 15:21  
16 you? And if there are, can you think of any?

17 A. Chairman, in the normal course of day-to-day business,  
18 I'm sure there are things that I wasn't aware of. So,  
19 you know, as I say, people had different styles, so  
20 Commissioner Callinan liked to be more -- 15:22

21 627 Q. Could I say, Commissioner, I agree with you and I'm not  
22 suggesting that you should be given a surfeit of  
23 information about everything. But I'm asking you were  
24 there things that he held back with which either at the  
25 time or with the benefit of hindsight you thought that 15:22  
26 was not acceptable or appropriate?

27 A. Well, "held back" may not be the right phraseology.  
28 But certainly as an example, Commissioner Callinan's  
29 style was to appoint people directly to do things and

1 then to deal with them directly from there. So as an  
2 example, appointing Assistant Commissioner O'Mahony to  
3 investigate the penalty points issue and deal directly  
4 with the Assistant Commissioner, that would be an  
5 example and a case in point. And that isn't a 15:22  
6 criticism, that is just a fact.

7 628 Q. All right. As far as the pre-PAC buildup and the  
8 attendance at the PAC and events in the aftermath, were  
9 you on the inside or the outside there do you think?

10 A. At the PAC meeting? 15:23

11 629 Q. No. No, no, there was the Commissioner's appearance at  
12 the PAC meeting, isn't that right?

13 A. Yes, that's correct.

14 630 Q. There were preparations?

15 A. Yes, Chairman. 15:23

16 631 Q. There was attendance?

17 A. Yes, Chairman.

18 632 Q. There was a post-PAC debriefing, informal or otherwise?

19 A. Yes, Chairman, that's correct.

20 633 Q. There was a plan and a strategy? 15:23

21 A. For dealing with --

22 634 Q. For dealing with the Public Accounts Committee.

23 A. I wouldn't call it a plan and a strategy. Yes, there  
24 were preparatory meetings, yes.

25 635 Q. So were those open and transparent? 15:23

26 A. Yes, I believe the meetings were, yes.

27 636 Q. Well, again from reading the papers, that's the very  
28 strong impression that one would form.

29 A. Yes, Chairman.

1 637 Q. And the papers have been opened already before you  
2 today and I don't want to re-visit them, but other than  
3 to note that there were discussions, according to two  
4 note-takers at the meeting, I think of 21st January,  
5 about Sergeant McCabe's incident in 2006, isn't that 15:24  
6 right?

7 A. Yes, Chairman, I've seen that in the notes, yes.

8 638 Q. And again my notes on this may not be verbatim, but you  
9 indicated, it seemed to me, the following answers: If  
10 that was discussed, you'd no recollection of it. You 15:24  
11 then went on to say: 'However, I believe it's the sort  
12 of thing I would not have forgotten about it had it  
13 been mentioned'. Then you mentioned that you may have  
14 stepped out of the room, although you accepted from  
15 Ms. Leader that one of the notes topped and tailed with 15:24  
16 this, that it seemed unlikely you would've left at the  
17 outset of the meeting and you agreed with that. And I  
18 understand, correct me if I'm wrong, you've no specific  
19 recollection of leaving any meeting?

20 A. No, Chairman, it would often happen because of, 15:24  
21 obviously, the nature of the job that I was doing at  
22 the time that I would be late in attendance at the  
23 meetings. And I note in some of the minutes of the  
24 meetings there is no attribution recorded to me, so it  
25 may well be, that would lead me to believe that it may 15:25  
26 have been times when I was not -- either I arrived late  
27 to the meeting or I may have had to step out to deal  
28 with something that was after happening.

29 639 Q. And later when Ms. Leader talked about a theme or a

1 pattern, you said definitively nothing was ever said at  
2 the meeting in your presence.

3 A. Yes, Chairman.

4 640 Q. Now, that's the range of responses. Can I suggest to  
5 you it's very plain that those matters were discussed 15:25  
6 and it's highly -- it's not impossible, in the sense  
7 that nothing is impossible, but it's highly improbable  
8 that you would just have managed to step out of the  
9 room when this topic was aired?

10 A. No, Chairman, I'm not suggesting that, I'm only giving 15:25  
11 the practicalities of the way the meetings would be  
12 run. They'd be run in an office adjacent or in close  
13 proximity to my office. There would often be times  
14 that I would be late coming to attend a meeting or  
15 there would often be an operational issue that would 15:26  
16 require me stepping out. But I'm not suggesting that I  
17 was stepping in and out, but I just note that there are  
18 very few attributions made by me or recorded being made  
19 by me at some of these meetings, which leads me to  
20 believe I may have been in and out of the meetings, but 15:26  
21 I just can't recall.

22 641 Q. I want to suggest that you heard the topics discussed,  
23 I want to adopt your own words that it's extremely  
24 unlikely you would've forgotten them being mentioned  
25 and that in fact you do remember them being mentioned 15:26  
26 but you're unwilling to accept that because it presents  
27 other difficulties for you.

28 A. That is not correct, Chairman. If I recalled them  
29 being discussed or said, I would say that here. I do



1 not recall it.

2 642 Q. Now, the next day I think you introduced Commissioner  
3 Callinan to Deputy Deasy?

4 A. Yes, Chairman, that's correct.

5 643 Q. But you say you weren't party, you didn't hear a single 15:26  
6 word that was spoken thereafter?

7 A. No, Chairman, we literally met, from my memory, on the  
8 edge of the coffee dock, Deputy Deasy, I think, had  
9 just arrived and I just introduced him as a courtesy to  
10 Commissioner Callinan and then I would've turned and 15:27  
11 had conversations with other people.

12 644 Q. And you say with regard to any interaction between  
13 Mr. McGuinness and the Commissioner at the end of the  
14 Public Accounts Committee meeting - I mean, my  
15 recollection of the witness is that you were there on 15:27  
16 the edge of the group; where do you say you were, or do  
17 you have a memory?

18 A. At the -- sorry, Mr. O'Higgins, at the end of the PAC  
19 meeting as the meeting finished?

20 645 Q. Finished and Mr. McGuinness came down to exchange some 15:27  
21 pleasantries with Commissioner Callinan.

22 A. Okay. My memory was that we were all sitting, as you  
23 do - there's positions at the PAC meeting - I would  
24 have been sitting to, I believe, the left of  
25 Commissioner Callinan, we would've all risen when the 15:27  
26 PAC meeting was over - it had been a very long meeting  
27 - and we would've all turned around towards the, not  
28 towards the door, but towards, there's an aisle leading  
29 to the door.

1 646 Q. Well, when the Chairman came down, he must've been the  
2 immediate focus of everyone in your group?

3 A. Not necessarily, Chairman. Because a number of PAC  
4 members, as would be the normal course, a number of  
5 members would be leaving the room at that time and 15:28  
6 there would be just general normal pleasantries and  
7 interactions and people saying goodbye.

8 647 Q. Well, how long was the Chairman interacting with  
9 Commissioner Callinan?

10 A. I wouldn't have thought it was very long, Chairman. 15:28  
11 Because as I say, it was a very long meeting, I know  
12 that a number of people wanted to leave the room and  
13 then it was -- it was a very long meeting. So my  
14 recollection is it was not that long.

15 648 Q. And did you hear anything? 15:28

16 A. No, Chairman. No, I didn't hear any of the  
17 conversations that I have read that are alleged to have  
18 taken place. But there would've been a number of  
19 people around and we would've been passing, as I say,  
20 general pleasantries with a number of people. 15:29

21 649 Q. And how far away would you have been?

22 A. It would be, I would say, like an aisle like here at  
23 the front and there would be a number of people passing  
24 toing and froing.

25 650 Q. Now, when you adjourned to headquarters to have an 15:29  
26 informal briefing, there were a number of matters  
27 discussed. One was GSOC.

28 A. Yes, Chairman.

29 651 Q. And I'm sorry to ask this, what was being referred to

1 GSOC?

2 A. So, Chairman, the issue with the penalty points being  
3 referred to GSOC was to have an independent impartial  
4 investigation in relation to it.

5 652 Q. I see. And there was a letter which was produced this 15:29  
6 morning, isn't that right?

7 A. The letters, the draft letters?

8 653 Q. Yeah.

9 A. Yes.

10 654 Q. Which came from the Head of Legal Affairs? 15:29

11 A. Yes, that's correct.

12 655 Q. And we can put it up on screen if you want, but the  
13 letter was, in terms, saying that advice had been  
14 sought from appropriate quarters and the entitlement of  
15 Sergeant McCabe to give evidence before the commission 15:30  
16 was in issue and that if he had to be forced into  
17 standing on his rights to ensure that wouldn't happen,  
18 he would do that, but here was an alternative  
19 possibility, isn't that right?

20 A. Yes, Chairman. Do you have the reference to the 15:30  
21 letter, Mr. O'Higgins, sorry, just --

22 656 Q. If we could just put it up again.

23 A. Yes, thank you.

24 657 Q. I would be grateful to Ms. Leader perhaps if she -- I  
25 did take a note of it, but I just don't see the number 15:30  
26 here.

27 CHAIRMAN: well, it wasn't mentioned for the first time  
28 this morning, it was mentioned for the first time on  
29 Friday, 18th May actually -- 16th May.

1 MR. MICHAEL O' HIGGINS: Sorry, Chairman, I didn't  
2 realise I'd said "first time". It's certainly been up  
3 numerous occasions.

4 CHAIRMAN: well, you didn't actually say first time,  
5 Mr. O'Higgins. 15:30

6 MR. MICHAEL O' HIGGINS: Sorry, I didn't mean to do  
7 that.

8 MS. LEADER: I think it might be 645.

9 A. I've messed up my volumes. 645, yes.

10 CHAIRMAN: This is the draft letter that wasn't in the 15:31  
11 end sent?

12 A. Yes. I don't think that's it. But I'm happy to carry  
13 on, Chairman, yes.

14 CHAIRMAN: No, it's not that. All right, I'll find it.

15 658 Q. MR. MICHAEL O' HIGGINS: well, in any event, the letter 15:31  
16 was saying, in terms, advice had been sought, it wasn't  
17 accepted that Sergeant McCabe had an entitlement to  
18 appear before the committee and the Commissioner didn't  
19 want to stand on his legal rights, but if he had to he  
20 would, is that a fair summary? 15:32

21 A. Yes, Chairman, I don't think the Commissioner ever  
22 wished to take the legal route.

23 659 Q. I know that.

24 A. Yes. But, yes, that's a summary.

25 660 Q. But the point I'm anxious to establish, perhaps in an 15:32  
26 unnecessarily cumbersome way, a shot was being fired  
27 across the bows of the committee in terms indicating  
28 that if they proceeded to call Sergeant McCabe, that he  
29 might act on his legal advice and take steps to prevent

1 it?

2 A. Sorry, Chairman, that's why I just wanted to check the  
3 letter. I don't believe that that's referred to in  
4 this letter. If I can just --

5 661 Q. I think you're right. That is that's to Sergeant 15:32  
6 McCabe in this letter.

7 A. Yes.

8 MS. LEADER: 677, sorry.

9 662 Q. MR. MICHAEL O' HIGGINS: 676, we think, perhaps 676.  
10 A. Yes, Chairman, that's correct, yes. 15:32

11 663 Q. If I could take you to the second paragraph:  
12  
13 "I now wish to address the specific issue of your  
14 intention to call Sergeant McCabe."  
15 15:33

16 Do you see that?

17 A. Yes, Chairman, that's correct.

18 664 Q. "On Thursday, 30th January. I have this evening taken  
19 legal advice on that issue and, in an effort to avoid  
20 having to exercise those legal rights, would be obliged 15:33  
21 if the committee would consider the following proposal  
22 as outlined below."  
23

24 And then there follows, isn't that so?

25 A. Yes, Chairman. 15:33

26 665 Q. Now, I read that to be an indication, a shot across the  
27 bows that 'If you proceed with this, I may have to go  
28 to court to stop you'.  
29 A. Yes, Chairman, that's certainly implied in it.

1 666 Q. Yes.

2 A. But as I say, the point I was making this morning, at  
3 that stage the issue had already, in my view and in our  
4 opinion, been decided that Sergeant McCabe would appear  
5 before the committee and that this, the issue was 15:33  
6 whether it would be in public or private. But yes,  
7 I'll agree with you, Mr. O'Higgins.

8 667 Q. And whether it was, for want of a better description, a  
9 bit of a bluff or whether it was going to be followed  
10 up actually with a court application, it was a shot 15:34  
11 across the bows to the Public Accounts Committee  
12 indicating such a course could be taken. And that was  
13 your position, the Commissioner's position and  
14 Mr. McLindon's position as of the end of the informal  
15 briefing, isn't that right? 15:34

16 A. I wouldn't categorise it like that, Chairman. No, it  
17 wasn't a bluff or it wasn't a threat. It was, as I  
18 have said earlier, the Commissioner was extremely  
19 concerned at the fact that this -- that Sergeant McCabe  
20 was going to appear. 15:34

21 668 Q. Commissioner, I'm sorry if my language is irritating  
22 you, I'm really just making a very simple point.  
23 CHAIRMAN: I don't think the Commissioner is at all  
24 irritated. In any event, your question, Mr. O'Higgins,  
25 is? 15:34

26 669 Q. MR. MICHAEL O' HIGGINS: That was the position after the  
27 PAC meeting, isn't that right?

28 A. Yes, Chairman. But I just want to make the point it  
29 wasn't a threat, it wasn't a bluff, it was just

1           expressing the Commissioner's concern. And he was so  
2           concerned that he had gone to the trouble of seeking  
3           legal advices and was only setting out simply that  
4           fact.

5   670   Q.   Thank you. Now, the following day there was a press           15:35  
6           conference in Dundalk.

7           A.   Yes, Chair, that's correct.

8   671   Q.   And we know that Commissioner Callinan expressed, or  
9           informed Mr. McLindon that there was a possibility of a  
10          meeting with Mr. McGuinness and sought his view?           15:35

11          A.   My -- again, Chairman, my apologies, I'm trying to  
12          recall Mr. McLindon's evidence. But I believe that  
13          Commissioner Callinan was in the room and spoke to a  
14          number of people in the room from --

15   672   Q.   A number of people?           15:35

16          A.   Yes.

17   673   Q.   He was one of them?

18          A.   Yes.

19   674   Q.   And I suppose that would indicate that the Commissioner  
20          was not trying to keep the meeting secret?           15:36

21          A.   Yes.

22   675   Q.   And was quite open about that?

23          A.   Yes.

24   676   Q.   And he'd also spoken to Mr. Purcell about it?

25          A.   Yes, Chairman, I understand that.           15:36

26   677   Q.   And he had also, as evidenced by the telephone traffic,  
27          a number of telephone conversations with you, isn't  
28          that correct?

29          A.   Yes, Chairman, that is correct.

1 678 Q. But you're adamant he never mentioned the meeting?  
2 A. No, Chairman, did he not.

3 679 Q. Never said he'd arranged it, never said it had taken  
4 place or never gave you the indication of the outcome?  
5 A. No, Chairman. 15:36

6 680 Q. Well, what happened then to the strategy with the  
7 letter?  
8 A. Well, as I said this morning, Mr. O'Higgins, I don't  
9 know. The issue was that Sergeant McCabe appeared  
10 before the committee on the Thursday of the following 15:36  
11 week. And thereafter, the letter became redundant.  
12 What happened to it between then and Thursday, I don't  
13 know, but there would often be draft letters or  
14 proposals and they wouldn't be acted upon, it would not  
15 be unusual. 15:37

16 681 Q. But I do understand that. And you used a phrase this  
17 morning about the letter being overtaken by events.  
18 But what events?  
19 A. I believe Sergeant McCabe's appearance before the PAC.

20 682 Q. Well, in fairness, that was a week down the line and in 15:37  
21 circumstances where it's contemplated sending a letter  
22 saying 'If you call him, we may exercise our legal  
23 rights in accordance with the advice we've received'.  
24 And I thought we agreed that was a shot across the  
25 bows. I mean, I do understand that a draft letter can 15:37  
26 be formed and a decision can be taken not to follow up  
27 on it. I've no difficulty with that. But what I would  
28 like to know is at what point was the matter  
29 reconsidered, number one, and number two, on what basis



1 was it decided not to proceed with it?

2 A. I don't recall the matter being reconsidered, but I  
3 know the letters never issued. But I don't recall the  
4 matter actually being reconsidered. The letters never  
5 issued. 15:38

6 683 Q. So would it be, as far as you're concerned, that you  
7 all went back, you had a briefing, you had advice, you  
8 had a draft letter and nothing was done between that  
9 and Sergeant McCabe giving evidence and you never asked  
10 a single question about that? 15:38

11 A. No, Chairman, I don't believe I did. And we would've  
12 had other meetings, as I say, around making sure there  
13 would've been other actions taken arising from Sergeant  
14 McCabe appearing before the PAC, such as making sure  
15 that welfare supports were put into place and -- there 15:38  
16 were a number of issues. But I do not remember any  
17 further discussions around these draft letters.

18 684 Q. I mean, is the operation, the day-to-day operation of  
19 Garda management totally chaotic?

20 A. No, it's not chaotic, Mr. O'Higgins, but it is very 15:39  
21 intense. And as I've said, yes, on a particular day  
22 there may be a PAC meeting, in the days following there  
23 may be a number of issues arising, but there are also a  
24 number of very critical policing and security  
25 operational issues that go on. 15:39

26 685 Q. I'm sure there are, but --

27 A. So it's not chaotic, but there are a number of other  
28 pressing matters. The organisation has to be managed  
29 as well as managing these specific issues.

1 686 Q. would you not accept it's reasonable that for whatever  
2 reason the letter wasn't being pursued, there would be  
3 some finality on that, some discussion about it, some  
4 explanation?

5 A. No, Chairman. As I say, there would often be draft 15:39  
6 proposals or draft letters would be presented, they  
7 wouldn't be acted upon. There would be sometimes some  
8 follow-up, sometimes no follow-up. It's not a chaotic  
9 situation, it's just the facts of running a large  
10 complex organisation. 15:40

11 687 Q. well, one very simple reason as to why the letter would  
12 not have been followed up on would be that Commissioner  
13 Callinan would've said 'Look, I met the man and it's  
14 not a runner, it's a cul-de-sac, we're going nowhere on  
15 it'. 15:40

16 A. well, Chairman, he may have said that to somebody. He  
17 did not say it to me.

18 688 Q. I see. And can you offer us any explanation why  
19 Mr. Purcell, who is, I understand, in a position in the  
20 Department of Justice, Mr. McLindon, other people 15:40  
21 present in the room would be privy to this meeting  
22 taking place, you had had a number of conversations on  
23 the day with him at very critical times and it's not  
24 mentioned to you? I mean, is it a surprise to you it  
25 wasn't mentioned? 15:40

26 A. Not necessarily, Chairman, because - and I've read  
27 Commissioner Callinan's evidence as well - there are  
28 things he would tell me, there are things he wouldn't  
29 tell me. And I didn't, as an example, know that the

1 press conference was taking place that morning in  
2 Dundalk. So there are things that he wouldn't tell me  
3 he was going to or that he was going to do, and that  
4 would be just normal.

5 689 Q. Well, when you use the phrase "wouldn't tell you", are 15:41  
6 you saying implicitly there that it was a conscious  
7 decision not to tell you?

8 A. Not necessarily, Chairman, no, I'm not. But that's  
9 just a fact; there are things that I would be told  
10 about and there was things that I wouldn't be told 15:41  
11 about and I don't believe there is anything implied  
12 wrongly in that.

13 690 Q. You see, given the very long day which everyone has  
14 referred to the previous day, given the briefing  
15 meeting which occurred and given the preparation of the 15:41  
16 letter, could I suggest to you that it would be  
17 improbable in the extreme when he spoke to you on the  
18 phone that he wouldn't say 'I've an update on our, on  
19 the information we had last night'?

20 A. No, Chairman, Mr. Callinan -- or Commissioner Callinan 15:42  
21 did not say it to me. It would not be anything out of  
22 the ordinary that he would not tell me what he was  
23 doing. And he didn't tell me.

24 691 Q. Even though this was an ongoing issue in respect of  
25 which there'd been a fairly significant development, on 15:42  
26 Commissioner Callinan's account --

27 A. Yes, Chairman --

28 692 Q. -- namely that Mr. McGuinness had no interest in this?

29 A. Yes, Chairman, I accept that. But the facts are that

1 he didn't tell me about the meeting and that's just the  
2 way it was.

3 693 Q. Yeah.

4 CHAIRMAN: Your client's case on this, Mr. O'Higgins,  
5 is what?

15:42

6 MR. MICHAEL O' HIGGINS: I'm just finishing up now.

7 CHAIRMAN: No, no, no, but I'm just wondering, in  
8 relation to the meeting, does your client have a  
9 specific case to make on the meeting? I mean --

10 MR. MICHAEL O' HIGGINS: No, Judge.

15:42

11 CHAIRMAN: -- I see what you're --

12 MR. MICHAEL O' HIGGINS: The reason that I'm asking  
13 about it is because one of the issues which I would  
14 anticipate that the Tribunal will have to deal with is  
15 the nature of the relationship between Commissioner  
16 Callinan and then-Deputy Commissioner O'Sullivan and  
17 what information they imparted. That's all.

15:43

18 CHAIRMAN: No, no, no, I appreciate that. But does  
19 your client make the case that he --

20 MR. MICHAEL O' HIGGINS: No, he was unaware the meeting  
21 was taking place.

15:43

22 CHAIRMAN: No, all right, that's --

23 MR. MICHAEL O' HIGGINS: And nor did he attend the  
24 post-PAC briefing.

25 CHAIRMAN: No, I appreciate he wasn't at the post-PAC  
26 meeting. But there's no specific allegation to put on  
27 this?

15:43

28 MR. MICHAEL O' HIGGINS: No.

29 CHAIRMAN: I understand. Okay, thank you.

1 694 Q. MR. MICHAEL O' HIGGINS: When you received, via  
2 Mr. Justice O'Neill, retired, a letter enclosing the  
3 protected disclosures, did you contact former  
4 Commissioner Callinan?  
5 A. No, Chairman. 15:43  
6 695 Q. You had no contact with him at all?  
7 A. Not at that time, no.  
8 696 Q. Well, what time did you have contact?  
9 A. Not in relation to Mr. O'Neill, but I would have met  
10 him subsequently. 15:44  
11 697 Q. Well, did you contact him with regard to the protected  
12 disclosure at all?  
13 A. No, Chairman.  
14 698 Q. Never?  
15 A. No, Chairman. 15:44  
16 699 Q. Can I ask you why?  
17 A. Because I was dealing with the protected disclosure in  
18 the manner I was asked to by Mr. O'Neill and I just  
19 dealt with it as a protected disclosure against me.  
20 And no, I did not contact Commissioner Callinan. 15:44  
21 700 Q. And was that a considered position? Did you get advice  
22 on it or -- I don't mean legal advice, but did you get  
23 advice from people as to whether it would be a good or  
24 a bad idea? The reason I ask it is it just seems to me  
25 if there are allegations made against people in 15:44  
26 concert, a normal thing to do would be to say 'I've got  
27 this; what do you have to say about it?'  
28 A. No, Chairman, at some stage subsequent to receiving the  
29 protected disclosures, Commissioner Callinan would have

1 written or contacted us in the normal course just to  
2 say that in relation to obtaining legal advice, and  
3 that would've been dealt with in the normal course.

4 701 Q. And I just want to say to you that my client's  
5 instructions are that he did have a conversation with 15:45  
6 you with regard to Paul Williams being there and in the  
7 course of that conversation he just simply noted that  
8 you didn't seem very surprised and didn't give any  
9 indication that it was a course that should not be  
10 encouraged or anything of that sort. You say that 15:45  
11 conversation never took place?

12 A. Superintendent Taylor never had a conversation with me  
13 of that nature.

14 MR. MICHAEL O' HIGGINS: Thank you very much.

15 A. Thank you very much, Mr. O'Higgins. 15:45

16 CHAIRMAN: Mr. O'Higgins, there's one significant thing  
17 you haven't put at all. I mean, it's your client's  
18 case. Are you going to put your client's case? I mean,  
19 your client's case is that the Commissioner was fully  
20 aware, as Deputy Commissioner, that he was running a 15:45  
21 campaign at the behest of Martin Callinan against --

22 MR. MICHAEL O' HIGGINS: well, I thought the evidence on  
23 that point was clear. But I will clarify it with the  
24 witness, Judge.

25 CHAIRMAN: No, but I mean, it's your client who's 15:46  
26 making that case.

27 MR. MICHAEL O' HIGGINS: Yes, but I think he accepted  
28 fully in evidence, and in his protected disclosure,  
29 number one, that he had never received a direction from

1 the Deputy Commissioner, she had not been present --  
2 CHAIRMAN: Mr. O'Higgins, I'm not interested you in  
3 telling me all of this. I'm aware of everything that  
4 your client has said, including everything he's said  
5 here, everything he's said to our investigators, 15:46  
6 everything he said in his protected disclosure. But he  
7 is making a case. If you want to put that case to the  
8 Commissioner then please do, because I'd be interested  
9 to know what the form of it now is, if nothing else.

10 702 Q. MR. MICHAEL O' HIGGINS: Deputy, or Commissioner, at the 15:46  
11 time you were Deputy Commissioner you saw the protected  
12 disclosure that my client Superintendent Taylor said  
13 that Commissioner Callinan had instructed him to brief  
14 negatively to the media, isn't that so?

15 A. Yes, Chairman, I saw the allegations contained in the 15:47  
16 protected disclosure.

17 703 Q. He does not allege that you gave him any direction, he  
18 does not allege that you were present when Commissioner  
19 Callinan gave any direction.

20 A. I understand that that is his position now, Chairman. 15:47

21 704 Q. And with respect to his assertion that because he was  
22 communicating texts to you and because of the manner in  
23 which An Garda Síochána operates that you must have  
24 known about the campaign, he has acknowledged that the  
25 texts that he sent you -- he has not sent a single text 15:47  
26 to you which would be in terms, show knowledge on your  
27 part and I'm not making such a case.

28 CHAIRMAN: well, that's a different case. That's now a  
29 different case, "communicating texts to you that you

1 must have known about the campaign".

2 MR. MICHAEL O' HIGGINS: No, no, I'm accepting --

3 CHAIRMAN: In other words, that there's something in

4 the texts which would've --

5 MR. MICHAEL O' HIGGINS: No, what I'm saying, Chairman, 15:48

6 is --

7 CHAIRMAN: He said explicitly to me that there was

8 nothing in the texts which --

9 MR. MICHAEL O' HIGGINS: That's what I'm saying.

10 CHAIRMAN: -- would've indicated to anybody that there 15:48

11 was a campaign.

12 MR. MICHAEL O' HIGGINS: That is what I'm saying.

13 CHAIRMAN: But you've just put a question to the

14 Commissioner --

15 MR. MICHAEL O' HIGGINS: There's nothing in the text -- 15:48

16 CHAIRMAN: Sorry, Mr. O'Higgins, you've just put a

17 question to the Commissioner: "With respect to his

18 assertion that because he was communicating texts to

19 you and the manner in which An Garda Síochána operates,

20 you must have known about the campaign". 15:48

21 MR. MICHAEL O' HIGGINS: But I added the texts do not

22 confirm that.

23 CHAIRMAN: well, maybe you'll put a simple question and

24 I'd know where we stand.

25 705 Q. MR. MICHAEL O' HIGGINS: None of the texts upon which he 15:48

26 relies confirm that case.

27 A. well, Chairman, if I may say, I'm very confused about

28 what Superintendent Taylor is now saying in relation to

29 me and I would welcome any clarification, because I had



1 never at any stage received any texts of the nature  
2 initially alleged by Superintendent Taylor. I am  
3 confused, even though I have read all of the evidence,  
4 what Superintendent Taylor is now alleging against me.

5 706 Q. It's not alleged that the texts confirm that. 15:49

6 A. I'm sorry, Mr. O'Higgins, could you just explain that  
7 to me further?

8 707 Q. Insofar as in his protected disclosure he had said that  
9 he copied you in on texts and insofar as that gave an  
10 implication that the texts confirmed the existence of a 15:49  
11 smear campaign or negative briefing against Sergeant  
12 McCabe, no case is made that any texts of that sort  
13 were sent.

14 A. Well, Chairman, that is what I now believe I  
15 understand, but I am very confused. But in the 15:49  
16 interests of clarity, what I will say - and I have said  
17 this from the outset - I have never ever received any  
18 texts of the nature alleged by Superintendent Taylor  
19 from the outset and which were reported widely in the  
20 media, I have never received those texts of that 15:49  
21 nature, I was never privy to nor away of any campaign  
22 as alleged by Superintendent Taylor and that is my  
23 position in relation to it.

24 708 Q. Well, I hope I have made crystal clear to you that the  
25 texts to which he refers do not make that allegation. 15:50

26 A. Well, Chairman - and I'm sorry, and I will take your  
27 direction on this - my understanding all along of what  
28 Superintendent Taylor was suggesting was that there  
29 were texts contained on the phones which had been

1 seized by An Garda Síochána which would support his  
2 allegations that he was making against me and  
3 Commissioner Callinan. I certainly understand now from  
4 reading the evidence and from your interjection, Chair,  
5 that that is not the case that he is now making. But 15:50  
6 that was certainly my understanding, right up to his  
7 most recent evidence.

8 MR. MICHAEL O' HIGGINS: Thank you.

9 CHAIRMAN: But are you putting to the Commissioner that  
10 she was fully aware -- 15:50

11 MR. MICHAEL O' HIGGINS: No, I'm not. I'm not,

12 CHAIRMAN: What case is David Taylor making then if  
13 you're not putting that?

14 MR. MICHAEL O' HIGGINS: We're not, Chairman, saying  
15 there's a single text that substantiates that. 15:51

16 CHAIRMAN: Mr. O'Higgins, the water on that has gone  
17 way under the bridge. And in fact if it's not now in  
18 the Irish Sea, it's in the Atlantic.

19 MR. MICHAEL O' HIGGINS: I'm sorry,

20 CHAIRMAN: All right? The situation is very simple, as 15:51  
21 clarified to Mr. Marrinan, as clarified to me;

22 Superintendent Taylor is saying that he never told any  
23 politicians, never told Sergeant McCabe that there was  
24 implicatory texts - in other words, texts which  
25 implicate the Commissioner, which implicate the Deputy 15:51  
26 Commissioner in the campaign he was waging at the  
27 behest of Commissioner Callinan against Maurice McCabe.  
28 He clarified that by saying these people are making  
29 very bad mistakes, his wife is saying the same thing,

1 they've taken him up totally wrong in that respect.  
2 But there were a lot of texts indicating in the  
3 ordinary course of his duties as Garda Press Officer  
4 'Maurice McCabe is on the television again' or 'Such  
5 and such a journalist has written an article about 15:52  
6 Maurice McCabe', all of which, if we had recovered them  
7 and read them, would be entirely innocuous because they  
8 were simply reporting on what the media was doing.  
9 Now, that is the up to date position --  
10 MR. MICHAEL O' HIGGINS: Yes. 15:52  
11 CHAIRMAN: -- vis-à-vis David Taylor? That's it? And  
12 nothing in those texts of any kind, no matter who they  
13 were sent to, would give rise to any inference that  
14 there was any campaign directed by Commissioner  
15 Callinan or supported by Deputy Commissioner O'Sullivan 15:52  
16 at the time. Now, that's the texts, that's the done,  
17 that's dealt with --  
18 MR. MICHAEL O' HIGGINS: That is done and dusted.  
19 CHAIRMAN: -- that's out of the way. But he does  
20 allege, and you haven't put this -- 15:52  
21 MR. MICHAEL O' HIGGINS: Yes. well, sorry, Chairman, I  
22 understand precisely.  
23 CHAIRMAN: So what does he now allege and what are you  
24 putting to the Commissioner?  
25 709 Q. MR. MICHAEL O' HIGGINS: what he alleges is that 15:52  
26 Commissioner Callinan gave him a direction to brief  
27 negatively and it is his belief that because you are  
28 his Deputy Commissioner, that you were aware of this.  
29 But it is his belief and no more. You never gave him a

1 direction and you were not present when Commissioner  
2 Callinan gave him the direction.

3 CHAIRMAN: I don't think that's accurate,  
4 Mr. O'Higgins. I'm going to rise actually for 15  
5 minutes and you might like to clarify that, because  
6 this is actually very important. 15:53

7  
8 SHORT ADJOURNMENT

9  
10 CHAIRMAN: So, Mr. O'Higgins? 16:10

11 710 Q. MR. MICHAEL O' HIGGINS: Chairman, first of all, I  
12 apologise and thank you for the period to consult the  
13 record. And I now want to put in terms to the  
14 then-Deputy Commissioner what Mr. Taylor's case is with  
15 regard to her state of knowledge. And I apologise, 16:11  
16 Commissioner. I'm going to put to you now in the first  
17 instance from his statement to the Tribunal. He says -  
18 this is Superintendent Taylor.

19 A. Yes.

20 711 Q. "I can confirm that she was aware of the briefing 16:11  
21 strategy against Maurice McCabe. As Deputy  
22 Commissioner, Operations she was the gatekeeper for the  
23 Garda Commissioner for the day, everything would funnel  
24 through her office in to the Garda Commissioner and  
25 would come back out that way. I always kept Deputy 16:11  
26 Commissioner O'Sullivan informed on all matters, as  
27 referred to in my statements."

28  
29 I'm putting that to you as his version.

1 A. That's not a correct version, Chairman.

2 712 Q. Yes. It also says again -- sorry:

3

4 "In terms of Maurice McCabe, I would have had face to  
5 face meetings with the Deputy Commissioner where I 16:12  
6 would have discussed the strategy and where I would  
7 have discussed the media strategy about how we were  
8 briefing them against McCabe. Again to reiterate,  
9 Deputy Commissioner O'Sullivan never instructed me to  
10 brief journalists against Maurice McCabe, however she 16:12  
11 was aware of the strategy through my updates to her".

12 A. It's completely untrue, Chairman, that Superintendent  
13 Taylor ever briefed me on one-to-one or in any other  
14 way in relation to any strategy.

15 713 Q. And the final one I just want to put to you, if you 16:12  
16 just give me just one moment, in the course of giving  
17 his evidence on day 74, he said, speaking of his  
18 interaction with you --

19 CHAIRMAN: would you like to give us a page?

20 714 Q. MR. MICHAEL O'HIGGINS: Yes, Chairman, it's page 81 and 16:13  
21 it's line 26 -- sorry, 22:

22

23 "As I always said consistently, Commissioner Callinan  
24 directed. Commissioner O'Sullivan was aware of it,  
25 because I spoke to her in relation to this matter on 16:13  
26 numerous occasions and I spoke to her in relation to  
27 how I was briefing the media in relation to Maurice  
28 McCabe's motivation, and this motivation was driven by  
29 the investigation that had been conducted into him".

1 A. That is completely untrue, Chairman.

2 MR. MICHAEL O' HIGGINS: Thank you very much.

3 MR. GILLANE: Commissioner O'Sullivan, Sean Gillane --

4 CHAIRMAN: Sorry, just to complete it, if you wouldn't

5 mind, at day 74, page 37. 16:13

6 MR. MICHAEL O' HIGGINS: Sorry, Judge. Line? Sorry,

7 Judge, page 37:

8

9 "The Deputy Commissioner was aware of it because I

10 discussed it with her and she was aware of what 16:14

11 Commissioner Callinan's instructions were".

12 A. That is completely untrue, Chairman.

13 CHAIRMAN: well, the next question was: "Did she

14 countermand it" --

15 MR. MICHAEL O' HIGGINS: "Q. Did she countermand it when 16:14

16 Commissioner Callinan left?

17 A. Well, I'd very little contact with the Deputy

18 Commissioner once she left. As I said to you earlier,

19 I was never in the Commissioner's office again".

20 A. well, in fact Superintendent Taylor was in my office 16:14

21 again on the occasion that I referenced when I told him

22 why he was being moved.

23 CHAIRMAN: Then if one might go to 75, page 214:

24

25 "I kept them informed of all matters and I spoke to 16:15

26 Deputy Commissioner O'Sullivan by phone. We discussed

27 the matter, we discussed how I was engaging with

28 journalists in relation to the McCabe thing and she was

29 fully informed. I never not kept her informed.

1 Commissioner Callinan always told me, yes, never to  
2 keep anything from Commissioner O'Sullivan concerning  
3 the smear campaign, concerning anything."

4  
5 And then he was asked was the green light given also in 16:15  
6 relation to speaking to Andrew McLindon and the answer  
7 to that was Mr. McLindon is also supposed to have been  
8 aware of the smear campaign being directed. So that's  
9 more or less the bones of it. So what do you say?

10 A. It's completely untrue, Chairman. Superintendent 16:15  
11 Taylor never kept me updated or briefed in the manner  
12 in which he has described there.

13 MR. MICHAEL O'HIGGINS: Thank you very much

14 A. Thank you, Mr. O'Higgins.

15 CHAIRMAN: Mr. O'Higgins, there was just one other 16:16  
16 thing. I mean, it is perfectly clear from  
17 Superintendent Taylor's evidence that he has a problem  
18 with Commissioner O'Sullivan. If there's a reason for  
19 that --

20 MR. MICHAEL O'HIGGINS: well -- 16:16

21 CHAIRMAN: -- what is the reason? It has been alleged,  
22 for instance, by his wife that if she put her husband  
23 on the case that it would be an imperative for him to  
24 find some kind of charge. That's the allegation that  
25 has been put, but not put to Commissioner O'Sullivan, 16:16  
26 that it was done for the purpose of ensuing that there  
27 would be some kind of a charge against him. I mean, is  
28 that being maintained as well?

29 MR. MICHAEL O'HIGGINS: well, I understood him to say

1 in evidence, Chairman, that while he mightn't have  
2 liked it, he accepted the Clerkin investigation was  
3 valid and he would've preferred that he was not the  
4 arresting officer. But no, I'm not making a case that  
5 the Deputy Commissioner -- or Commissioner's husband 16:17  
6 was put into the case for the purposes of fixing a  
7 charge. My client has accepted unreservedly it was a  
8 valid investigation.

9 CHAIRMAN: well, that case seems to have been made to  
10 the entire people of Ireland. So is there any 16:17  
11 follow-up to that?

12 MR. MICHAEL O' HIGGINS: well, he --

13 CHAIRMAN: I mean, after all, the Commissioner had to  
14 leave office in relation to these events, so I think  
15 it's only fair that whatever you have to say -- 16:17

16 MR. MICHAEL O' HIGGINS: No, I'm not making that case.

17 CHAIRMAN: -- on behalf of David Taylor to her should  
18 be fully said to her so that she can --

19 MR. MICHAEL O' HIGGINS: I'm not making that case.

20 CHAIRMAN: -- have a chance to answer it. So it's fine 16:17  
21 to make allegations against people in public and to  
22 public representatives and that's it as far as he's  
23 concerned?

24 MR. MICHAEL O' HIGGINS: well, I'm just noting from day  
25 77, page 100 Superintendent Taylor said he didn't think 16:17  
26 that she should've appointed her husband to investigate  
27 him, but nonetheless accepts the validity of the  
28 Clerkin investigation.

29 CHAIRMAN: In other words, that he was breaching Garda



1 regulations left, right and centre, leaking like a  
2 sieve, potentially ruining a whole load of very  
3 important investigations. But I mean, the case that he  
4 made effectively through public representatives and  
5 everybody else was that this was all done as a sham by 16:18  
6 Commissioner O'Sullivan and as evidence of that sham  
7 was the appointment of her own husband to the team.  
8 MR. MICHAEL O' HIGGINS: All I'm saying --  
9 CHAIRMAN: Are you making the case --  
10 MR. MICHAEL O' HIGGINS: No, I'm not, Judge, or 16:18  
11 Chairman, I'm not --  
12 CHAIRMAN: -- firstly, that she -- Mr. O'Higgins, it's  
13 not you, you appreciate that, it's your client, it's  
14 your client's instructions we're talking about --  
15 MR. MICHAEL O' HIGGINS: well, I want to be clear -- 16:18  
16 CHAIRMAN: No, but I mean, if I could get a word in  
17 edgeways, perhaps we could clarify things, if you don't  
18 mind. Firstly, is there an allegation now being made  
19 that it was Commissioner O'Sullivan who appointed her  
20 husband to the investigation team or is it accepted 16:18  
21 that it was the choice of Chief Superintendent Clerkin?  
22 MR. MICHAEL O' HIGGINS: The latter.  
23 CHAIRMAN: Yes. And Chief Superintendent Clerkin  
24 emerges as, to put it mildly, a competent investigator.  
25 Is anything being said as to whether, given that your 16:18  
26 client has said publicly and before this Tribunal that  
27 Commissioner O'Sullivan would not have been his first  
28 choice for Garda Commissioner - and that's how he  
29 euphemistically put it - is there anything to be put to

1 her now as to why she should never have been appointed  
2 Garda Commissioner?  
3 MR. MICHAEL O' HIGGINS: Absolutely not, Judge --  
4 Chairman. No. No.  
5 CHAIRMAN: And is there anything to say that she was in 16:19  
6 any way directing or steering the Clerkin  
7 investigation?  
8 MR. MICHAEL O' HIGGINS: No, absolutely not.  
9 CHAIRMAN: Is there anything to say that she was in any  
10 way deliberately influencing Chief Superintendent 16:19  
11 Clerkin so that, for instance - and this is only a for  
12 instance - there was a decision made to arrest David  
13 Taylor when simply having a chat with him in a room  
14 would have sufficed for the purposes of the  
15 investigation? 16:19  
16 MR. MICHAEL O' HIGGINS: Chairman, the Clerkin  
17 investigation is accepted as a valid investigation and  
18 there's no case being made, implicitly or otherwise, to  
19 the contrary.  
20 CHAIRMAN: So all of the allegations that are made on 16:19  
21 oath in the High Court, which I can fish out and repeat  
22 to you, but which no doubt your client is very well  
23 aware of, are, having been made in public in front of  
24 the High Court of Ireland and through public  
25 representatives as well to the people of Ireland, now 16:20  
26 withdrawn?  
27 MR. MICHAEL O' HIGGINS: well, I can't comment on that.  
28 CHAIRMAN: well, I still need to know your case,  
29 Mr. O'Higgins.

1 MR. MICHAEL O' HIGGINS: well, the case is that I'm not  
2 making that case.

3 CHAIRMAN: Just like that?

4 MR. MICHAEL O' HIGGINS: And in evidence he accepted the  
5 Clerk in case -- or investigation was valid. That may 16:20  
6 have repercussions for what he said elsewhere, but  
7 that's what his evidence has been here.

8 CHAIRMAN: So just like that, he's just withdrawing all  
9 of the allegations?

10 MR. MICHAEL O' HIGGINS: No, Chairman, I'm only trying 16:20  
11 to clarify what our case is. As to what the  
12 repercussions of it are, I'm not making any submission  
13 on that.

14 CHAIRMAN: Just give me a second please. Just hang on  
15 if you wouldn't mind just a minute. And as regards 16:21  
16 text messages which weren't mundane, is there any case  
17 to be made in relation to those? Because there's a  
18 reference to some text messages being mundane. Is  
19 there any case being made in that regard?

20 MR. MICHAEL O' HIGGINS: There is no case good, bad or 16:21  
21 indifferent being made in respect of text messages,  
22 other than he updated whatever the story of the day was

23 CHAIRMAN: And is there any case now being made that  
24 during David Taylor's detention the investigators were  
25 tactless, unnecessarily autocratic and oppressive and 16:21  
26 have failed to afford David Taylor a reasonable level  
27 of courtesy and respect? This was on the watch, by the  
28 way, of Commissioner O'Sullivan so the buck has to stop  
29 with her; if there is such an allegation, it should be

1 made. Is there any allegation being made that the  
2 investigators were heavy handed and that they were  
3 leaking information and that the investigation was  
4 tainted beyond redemption, lacking in credibility,  
5 significantly breaching trust and confidence, 16:22  
6 constituted an interference in the administration of  
7 justice, were manifestly irregular and failed to  
8 respect and uphold the rule of law under Commissioner  
9 O'Sullivan?

10 MR. MICHAEL O' HIGGINS: I understand, Chairman, that in 16:22  
11 the course of giving evidence those matters were put to  
12 him and he gave answers.

13 CHAIRMAN: well, he did, he gave answers. But they  
14 weren't really answers.

15 MR. MICHAEL O' HIGGINS: well, it's the evidence. 16:22

16 CHAIRMAN: well, you have his instructions. So are you  
17 withdrawing all of that?

18 MR. MICHAEL O' HIGGINS: I'm not making that case.

19 CHAIRMAN: Are you withdrawing all of that?

20 MR. MICHAEL O' HIGGINS: I'm not making that case. 16:22

21 CHAIRMAN: what does that mean?

22 MR. MICHAEL O' HIGGINS: It means, Chairman, that he was  
23 asked questions, he gave his answers, that is the  
24 evidence in the case. I am confirming to you --

25 CHAIRMAN: Yes, but this isn't a criminal trial, 16:23  
26 Mr. O'Higgins. You know, I'm not sitting here  
27 mystified like some poor jury where the accused is  
28 making all kinds of allegations against the  
29 investigators and the accused doesn't give evidence.

1 It's not like that. Your client has given evidence.  
2 But I actually am tasked with reporting to the  
3 Oireachtas, which is answerable to the people of  
4 Ireland as to what happened. Now, I actually do really  
5 need to know, are those allegations being withdrawn or 16:23  
6 not?

7 MR. MICHAEL O' HIGGINS: well, what I would say about  
8 that, Chairman, is you have asked us on previous  
9 occasions --

10 CHAIRMAN: No, I mean, if I could finished a sentence, 16:23  
11 Mr. O'Higgins, before you're coming in. I'm simply  
12 asking are those allegations being maintained or, on  
13 your instructions from David Taylor, are they now being  
14 withdrawn?

15 MR. MICHAEL O' HIGGINS: well, I understood his 16:23  
16 testimony to be to the effect that he was resiling from  
17 it. But you are saying his testimony is unclear.

18 CHAIRMAN: well, you know, that's not very  
19 satisfactory, to quote back at me my own statement.  
20 You're the person who's appearing on behalf of him, 16:23  
21 you're the person with instructions, you can tell me  
22 one way or the other without engaging in some kind of  
23 rhetoric with me, which frankly I'm not prepared to  
24 entertain, Mr. O'Higgins.

25 MR. MICHAEL O' HIGGINS: well, I'm sorry, Chairman -- 16:24

26 CHAIRMAN: So what are your instructions?

27 MR. MICHAEL O' HIGGINS: -- I have indicated on other  
28 occasions when you've asked us to clarify our  
29 instructions and we've done it immediately and I will

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do that again.

CHAIRMAN: All right. Thank you, Mr. O'Higgins. So, look, it's been a long day and it's half past four and I've had enough. So tomorrow at ten o'clock.

THE HEARING WAS THEN ADJOURNED UNTIL WEDNESDAY, 30TH  
MAY 2018 AT 10:00

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