

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 16TH FEBRUARY 2017

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE  
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT  
1921, ON 17TH FEBRUARY 2017

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

OPENING STATEMENT

HELD IN DUBLIN CASTLE

ON WEDNESDAY, 14TH JUNE 2017

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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GWEN MALONE STENOGRAPHY  
SERVICES

1 OPENING STATEMENT OF COUNSEL FOR THE TRIBUNAL MADE ON  
2 WEDNESDAY, 14TH JUNE 2017:

3  
4 **MR. MCGUINNESS:** Sir, it is now my function to address  
5 you to deliver an opening statement on behalf of the 10:33  
6 Tribunal. I will be aided in this task by your other  
7 counsel Mr. Patrick Marrinan SC and Ms. Kathleen Leader  
8 BL. The purpose of this is to outline in public the  
9 progress the Tribunal is making in relation to the  
10 issues comprised in the terms of reference, an overview 10:33  
11 of the evidence and issues that have emerged so far,  
12 without drawing any conclusions in relation to those  
13 and to lay out, fairly I hope, the factual landscape  
14 that appears to be emerging. This is subject to all  
15 the evidence that will emerge in the course of the 10:33  
16 public hearings that you, sir, are about to embark  
17 upon. Anything, therefore, that I or my colleagues say  
18 is subject to the evidence as it emerges and is tested,  
19 but also to the whole process that a tribunal must  
20 necessarily bring to bear in relation to that. I 10:33  
21 shall, as a matter of necessity and fairness, have to  
22 outline what is involved in such a process, albeit as  
23 briefly as I can.

24  
25 **Scope of Inquiry and the Terms of Reference** 10:34

26 The scope of the Tribunal's inquiries have necessarily  
27 been defined and thereby limited by the terms of  
28 reference conferred on it by the resolutions of each of  
29 the Houses of the Oireachtas. These are set out here,

1 and I will quote them.

2  
3 *"(a) To investigate the allegation made in a Protected*  
4 *Disclosure under the Protected Disclosures Act 2014, on*  
5 *the 30th September 2016, by Superintendent David* 10:34  
6 *Taylor, wherein he alleges he was instructed or*  
7 *directed by former Commissioner Martin Callinan and/or*  
8 *Deputy Commissioner Nóirín O'Sullivan to contact the*  
9 *media, to brief them negatively against Sergeant*  
10 *Maurice McCabe and in particular to brief the media* 10:34  
11 *that Sergeant McCabe was motivated by malice and*  
12 *revenge, that he was to encourage the media to write*  
13 *negatively about Sergeant McCabe to the effect that his*  
14 *complaints had no substance, that the Gardaí had fully*  
15 *investigated his complaints and found no substance to* 10:35  
16 *his allegations and that he was driven by agendas.*

17  
18 *(b) To investigate the allegation of*  
19 *Superintendent Taylor in his Protected Disclosure that*  
20 *he was directed to draw journalists' attention to an* 10:35  
21 *allegation of criminal misconduct made against*  
22 *Sergeant McCabe and that this was the root cause of his*  
23 *agenda, namely revenge against the Gardaí.*

24  
25 *(c) To investigate what knowledge former Commissioner* 10:35  
26 *Callinan and/or Commissioner O'Sullivan and/or other*  
27 *senior members of the Garda Síochána had concerning*  
28 *this allegation of criminal misconduct made against*  
29 *Sergeant McCabe and whether they acted upon the same in*

1 a manner intended to discredit Sergeant McCabe.

2  
3 (d) To investigate the creation, distribution and use  
4 by Tusla of a file containing false allegations of  
5 sexual abuse against Sergeant Maurice McCabe that was 10:35  
6 allegedly sent to Gardaí in 2013 and whether these  
7 false allegations and/or the file were knowingly used  
8 by senior members of An Garda Síochána to discredit  
9 Sergeant McCabe.

10 10:36  
11 (e) To investigate whether the false allegations of  
12 sexual abuse or any other unjustified grounds were  
13 inappropriately relied upon by Commissioner O'Sullivan  
14 to discredit Sergeant Maurice McCabe at the Commission  
15 of Investigation into Certain Matters in the 10:36  
16 Cavan/Monaghan district under the Chairmanship of  
17 Mr. Justice Kevin O'Higgins.

18  
19 (f) To investigate whether senior members of An Garda  
20 Síochána attempted to entrap or falsely accuse 10:36  
21 Sergeant McCabe of criminal conduct.

22  
23 (g) To investigate such knowledge which former  
24 Commissioner Callinan and Commissioner O'Sullivan had  
25 concerning the matters set out at (a), (b), (c), (d), 10:36  
26 (e) and (f) move.

27  
28 (h) To investigate contacts between members of the  
29 Garda Síochána and media and broadcasting personnel,

1 *members of the Government, Tusla, the Health Service*  
2 *Executive, any other State agencies or any relevant*  
3 *person as the sole Member may deem necessary to carry*  
4 *out his work relevant to the matters set out at (a),*  
5 *(b), (c), (d), (e) and (f) above.* 10:36

6  
7 *(i) To examine all records relating to the*  
8 *telecommunications interactions used by*  
9 *Superintendent Taylor, former Commissioner Callinan and*  
10 *Commissioner O'Sullivan in the period from the 1st July* 10:37  
11 *2012 to the 31st May 2014, to ascertain whether there*  
12 *are any records of text messages or other*  
13 *telecommunications interactions relating to the matters*  
14 *set out at (a), (b), (c), (d), (e) and (f) above and to*  
15 *examine and consider the content of any such text* 10:37  
16 *messages or other telecommunications interactions.*

17  
18 *(j) To examine all electronic and paper files relating*  
19 *to Sergeant Maurice McCabe held by An Garda Síochána*  
20 *and to consider any material therein relevant to (a),* 10:37  
21 *(b), (c), (d), (e) and (f) above.*

22  
23 *(k) To investigate whether Commissioner O'Sullivan,*  
24 *using briefing material prepared in Garda Headquarters,*  
25 *influenced or attempted to influence broadcasts on RTÉ* 10:38  
26 *on the 9th May 2016, purporting to be a leaked account*  
27 *of the unpublished O'Higgins Commission Report, in*  
28 *which Sergeant McCabe was branded a liar and*  
29 *irresponsible.*

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*(l) To investigate whether a meeting took place between former Commissioner Callinan and Deputy John McGuinness on the 24th January 2014 in the car park of Bewley's Hotel, Newlands Cross, County Dublin, and to examine and consider the circumstances which led to any such meeting, the purpose of such meeting and matters discussed at such meeting.*

10:38

*(m) To investigate such knowledge which Commissioner O'Sullivan had of the meeting referred to in (l) above.*

10:38

*(n) To investigate contacts between members of the Garda Síochána and Tusla in relation to Garda Keith Harrison.*

10:38

*(o) To investigate the pattern of the creation, distribution and use by Tusla of files containing allegations of criminal misconduct against members of An Garda Síochána who had made allegations of wrongdoing within An Garda Síochána and of the use knowingly by senior members of the Garda Síochána of these files to discredit members who had made such allegations.*

10:39

*(p) To consider any other complaints by members of Garda Síochána who has made a Protected Disclosure prior to the 16th February 2017 alleging wrongdoing within the Garda Síochána and where, following the*

10:39

1           *making of the Protected Disclosure, the garda making*  
2           *the said Protected Disclosure was targeted or*  
3           *discredited with the knowledge or acquiescence of*  
4           *senior members of the Garda Síochána."*

10:39

6           That is the end of the terms of reference, sir.

8           The terms of reference having been set down, the  
9           Tribunal, in accordance with the Supreme Court decision  
10          in *Haughey v. Moriarty*, duly interpreted its terms of  
11          reference in its interpretation of the Terms of  
12          Reference of the Tribunal on the 12th May 2017. It is  
13          unnecessary to refer to it in any detail here as it  
14          speaks for itself and no issue has been raised by any  
15          party in relation to the ambit of the Tribunal's  
16          inquiries in pursuance of its interpretation of its  
17          terms of reference. On the same date, the Tribunal  
18          also published its memorandum of procedures adopted for  
19          the purpose of the Tribunal. Again, no issue has  
20          arisen to date in connection with this. These steps  
21          were all preceded, sir, by your immediate announcement  
22          in relation to the establishment of the Tribunal and  
23          your urgent call for the cooperation of all concerned  
24          and the provision of all necessary information,  
25          documentation and relevant devices as outlined by you  
26          at your sitting on the 27th February 2017.

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29          **Function of the Tribunal**

1 In accordance with its mandate under the terms of  
2 reference, the Tribunal's function is to inquire into  
3 the facts, make such findings and recommendations as  
4 appear appropriate and report thereon.

5  
6 As Finlay CJ said in the case of *Goodman International*  
7 *v. Mr. Justice Hamilton*:

8  
9 *"It is a simple fact finding operation, reporting to*  
10 *the legislature."*

11  
12 The decision in the High Court of Costello J in that  
13 case, both in his conclusions and in the reasoning by  
14 which he came to those conclusions, was approved by the  
15 Supreme Court. He said. At the relevant pages of the  
16 judgment, and I quote:

17  
18 *"4. The functions of the Tribunal are to inquire,*  
19 *report and, if appropriate, to make recommendations.*  
20 *When reporting on allegations of wrongdoing it*  
21 *expresses an opinion as to whether the allegations are*  
22 *true or false, but this opinion is of no legal effect.*  
23 *The Tribunal determines no legal rights; it imposes no*  
24 *legal obligations. It expresses conclusions for the*  
25 *guidance of the legislature and the executive.*

26  
27 *5. There are no parties before the Tribunal, although*  
28 *persons accused of wrongdoing in the allegations being*  
29 *investigated will have the same rights as if they were*



1 parties against whom a charge had been made. The  
2 Tribunal is seized of no lis. Its functions are  
3 inquisitorial, which means that the Tribunal itself has  
4 to make inquiries relevant to its terms of reference.  
5 The witnesses produced at its hearings are the 10:42  
6 Tribunal's witnesses and are not produced by any party  
7 to whom representation has been granted. All witnesses  
8 called are subject to being cross-examined as permitted  
9 by the Tribunal.

10 10:42  
11 6. ... The terms of reference in this case required  
12 the Tribunal to inquire into the truth or falsity of a  
13 number of allegations of wrongdoing, including the  
14 assertions that the criminal law has been breached.  
15 But in inquiring into these allegations and in 10:42  
16 reporting its upon on them, the Tribunal is not  
17 imposing any liabilities or affecting any rights. It  
18 is not deciding any controversy as to the existence of  
19 any legal right. It is not making any determination of  
20 any rights or liabilities. It is not imposing any 10:42  
21 penalties. It may come to the conclusion that some or  
22 all of the allegations of wrongdoing are true, but this  
23 opinion is devoid of legal consequences. Its functions  
24 of inquiring, reporting and recommending cannot  
25 therefore be regarded as the "administration of 10:43  
26 justice". The Tribunal is not exercising a "judicial  
27 function" in the case of allegations of criminal  
28 behaviour. It is not trying anyone on a criminal  
29 charge. In my judgment Parliament did not direct the

1           *establishment of a Tribunal that is to exercise*  
2           *judicial functions."*

3  
4           And that is the end of the quotation from Costello J.

5  
6           As you, sir, indicated in your opening statement, the  
7           Tribunal, though having many of the powers of the High  
8           Court, is not a court of law, it is a Tribunal of  
9           Inquiry, the purpose of which in the instant case is to  
10          examine and, where possible, in the light of the  
11          evidence, make findings on the facts and if thought  
12          appropriate to make recommendations based upon the  
13          established facts. As you also recognised, sir, the  
14          Tribunal's inquiry is not a trial of alleged wrongdoing  
15          by any particular person or group of persons, nor will  
16          you, sir, I am sure, allow it to be turned into one.  
17          There are many, many matters outside your terms of  
18          reference and you, sir, will be vigilant to ensure that  
19          neither the parties stray outside them and that you are  
20          not enticed into error by doing so yourself.

10:43

10:43

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21  
22           **Finding the Facts**

23          Not unusually, there are many disputed areas of facts  
24          or areas of evidence where a conflict exists between  
25          witnesses as to what occurred. Where these occur and  
26          are of relevance, these will be identified in the  
27          appropriate place throughout the hearings and  
28          appropriately pursued to conclusion. The resolution of  
29          any such conflict in accordance with the appropriate

10:44

1 legal principles is of course a matter for you, sir, in  
2 deciding what the primary facts are. The second level  
3 of fact-finding which the Tribunal must engage in is  
4 what has been described as secondary fact-finding, i.e.  
5 drawing inferences or reaching conclusions from the 10:44  
6 facts directly established by the primary evidence. In  
7 relation to Tribunals of Inquiry, the standard which  
8 has been laid down as the basis for fact-finding by  
9 tribunals has long been established and approved of by  
10 the courts, e.g. in the *Goodman International*, cited 10:45  
11 above, Hederman J at page 603 noted that:

12  
13 *"The Tribunal will doubtless adopt the same approach as*  
14 *the Tribunal of Inquiry into dealings in Great Southern*  
15 *Railway Stock, the members of which were Mr. Justice 10:45*  
16 *Overend, Judge Davitt, and Judge Barra O'Briain. While*  
17 *it sifted through rumour and hearsay it relied only on*  
18 *admissible evidence for its findings."*

19  
20 McCarthy J also said at page 607: 10:45

21  
22 *"I do not accept that the determining of truth or*  
23 *falsity is necessarily a judicial act in the sense that*  
24 *it may only validly be performed by judges. It does*  
25 *require the application of judicial standards, but it 10:45*  
26 *is an every day occurrence that a variety of tribunals,*  
27 *collegiate or otherwise, have to decide disputes of*  
28 *fact."*

1 The former President of the High Court, Mr. Justice  
2 Hamilton, in his conduct of the Tribunal of Inquiry  
3 into the beef processing industry likewise defended and  
4 asserted his right to receive hearsay evidence, but  
5 also indicated repeatedly he would act only on legally 10:46  
6 admissible evidence when he came to make his findings.  
7 And the references to that are set out.

### 8 9 **The Rights of Parties to Fair Procedures**

10 It must be noted that this is an indispensable 10:46  
11 component of constitutional justice and fair procedures  
12 and was recognised as such by the Supreme Court in the  
13 case of *In re Haughey*. These are set down in its  
14 judgment at page 263:

15  
16 *"(a) that he should be furnished with a copy of the*  
17 *evidence which reflected on his good name;*

18 *(b) that he should be allowed to cross-examine by*  
19 *counsel his accuser or accusers;*

20 *(c) that he should be allowed to give rebutting* 10:47  
21 *evidence; and*

22 *(d) that he should be permitted to address, again by*  
23 *counsel, the committee in his own defence."*

24  
25 Of these Ó Dálaigh CJ said: 10:47

26  
27 *"A person whose conduct is impugned as part of the*  
28 *subject matter of the inquiry must be afforded*  
29 *reasonable means of defending himself. What are these*

1 means? They have been already enumerated at (a) to (d)  
2 above. Without the two rights which the Committee's  
3 procedures have purported to exclude, no accused - and  
4 I speak within the context of the terms of the inquiry  
5 - could hope to make any adequate defence of his own 10:47  
6 name. To deny such rights is, in an ancestral adage, a  
7 classic case of clocha ceangailte agus madraí scaoilte.  
8 Article 40, s. 3 of the Constitution is a guarantee to  
9 the citizen of basic fairness of procedures. The  
10 Constitution guarantees such fairness and it is the 10:47  
11 duty of the Court to underline that the words of  
12 Article 40, s. 3 are not political shibboleths but  
13 provide a positive protection for the citizen and his  
14 good name."

15  
16 In the case of *Goodman International v. Hamilton*  
17 (No. 2) Geoghegan J was considering how the rights of,  
18 inter alia, the applicant company there were to be  
19 vindicated by the Tribunal. He stated at page 313, and  
20 I quote: 10:48

21  
22 "I turn now to an important argument made by counsel  
23 for the applicants that the right to vindication of  
24 one's good name and the right to fair procedures at a  
25 tribunal in which that good name was being questioned 10:48  
26 are separate constitutional rights and that the  
27 tribunal must respect and vindicate both of those  
28 rights at all times. I agree with that proposition but  
29 in any view in the context of a tribunal hearing there

1           *is no difference in the manner in which the tribunal*  
2           *must discharge its constitutional obligation to respect*  
3           *and vindicate both of those constitutional rights. In*  
4           *each case the tribunal discharges its constitutional*  
5           *obligation by ensuring that there is a fair hearing in* 10:48  
6           *which, where appropriate, the protections identified in*  
7           *by Ó Dálaigh CJ in In re Haughey are afforded and are*  
8           *reflected in the ultimate report of the tribunal."*

9  
10           At page 316, he states: 10:49

11  
12           *"It does not seem to be suggested in the Haughey case*  
13           *that Chief Superintendent Fleming should not have been*  
14           *permitted to give evidence at all of a hearsay nature*  
15           *and therefore the former Chief Justice was obviously* 10:49  
16           *concerned to ensure in the vindication of Mr. Haughey's*  
17           *good name that the good name would not be destroyed*  
18           *except on the basis of evidence from the real accusers,*  
19           *duly tested by cross-examination if that was desired.*

20  
21           *Ó Dálaigh CJ referred to:-* 10:49

22           *"The well established procedure, adopted by the several*  
23           *tribunals of inquiry set up by Dáil Éireann to inquire*  
24           *into matters of public importance."*

25  
26           *He pointed out that in that case persons accused in*  
27           *connection with the subject matter of the inquiry were*  
28           *granted the rights of parties and were allowed to*  
29           *appear by counsel to cross-examine and address the*

1           *tribunal."*

2

3           There have been a number of previous tribunals which  
4           have been established to inquiry into the matters  
5           related to An Garda Síochána. These include three           10:50  
6           previous Tribunals of Inquiry into the facts and  
7           circumstances surrounding the death of citizens and the  
8           involvement of the police force of the State. The  
9           first of these was the Tribunal of Inquiry in 1928 to  
10          inquire into the shooting of Timothy Coghlan at Dartry           10:50  
11          Road. Three serving judges were appointed to inquire  
12          into this shooting. The second was the Tribunal of  
13          Inquiry 1967 to inquire into the death in Garda custody  
14          of one Liam O'Mahony. Again, this was presided over by  
15          three serving members of the judiciary. The third of           10:50  
16          these was the Tribunal of Inquiry into the fatal  
17          shooting of the late John Carty in Abbeylara, presided  
18          over by the late Mr. Justice Barr. Sitting at least  
19          for some of the same period of time was the Morris  
20          Tribunal at which you, sir, were one of the counsel for           10:50  
21          the Tribunal which produced several very high quality  
22          reports. The Smithwick Tribunal then dealt with  
23          allegations of garda collusion in relation to the  
24          murders of Chief Superintendent Harry Breen and  
25          Superintendent Bob Buchanan by the IRA in Northern           10:51  
26          Ireland. More recently a number of commissions of  
27          inquiry were established: one to deal with the Dean  
28          Lyons issue, presided over by Mr. George Birmingham SC,  
29          as he then was.

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More recently, but connected to some of the dramatic personae that you will be dealing with, were events which gave rise and led to the independent review mechanism established by the Minister for Justice and Equality, the O'Higgins Commission itself, followed by the Scoping Inquiry conducted by O'Neill J, which ultimately led to the decisions and resolutions establishing this Tribunal. These all comprise matters, which, with the exception of term of reference (e) above, you cannot enquire into. 10:51

It can be accurately observed that no previous Tribunal has had to deal with matters which concern directly both the serving and former Commissioner of the force, the Press Officer of An Garda Síochána and potentially all other senior ranking officers of An Garda Síochána. 10:52

Also centrally involved are Sergeant Maurice McCabe, the former Chairman of the Public Accounts Committee Mr. John McGuinness TD, the Child and Family Agency (known as Tusla), the Health Service Executive, RTÉ and others. 10:52

Also involved in the Tribunal's terms of reference are the media. It remains to be determined whether, and if so, to what extent an essential element of the Tribunal's inquiries, as determined by the Oireachtas, can legitimately put itself beyond the scope of those 10:52



1 inquiries as laid down by the law of the land in the  
2 Tribunals of Inquiry (Evidence) Act 1921, as amended.

3  
4 In all of these matters, sir, I know you will be guided  
5 by the law as it is, your patience, experience and 10:52  
6 above all by the guiding principle of your solemn  
7 judicial declaration to fulfil your duty "*without fear*  
8 *or favour to any*". Rank or position, high or low, will  
9 count for nothing in this process. And, as has been  
10 said, "*Be you ever so high the law is above you*". 10:53

11 You have already announced your intention to make  
12 fairness your watch word for the Tribunal and to treat  
13 all equally in this respect.

14  
15 I now propose to summarise some of the issues involved 10:53  
16 in the Tribunal more particularly.

### 18 **Summary**

19 Sir, on the 17th February 2017 this Tribunal of Inquiry  
20 into Protected Disclosures made under the Protected 10:53  
21 Disclosures Act 2014, and certain other matters, was  
22 established by the Minister for Justice and Equality by  
23 instrument under the Tribunals of Inquiry (Evidence)  
24 Act 1921, as amended. The establishment of the  
25 Tribunal followed what might be fair to say were months 10:53  
26 of controversy about how the Garda establishment  
27 allegedly treated those who chose to break ranks and to  
28 disclose, through the mechanisms established following  
29 the Morris Tribunal, serious failings within that

1 organisation. While this period of disquiet was  
2 intense in itself, it should be pointed out that it was  
3 preceded by the resignation of the former Commissioner  
4 Martin Callinan on the 24th March 2014, the  
5 Commissioner having appeared before the Public Accounts 10:54  
6 Committee on the 23rd January 2014 and having referred  
7 to an officer at the centre of this entire controversy,  
8 Sergeant Maurice McCabe, together with another officer,  
9 as "*disgusting*", and contrasting their conduct with  
10 that of 13,000 other police officers. As outlined 10:54  
11 above, a number of other commissions of inquiry were  
12 set up in the aftermath of these events, the details of  
13 which do not concern us. But, briefly, a Commission of  
14 Investigation under Mr. Justice Nial Fennelly was set  
15 up on the 25th March 2014, initially to inquire into an 10:54  
16 issue as to the recording of telephone conversations in  
17 Garda stations and then to inquire into the  
18 circumstances of the resignation of the former  
19 Commissioner; Mr. Séan Guerin SC recommended the  
20 establishment of a Commission of Investigation which in 10:55  
21 due course was set up under the Chairmanship of  
22 Mr. Justice Kevin O'Higgins on the 3rd February 2015  
23 and reported on what was essentially a review of the  
24 internal Byrne-McGinn garda inquiry on the 25th April  
25 2016. 10:55

26  
27 Sir, it is not the purpose of this Tribunal to revisit  
28 work that has already been done. You will be aware  
29 that under section 5 of the Commission of

1           Investigations Act 2014 you are entitled to regard as  
2           evidence matters that the O'Higgins Commission have  
3           made available for the work of the Tribunal. However,  
4           sir, you are not tasked with reinvestigating such  
5           matters as the Kingscourt bus incident, an assault at 10:55  
6           the Lakeside Manor Hotel, the savage attack on a taxi  
7           driver by a man later convicted of murder, the assault  
8           on a 17-year-old girl in Cootehill, the misuse of the  
9           Pulse system and other incidents covered in that  
10          comprehensive inquiry. These are in the past and we 10:56  
11          say that they are not subject to re-analysis within the  
12          context of the hearings which will now follow. Apart  
13          from the futility of spending huge sums on a public  
14          re-examination of work that has already been conducted  
15          with great efficiency and application by the O'Higgins 10:56  
16          Commission you will be aware, sir, that the Tribunal of  
17          Inquiry established under the relevant legislation is a  
18          creature of statute. Therefore, you have jurisdiction  
19          to investigate only those particular matters which are  
20          set out in the terms of reference. 10:56

21  
22          Sir, in any reading of the terms of reference, it is  
23          clear that the subject of Sergeant Maurice McCabe and  
24          his treatment by senior officers is a central issue.  
25          Sir, you will be aware that on the 30th September 2016 10:56  
26          the confidential recipient designated to deal with  
27          communications from garda officers received a Protected  
28          Disclosure from Superintendent David Taylor. Earlier,  
29          a revelation as to the text of what

1 Superintendent Taylor was to say had been received from  
2 Sergeant Maurice McCabe. Both documents were in  
3 substantially the same terms. We will refer to the  
4 text of this in due course and the investigations that  
5 have been subsequently done with a view to establishing 10:57  
6 the basis for these. In summary, Superintendent Taylor  
7 alleged in broad terms that the current head of the  
8 Garda force, Commissioner Nóirín O'Sullivan, and her  
9 immediate predecessor, former Commissioner Martin  
10 Callinan, had abused their position of authority and 10:57  
11 their standing within the community as unimpeachable  
12 sources of reliable information to damnify the  
13 character of Sergeant McCabe.

14  
15 For a period from the 1st July 2012 to 31st May 2014, 10:57  
16 under former Commissioner Callinan, the head of the  
17 Garda Press Office was Superintendent Taylor. He was  
18 therefore the official to whom members of the media had  
19 to resort when they wished to ascertain the progress of  
20 particular investigations and if they were to inquire 10:58  
21 into matters of internal structure, discipline and  
22 resourcing of our national police force or any other  
23 matters relating to policing. His word, sir, might  
24 therefore reasonably be taken as one of high  
25 reliability when it came to anything to do with matters 10:58  
26 relating to the police. Superintendent Taylor was also  
27 a person who could reasonably be regarded as an  
28 individual who would have inside knowledge as to the  
29 character and background of individual officers since

1 it might reasonably be supposed he might either have  
2 access to or might inquire in an official way into  
3 matters, files, internal documents or events and  
4 acquire information that would be regarded as more than  
5 mere barroom gossip. Therefore, from the rank which he 10:58  
6 held, his position within the police and his means of  
7 knowledge, his say-so on a matter would carry  
8 particular weight. That at least is what one might  
9 have thought.

10  
11 Superintendent Taylor alleges that he was required by  
12 former Commissioner Martin Callinan and with the  
13 knowledge of the then Deputy Commissioner Nóirín  
14 O'Sullivan in the course of his role as Press Officer  
15 to brief the media negatively against Sergeant McCabe 10:59  
16 and to tell them that he was motivated by malice and  
17 revenge to make complaints about garda malpractice  
18 which had no substance and that the Gardaí had fully  
19 investigated these complaints, finding them to be  
20 groundless and that therefore he was driven by agendas 10:59  
21 of his own.

22  
23 Sir, it is a regrettable fact of human nature that many  
24 people do not approach gossip with healthy skepticism,  
25 nor do they apply the maxim central to the 10:59  
26 administration of justice, that people are presumed to  
27 be innocent until proven guilty. Instead, many believe  
28 that there is no smoke without fire. This shibboleth  
29 in our day and age finds particular traction when it

1 comes to some allegations of which, perhaps, financial  
2 irregularity and sexual misconduct towards children are  
3 prime examples.

4  
5 Thus for his time as Garda Press Officer, 10:59  
6 Superintendent Taylor alleges that he was briefing the  
7 media negatively to the effect that an allegation of  
8 criminal misconduct had been made against  
9 Sergeant McCabe in December 2006 that supposedly  
10 referred to an event which had taken place in his house 11:00  
11 as far back as 1998. Sir, it is appropriate to record  
12 as of this point that when this complaint was referred  
13 to the Director of Public Prosecutions in 2007 the  
14 analysis by that office was that even on the facts  
15 alleged, taken at their height, no sexual assault was 11:00  
16 disclosed.

17  
18 Sir, if such instructions were given to  
19 Superintendent Taylor, but that he, acting under his  
20 own motivations, had chosen to misrepresent these 11:00  
21 facts, it would be shocking. Even more shocking would  
22 be the lack of fair mindedness, professionalism and  
23 adherence to basic and civilised standards were those  
24 tasked with the direction of the national police force  
25 at the very highest level to ignore everything which 11:00  
26 they were taught as to appropriate behaviour and to  
27 resort instead to the adoption of a culture of deceit  
28 in order to destroy those whom it might be thought were  
29 making life uncomfortable for them. As it happens,

1 despite anxious scrutiny of the media in all of its  
2 formats, we have been unable to find any mention in any  
3 published source from a professional organisation, at  
4 the relevant time, which took up and ran with the  
5 allegation that was supposedly being widely 11:01  
6 disseminated on the instructions of the then  
7 Commissioner and Deputy Commissioner by  
8 Superintendent Taylor.

9  
10 Nonetheless, sir, you are tasked with inquiring into 11:01  
11 whether any direction was given to Superintendent  
12 Taylor in that form, whether he acted on the same by  
13 contacting particular members of the media and briefing  
14 them in a particular way, what reception he received  
15 from journalists in the event that he did indeed 11:01  
16 follow-through on this and if any of this happened,  
17 from what source ultimately came the direction or  
18 motivation for this conduct

19  
20 Sir, as if this were not bad enough, public controversy 11:01  
21 surrounds the creation, distribution and use of a file  
22 by certain agencies, namely Rian, which is a  
23 counselling agency under the Health Service Executive,  
24 and later, on statutory transfer, the Child and Family  
25 Agency or, as they refer to themselves, Tusla. while 11:02  
26 this will be referred to in detail at a later stage in  
27 the statement it is convenient now to indicate that in  
28 July 2013 the young lady who had made the allegation  
29 which the Director of Public Prosecutions had decided

1 in April 2007 did not amount to a sexual assault  
2 returned to counselling with Rian because of an  
3 unrelated matter. Sir, you are not investigating  
4 whether anything happened in 1998 which led to this  
5 young lady making a complaint in December 2006, nor is 11:02  
6 anything concerning the private life of this young lady  
7 - and we will call her Ms. D - anything to do with the  
8 terms of reference. What is, however, central to the  
9 terms of reference is the fact that on returning to  
10 counselling it so happened that in the course of 11:02  
11 discussion with her counsellor the earlier alleged  
12 incident was mentioned which led in turn to invocation  
13 of certain and particular procedures which had been set  
14 up with a view to the protection of families and  
15 children. 11:03

16  
17 Some of this, sir, might be regarded as part of the  
18 mandatory reporting culture which is central to the way  
19 in which society now responds to allegations of harm to  
20 children. While this will be referred to in greater 11:03  
21 detail shortly, it suffices to say that while the  
22 original allegation made by Ms. D was one of "*being*  
23 *grabbed while clothed and what were described as*  
24 *humping motions made*", through some dreadful alchemy in  
25 making an official typed report of the counselling 11:03  
26 session to refer on to child protection services, this  
27 became recorded therein as digital penetration, both  
28 anal and vaginal. Ms. D never alleged this and never  
29 came close to making such allegation, nor did she make



1 an allegation, also recorded there, that in the event  
2 that she reported this matter that her alleged abuser  
3 would threaten her father. Furthermore, she has told  
4 your investigators, sir - and you must obviously  
5 question whether there is any reason to disbelieve her 11:04  
6 - that when she learned of this perversion of what she  
7 had said she took immediate steps to rectify what was  
8 none of her doing. In this respect, sir, it is clear  
9 that she appears to have done more than her duty, if  
10 this is correct, and acted in the correction of this 11:04  
11 error in the public interest with a view to protecting  
12 her integrity.

13  
14 Sir, there has been speculation, and indeed it might be  
15 reasonable to say from the coincidence of dates and 11:04  
16 circumstances that the speculation might be based on a  
17 potentially open inference, that this further attempt  
18 at damnification of Sergeant McCabe was inspired by  
19 Garda Headquarters. It is fair and appropriate at this  
20 juncture to record that the various agencies involved 11:04  
21 claim no connection with or direction by Garda  
22 Headquarters, instead saying that as regards to any of  
23 the individuals involved they have almost no relations  
24 who are Gardaí, do not act under the direction of the  
25 Gardaí and are entirely independent of the exercise of 11:05  
26 their functions, but that an unfortunate error was  
27 made. While, shortly, we will outline the manner in  
28 which this was alleged to have occurred, as recounted  
29 to your investigators, it would appear now appropriate

1 to briefly record that what was said to have happened  
2 was a word processing error. Sir, as a person trained  
3 in word processing and typing to a professional level,  
4 you will perhaps appreciate that people often use  
5 templates for standard reports. The creation and 11:05  
6 availability of templates can save time in necessary  
7 paperwork and this is especially so where several boxes  
8 need to be ticked. Having in front of you a checklist  
9 when creating or completing particular paperwork can be  
10 very valuable and can ensure that nothing is left off. 11:05  
11 what is said to have happened is that another young  
12 lady - and we will call her Ms. Y - had indeed reported  
13 that she had been subjected to this deeply regrettable  
14 form of abuse and was receiving counselling in  
15 consequence. what is said is that the template from 11:06  
16 Ms. Y was used in filling in the details in relation to  
17 Ms. D but that the two had been mixed up. Surely you  
18 might say, sir, that any such egregious error would or  
19 could not happen or would be stopped and that any  
20 organisation which did not have a system of checks and 11:06  
21 balances to ensure against such mistakes would be a  
22 construction of eminent stupidity. Be that as it may,  
23 this is the case that is being made. Nonetheless, this  
24 necessitates inquiry and cannot be accepted at face  
25 value. 11:06

26  
27 Sir, we have received correspondence from the solicitor  
28 acting on behalf of Ms. Y who is anxious that her  
29 identity be protected. Naturally, she is annoyed by

1 any risk of being dragged closely into what might seem  
2 to be a public arena through what is said to be a  
3 mistake. While your investigators have been tasked  
4 with inquiring into whether there was ever a Ms. Y,  
5 what file was created in relation to her and what steps 11:07  
6 were taken within the relevant organisation to assure  
7 her welfare, you have, sir, we understand, made a  
8 decision that no one within the Tribunal staff, apart  
9 from the investigators, is to know anything of her  
10 identity and that no document relevant to her 11:07  
11 confidential interactions in counselling is to be  
12 brought back to Dublin Castle or is to be disclosed or  
13 distributed to any other party.

14  
15 Sir, these allegations of the systematic destruction of 11:07  
16 the character of Sergeant McCabe are to some extent  
17 supported by some witnesses, including journalists, who  
18 have come forward with a view to assisting the Tribunal  
19 by disclosing conversations which they have had with  
20 former Commissioner Callinan at a time when he was 11:07  
21 Commissioner of the national police force. We will  
22 refer to these shortly in detail and it is also fair to  
23 immediately record that these are vehemently denied by  
24 him. One of the conversations is alleged to be that  
25 which took place on the 24th January 2014 in the car 11:07  
26 park of Bewley's Hotel in Newlands Cross in Dublin with  
27 the Head of the Public Accounts Committee of the  
28 Oireachtas, Deputy John McGuinness TD. And if this  
29 occurred, sir, it would indicate, depending upon the

1 view taken by the Tribunal in the context of other  
2 evidence, inappropriate comment, evidence of material  
3 from which it could be inferred that Commissioner  
4 Callinan did indeed have the motivation and emotional  
5 charge to attack the character of Sergeant Maurice 11:08  
6 McCabe and might perhaps have instructed his press  
7 officer to do likewise. What did Commissioner  
8 O'Sullivan know of this meeting? She appears not to  
9 have known of it. And, what did she do in consequence  
10 of what the former Commissioner might perhaps have felt 11:08  
11 in relation to Sergeant Maurice McCabe? These are  
12 questions you have to consider. It is fair to record  
13 as of this juncture, however, that Commissioner  
14 O'Sullivan is not alleged by direct evidence by any  
15 potential witness to the Tribunal to have spread 11:09  
16 unpleasant or nasty comments about this officer. A  
17 question which must loom large in your mind, however,  
18 sir, is as to whether, if it happened at all, former  
19 Commissioner Callinan was disturbed to the extent of  
20 making the statements which several witnesses claim, 11:09  
21 and which he vehemently denies, how could it be that  
22 the person with whom he worked most closely, namely  
23 then Deputy Commissioner O'Sullivan, could not have  
24 known of his expressed state of mind that is described  
25 in such graphic terms to others, and why there is no 11:09  
26 mention of this in statements to the Tribunal thus far?  
27 It could easily happen, however, that the choice of  
28 those who were to be regarded as confidants of these  
29 unproven allegations might be limited or targeted.

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If so, in what terms and whether the reach of his power extended to other agencies, such as those mentioned in the terms of reference - namely, media and broadcasting personnel, members of the Government, Tusla, the Health Service Executive, other state agencies and any other relevant personnel - is a matter you will have to decide in the context of all of the evidence. The issue as to whether it will perhaps be supported by telecommunications interactions between Superintendent Taylor, former Commissioner Callinan and Commissioner O'Sullivan are, as we speak, subject to investigation and analysis pursuant to a contract entered into by this Tribunal with the Forensic Service of Northern Ireland.

11:10  
11:10  
11:10

Related to this, sir, is the extent to which Garda Headquarters is in a position to influence broadcasts. Particularly, you are tasked with considering broadcasts on RTE on the 9th May 2016 when a leaked account of the unpublished O'Higgins Commission Report was traversed and discussed in radio and television broadcasts. Because the O'Higgins Commission held its hearings in private, another aspect of the terms of reference is as to whether false allegations of sexual abuse or any other unjustified grounds were inappropriately relied upon during the course of those hearings by Commissioner O'Sullivan for the purposes of undermining the testimony of Sergeant McCabe.

11:10  
11:10  
11:10

1  
2 Sir, one of the other issues for you to consider is  
3 whether more than one garda officer has been made the  
4 subject of inappropriate attention of social workers in  
5 consequence of an allegation involving him in allegedly 11:11  
6 inappropriate contact or behaviour with children, and  
7 whether two garda officers being dragged into this  
8 sphere is justified or carelessness and more or perhaps  
9 evidence of conspiracy. Indeed, sir, you are tasked  
10 with investigating whether there are any patterns to 11:11  
11 the creation, distribution and use of these social work  
12 files containing allegations of criminal misconduct  
13 against garda officers who have become a thorn in the  
14 side of Garda Headquarters by making allegations of  
15 wrongdoing. Clearly, Gardaí, while trained observers 11:11  
16 and persons who ought to be highly motivated in the  
17 service of their country, are also human. You will be  
18 aware, sir, that there is a garda disciplinary  
19 procedure and that many of these cases have ended up  
20 from time to time in the High Court and indeed as a 11:12  
21 judge of that court over a period of eight years you  
22 will perhaps have dealt with some of them in the  
23 judicial review list. This is simply a way of saying  
24 that Gardaí are as human as anyone else. Thus, Gardaí  
25 may get drunk, may commit assaults, may neglect their 11:12  
26 duty and may also, shocking as this is, abuse their  
27 spouse or domestic partner. One of the matters which  
28 you are tasked with investigating is the contacts  
29 between the national police force and Tusla as the

1 agency tasked with protection of child welfare.  
2 Briefly, according to Garda Keith Harrison, because of  
3 concerns which he had while stationed in Athlone, which  
4 are outside your terms of reference, and his  
5 relationship with a woman who lived in Donegal, he 11:12  
6 sought a transfer to Donegal. While there he claims  
7 that he was targeted by senior officers and that social  
8 workers were brought into the equation due to the  
9 manipulation of his situation and the extraction of an  
10 unfair and untrue series of allegations of serious 11:13  
11 domestic misconduct by his domestic partner. You must  
12 consider whether these interactions were simply those  
13 of people doing their duty to ensure the protection of  
14 children or whether the influence of senior garda  
15 officers extended into the social work services of the 11:13  
16 State enabling manipulation of procedures in order to  
17 undermine and destroy a decent and upstanding officer.  
18

19 That, sir, briefly is an outline of the inquiry which  
20 you are tasked with investigating. While it is not 11:13  
21 appropriate to traverse the detail of this with the  
22 extreme particularity of which you are aware, it is  
23 appropriate, in the context of impending public  
24 hearings, to now refer to some of the details in a way  
25 which will give fair notice to those involved as to 11:13  
26 what we are tasked to consider in a concise manner. As  
27 all will be aware from the first interim report of the  
28 Tribunal on the 17th May 2017 you had proposed to  
29 divide the work of the Tribunal into five sections.

1 while these may be related to each other and to some  
2 degree intersect with each other this is one from the  
3 point of view of convenience for potential witnesses  
4 and with a view to disposing of some of the more  
5 serious controversies in a public forum. It is, of 11:14  
6 course, a matter for you, sir, as to what decision you  
7 make in relation to these, but it is certainly to be  
8 hoped that by witnesses being given an opportunity to  
9 give evidence relevant to the terms of reference - and  
10 we must repeat that you are limited to that, otherwise 11:14  
11 you would be exceeding your jurisdiction - that the  
12 grave matters of public controversy which led to the  
13 establishment of this Tribunal may be somewhat quieted.  
14 We thus quote what you then said in the interim report:

15 11:14  
16 *"Of pressing public concern is whether or not files in*  
17 *certain State agencies, who here might be identified as*  
18 *Rian, the Health Service Executive, Child and Family*  
19 *Agency, otherwise Tusla, were created and distributed*  
20 *or otherwise used by senior members of our force in 11:15*  
21 *inventing or furthering a false allegation of sexual*  
22 *abuse against Sergeant Maurice McCabe. This will be*  
23 *the first section of public hearings. It is hoped to*  
24 *engage in these and to complete them in July of this*  
25 *year. Progress on this matter has moved very far but 11:15*  
26 *the analysis of relevant computers is essential and*  
27 *there are further interviews to be conducted by our*  
28 *investigators.*



1 *Concerns in relation to Garda Keith Harrison and his*  
2 *family and the same State agencies might be regarded as*  
3 *being similar in kind, if not in detail, and it is*  
4 *hoped to engage in public hearings on that issue in*  
5 *September of this year. Again, considerable work has* 11:15  
6 *been done.*

7  
8 *As to what may have been briefed to the then Garda*  
9 *Press Officer, Superintendent David Taylor, for*  
10 *dissemination to journalists by former Commissioner* 11:15  
11 *Martin Callinan and then Deputy Commissioner Nóirín*  
12 *O'Sullivan, this is the subject of inquiry in respect*  
13 *of which public hearings are hoped to be held, perhaps*  
14 *following a short break, in November. Allied to this*  
15 *are concerns in relation to an engagement between* 11:15  
16 *former Commissioner Martin Callinan and John McGuinness*  
17 *TD that is said to have taken place on the 24th January*  
18 *2014 in a very specific location according to the terms*  
19 *of reference. These sections do not seem to be*  
20 *divisible and evidence on one may be of assistance in* 11:16  
21 *the determination of what attitude was taken by those*  
22 *senior officers to Sergeant Maurice McCabe, if any, and*  
23 *as to how they responded or acted.*

24  
25 *A specific, and it would seem relatively short inquiry,* 11:16  
26 *is to be made in relation to broadcasts on RTÉ of the*  
27 *9th May 2016. This in fact consisted of several*  
28 *broadcasts and commentaries and as to whether*  
29 *Commissioner Nóirín O'Sullivan was influencing or had*

1           *dictated the terms of these in some way.*

2  
3           *The O'Higgins Commission was of course the subject of*  
4           *commentary in relation to these broadcasts. It may be*  
5           *logical to consider that with the question as to* 11:16  
6           *whether false allegations of sexual abuse and/or any*  
7           *unjustified grounds were inappropriately relied upon by*  
8           *the Commissioner during the hearings before Mr. Justice*  
9           *Kevin O'Higgins. It is hoped to dispose of these*  
10          *matters in December of this year. It is not within the* 11:17  
11          *terms of reference to re-run the O'Higgins Commission*  
12          *but, instead, that report is part of the evidence*  
13          *before the Tribunal. It might usefully be read by all*  
14          *interested parties."*

15  
16          And that is the end of the quotation from your interim  
17          report.

18  
19          We now move on, sir, to a more detailed consideration  
20          of various aspects of the work in hand. 11:17

21  
22          **Rian, the HSE and the Child and Family Agency (Tusla)**  
23          Sir, term of reference (d) requires the Tribunal to  
24          investigate files held by certain State bodies, Rian,  
25          the Health Service Executive and the Child and Family 11:17  
26          Agency, otherwise Tusla, and the creation, distribution  
27          and use of files containing a false allegation of  
28          sexual abuse against Sergeant Maurice McCabe and  
29          whether such allegations were knowingly used by senior

1 members of the Gardaí to discredit Sergeant McCabe.

2  
3 This matter is also relevant to other terms of  
4 reference of the Tribunal as to the knowledge of  
5 Commissioner O'Sullivan and former Commissioner 11:18  
6 Callinan of this matter and whether they or other  
7 senior members of the Gardaí acted upon such knowledge  
8 in order to discredit Sergeant McCabe. The sequence of  
9 events could possibly lead to the conclusion that in  
10 consequence of Sergeant McCabe's complaints of 11:18  
11 malpractice and low standards of policing in  
12 Cavan/Monaghan which were the subject of the O'Higgins  
13 Commission, there was campaign to use allegations of  
14 child sexual abuse to undermine the reputation of  
15 Sergeant McCabe and discredit his complaints. Another 11:18  
16 matter which will be dealt with in further detail below  
17 is whether such allegations of sexual abuse were later  
18 relied upon by Commissioner O'Sullivan in order to  
19 discredit Sergeant McCabe at the O'Higgins Commission  
20 in 2015. 11:18

21  
22 Sir, while this Tribunal is not tasked with  
23 re-examining in any way the allegation of sexual abuse  
24 against Sergeant McCabe made by Ms. D in 2006, the 2006  
25 allegation lays the foundation for other aspects of the 11:18  
26 Tribunal's work which have just been mentioned. A  
27 background of the circumstances and investigation of  
28 this complaint is relevant in order to consider how the  
29 referral to Tusla came from Rian counselling in 2013

1 and how a subsequent notification to the Gardaí came to  
2 be made in 2014.

3  
4 By way of background, Maurice McCabe became a member of  
5 the Garda Síochána in August 1985. He began to serve 11:19  
6 at Bailieboro Garda Station in 1989 and was promoted to  
7 the rank of sergeant in 1999. He became sergeant in  
8 charge at Bailieboro Garda Station in October 2004. On  
9 the 4th December 2006 Ms. D, the daughter of someone  
10 known to Sergeant McCabe, then aged 14, made an 11:19  
11 allegation of sexual abuse against Sergeant McCabe  
12 dating back to around Christmas 1998, when she would  
13 have been approximately six years of age. The incident  
14 was alleged to have occurred in the McCabe's family  
15 home. Ms. D made two statements, in the first of which 11:20  
16 she describes the alleged incident as follows from the  
17 5th December 2006:

18  
19 *"It was the Christmas time when we visited. Man, dad*  
20 *and [another person]. I don't remember [being] in [the 11:20*  
21 *McCabe's house] before. I was about six years of age*  
22 *at the time. I remember we played a game of hide and*  
23 *seek. Me, [another], Maurice McCabe and his two girls.*  
24 *Mum and dad were in the kitchen with Lorraine,*  
25 *Sergeant McCabe's wife. I went and hid in the sitting 11:20*  
26 *room. What I can remember of this room was that there*  
27 *was a couch, it was a long seated chair... I was the*  
28 *only one there. I remember hearing him coming for fear*  
29 *he would find me. This fear is from the game, nothing*

1            *else. The next thing I remember I am bent over the arm*  
2            *of the couch, my feet on the ground and my face down.*  
3            *I remember his, Maurice McCabe's arms around my waist*  
4            *tickling me. I did not see his face. He was behind*  
5            *me. I can remember pressing against me. I could not* 11:20  
6            *get up, the pressure was too strong. He was pressing*  
7            *himself against me. Humping. I can't remember how*  
8            *long it lasted. I remember somebody running down the*  
9            *hall. He stopped."*

10  
11            Ms. D made a further statement on the 21st December  
12            2006. Ms. D's mother and father also made statements  
13            in their home on the 19th December 2006.

14            Sergeant McCabe was cautioned and made a statement on  
15            the 22nd December 2006 in which he fully denied the 11:21  
16            allegation. While he stated that Ms. D's family had  
17            visited their house but by the time Ms. D was aged six  
18            this no longer occurred. He also stated that he did  
19            not have any recollection of a game of hide and seek  
20            taking place at their home, nor did he have any memory 11:21  
21            of Ms. D's family visiting his home at Christmas of  
22            1998. He fully denied the allegation of sexual  
23            assault.

24  
25            *"It did not happen. It did not happen. [It's a]* 11:21  
26            *horrendous allegation to make and it did not happen."*

27  
28            Sergeant McCabe's wife, Lorraine, made a statement to  
29            the Gardaí on the 23rd December 2006. She recalled the

1 following:

2  
3 *"Ms. D's family would have visited this house about*  
4 *half a dozen times that I can recall and on one*  
5 *occasion I can remember their having two children with* 11:22  
6 *them and it was in the evening time. I recall [Ms. D's*  
7 *sibling] being a toddler around two years of age and*  
8 *the girl maybe four or five years. I am aware of the*  
9 *allegation that has been made against my husband which*  
10 *surrounds a game of hide and seek. I have never seen* 11:22  
11 *Maurice playing hide and seek with any other children*  
12 *apart from our own and my two nieces and I am*  
13 *absolutely one hundred percent sure of that."*

14  
15 A notification of suspected child abuse was sent to the 11:22  
16 HSE in late December 2006 and was received by the  
17 Health Board on the 2nd January 2007. It appears to  
18 have previously arisen first at a meeting on the 12th  
19 December 2006 of the Child Protection Strategy Risk  
20 Management Committee and was again considered on the 11:22  
21 27th April 2007 at which time it had been decided to  
22 offer Sergeant McCabe the opportunity of an assessment.  
23 Ms. D had been met and by this time the Director of  
24 Public Prosecutions had directed there should be no  
25 prosecution. At this time, Child and Family Services 11:22  
26 in the HSE did not contact Sergeant McCabe about the  
27 allegations. An entry relating to this referral had  
28 been made and a decision was later made to close the  
29 file with a letter dated the 10th October 2007 from

1 Rhona Murphy, noting that this was being done without  
2 meeting Sergeant McCabe and apparently contrary to the  
3 applicable procedures at the time.

4  
5 It appears from some material available to the Tribunal 11:23  
6 that Sergeant McCabe, while stationed at Clones and  
7 Bailieboro, had been acting on several occasions in  
8 2004, 2005, 2006 and up to 2009 as the Garda/HSE  
9 liaison officer for family/child protection issues and  
10 attended meetings with a number of those HSE staff who 11:23  
11 were later to have significant dealings with the file  
12 when the 2013/2014 referrals took place. The possible  
13 relevance of this will be explored by the Tribunal.

14  
15 On the 19th February 2007 Superintendent Noel 11:24  
16 Cunningham completed an investigation file in relation  
17 Ms. D's complaint in this case and stated:

18  
19 *"Taking all matters into consideration, including the*  
20 *question of whether the event, if it happened,* 11:24  
21 *constituted a breach of the criminal law, it is felt*  
22 *there is no ground for a criminal prosecution."*

23  
24 On the 1st March 2007, Rory Hayden, state solicitor for  
25 Cavan, sent the garda investigation file to the  
26 Director of Prosecutions, concluding in a letter *"I do*  
27 *not think any case arises for prosecution"*.

28  
29 On the 5th April 2007 a letter from the DPP stated that

1 there was no basis for prosecution of Sergeant McCabe  
2 for the allegations made by Ms. D. The letter stated  
3 the following:

4  
5 *"I agree with you [that is the state solicitor] and the 11:24*  
6 *Guards that the evidence does not warrant a*  
7 *prosecution. There are no admissions. The incident as*  
8 *described by the injured party is vague. It appears*  
9 *that it was only when she was 11/12 that she decided*  
10 *that whatever occurred was sexual in nature. Even if 11:25*  
11 *there wasn't a doubt over her credibility, the incident*  
12 *that she describes does not constitute a sexual assault*  
13 *or indeed an assault. Further, the account given to*  
14 *her cousin differs in a number of respects to that*  
15 *given to her parents and the Guards. There is no basis 11:25*  
16 *for prosecution."*

17  
18 Sir, at and subsequent to this time, Sergeant McCabe's  
19 complaints relating to a number of investigations in  
20 the Cavan district later became the subject of the 11:25  
21 O'Higgins Commission. Sergeant McCabe made a number of  
22 complaints to senior Gardaí, Garda HR and to the  
23 confidential recipient and made contact with various  
24 members of Government in relation to these complaints.  
25 These matters were also the subject of investigation 11:25  
26 internally by Gardaí in the Byrne/McGinn Inquiry.  
27 Sergeant McCabe came to prominence in 2013 and 2014 and  
28 became known as a garda whistleblower, receiving media  
29 attention during the course of the Public Accounts



1 Committee, which examined alleged penalty points  
2 inconsistencies brought to the fore by Sergeant McCabe  
3 and Garda John Wilson.  
4

5 Sir, the matters relevant for your consideration relate 11:26  
6 in the first part to Ms. D's attendance at counselling  
7 in July 2013 with Rian, a free counselling service  
8 under the remit of the HSE, described as a specialised  
9 counselling service for adults who have experienced  
10 abuse in childhood. Ms. D began to attend counselling 11:26  
11 for this service for unrelated personal matters and it  
12 appears that she attended two appointments with a  
13 counsellor, Laura Brophy, on the 24th July 2013 and 7th  
14 August 2013. During the course of the initial  
15 assessment in July 2013, Ms. D discussed the 2006 11:26  
16 allegation and Ms. Brophy accurately recorded it in her  
17 own handwritten notes.  
18

19 Sir, the Children First Guidelines place various  
20 obligations on members of organisations, such as the 11:26  
21 HSE, to refer allegations of child abuse on to the  
22 appropriate authorities. Within the HSE, if there is  
23 suspicion of child abuse or neglect, Gardaí may also be  
24 notified of the suspected abuse. In this case it seems  
25 initially a verbal referral of the actual allegations 11:27  
26 which had been made in 2006 were conveyed to a social  
27 worker, Ms. Briege Tinnelly, in the HSE by Laura  
28 Brophy. Ms. Brophy made a verbal referral which was  
29 recorded as follows in an intake record completed by

1 Ms. Tinnelly, signed off by HSE line manager, Keara  
2 McGlone:

3  
4 *"Laura advised that she has a client called [Ms. D]...  
5 [who] told Laura that she was abused when she was six 11:27  
6 or seven by [Sergeant McCabe]... It was reported to  
7 Gardaí and there was no prosecution from the DPP...  
8 [Ms. D] was playing hide and seek in  
9 [Sergeant McCabe's] house when [he] put her on the  
10 couch, tickled her and touched her inappropriately 11:27  
11 whilst gyrating on top of her with clothes on... Laura  
12 agreed to send in standard notification form."*

13  
14 The intake record also noted *"duty to garda notify &  
15 await allocation"*. 11:28

16  
17 Sir, a crucial event occurred which resulted in an  
18 allegation of digital penetration being sent to Gardaí,  
19 distributed within Tusla and later being wrongfully put  
20 to Sergeant McCabe in December 2015. After making a 11:28  
21 verbal referral on the 9th August 2013, Ms. Brophy  
22 completed a typed retrospective Disclosure of Abuse  
23 Report on the same date which provided the following  
24 under the heading *"Description of Abuse"*:

25 11:28  
26 *"Ms. [Blank] informed me that she suffered sexual abuse  
27 in childhood. The abuse involved digital penetration,  
28 both vaginal and anal. The alleged would also threaten  
29 [blank's] father if she said anything."*

1  
2 Accordingly to Ms. Brophy a genuine mistake was made,  
3 that in filling out the report to forward to social  
4 workers in the HSE she states that she used the  
5 template of a retrospective disclosure of abuse form 11:29  
6 relating to another one of her clients, Ms. Y, and that  
7 she mistakenly failed to remove the "Description of  
8 Abuse" section which related to that client and  
9 therefore did not include the correct information about  
10 Ms. D's allegation which she had verbally conveyed to 11:29  
11 Ms. Tinnelly on that day. This form was sent to the  
12 HSE on the 9th August 2013. It appears that nothing  
13 was done in-house, as it were, in relation to this  
14 matter until the following year as the file awaited  
15 allocation within what became the Child and Family 11:29  
16 Agency, or Tusla. However, a letter dated the 15th  
17 August 2013 from Keara McGlone was sent to the  
18 superintendent in Monaghan, who at the time was  
19 Superintendent Cunningham, referring to Ms. D by her  
20 actual name and to "MMCC" seeking a meeting with him, 11:30  
21 Superintendent Cunningham. This referred to the  
22 criminal investigation that he had carried out in 2007  
23 but did not contain any detail, let alone the inclusion  
24 of an allegation of digital penetration in the  
25 referral, allegedly included in error from the Ms. Y 11:30  
26 file. Superintendent Cunningham was not on duty for  
27 extended periods in or around this time and did not  
28 apparently see the letter in this period. He, however,  
29 appears to have had possession of it and produced it

1 from a safe in early 2017. It is accurate to record  
2 here that both Ms. McGlone and the superintendent have  
3 each confirmed to the Tribunal this their statements  
4 that Superintendent Cunningham did not reply to the  
5 letter and that Ms. McGlone did not make any further 11:31  
6 contact with him in relation to this matter.

7  
8 Sir, in early 2014, some journalists sought to contact  
9 Ms. D, at whose instigation is not yet entirely clear.  
10 However, Ms. D engaged in contact with a journalist in 11:31  
11 relation to her initial complaint in 2006. This  
12 appears to have been as a result of an inquiry made by  
13 her father of her as to whether she would be prepared  
14 to speak to Mr. Paul Williams. He in turn appears to  
15 have been nominated to her father by a friend of his 11:31  
16 who is a detective superintendent in the Gardaí. On  
17 the 12th April 2014 an article by Paul Williams  
18 entitled "*Girl wants new probe into alleged sex assault*  
19 *by garda*" appeared in the Irish Independent containing  
20 comments by Ms. D about her dissatisfaction with the 11:31  
21 2006 investigation by Gardaí into her complaint against  
22 Sergeant McCabe. Ms. D sought inclusion of this matter  
23 within the terms of reference of the Guerin Report  
24 carried out by Mr. Séan Guerin SC, who ultimately  
25 recommended the establishment of the O'Higgins 11:32  
26 Commission. In this article Ms. D complained that  
27 Sergeant McCabe had not been formally arrested and that  
28 her complaint was not recorded on the Garda Pulse  
29 system in 2006.

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On the 29th April 2014 Ms. D made an official complaint to the Garda Síochána Ombudsman Commission on the basis that the complaint she had made against Sergeant McCabe in 2006 was not properly investigated for two reasons: 11:32  
The first being that the appointment of Superintendent Cunningham to investigate the allegations when he personally knew both her father and Sergeant McCabe and, secondly, the failure to report the case on Pulse. Ms. D made a statement to GSOC on 11:32  
the 3rd July 2014. However, on the 16th April 2015 GSOC found that no disciplinary proceedings should be commenced against Superintendent Cunningham or Detective Sergeant James Fraher, to whom the initial complaint was made on the 4th December 2006. 11:33

Sir, on the following day, the 30th April 2014, Laura Connolly, duty social worker in Cavan town, reviewed the Ms. D file and noted that the intake records had not been completed on Sergeant McCabe's children in 11:33  
2006/7, at the time of the initial allegation, nor in 2013 when the matter came to HSE attention once more. Ms. Connolly states that she sought the direction of Eileen Argue, social work team leader, on opening intake records on four of Sergeant McCabe's children 11:33  
and was advised to open these. The inclusion of the incorrect allegation of digital penetration was recorded on each of these records in the following terms:

1  
2           "*[Ms. D] is attending counselling with Rian, during the*  
3 *course of counselling she alleged that she experienced*  
4 *sexual abuse in childhood, that this abuse involved*  
5 *digital penetration, both vaginal and anal. This abuse* 11:34  
6 *is alleged to have occurred on one occasion in*  
7 *1998-1999. [Ms. D] reports being aged six/seven years*  
8 *old at the time of this alleged abuse."*  
9

10           A garda notification form was then completed by Laura 11:34  
11 Connolly on this date. According to Ms. Connolly, in  
12 her statement to the Tribunal on the 20th May 2017:  
13

14           "*The content of this notification was based on the*  
15 *standard referral form forwarded by Rian to Tusla.* 11:34  
16 *Notifying An Garda Síochána of allegations of child*  
17 *sexual abuse was standard procedure."*  
18

19           She emailed the garda notification to Linda Dewhirst,  
20 social work administrator, to be signed off by Seamus 11:34  
21 Deeney, principal social worker, and sent to Gardaí on  
22 the 2nd May 2014. The garda notification form of the  
23 2nd May 2014 contains the following:  
24

25           "*Laura Brophy, counsellor with Rian Counselling* 11:35  
26 *Service, reported the following information to the*  
27 *Child and Family Agency in August 2013. [Ms. D] is*  
28 *attending counselling with Rian, during the course of*  
29 *counselling she alleged that she experienced sexual*

1 abuse in childhood, that this abuse involved digital  
2 penetration, both vaginal and anal. This abuse is  
3 alleged to have occurred on one occasion 1998-1999.  
4 [Ms. D] reports being aged six/seven years at the time  
5 of this alleged abuse. [Ms. D] alleges that the 11:35  
6 alleged perpetrator of this abuse threatened her father  
7 if she said anything. [Ms. D] alleges that this  
8 incident of alleged abuse occurred whilst she and her  
9 parents were visiting the home of the alleged  
10 perpetrator, [Ms. D] alleges that her parents and the 11:35  
11 alleged perpetrator's wife were in another part of the  
12 house, that she was playing hide and seek and the  
13 alleged perpetrator and his two daughters who were then  
14 aged approximately three and five years of age."

15 11:35  
16 The above notification, therefore, combined aspects of  
17 the 2006 allegation, in relation to the allegations  
18 that there had been a sexual assault during a game of  
19 hide and seek, with incorrect information claimed to  
20 have been mistakenly included from the report of 11:36  
21 another client, Ms. Y, relating to digital penetration  
22 as well as an allegation that the perpetrator of the  
23 abuse had threatened her father if she told anyone  
24 about the abuse. Allegations of the digital  
25 penetration or threats against her father were never 11:36  
26 made by Ms. D against Sergeant McCabe. This appears  
27 clear from, inter alia, the statements of Ms. Brophy,  
28 Ms. D and her father.  
29

1           Soon after the garda notification had been received on  
2           the 14th May 2014, it appears from Laura Brophy's notes  
3           that a person (identified as "client") contacted her to  
4           inform her that there was an error on the retrospective  
5           report sent to social services in Cavan which was           11:37  
6           subsequently the basis for the garda notification.  
7           There was a second phone call on this date from the  
8           "client" along the same lines. Ms. Brophy hold the  
9           client that she, Ms. Brophy, had made an error in the  
10          form and would take steps to remedy this. It seems           11:37  
11          that Ms. D was informed of the inclusion of an  
12          allegation of digital penetration by a relative of hers  
13          following notification to the Gardaí, and subsequently  
14          she contacted Rian Counselling Service to have the  
15          report amended.   11:37

16  
17          It appears that Ms. Brophy took a number of steps  
18          following these contacts to rectify what she claims was  
19          a genuine error that she only became aware of on this  
20          day. She prepared an amended standard report form and           11:37  
21          sent this to Eileen Argue. The amended report under  
22          the heading "*Description of Abuse*" now contained the  
23          correct details of the 2006 allegations:

24  
25          "*[Ms. D] informed me that there was a single incident           11:37*  
26          *of sexual abuse. At the time of the incident both*  
27          *[Ms. D] and the alleged were fully clothed, and the*  
28          *incident involved inappropriate contact as the alleged*  
29          *rubbed himself up and down [Ms. D] in a sexual way.*"



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Ms. Brophy also sent a letter to Eileen Argue on this date requesting the return of the erroneous report and any copies of same. On the 16th May 2014 there would appear to be a third phone call from "client" informing Ms. Brophy that the superintendent in Bailieboro had not been informed of the fact that there was the inclusion of a more serious allegation which Ms. D had never made against Sergeant McCabe. Ms. Brophy then spoke to Superintendant Leo McGinn and also sent a letter explaining the error, attaching a copy of the corrected report which she had completed.

In May 2014, Fiona Ward, Director of Counselling, wrote to the Child and Family Agency seeking the return of all copies of the report on the 9th August 2013 to the National Counselling Service and also from the Gardaí, writing directly to Chief Superintendent Sheridan. Ms. Ward has informed your investigators that the original report was never returned by Gardaí. This was a course of action decided upon by Assistant Commissioner Kieran Kenny, who had been kept informed of matters by Chief Superintendent Sheridan and had presided over a meeting in Mullingar on the 16th July 2014 to consider the HSE error, the result of which was to the effect that the Assistant Commissioner would seek legal advice and that Chief Superintendent Sheridan would seek to ascertain the intentions of Tusla in relation to the matter. It is clear that the

1 Commissioner was kept informed of these developments at  
2 that time.

3  
4 Sir, the first part of this term of reference has  
5 related to the resurfacing of the initial 2006 11:39  
6 allegation against Sergeant McCabe in 2013 and the  
7 inclusion of much more serious allegations in the  
8 referral from Rian counselling to Tusla and therefrom  
9 to the Gardaí; whether there was a genuine mistake as  
10 is claimed by the counsellor and social workers 11:40  
11 involved up to that point in time is a matter for you.  
12 The second aspect of this term of reference relates to  
13 the actions of various personnel in Tusla once  
14 Ms. Brophy had been contacted on the 14th May 2014 and  
15 had taken a number of steps to remedy what she claims 11:40  
16 was a genuine error which resulted in much more serious  
17 allegations being included in her report sent to Tusla  
18 and the Gardaí.

19  
20 On the 7th June 2014, Eileen Argue sent an amended 11:40  
21 garda notification form, which she appears to have  
22 completed, to Linda Dewhirst, in order for this to be  
23 signed off by Seamus Deeney before being sent to  
24 Gardaí. In the meantime, the Gardaí sought  
25 clarification as to how the error had occurred and come 11:40  
26 to light subsequently. On the 9th June 2014 Chief  
27 Superintendent Sheridan sought clarification as to how  
28 a notification was sent to Gardaí which contained wrong  
29 information and how the alleged error came to light.

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On the 20th June 2014, now more than six weeks after the first garda notification, the amended garda notification form now dated the 10th June was signed off by Seamus Deeney and sent to the superintendent at Bailieboro. The more serious allegation had been removed, however the reference to threats made by the alleged perpetrator were still included. This was a further error as the reference to threats should not been an included, given that according to Ms. Brophy's account the description of the abuse contained in the initial report related to another client in its entirety. The amended report sent to Gardaí provided:

*"Laura Brophy stated that during the course of counselling [Ms. D] alleged she had experienced sexual abuse in childhood. This abuse is alleged to have occurred on one occasion in 1998 to 1999. [Ms. D] reports being aged six/seven at the time of this alleged abuse. [Ms. D] alleges that the alleged perpetrator of this abuse threatened her father if she said anything."*

On the 24th June 2014 Ms. Ward spoke to Inspector Pat O'Connell regarding the return of the incorrect retrospective report form of the 2nd May 2014, and gives an account as follows:

*"He was seeking clarification around the administrative*

1 error. He wanted to know how it came about. He asked  
2 me was it a typographical error of a cut and paste  
3 type. These were the words Inspector O'Connell used  
4 when querying the error with me. I stated that it was  
5 a typographical error, that it was a cut and paste from 11:42  
6 another report. I know that this description is not  
7 entirely accurate. My understanding now of what  
8 actually is that what should have been a blank report  
9 form used by Laura Brophy was not in fact blanked out,  
10 but contained the sentences that refer to another 11:43  
11 client and a previous report made by Laura Brophy to  
12 social work in 2013, prior to the [Ms. D] retrospective  
13 report form... Inspector O'Connell stated that the  
14 previous report received by the Garda Síochána was sent  
15 to the Commissioner in Sligo and that they needed to 11:43  
16 clarify the nature of the error before any report could  
17 be destroyed or returned, given the nature of the  
18 report. In respect of the previous report referred to  
19 by Inspector Pat O'Connell above I can confirm that I  
20 do not know what that report looks like or what the 11:43  
21 content that report was. I should clarify that the  
22 Rian Counselling Service did not send the original  
23 retrospective form (completed by Laura Brophy)  
24 containing the incorrect information to the Gardaí.  
25 Our process is to send it to the social work 11:44  
26 department, who then make a decision to refer it to the  
27 Gardaí. Inspector O'Connell again sought clarification  
28 regarding whether the retrospective report form made to  
29 the social work department in 2013 related to the 2006

1           *allegations to Gardaí. I understood this to be the*  
2           *same query made by Chief Superintendent Sheridan... I*  
3           *clarified that it was the first report received by Rian*  
4           *but seemed to relate to a previous report made by*  
5           *[Ms. D] to the Gardaí. Inspector O'Connell said that* 11:44  
6           *he would pass on this information to Chief*  
7           *Superintendent Sheridan and revert if any further*  
8           *clarification was needed."*

9  
10           The quotation continues: 11:44

11  
12           *"... On the 21st July 2014 I telephoned Inspector Pat*  
13           *O'Connell and my notes indicate that he stated that the*  
14           *Chief Superintendent was querying whether there was any*  
15           *subsequent action in relation to the original referral.* 11:44  
16           *My understanding is that this was the original*  
17           *retrospective report form made by Rian to the social*  
18           *work department in August 2013. He specifically asked*  
19           *if there was any subsequent action by the HSE, such as*  
20           *strategy meetings with Gardaí. I informed Inspector* 11:45  
21           *O'Connell that such action would be the remit of the*  
22           *social work department, i.e. Tusla, and that Rian*  
23           *Counselling would not be involved in any such actions.*  
24           *I agreed to obtain the contact details regarding the*  
25           *social worker dealing with these matters in Tusla and* 11:45  
26           *to pass them on to Inspector O'Connell."*

27  
28           It appears that the corrected garda notification was  
29           appropriately filed in a separate file kept by the HSE

1 for that purpose in their Monaghan office. However,  
2 when apparently sent to Cavan it was not associated  
3 with or put on the file relating to either Ms. D or  
4 Sergeant McCabe.

5  
6 Sir, nothing further seems to have occurred in relation  
7 to the Ms. D file until 7th May 2015, when a review of  
8 the file took place by social workers in Tusla. It is  
9 important to note that Sergeant McCabe had not been  
10 informed of the decision to refer the case to Gardaí, 11:45

11 nor was he aware of any of these matters. At the time  
12 a decision was made to respond to the referral and to  
13 write to Sergeant McCabe about the allegations. Kay  
14 McLoughlin, Social Work Team Leader, drafted the letter  
15 to Sergeant McCabe. On the 8th May 2015, Seamus Deeney 11:46  
16 outlined the five steps to be taken in the Ms. D case  
17 in correspondence with Ms. McLoughlin. It was advised  
18 that she contact Ms. D to conduct a credibility  
19 assessment, to determine whether anyone of relevance  
20 would need to be entered viewed in this matter, such as 11:46  
21 Ms. Brophy, to inform Sergeant McCabe on review of the  
22 above steps and to make a plan around informing third  
23 parties such as Sergeant McCabe's wife, Lorraine  
24 McCabe, of the allegations.

25  
26 On the 11th May 2015 Kay McLoughlin offered Ms. D an  
27 appointment as *"a matter has been brought to the*  
28 *attention of the social work department which we would*  
29 *would like to discuss with you"*. Ms. D did not attend 11:47

1 this meeting.

2  
3 Sir, it was only seven months later, on the 29th  
4 December 2015, that Kay McLoughlin sent a Barr letter  
5 to Sergeant McCabe stating that the Child and Family  
6 Agency was: 11:47

7  
8 *"Obligated to investigate allegations of abuse and to*  
9 *reach a determination as to whether there are*  
10 *sufficient grounds for believing you may potentially* 11:47  
11 *pose a risk to children.*

12  
13 *The allegations mad by [Ms. D] are as follows:*  
14 *That on one occasion between 1998 and 1999 at the home*  
15 *of Sergeant Maurice McCabe, [Ms. D] alleged that* 11:47  
16 *Maurice McCabe sexually abused her. The abuse*  
17 *allegedly involved digital penetration and the victim*  
18 *was aged six/seven years old."*

19  
20 The letter stated that Ms. McLoughlin wished to meet 11:48  
21 with Sergeant McCabe to give him an opportunity to  
22 respond to the allegations and further stated that  
23 relevant third parties, such as his employer or family,  
24 would be informed if the Child and Family Agency  
25 assessment determined that Sergeant McCabe posed a risk 11:48  
26 to children. This letter was the first time that an  
27 allegation of digital penetration had ever been made to  
28 Sergeant McCabe. In a context where the inclusion of  
29 such an allegation had been brought to the attention of

1 Ms. Brophy some 18 months earlier, sir, it is for you  
2 to consider how such an egregious error could have been  
3 made again in putting this allegation to  
4 Sergeant McCabe, where Ms. D herself was shocked by its  
5 inclusion in the report and had never made such an 11:48  
6 allegation against him. In addition, it does not  
7 appear that the first two of the five steps  
8 contemplated by Mr. Deeney had been completed prior to  
9 this being done.

10  
11 On the 28th January 2016, Sergeant McCabe's solicitors  
12 responded to the Tusla letter, stating that the  
13 allegation of digital penetration was "*wholly untrue*"  
14 and had never been made before by Ms. D, highlighting  
15 Sergeant McCabe's astonishment at receiving this 11:49  
16 letter.

17  
18 Sir, this is the crucial event in this second part of  
19 the term of reference. Ms. McLoughlin claims that she  
20 realised she had made an error when on the 2nd February 11:49  
21 2016 she sought a copy of Ms. D's 2006 statement to  
22 Gardaí from the HSE. Following this, on the 9th  
23 February to 2016, Ms. McLoughlin realised that the  
24 amended 14th May 2014 report by Ms. Brophy had removed  
25 the digital penetration allegation. As such, it 11:49  
26 appears that the Child and Family Agency had returned  
27 the incorrect report by Ms. Brophy made on the 9th  
28 August 2013, but the incorrect garda referral, i.e. the  
29 one made to Gardaí, on the 2nd May 2014, had remained



1 on file. According to Ms. McLoughlin, she based the  
2 contents of the Barr letter - that is the one sent in  
3 December 2013 - on the incorrect garda notification of  
4 the 2nd May 2014.

5  
6 Sir, it is important to note the context in which the  
7 above events took place. From 2015 onwards, and in  
8 2016, Sergeant McCabe continued to be a prominent  
9 person in the media as the O'Higgins Commission was  
10 ongoing. In particular in May 2016, the report of the 11:50  
11 O'Higgins Commission was leaked and subject to much  
12 comment. However, there was no response to the January  
13 letter from Sergeant McCabe's solicitors until the 22nd  
14 June 2016. Ms. McLoughlin replied stating there was a  
15 "mistake" in previous correspondence and said that "no 11:51  
16 allegation of digital penetration" had ever been made  
17 against Sergeant McCabe by Ms. D. The letter did not  
18 address how the allegation came to be included on the  
19 file or how this had occurred.

20  
21 Sir, this second part of the term of reference requires  
22 you to consider the dissemination from Rian to Tusla  
23 and the Gardaí of an allegation of digital penetration  
24 made against Sergeant McCabe. It may be that the  
25 inclusion of this allegation was a genuine mistake made 11:51  
26 initially by Rian counsellor, Laura Brophy, which was  
27 compounded and repeated by a series of further errors  
28 and omissions on the part of Tusla personnel, despite  
29 her best efforts to rectify this, or it may that be

1 there was a deliberate attempt to keep matters live at  
2 a time when Sergeant McCabe was a household name, and  
3 that the ongoing pursuit of this matter by State  
4 agencies was part of the overall aim of discrediting  
5 Sergeant McCabe and destroying his reputation. It 11:52  
6 should be noted that this latter possibility has been  
7 canvassed with all of the Tusla witnesses involved to  
8 date and that no knowledge or evidence of this seems to  
9 have emerged to date.

10  
11 Sir, the matter did not end with the incorrect Barr  
12 letter from Kay McLoughlin. In July 2016, the Ms. D  
13 file was referred to the Sexual Abuse Regional Team  
14 (SART), a regional team set up initially by Tusla to  
15 manage and to respond to retrospective cases of child 11:52  
16 sexual abuse under Lisa O'Loghlen, Regional Social Work  
17 Team Leader.

18  
19 Correspondence in relation to the Barr letter was  
20 ongoing at the time between Tusla and Sergeant McCabe's 11:52  
21 legal team, who queried why the HSE had not contacted  
22 Sergeant McCabe in 2006/2007 if they had any concerns  
23 in relation to his children. The solicitors again  
24 sought an explanation for the inclusion of the  
25 allegation of digital penetration in the 29th December 11:53  
26 2015 letter.

27  
28 On the 2nd August 2016, the Ms. D file was considered  
29 by the Sexual Abuse Regional Team (SART) to be of high

1 priority given *"the complex legal issues"* involved and  
2 Sergeant McCabe's *"profession and high media profile"*.  
3 As a result the case was *"risk escalated"* by Lisa  
4 O'Loughlen. The risk escalation form outlined concerns  
5 around the issue of fair procedures given the failure 11:53  
6 to contact Sergeant McCabe until December 2015. The  
7 Ms. D file was then allocated to Claire Tobin, Regional  
8 Social worker in SART. On review of the file,  
9 Ms. Tobin criticised the failure to contact  
10 Sergeant McCabe earlier and the fact that Ms. Brophy's 11:53  
11 report from August 2013 included allegations which had  
12 not been recorded in 2006. In her view, a credibility  
13 assessment of Ms. D's allegations should have taken  
14 place before any contact was made with Sergeant McCabe.

15  
16 A number of attempts were made to meet with Ms. D on  
17 this matter by Tusla staff to discuss the cases  
18 transferred to SART. Ms. D, however, did not attend  
19 any of these appointments and in August 2016 Ms. D  
20 contacted Tusla to state that she did not wish to 11:54  
21 pursue the matter any further. On the 22nd September  
22 2006 SART conducted a review of the Ms. D file. The  
23 report found that Sergeant McCabe was not afforded fair  
24 procedures with regard to the allegation made by Ms. D  
25 initially in 2006 and when the case was referred again 11:54  
26 to the social work department in 2013.

27  
28 Ms. D was again invited to attend an appointment in  
29 order to conduct an assessment and to establish whether

1 she wished to proceed with the matter. However, Ms. D  
2 did not attend the scheduled appointment and contacted  
3 the social work department to state that she did not  
4 wish to pursue the matter any further. In the light of  
5 this, a decision was made to close the file. 11:55

6  
7 On the 22nd September 2006, Sergeant McCabe was  
8 informed that Tusla would not be proceeding with its  
9 assessment of the allegations and informed them of the  
10 decision to close the file, confirming that there were 11:55  
11 no outstanding allegations or findings recorded against  
12 Sergeant McCabe.

13  
14 Sir, on one view it could be thought possible that the  
15 Gardaí and State agencies involved deliberately sought 11:55  
16 to blacken the character of Sergeant McCabe by making  
17 such allegations resurface at a time when he was a  
18 prominent person in public discourse in order to  
19 discredit and undermine him; it may also be thought  
20 possible that a genuine mistake was made by one person 11:55  
21 which resulted in a more serious allegation being  
22 forwarded to the Gardaí in 2014 and that a further  
23 series of errors resulted in these then being put to  
24 Sergeant McCabe in 2015 and the case being kept open  
25 within the Child and Family Agency until late 2016. 11:56

26  
27 Sir, in this module, you will expect to hear evidence  
28 from relevant witnesses from Rian, the Health Service  
29 Executive and Tusla, who will claim that the sequence

1 of errors which unfolded was the product of a series of  
2 genuine errors. You must, however, consider whether  
3 this was not the case. You may also hear from Ms. D  
4 and her parents, if needs be, and from the relevant  
5 Gardaí to the extent necessary to give as full a 11:56  
6 picture of the events as possible surrounding the Tusla  
7 file. This will then be a matter for you, sir.

8  
9 I am now going to ask my colleague, Ms. Leader, at this  
10 stage to continue the opening statement in relation to 11:56  
11 the next issue. Thank you, Chairman.

12  
13 **MS. LEADER:**

14 **The actions of Tusla in Donegal and the role of the**  
15 **Gardaí** 11:56

16 Sir, the issues which concern Garda Keith Harrison are  
17 expressed in the terms of reference in brought terms.  
18 You are tasked with investigating "*contacts between*"  
19 Gardaí and the Child and Family Agency in relation to  
20 that officer. 11:57

21  
22 Keith Harrison joined the Gardaí in April 2000 and was  
23 attested in June 2001. It was in consequence of  
24 certain statements made in relation to him in the  
25 public media that this term of reference was inserted. 11:57  
26 Garda Keith Harrison made a statement to the Tribunal  
27 on the 1st March 2017. Much of that statement is  
28 outside the terms of reference. It contains direct  
29 allegations against colleagues within the Gardaí while

1 he was serving in the traffic division of Athlone where  
2 he began in 2008. Sir, it is fair to say that he does  
3 not hold back in relation to what he says about  
4 colleagues, all of whom are named, and about the  
5 difficulties which he says that he had with his 11:57  
6 superior officers. None of this, however, is within  
7 the terms of reference. It would seem that Garda Keith  
8 Harrison did make a Protected Disclosure to the  
9 confidential recipient in May 2014, but, sir, you are  
10 not asked to investigate the terms of that complaint. 11:58  
11 Rather, it can be taken as a fact that such a complaint  
12 was made in the terms in which it was made.

13  
14 This aspect of the Tribunal's work concerns family  
15 circumstances and it is regrettable, but unfortunately 11:58  
16 inescapable, that references will have to be made to  
17 Garda Keith Harrison's private life. Indeed, in his  
18 statement to the Tribunal he complains about  
19 intervention by garda colleagues, the involvement of  
20 the Child and Family Agency, and makes the claim that 11:58  
21 how he was treated in comparison to Sergeant Maurice  
22 McCabe leads him to view that *"the similarities are so*  
23 *alike it couldn't be coincidence and considering the*  
24 *geographical locations of us such treatment had to come*  
25 *on orders from the highest level"*. In other words, 11:59  
26 Garda Harrison is alleging that there was an abuse of  
27 power by colleagues of his in Donegal and that this was  
28 directed by headquarters in Dublin. Furthermore, he  
29 claims that this abuse extended to inappropriately

1 involving the Child and Family Agency in his personal  
2 and domestic relationships. The extent of this  
3 apparently was that he and his domestic partner met  
4 with a social worker called Donna McTeague and that  
5 this lady visited their home and spoke for about 15 11:59  
6 minutes with the children of the household. This is  
7 said to have had profound effects upon him and upon his  
8 domestic partner.

9  
10 A brief sketch of the background is required. While 12:00  
11 Marisa McDermott, a young lady whose family is from  
12 Raphoe in County Donegal, was a student at the National  
13 University of Ireland, Galway, she met Keith Harrison.  
14 According to her statement to the Tribunal made on the  
15 7th March 2007 they *"went out together for about a 12:00*  
16 *year"* before she took *"a year out in second year and*  
17 *Keith joined [the Gardaí] and we lost contact"*. Garda  
18 Keith Harrison then married somebody else and she  
19 married a man from Donegal and adopted his surname of  
20 Simms. Garda Keith Harrison and his wife apparently 12:00  
21 divorced in November 2011. These other people, sir, do  
22 not have to be brought into the narrative. In late  
23 2010 the couple began to see each other again and, as  
24 she puts it, *"Keith and I decided we wanted to give*  
25 *things a proper go and do this Keith agreed to seek a 12:00*  
26 *transfer to Donegal. In March 2011 Keith told me that*  
27 *he had got a transfer to Buncrana."* There was a  
28 certain wariness attached to this which she ascribes to  
29 the fact that her brother had been involved in a

1 traffic accident with a garda patrol car two years  
2 previously that resulted in the death of a garda.

3  
4 Sir, it may very well be that this is how she saw the  
5 matter but insofar as it may be relevant what was 12:01  
6 involved was much more than a traffic dent. In

7 December 2009 a garda patrol spotted Martin McDermott  
8 travelling at excessive speed out of a petrol station  
9 at Bridgend and followed him. He failed to stop and  
10 chase ensued. The car in which he was driving reached 12:01  
11 speeds of up to 180 kilometres an hour and averaged  
12 over a 30 kilometre chase, 150 kilometres per hour.

13 The pursuit ended when he smashed head-on into a  
14 uniformed garda car at Lisfannon, near Burt. The  
15 driver of that car was the late Garda Gary McLoughlin, 12:02  
16 an officer who was simply doing his duty and his life  
17 was snatched from him in consequence of the deliberate  
18 actions of Martin McDermott. The offending driver was  
19 arrested and in July 2011 he was convicted of the  
20 manslaughter of the late garda and was sentenced to 12:02  
21 eight years imprisonment. He was driving while  
22 disqualified, had no insurance and was over the legal  
23 limit for alcohol consumption.

24  
25 Sir, the view was taken by the Garda management, and 12:02  
26 provided for in the Garda Code, is that before  
27 requesting a transfer to Buncrana in early 2011 in  
28 order to be closer to Marisa Simms, Garda Keith  
29 Harrison under sections 8.3 and 8.4 of the Garda Code



1 should have informed Garda management of *"any family*  
2 *connections or relationships"* which might mean that a  
3 garda should not serve in a particular district or  
4 station. Garda Harrison did not inform anyone in Garda  
5 management that he was in a relationship with the 12:03  
6 sister of a person who had been guilty of the homicide  
7 of a locally serving and much respected officer.  
8 According to the Chief Superintendent Terry McGinn, the  
9 relationship was only discovered in May 2011 when a  
10 request was made by the Garda Harrison to be permitted 12:03  
11 to finish work early because of family difficulties,  
12 which turned out to be connected to Marisa Simms'  
13 previous marriage. Garda Keith Harrison alleges that  
14 in consequence of this discovery he was asked to meet  
15 Superintendent Kevin English for a cup of coffee in the 12:03  
16 Mount Errigal Hotel. Garda Harrison's expectations of  
17 this meeting were that because, according to himself,  
18 he *"had been working well in Buncrana"*, he *"assumed he*  
19 *wanted to meet perhaps to offer me a position in a*  
20 *specialist unit"*. This is Garda Harrison's narrative: 12:04  
21  
22 *"Superintendent English said "look, Keith, I am not*  
23 *going to beat around the bush, we know about Marisa's*  
24 *connection, we know her brother is Martin McDermott and*  
25 *it's causing me difficulties in that a number of 12:04*  
26 *members in Buncrana are very angry about it and some*  
27 *have indicated to me that they won't work alongside you*  
28 *anymore, I have to consider their feelings and your*  
29 *safety." I was stunned and hurt that after such a good*

1           *start that I would be judged over something I had no*  
2           *part to play in. I had no contact or relationship*  
3           *whatsoever with Martin McDermott. I explained to*  
4           *Superintendent English that Marisa and I were own*  
5           *people, we did not engage in any way with her brother,* 12:04  
6           *we led our own lives privately and who I am in a*  
7           *relationship should not impact on my professional life.*  
8           *Superintendent English said "well, Keith, it's not just*  
9           *me who has a problem with this, Chief Superintendent*  
10          *Jim Sheridan, who is in situ for Chief Superintendent* 12:05  
11          *McGinn, is very angry about it and wants to see you,*  
12          *you'll be moving station." I told him I didn't want to*  
13          *move, that I was very happy where I was and would*  
14          *continue to work alongside each and every member in*  
15          *Buncrana and if they chose to do otherwise that was a* 12:05  
16          *matter for them."*

17  
18          Afterwards, Garda Harrison "*pleaded*", to use his own  
19          words, with Chief Superintendent Sheridan to stay in  
20          Donegal and in the end he was moved to the southern end 12:05  
21          of the county, to Donegal town, where he began work in  
22          June 2011.

23  
24          Sir, at this time other things were happening. In  
25          September 2011 Garda Harrison met with Chief 12:05  
26          Superintendent Terry McGinn, where Garda Harrison says  
27          he requested a move closer to home and was told this  
28          wouldn't be possible because of Marisa's brother. In  
29          January 2012 an anonymous letter was sent to the Health

1 Service Executive concerning the children of Marisa  
2 Simms. Gardaí in Milford were made aware of this  
3 letter on the 9th February 2012 and a copy of this  
4 anonymous letter was furnished by Úna Coll of the HSE  
5 to Sergeant Bridget McGowan. The letter stated the 12:06  
6 following:

7  
8 *"It has come to my attention that the wellbeing of [the*  
9 *two children] is questionable. Their mother, Marisa*  
10 *Simms (nee McDermott) is having an extramarital affair 12:06*  
11 *with Garda Keith Harrison who has a barring order*  
12 *against him from his estranged wife. She leaves and*  
13 *returns to the family home on a regular basis, causing*  
14 *great upset to her children and husband, Andrew Simms*  
15 *obviously. Their father, Andrew Simms' prime concern 12:06*  
16 *is to get his wife back and is at breaking point. My*  
17 *gut feeling is that while Andrew is caring for the*  
18 *children physically and working full-time he needs*  
19 *help. Thankfully he has the help of his mother.*

20 12:07  
21 *I would call you but I am aware that all calls are*  
22 *recorded. I have been advised not to leave myself open*  
23 *to Garda Harrison on any level as I believe him to be a*  
24 *dangerous individual. I would fear in his post that he*  
25 *might obtain a recording of the call and so therefore I 12:07*  
26 *do not wish to put myself and my own family in danger.*

27  
28 *[One of the children] has become very withdrawn and*  
29 *[various health issues are mentioned]... I believe the*

1           *stress of everything is far too much for [the child] to*  
2           *handle without proper help.*

3  
4           *I feel it my duty to inform you of this situation and*  
5           *so let you decide on what action might be taken,* 12:07  
6           *whether it be to inform the school, provide*  
7           *counselling, etcetera. I feel that the children have*  
8           *suffered so much already and that maybe you are the*  
9           *people to help."*

10  
11           On the 10th February 2012, Sergeant McGowan forwarded a  
12           report to Superintendent Eugene McGovern, attaching the  
13           anonymous letter which was in the following terms:

14  
15           *"On the afternoon of the 9/2/2012 I met with Ms. Coll* 12:08  
16           *and she handed me a copy of the letter which they had*  
17           *received.*

18  
19           *The matter was discussed and based on the contents the*  
20           *member informed Ms. Coll that in their view there were* 12:08  
21           *specific concerns raised in the letter pertaining to*  
22           *the health and welfare of the children, in particular*  
23           *[one of the children], which would need to be*  
24           *addressed. The HSE informed me that they would call*  
25           *and speak to both parents of the children to ensure* 12:08  
26           *that the children were being adequately cared for and*  
27           *that they would inform me of the outcome of their*  
28           *enquiries."*

1 On the 14th March 2012, a meeting occurred between  
2 Gardaí and Nora Roarty, Social Work Team Leader, and  
3 Úna Coll, in which they informed Sergeant McGowan that  
4 they had met with Marisa and Andrew Simms regarding the  
5 letter and discussed the welfare of the children. 12:09

6 Following on from this the matter was closed as there  
7 were no further child protection concerns. According  
8 to Bridgeen Smith, social worker, the matter was not  
9 taken any further following a screening as there was no  
10 information to substantiate the referral allegations. 12:09

11  
12 Sir, while we do not know the origin of this letter, on  
13 a number of occasions in 2013 relatives of Marisa Simms  
14 contacted Gardaí in Letterkenny to express concern in  
15 relation to the conduct of the Garda Keith Harrison 12:09  
16 towards her. These contacts came from the uncle,  
17 cousin, sister and mother of Marisa Simms. At around  
18 this time, on the 29th February 2012, Chief  
19 Superintendent Sheridan reprimanded Garda Harrison for  
20 inappropriate use of the Pulse system to enquire about 12:10  
21 Marisa Simms, a matter which had been referred to him  
22 by Superintendent Eugene McGovern.

23  
24 Regarding the first phone call, on the 1st April 2013,  
25 it is claimed by Gardaí that Marisa Simms' uncle told 12:10  
26 Gardaí that Marisa Simms had been "*forcibly removed*  
27 *from her by Garda Harrison*" and that her cousin said  
28 that Marisa Simms was being pursued by Garda Harrison  
29 in her car around Letterkenny and that she "*feared for*

1 *her cousin's safety*". On the 24th August 2013, Gardaí  
2 state that Rita McDermott contacted Donegal town Garda  
3 station and expressed concern about Garda Harrison's  
4 behaviour towards her daughter, saying that he had  
5 thrown Marisa out of their home on multiple occasions 12:11  
6 over the past three months. On the 24th September  
7 2013, Marisa Simms' sister, Paula McDaid, alleged that  
8 Garda Harrison had "*threatened to cause a disturbance*  
9 *at the wedding*" as he was not invited. As there was no  
10 formal complaint, a Garda investigation was not 12:11  
11 commenced into these matters. This last contact was  
12 the most serious because it is said by the Gardaí that  
13 Paula McDaid called to Letterkenny Garda station on the  
14 afternoon of the 30th September 2013 and reported to  
15 Garda Brendan Mahon that on the evening of the 28th 12:11  
16 September 2013 Garda Harrison had threatened Marisa  
17 Simms in front of one of her children by saying that he  
18 was going to burn her and bury her and her sister.  
19 According to garda sources, Paula McDaid appeared  
20 "*visibly upset*". 12:11

21  
22 All of this happened, it would seem, in the context of  
23 a row which occurred because of a family wedding on her  
24 side of the family to which Garda Keith Harrison was  
25 not invited, for whatever reason. While it is 12:12  
26 understandable that there might be tension over such a  
27 decision, especially, as according to Marisa Simms, an  
28 invitation had been withdrawn, the reference in a  
29 Donegal context of a threat to burn someone may

1 resonate with a notorious case from January 2004 where  
2 a woman called Dolores McCrea had been murdered by her  
3 husband and her body burned in a pyre almost destroying  
4 every trace of her remains, this action resulting in  
5 Gary McCrea's conviction for murder in November 2005. 12:12

6  
7 Following the complaint made by Paula McDaid on the  
8 30th September the Gardaí then claim that they made  
9 contact with Marisa Simms and asked her to come in and  
10 make a statement about the incident and say that Marisa 12:12  
11 Simms later voluntarily attended to make a statement.  
12 However, sir, there are conflicting accounts on the  
13 incident itself as well as how Marisa Simms came to  
14 make a statement and indeed in relation to the content  
15 of the statement itself. Garda Keith Harrison 12:13  
16 describes whatever happened as "*a normal family row*".  
17 He describes how Marisa Simms was pestered by certain  
18 members of the Gardaí to attend and to make a statement  
19 about the incident. In particular he says:

20 12:13  
21 "*As a result of Marisa going to her sister's a complete*  
22 *fabrication of events was transmitted to Sergeant David*  
23 *Durkin, that I had been violent to Marisa and threw her*  
24 *and the children out. This false version of events was*  
25 *forwarded to Inspector Goretta Sheridan of Letterkenny, 12:13*  
26 *a relation of Chief Superintendent Jim Sheridan.*  
27 *Inspector Sheridan then bombarded Marisa with phone*  
28 *calls to meet though Marisa didn't want to. She even*  
29 *offered to send the patrol car out to her sister's*

1           *house the night before the wedding at which point*  
2           *Marisa agreed to meet with Inspector Sheridan the day*  
3           *after the wedding to get her to stop calling. Marisa*  
4           *attended Letterkenny Garda station as requested. She*  
5           *was taken to the Superintendent's office, which is* 12:14  
6           *quite unusual, and over the course of the next eight*  
7           *and a half hours she was pressurised and coerced into*  
8           *making a statement without any breaks and was told that*  
9           *this statement was for the Chief Superintendent only.*  
10          *We both have since read this statement and Marisa is* 12:14  
11          *shocked by it as she states that there are parts of it*  
12          *which she never said and other parts of it where what*  
13          *she said was manipulated to portray me in a bad way.*  
14          *During this time, on the 4th October 2013, I was*  
15          *informed over the phone by Sergeant Tony Cornyn that he* 12:14  
16          *had received information from Letterkenny Gardaí that*  
17          *there had been a phone call to the 999 line and that I*  
18          *was going to be shot tonight."*

19  
20          *Sir, if this happened, it would indeed be shocking.* 12:15  
21          *Marisa Simms describes the particular row as "terse and*  
22          *we both exchanged words, there was no violence, just*  
23          *words exchanged in the heat of the moment".*

24          Nonetheless she moved into her sister's house for a  
25          time prior to the wedding. Marisa Simms claims that 12:15  
26          she was threatened by the Gardaí and in particular by  
27          Inspector Goretta Sheridan.

28  
29          Sir, it is appropriate before we quote from what Marisa



1 Simms has to say that we record that all of the Gardaí  
2 involved in these incidents have furnished statements  
3 which indicate that they followed procedures and that  
4 they took action not only out of an ordinary duty in  
5 terms of criminal law, but also because they were 12:15  
6 concerned with the welfare of the children in question.  
7 According to Chief Superintendent Terry McGinn an  
8 intervention by the Gardaí was necessary. As the  
9 relevant officer ultimately responsible she had,  
10 through officers under her command, apparently learned 12:16  
11 of the previous contacts made by family members  
12 although there had been no formal complaints following  
13 these incidents. After the complaint of the 30th  
14 September 2013 Gardaí also spoke with Rita McDermott on  
15 the 2nd October 2013 who made a witness statement and 12:16  
16 then sought to interview Marisa Simms. In relation to  
17 this interview Marisa Simms says:

18  
19 *"I stated a number of times during that time of taking*  
20 *the statement I questioned if this was appropriate to 12:16*  
21 *which Bridget McGowan replied "you should think of your*  
22 *children". My understanding at all times was that this*  
23 *was for the Chief Superintendent 's eyes only. I never*  
24 *sought or wanted any garda intervention into my private*  
25 *life. Goretti Sheridan and Bridget McGowan took 12:17*  
26 *advantage of me at a very vulnerable time where I was*  
27 *mentally and physically exhausted and my emotions were*  
28 *heightened due to extraordinary circumstances. A few*  
29 *days later I had to go to hospital due to complications*

1           *related to the loss of our baby."*

2  
3           Sir, the 23-page statement made by Marisa Simms to  
4           Gardaí on the 6th October 2013 does not record happy  
5           domestic circumstances. She describes an occasion           12:17  
6           where Garda Harrison banged the dashboard of the car so  
7           hard with his fist that she thought he had actually  
8           cracked it. She describes him as being "*in a complete*  
9           *out of control rage*". She describes being woken out of  
10          her sleep by Keith Harrison and goes on to say:           12:18

11  
12          "*The next thing I do remember is being woken out of my*  
13          *sleep by Keith. He was roaring and shouting at me*  
14          *about getting into the car earlier with the fellas and*  
15          *why did I leave the pub. He pulled the quilt off me           12:18*  
16          *and grabbed my arm and pulled me out of the bed and*  
17          *told me to get out of the house. I tried to reason*  
18          *with him and told him that I wouldn't be able to get a*  
19          *taxi and asked if I could stay until the morning. He*  
20          *kept telling me to get out and caught me by the arm. I   12:18*  
21          *kept pleading with him to get a coat as I only had*  
22          *pyjamas on and he allowed me to get my coat. At one*  
23          *point he had a hold of my arm and was shouting and*  
24          *roaring at me. I was terrified of him and the only*  
25          *other time I had seen him like this was on the night of   12:18*  
26          *his brother's 21st in Galway. I got my phone which is*  
27          *beside the locker and rang my mother and asked her to*  
28          *come and collect me."*

1 The other major row that is detailed in her lengthy and  
2 highly particularised statement is that which occurred  
3 in the context of the wedding which she dates as  
4 occurring on Saturday, 28th September 2013. Just  
5 before this she describes collecting her children from 12:19  
6 her husband's house and a row beginning concerning a  
7 financial contribution it seems to the wedding. This  
8 is described by Marisa Simms as *"the first time that he*  
9 *[ever] started going on in front of [the children]"*.  
10 She went on in her statement to the Gardaí: 12:19

11  
12 *"[He] kept making comments and ranting on about my*  
13 *sister saying "who does she think she is? I will take*  
14 *down a peg or two", and also "I'm going to bury her and*  
15 *you". He kept repeating this and I told him to stop 12:19*  
16 *but it was as if he went into a total rant. He then*  
17 *said "I am going to burn you" and at that point I could*  
18 *see [one of the children's] eyes filling up and she was*  
19 *getting upset, so at that stage I put their coats over*  
20 *their pyjamas and told them they were going to the car. 12:20*  
21 *I remember [that child] was asking me if I was okay*  
22 *after having him threatening to burn me and it appeared*  
23 *to me that she didn't know whether to go to the car or*  
24 *not as he was worried whether I would follow her out or*  
25 *not. I brought [the children] to the car and strapped 12:20*  
26 *them in. At that point I knew once I left I wouldn't*  
27 *be back to the house but I went back to get [one of the*  
28 *children's] school uniform[s] out of the tumble drier.*  
29 *When I lifted it out he wouldn't let me back into the*

1           *kitchen from the utility room again. He prevented me*  
2           *from me going back in by physically grabbing my wrist.*  
3           *I was really frightened of him at this stage as he was*  
4           *in such a rage, it was as if he was not in control of*  
5           *himself and he was crazy."*

12:21

6  
7           Sir, if this statement was not coerced or invented by  
8           members of the Gardaí, whether Keith Harrison was a  
9           garda officer or not, you may regard it as being  
10          appropriate that in the interests of child protection  
11          and safety that there should be some social work  
12          involvement. would it be appropriate, in this context,  
13          to blame the Health Service Executive or the Child and  
14          Family Agency? Is there evidence here that all of  
15          these contacts with State agencies were deliberately  
16          set up in Garda Headquarters in Dublin with a view to  
17          undermining the personal and family life of Garda Keith  
18          Harrison as indeed he alleges? Certainly having social  
19          workers visit one in the privacy of one's home would  
20          not be pleasant. Sir, you will have to think of the  
21          alternatives as to whether it would have been  
22          appropriate that no action was taken following the  
23          statement. Before you make any of these decisions,  
24          however, you need to establish whether there is a  
25          factual basis for the two radically different  
26          conflicting accounts which have been given by the  
27          parties involved, bearing in mind the terms of  
28          reference and your lack of jurisdiction to stray  
29          outside these.

12:21

12:21

12:21

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On the 8th October 2013, Marisa Simms' statement was referred to GSOC. However, Ms. Simms later contacted GSOC stating that she did not want their involvement in the matter. On the 9th October 2013, formal referrals to the HSE were completed by Sergeant McGowan arising out of Marisa Simms' statement. A standard notification form was filled out in respect of both children for suspected emotional abuse, providing that the children were *"present during an argument between mother and partner (HSE to contact Gardaí on receipt of notification to confirm contact details)."* These were signed off by Superintendent McGovern the following day and sent to what was at the time HSE Child and Family Services.

On the 16th October 2013, intake records on the Simms children were opened and a request for further information was made by the HSE to the Gardaí. Gerry Hone, Principal Social worker, states that this was standard practice where garda referrals did not contain sufficient information and this was done *"prior to the social workers intervening with any family"*. On the 21st October 2013 a strategy meeting was held between Gardaí and the HSE regarding the Simms children, attended by Sergeant McGowan, Bridgeen Smith and Donna McTeague, social workers. Ms. Simms had been hospitalised around this time and as a result it was decided that the social work department would liaise

1 with Gardaí and that they would not contact Ms. Simms  
2 or progress the matter until they received confirmation  
3 from Sergeant McGowan that Marisa had regained health.  
4

5 On the 11th January 2013 Marisa Simms withdrew her  
6 statement of the 6th October 2013. She said:

12:24

7  
8 *"I want to say that everything I told them on the 6th*  
9 *October 2013 and that recorded in the statement is*  
10 *true. These things did happen and I was honest in what*  
11 *I told them at the time. Today, the 11th January 2014,*  
12 *I wish to inform you that I no longer wish to pursue a*  
13 *complaint against Keith Harrison. I wish to withdraw*  
14 *the statement I made on the 6th October 2013. I am*  
15 *making this statement of own accord. No one is*  
16 *pressurising me to do so and I am not under duress."*

12:24

12:24

17  
18 According to Ms. Simms, on this date, Inspector  
19 Sheridan was "cold and short" with her and that had a  
20 pre-prepared statement of withdrawal for her to sign.  
21 She also says the following:

12:25

22  
23 *"I told her I wanted to retract my statement and that I*  
24 *was put under a lot of pressure at the time of making*  
25 *it. At this she began to recount a story to me about a*  
26 *local couple who had a row in front of their children*  
27 *and now social services were involved and said she*  
28 *couldn't guarantee this wouldn't happen with Keith and*  
29 *I. I felt sick to my stomach. She basically was*

12:25

1            *telling me if I took back my statement social services*  
2            *would get involved. I confirmed that it was my wish to*  
3            *take back the statement. I did not dictate the*  
4            *statement of retraction. Those are all the words of*  
5            *Goretti Sheridan. I again wanted to just get out of* 12:26  
6            *there, so I signed it and left to go home to my family.*  
7            *I left feeling relieved as I thought that was the end*  
8            *of the matter, but Goretti Sheridan's threat of social*  
9            *services getting involved played on my mind."*

10  
11            On the 27th January 2014 Donna McTeague contacted  
12            Sergeant McGowan for the purposes of ascertaining the  
13            current status regarding garda investigation so as to  
14            allow the social work department to proceed with  
15            investigation. Ms. McTeague states that she advised 12:26  
16            that the HSE needed a report from Gardaí with specific  
17            information regarding the 28th September incident in  
18            order to progress the matter. She was also informed of  
19            the withdrawal of the 6th October statement. An  
20            initial assessment of the Simms children was then 12:27  
21            commenced on the following day. On the 3rd February  
22            2014 Ms. McTeague wrote to Marisa Simms requesting a  
23            meeting on the 6th February as the social work  
24            department had "*received information in relation to*  
25            *your family which we would like to discuss*" and asked 12:27  
26            that Garda Harrison also attend "*so as to explore the*  
27            *referral information in detail*".

28  
29            Following this meeting between Donna McTeague, Marisa

1 Simms and Garda Harrison on the 7th February 2014,  
2 discussion seems to have taken place between  
3 Ms. McTeague and Bridgeen Smith and it was agreed that  
4 Ms. McTeague would meet the children in order to  
5 complete the assessment. This home visit took place on 12:27  
6 the 19th February 2014 and Ms. McTeague reported that  
7 there were *"no issues of concern noted in the*  
8 *observations of the children"*. Ms. McTeague's view  
9 following the initial assessment and meeting with  
10 Marisa Simms and Garda Harrison found that the children 12:28  
11 were *"not at risk of ongoing significant harm and both*  
12 *have taken steps to ensure disagreements/arguments will*  
13 *not happen again in front of children"*. The file was  
14 closed on the 27th February 2014 with no further action  
15 to be taken. 12:28

16  
17 Both Marisa Simms and Garda Keith Harrison allege that  
18 there were very serious consequences to the involvement  
19 of social workers from Tusla with their private and  
20 family life. Ms. Simms says of her meeting and 12:28  
21 subsequent contact with the social workers:

22  
23 *"I couldn't sleep, I was stressed and very emotional*  
24 *and upset. Everything Keith and I do is for the*  
25 *children. I was scared that the children would be* 12:28  
26 *taken from us. I wish that I had never agreed to meet*  
27 *with Goretti Sheridan. Keith and I attended the*  
28 *meeting with Donna McTeague, a social worker, she said*  
29 *she had been asked to meet with us over a row that*



1           *happened in September 2013. She explained she dealt*  
2           *with families with children who were at immediate risk*  
3           *but was confused as to her role in this instance as the*  
4           *incident occurred over four months previously. Keith*  
5           *and I explained what happened was a normal row, that* 12:29  
6           *there was nothing untoward and it was not a common*  
7           *thing to happen between us and that it occurred at a*  
8           *very stressful time for both of us, which she accepted.*

9  
10           *I asked Donna McTeague that she visit our home* 12:29  
11           *immediately as I didn't want though hanging over me.*  
12           *She stated she wasn't able to do that but would do so*  
13           *in the next few days. When she did visit she*  
14           *apologised to me on her arrival saying that she had no*  
15           *choice in the matter. She spoke to our children for* 12:29  
16           *about ten or fifteen minutes. I am to this day*  
17           *extremely upset and angry my children had to do this.*  
18           *Donna McTeague then left, but she did she spoke with me*  
19           *in our kitchen and assured me that would be the end of*  
20           *the matter but I remain skeptical. Every day I fear* 12:30  
21           *receiving another letter from the Child and Family*  
22           *Agency or a phone call or fictitious complaint."*

23  
24           Complaints have also been made in the statements of  
25           both Garda Harrison and Marisa Simms in relation to 12:30  
26           garda attention to their home. Sir, you should be  
27           aware that a number of death threats were made against  
28           Garda Harrison, whether these are credible threats or  
29           not is a matter for you to decide. The first was on

1 the 4th October 2013, when an anonymous male made a  
2 phone call to Letterkenny Garda Station. The anonymous  
3 caller said that he had overheard a conversation in a  
4 pub, to the effect that Garda Harrison would be shot  
5 that night. Gardaí state that this matter was  
6 investigated but they were unable to identify the  
7 caller. On this date, Garda Harrison was put on office  
8 duties and remained on such duties until he went on  
9 sick leave in May 2014. The following day, the 5th  
10 October 2013, an anonymous caller who identified 12:31  
11 himself as the same male who had called the previous  
12 night, phoned Letterkenny Garda Station and said that  
13 Garda Harrison would be killed on that night as opposed  
14 to the 4th October. He stated that [somebody], a  
15 relation of Martin McDermott, was arranging to have 12:31  
16 Garda Harrison killed as he had been harassing his  
17 sister. On the 24th February 2015 Garda Harrison was  
18 informed of a further threat that a man had contacted  
19 Donegal Town Garda Station to say he was going to put a  
20 bullet in Garda Harrison. 12:31

21  
22 Garda Harrison describes the garda attention to his  
23 home with Marisa Simms in the following terms:

24  
25 *"[Following December 2014] we endured patrol cars 12:32*  
26 *passing our home and following us and in general*  
27 *intimidating us... In July 2015 my family and I moved*  
28 *home and for the first time in a long time we enjoyed a*  
29 *life of no passing patrol cars or daily intimidation as*

1            *Garda management were not aware of our new address. In*  
2            *August 2013, over four days various patrol cars passed*  
3            *our home nine times. I rang Letterkenny Garda Station*  
4            *and told them to stop as on one occasion my partner and*  
5            *daughter were out in the front garden a patrol car* 12:32  
6            *drove very slowly past smiling in at them making my*  
7            *partner very uncomfortable. Patrol cars passing our*  
8            *home on a regular basis became the norm again."*

9  
10           *According to Marisa Simms:* 12:33

11  
12           *"Since Keith reported incidents of garda malpractice*  
13           *and corruption we have been continually harassed with*  
14           *patrol cars driving slowly past our home, we have been*  
15           *followed by patrol cars. An Garda Síochána have us* 12:33  
16           *living in fear as they have told us there are death*  
17           *threats against Keith but have failed to investigate*  
18           *them. As two individuals, as a couple, as parents and*  
19           *as a family An Garda Síochána have tried to break us*  
20           *emotionally, mentally and financially."* 12:33

21  
22           *Sir, in this module, you will hear from relevant*  
23           *members of the Gardaí, from relevant witnesses and most*  
24           *especially from Garda Keith Harrison and Marisa Simms*  
25           *and from the relevant social workers. They defend* 12:33  
26           *their position but they do not seek to blame the Gardaí*  
27           *in relation to what happened. Since Garda Harrison*  
28           *blames these events on inappropriate, malign and*  
29           *unjustified action on foot of senior Gardaí and Garda*

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Headquarters, sir, you must anxiously consider what evidence there may be for this.

Mr. Marrinan will continue.

12:34

**THE HEARING THEN ADJOURNED FOR LUNCH**

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2  
3 **MR. MARRINAN:** Sir, we now turn to the allegations of  
4 Superintendent David Taylor. Much of the reason why  
5 this Tribunal was established may be traced to 13:42  
6 Superintendent David Taylor's Protected Disclosure of  
7 September 2016. In that Protected Disclosure he  
8 alleged that during his time serving as the Garda Press  
9 Officer he was, and I quote:

10  
11 *"Instructed or directed to contact the media, to brief*  
12 *them on the particular line that the Commissioner had*  
13 *instructed, namely to brief negatively against*  
14 *Sergeant McCabe."* 13:42

15  
16 And that he was, again to quote:

17  
18 *"...directed to draw journalists' attention to the*  
19 *complaint of sexual assault made against*  
20 *Sergeant McCabe and that this was the root cause of his* 13:43  
21 *agenda. Revenge against the Gardaí."*

22  
23 You are tasked, sir, by terms of reference (a) and (b)  
24 with investigating the allegations made by  
25 Superintendent Taylor in that Protected Disclosure. 13:43  
26

27 David Taylor joined An Garda Síochána in 1985 and rose  
28 through the ranks to become a superintendent. He was  
29 appointed Press Officer in July 2012 and remained in

1 that post until his transfer to the traffic division in  
2 June 2014.

3  
4 In May 2015, Superintendent Taylor was suspended from  
5 duty and arrested for offences contrary to section 62 13:43  
6 of the Garda Síochána Act 2005.

7  
8 Section 62 makes it an offence for a garda:

9  
10 *"Disclose in or outside the State any information 13:44*  
11 *obtained in the course of carrying out duties of that*  
12 *person's office, employment, contract or other*  
13 *arrangement if the person knows that the disclosure of*  
14 *that information is likely to have a harmful effect."*

15 13:44  
16 The section defines *"harmful effect"* in a number of  
17 ways, including impeding the prevention, detection or  
18 investigation of an offence, and impeding the  
19 apprehension and prosecution of a suspected offender.

20 13:44  
21 The investigation which led to the arrest and  
22 suspension of Superintendent Taylor commenced in 2013,  
23 where Gardaí in Tallaght temporarily took a Roma child  
24 into care, after a member of the public expressed  
25 concern to a journalist that the child may not be kin 13:44  
26 to the people who were ultimately determined to be her  
27 biological parents.

28  
29 A leak from inside the Gardaí to the press resulted in

1 an exclusive article appearing in the Sunday world the  
2 following day. This report led Emily Logan, then the  
3 Children's Ombudsman, to investigate whether there had  
4 been an unlawful leak in the media of the child's  
5 identity. This investigation in turn led Gardaí to 13:45  
6 investigate Superintendent Taylor who was Press Officer  
7 at the time.

8  
9 On the 13th February 2017, the DPP, after considering a  
10 voluminous and very detailed report from the 13:45  
11 investigating officers, directed that no prosecution be  
12 brought against Superintendent Taylor. He returned to  
13 work in the traffic division the following day.

14  
15 Sir, some of the witnesses who are to be called by us 13:45  
16 have remarked on the lack of detail in  
17 Superintendent Taylor's Protected Disclosure, which  
18 does not contain the names of any journalists, the  
19 exact nature of his alleged instructions to brief  
20 journalists against Sergeant McCabe, nor any specific 13:46  
21 instances when such briefings took place.

22  
23 Former Commissioner Callinan, in his statement to the  
24 Tribunal, expressed concern that:

25 13:46  
26 *"The terms of reference are based on allegations that*  
27 *have been made against me in extremely vague and broad*  
28 *terms... In circumstances where very little by way of*  
29 *specific detail has been set out in relation to the*

1 *allegation, it is difficult to do any more at this*  
2 *stage than refute them by way of denial."*

3  
4 Commissioner O'Sullivan similarly says, in her  
5 statement to the Tribunal on the 13th March 2017, that: 13:46

6  
7 *"Insofar as Superintendent Taylor makes two core*  
8 *allegations which are to be investigated by this*  
9 *Tribunal, namely that he was directed to brief*  
10 *negatively against Sergeant McCabe and to draw* 13:46  
11 *allegations of criminal misconduct made against*  
12 *Sergeant McCabe to the attention of journalists, his*  
13 *Protected Disclosure is entirely bereft of any details*  
14 *particularly in relation to me. As will be*  
15 *appreciated, this presents difficulties in responding* 13:47  
16 *to same."*

17  
18 Sir, it seemed to us that these concerns may be  
19 legitimate. Therefore, your investigators were  
20 requested to interview Superintendent Taylor at some 13:47  
21 length. When specifically asked by your investigators  
22 if he had any evidence of former Commissioner  
23 Callinan's instructions, Superintendent Taylor stated  
24 that he would need access to his emails, currently  
25 archived by the Gardaí, and his phones, in order to 13:47  
26 assist the Tribunal. However, Superintendent Taylor  
27 maintains that the instructions given to him were  
28 always given verbally and were never recorded in  
29 writing



1  
2 *"The instructions referred to were verbal in nature...  
3 the instructions by Commissioner Callinan in this  
4 regard was always verbal. The instruction was never  
5 documented in writing, text or email."*

13:48

6  
7 In his statement to Tribunal investigators,  
8 Superintendent Taylor clarified some aspects of his  
9 Protected Disclosure as follows:

10  
11 *"Deputy Commissioner O'Sullivan never instructed me  
12 brief the media negatively about Sergeant McCabe though  
13 as far as I am concerned she was aware of the  
14 instruction by Commissioner Callinan... Deputy  
15 Commissioner O'Sullivan never instructed me to brief  
16 journalists against Maurice McCabe. However, she was  
17 aware of the strategy through my updates to her."*

13:48

13:48

18  
19 Sir, it is perhaps worth noting that this is the height  
20 of the allegation made by Superintendent Taylor against  
21 Commissioner O'Sullivan, namely, that she was aware of  
22 former Commissioner Callinan's instructions. It is not  
23 suggested or even implied that she issued such orders  
24 herself. No witness has thus far come forward and  
25 directly alleged that Commissioner O'Sullivan herself  
26 spread rumours or misinformation about Sergeant McCabe.

13:48

13:49

27  
28 Sir, Superintendent Taylor also told your investigators  
29 that Andrew McLindon, a civilian who was director of

1 communications in the Garda Press Office during the  
2 relevant period of time, was aware of the alleged  
3 instructions to brief journalists negatively. This  
4 matter is currently under investigation.

13:49

5  
6 The most detail given by Superintendent Taylor with  
7 regard to his alleged instructions from former  
8 Commissioner Callinan was provided to Tribunal  
9 investigators. And I quote at some length:

13:49

10  
11 *"Commissioner Callinan would have said to me we need to*  
12 *hit back [at Sergeant McCabe], so that when I was*  
13 *talking to the media in whatever environment it*  
14 *presented itself I would take advantage and I was to*  
15 *say that Maurice McCabe was driven by agendas, he is* 13:50  
16 *motivated by revenge, and that revenge is driven by the*  
17 *allegation, the sexual allegations made against him by*  
18 *someone else's daughter a number of years ago. I would*  
19 *say that I did always clarify to the journalists that a*  
20 *file had gone to the DPP and that there was no* 13:50  
21 *prosecution, however, this was the narrative. It was*  
22 *put in such a way that there was no smoke without fire.*  
23 *I would drop that in when talking to journalists. I*  
24 *will clarify I never saw the garda investigation file*  
25 *into the complaint of sexual assault against Maurice* 13:50  
26 *McCabe, what I got was always verbally from the*  
27 *Commissioner. I would also say that I believed what*  
28 *the Commissioner told me about Maurice McCabe. I had*  
29 *no reason to question what he was telling me.... My*

1 *briefing to journalists was always where an opportunity*  
2 *arose I would make them aware as detailed above of the*  
3 *instruction from Commissioner Callinan in respect of*  
4 *Maurice McCabe. I don't think this would have included*  
5 *details of the parties involved, it was more in the* 13:51  
6 *general, about McCabe, to draw people's attention*  
7 *towards McCabe and his agendas. The genesis of this*  
8 *agenda was revenge for the fact that a complaint of*  
9 *sexual assault had been made against him, he had been*  
10 *criminally investigated and the file had gone to the* 13:51  
11 *DPP. I can confirm that I was never aware of any*  
12 *complaint made to Tusla regarding Sergeant McCabe in*  
13 *2013. When journalists were talking to me they knew*  
14 *they were talking to the Garda Press Officer of An*  
15 *Garda Síochána. I would not have advised them that I* 13:51  
16 *was acting on foot of instructions. They were speaking*  
17 *to the Garda Press Officer and not David Taylor in a*  
18 *personal capacity. I would also have said to*  
19 *journalists that anything they said to me would be*  
20 *reported up the line."* 13:52

21  
22 Sir, the Tribunal still has not received specific  
23 details of the time Superintendent Taylor "spoke to  
24 various journalists on foot of instructions" as he says  
25 "to encourage them to write negatively about" 13:52  
26 *Sergeant Maurice McCabe and to brief against him".*

27 Furthermore, what is supposed to have been said to him?  
28 To whom did he say it and when? why can he not now  
29 remember it?

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Sir, these are obvious questions that need to be asked but of considerable importance is whether the other parties to these alleged considerations can assist you in coming to the truth. And in order to investigate the matter thoroughly it is absolutely necessary to ask the journalists about their dealings with Superintendent Taylor during the relevant period of time. Unfortunately, this has proved problematic because of journalists' alleged privilege. 13:52

Sir, of importance in this regard, and perhaps crucially, on the 28th April 2017 Superintendent Taylor provided the Tribunal with a waiver of any journalistic privilege. It is in the following unambiguous terms: 13:53

*"I wish to confirm that I do not claim and have not claimed any privilege over my identification as the source of any information, briefing, allegation or belief communicated to journalists in the print, broadcasting or other media directly or indirectly relating to Sergeant Maurice McCabe.* 13:53

*For the avoidance of any doubts, I also confirm that insofar as may be necessary I waive and abandon any such right to claim privilege or have it asserted on my behalf or in relation to me insofar as it relates to my identity as the source of same.* 13:54

1 *I understand I am giving this confirmation:*

2 *(a) for the purposes of the Tribunal's preliminary*  
3 *inquiries into the matters included within the*  
4 *Tribunal's terms of reference which are attached*  
5 *hereto;* 13:54

6 *(b) for all other purposes of the Tribunal, including*  
7 *the taking of evidence from myself or any other person,*  
8 *whether in public or private sittings."*

9  
10 This waiver, and similar waivers signed by Commissioner 13:54  
11 N oir n O'Sullivan, and former Commissioner Callinan,  
12 have been notified to several journalists.

13  
14 The journalists named by Superintendent Taylor are Paul  
15 Williams, Paul Reynolds, Conor Lally, John Mooney, 13:54  
16 Michael O'Toole, Cormac O'Keefe, John Burke, Daniel  
17 McConnell and Juno McEnroe. In particular  
18 Superintendent Taylor reiterated in his statement to  
19 the Tribunal investigators that Paul Reynolds and Conor  
20 Lally would have received negative briefings by him 13:55  
21 about Sergeant McCabe.

22  
23 Sir, the Tribunal has also identified from telephone  
24 data other journalists that Superintendent Taylor  
25 contacted during the relevant period of time. 13:55  
26

27 Arising out of its investigations to date the Tribunal  
28 has now written to the following journalists: Sarah  
29 Bardon, Ali Bracken, Tom Brady, Jennifer Bray, Stephen

1 Breen, John Burke, Paul Connolly, Dyanne Connor, Ken  
2 Foy, Fran Greany, Mark Hilliard, Mick McCaffrey, Juno  
3 McEnroe, Cathal McMahon, Emma McMenamy, John Mooney,  
4 Eavan Murray, Niall O'Connor (formerly of the Irish  
5 Sun), Niall O'Connor (currently of the Irish  
6 Independent), Mick O'Toole, Paul Reynolds, Joe Walsh,  
7 Debbie McCann, Alison O'Reilly, Paul Williams and, at a  
8 later date, Conor Lally, Daniel McConnell and Cormac  
9 O'Keefe.

13:56

10  
11 In the first instance the Tribunal wrote to most of  
12 these journalists on the 15th March 2017 and requested  
13 statements from anyone who may have information  
14 relevant to the terms of reference. Regrettably many  
15 of these letters went unanswered.

13:56

13:56

16  
17 Five weeks later, on the 21st April 2017, the Tribunal  
18 wrote again to these journalists, informing them of the  
19 waivers referred to earlier and asking the following  
20 series of questions:

13:56

21  
22 *"1. Can you confirm your mobile phone number and work  
23 phone number?*

24  
25 *2. Was this number your mobile phone number in the  
26 years from July 2012 until February 2017?*

13:56

27  
28 *3. Were you briefed negatively about Sergeant McCabe  
29 by anyone? And if so, by whom?*

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23  
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25  
26  
27  
28  
29

4. Have you any information or evidence about an orchestrated campaign directed by senior officers of the Garda Síochána to discredit Sergeant Maurice McCabe by spreading rumours about his professional and personal life?

13:57

5. Were you contacted by Superintendent David Taylor in relation to Sergeant Maurice McCabe?

13:57

6. Were you briefed negatively by Superintendent David Taylor in relation to Sergeant Maurice McCabe?

7. Were you briefed negatively by Superintendent David Taylor in relation to Sergeant Maurice McCabe to the effect that his complaints had no substance?

13:57

8. Were you briefed negatively by Superintendent David Taylor in relation to Sergeant McCabe to the effect that the Gardaí had fully investigated complaints and had found no substance to his allegations and that he was driven by agendas?

13:57

9. Was your attention drawn by Superintendent Taylor to an allegation or suggestion of criminal misconduct made against Sergeant McCabe in any respect?

13:58

10. Was your attention drawn by Superintendent Taylor to an allegation that the root cause of Sergeant

1 *Maurice McCabe's agenda was revenge against An Garda*  
2 *Síochána?*

3  
4 *11. Were you informed by Superintendent David Taylor* 13:58  
5 *that he was instructed/directed by former Commissioner*  
6 *Callinan and/or then Deputy Commissioner Nóirín*  
7 *O'Sullivan to contact the media to brief the media*  
8 *negatively against Sergeant Maurice McCabe?*

9  
10 *12. Are you aware and have you any evidence of any* 13:58  
11 *attempt made by former Commissioner Callinan or*  
12 *Commissioner O'Sullivan or any other senior member of*  
13 *An Garda Síochána to discredit Sergeant Maurice McCabe*  
14 *by reference to an allegation of criminal misconduct*  
15 *made against him?* 13:58

16  
17 *13. Were you informed by any journalist or any person*  
18 *of any matters referred to in the questions above?*

19  
20 *14. Have you any knowledge, information or evidence* 13:59  
21 *relating to any of the matters above?*

22  
23 *15. Have you any knowledge, information or evidence*  
24 *relating to any matters within the terms of reference*  
25 *of the Tribunal?* 13:59

26  
27 *16. Have you any records (however made, wherever*  
28 *stored) of any communications from or with*  
29 *Superintendent Taylor or former Commissioner Callinan,*



1 *Commissioner O'Sullivan or any other senior Gardaí*  
2 *relating to any of the above matters?"*

3  
4 Sir, with a few exceptions the journalists have either  
5 ignored these letters or refused to answer those 13:59  
6 questions, citing journalistic privilege. Many of them  
7 nonetheless wish to make generalised academic arguments  
8 about the nature of journalistic privilege to the  
9 Tribunal.

10  
11 Sir, as you said during the applications for  
12 representations on the 30th March 2017:

13  
14 *"That's what court cases never do. That's what judges*  
15 *never do. Issues are never tried on the basis of a 14:00*  
16 *hypothesis. What you are suggesting is that I listen*  
17 *to an exegesis on journalistic privilege which may be*  
18 *very important, which may be protected under the*  
19 *European Convention on Human Rights and then I rule in*  
20 *abstract as opposed to hearing from people without even 14:00*  
21 *knowing if they have anything to tell the Tribunal*  
22 *which is relevant."*

23  
24 We will return to this topic later in the opening  
25 statement, sir. 14:00

26  
27 It must be stated that the claim of journalistic  
28 privilege has not been raised universally. Some, for  
29 instance, have written saying that they have no

1 relevant information to offer. Others have regarded  
2 what they know as having been learned on an occasion to  
3 which privilege does not attach and have made helpful  
4 statements to the Tribunal.

5  
6 Philip Boucher-Hayes of RTÉ made a statement to the  
7 Tribunal on the 13th March 2017 detailing a  
8 conversation he had with former Commissioner Callinan  
9 on the 17th December 2013, as part of the Crimecall  
10 programme. A disagreement had arisen between the  
11 programme's producers and Gardaí, about whether  
12 Mr. Boucher-Hayes could ask the Commissioner about the  
13 penalty points allegation made by Sergeant McCabe. In  
14 his statement to the Tribunal he says the following:

15  
16 *"When the Commissioner arrived at RTÉ I asked to speak*  
17 *to him alone, without any of his advisers present, in*  
18 *an attempt to resolve what had become a row that was by*  
19 *that stage at risk of knocking the programme off the*  
20 *air.*

21  
22 *We talked privately, out of earshot of all others, but*  
23 *in a public corridor outside studio 4. I explained to*  
24 *him that from the perspective of the*  
25 *journalist/presenters it was wholly unacceptable that*  
26 *the Gardaí were seeking to determine what questions we*  
27 *could and could not ask.*

28  
29 *He offered me background information on the penalty*

1 point story. But the majority of his information  
2 related solely to the two whistleblowers, John Wilson  
3 and Maurice McCabe, not to the substance of the story.  
4 He offered a negative but cursory impression of John  
5 Wilson, before speaking at some length on Maurice  
6 McCabe's character. I had not asked any questions to  
7 elicit this information.

14:02

8  
9 He told me that McCabe was a troubled individual and  
10 that he had a "lot of psychological issues and  
11 psychiatric issues". He claimed that McCabe was  
12 motivated by a set of grievances against Garda  
13 management and that he was famous with An Garda  
14 Síochána for this. He warned me that McCabe was not to  
15 be trusted and went on to add that there were other  
16 things he could tell me about him, "horrific things,  
17 the worst kind of thing" but he did not elaborate  
18 further.

14:02

14:03

19  
20 As our conversation was ending, he added that if there  
21 was anything else I wanted to know about Maurice McCabe  
22 or the penalty points issue that I should ask  
23 Superintendent Dave Taylor from the Garda Press Office  
24 who was also present that evening.

14:03

14:03

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

1  
2  
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*I took no immediate action on foot of what Commissioner Callinan had said to me as my instinct about the encounter told me that the information passed on to me wasn't true."*

14:04

Sir, Martin Callinan responded to this statement on the 14th June 2017, where he confirms that he had a conversation with Mr. Boucher-Hayes on the night of his scheduled appearance on Crimecall, but he denies the account of Mr. Boucher-Hayes, stating the following:

14:04

*"I did not speak at some length on Sergeant McCabe's character as indicated.*

14:04

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

14:04

14:05

*I certainly did say to Philip Boucher-Hayes that if he had any questions on either of the topics raised, i.e. the Smithwick Report or the penalty points issue, that*

1 *he could forward them to the Garda Press Office or*  
2 *Superintendent David Taylor, whom I was aware that he*  
3 *was in contact with prior to me speaking with him.*  
4

5 *On Sunday 30th May 2017, I read on the front page of* 14:05  
6 *the Sunday Times (the Irish edition) an article by John*  
7 *Mooney titled "RTÉ Journalist Links Callinan to McCabe*  
8 *Smear". The article claimed "Boucher-Hayes' statement*  
9 *is the first independent verification of claims made by*  
10 *Taylor that he was directed by Callinan to discredit* 14:05  
11 *McCabe by smearing his reputation". I was shocked and*  
12 *alarmed to read this."*

13  
14 *Sir, in addition, Anne Harris, former editor of the*  
15 *Sunday Independent, wrote to the Tribunal on the 11th* 14:06  
16 *March 2017 stating:*

17  
18 *"In the years 2013 and 2014, matters raised by*  
19 *whistleblower Sergeant Maurice McCabe, such as the*  
20 *termination by senior Gardaí of fixed penalty points,* 14:06  
21 *as well as allegations of murder and abductions not*  
22 *properly investigated, came to prominence. From the*  
23 *first instance that the Sunday Independent began to*  
24 *report on these matters certain journalists came to my*  
25 *office to warn me off Sergeant McCabe. I was given* 14:06  
26 *varying accounts of an alleged case of child sex abuse*  
27 *by him which was apparently being investigated. This*  
28 *was repeated several times by very a reputable*  
29 *journalist, one who had shown great courage in exposing*

1 incidents of corruption and terrorism. I made  
2 enquiries and was satisfied that the matter had been  
3 investigated by the DPP and the complaint was found to  
4 be without grounds. The Sunday Independent continued  
5 to report on Sergeant McCabe's concerns and the 14:07  
6 consequent treatment of him.

7  
8 In 2013, the allegation that Sergeant McCabe as a  
9 "paedophile" was stated in my office by senior  
10 executive from the wider "Group" editorial hierarchy of 14:07  
11 Independent Newspapers.

12  
13 I am certain that a whispering smear campaign was being  
14 conducted and that the media were being used. The  
15 pressure on me was less about publishing the sex abuse 14:07  
16 allegation, it would have been difficult within the  
17 laws of libel, but had the clear purpose of  
18 discrediting him and therefore censoring the issues he  
19 was raising."

20 14:08  
21 Sir, it is important to note that former Commissioner  
22 Callinan has responded to these allegations, which he  
23 denies. In a statement to the Tribunal on the 30th May  
24 2017 he states as follows:

25 14:08  
26 "I have no knowledge of the allegation that  
27 Sergeant McCabe was referred to as a "paedophile" in  
28 2014 as referenced by Ms. Harris in her  
29 correspondence."

1  
2 Commissioner O'Sullivan in a letter to the Tribunal on  
3 the 2nd June 2017 stated that she had no response to  
4 Ms. Harris beyond the statements she had already  
5 provided to the Tribunal. This effectively amounts to 14:08  
6 a denial of the allegations.

7  
8 Sir, Mr. Brendan Howlin TD has made a statement to the  
9 Tribunal in which he outlines a conversation with a  
10 journalist, Alison O'Reilly, of the Mail on Sunday, on 14:08  
11 the 8th February 2017.

12  
13 According to Mr. Howlin, Ms. O'Reilly informed him that  
14 another journalist, Ms. Debbie McCann, had told her  
15 that *"the Commissioner had given information to her 14:08*  
16 *claiming serious sexual misconduct on the part of*  
17 *Sergeant McCabe"*. Ms. O'Reilly then informed  
18 Mr. Howlin that Ms. McCann described Sergeant McCabe in  
19 a very derogatory term following a conversation with  
20 Commissioner O'Sullivan and that these matters were 14:09  
21 being discussed generally in the Mail on Sunday office.  
22 Ms. O'Reilly also told Mr. Howlin that  
23 Superintendent Taylor and Commissioner O'Sullivan had  
24 both provided this type of information to Ms. McCann.  
25 Obviously some of what Ms. O'Reilly recounted to 14:09  
26 Mr. Howlin was hearsay evidence.

27  
28 Last week, in response to Mr. Howlin's statement,  
29 Ms. Alison O'Reilly sent a very helpful and detailed

1 statement to the Tribunal which covers not only her  
2 account of her conversation with Mr. Howlin but also  
3 her knowledge of events from 2013 until the present as  
4 seen from the perspective of the media. This statement  
5 is of great assistance to the Tribunal and has opened 14:10  
6 up a number of avenues of enquiry. Some of the  
7 information is hearsay but is nevertheless helpful in  
8 identifying journalists who it appears have first hand  
9 knowledge of who may have been behind a campaign to  
10 blacken Sergeant McCabe's good name. 14:10

11  
12 Sir, Gemma O'Doherty, who is a journalist, wrote to the  
13 Tribunal stating that she was:

14  
15 *"Well affair of the whispering campaign against 14:10*  
16 *Sergeant McCabe and when I was informed about the*  
17 *allegations of child sexual assault against him I put*  
18 *them to him. He immediately informed me as to what*  
19 *happened and when I did some further investigation into*  
20 *the allegations I found them to lack credibility 14:10*  
21 *entirely."*

22  
23 Ms. O'Doherty elaborated on this in a subsequent letter  
24 to the Tribunal on the 18th May 2017:

25 14:11  
26 *"It was in 2013 that I first became aware that*  
27 *Sergeant McCabe was being associated with an allegation*  
28 *of child sexual assault. Rumours about this were*  
29 *circulating in a number of Dublin news rooms at the*



1           *time. It is my understanding that a copy of the garda*  
2           *file concerning the allegations had been provided*  
3           *Mr. Paul Williams (special correspondent) by senior*  
4           *Gardaí in Garda Headquarters and that was how 'the*  
5           *word' got out.*

14:11

6  
7           *The fact that a garda investigation file was said to*  
8           *exist and that it contained damaging details concerning*  
9           *Sergeant McCabe gave the story certain credibility, but*  
10          *knowing Sergeant McCabe I was in no doubt that this was*  
11          *a malicious campaign against him orchestrated by*  
12          *certain people who wanted to silence him and knew they*  
13          *couldn't.*

14:11

14  
15          *I spoke to Garda Wilson about the allegations that I*  
16          *had heard concerning Sergeant McCabe. He was aware of*  
17          *them. He said that a number of journalists were on the*  
18          *story but that it was untrue. One such individual was*  
19          *Paul Williams. Paul Williams has significant garda*  
20          *connections which both he and [Independent News and*  
21          *Media] rely upon for exclusive information...*

14:12

14:12

22  
23          *It is my understanding that the same firm of solicitors*  
24          *represents Paul Williams [Independent News and Media]*  
25          *and the woman who was purportedly behind the*  
26          *allegations of sexual abuse concerning*  
27          *Sergeant McCabe...*

14:12

28  
29          *Rumours circulated that a copy of the garda file had*

1           *been given to Paul Williams and that it revealed that*  
2           *Sergeant McCabe was under investigation for child*  
3           *sexual abuse... Garda Wilson also informed me that a*  
4           *reporter named Debbie McCann, who worked for the Irish*  
5           *Daily Mail and whose father was a senior garda, was* 14:12  
6           *allegedly one of the journalists that was putting the*  
7           *word out that Sergeant McCabe was a child sex abuser.*  
8           *He said that she called him a "paedo"."*

9  
10           Sir, former Commissioner Callinan also responded to 14:13  
11           these allegations in his statement to the Tribunal on  
12           the 30th May 2017:

13  
14           *"At the outset it is unclear to me as to how all of the*  
15           *matters recited by Gemma O'Doherty fall within the* 14:13  
16           *terms of reference. Nonetheless I propose to deal with*  
17           *the matters of which I have direct knowledge and which*  
18           *would seem to be of relevance to me.*

19  
20           *I recall that in 2007 I was using my private car to* 14:13  
21           *attend to an urgent operational matter when I was*  
22           *recorded as exceeding the speed limit. I subsequently*  
23           *applied to have the fixed charge penalty cancelled. I*  
24           *became aware that Ms. Gemma O'Doherty had been*  
25           *furnished with details and that she had called to my* 14:14  
26           *home late one night looking for me at a time when I was*  
27           *out of the country on state security business. I was*  
28           *unhappy that a journalist firstly had my home address*  
29           *and secondly called to my home in relation to a matter*

1           *that could have been dealt with during the hours of*  
2           *business and through the Press Office in a normal way.*

3  
4           *I contacted the Press Officer, Superintendent David*  
5           *Taylor, and informed him of the visit to my home. I* 14:14  
6           *asked him to make contact with the newspaper to inform*  
7           *them that the Garda Press Office is open from early*  
8           *morning until late night to deal with any press*  
9           *queries, in addition to having an email service to*  
10           *facilitate queries from journalists. Superintendent* 14:14  
11           *Taylor subsequently informed me that he had spoken to*  
12           *the newspaper concerned and conveyed my message."*

13  
14           Commissioner O'Sullivan also responded to  
15           Ms. O'Doherty's statement, pointing out that she does 14:14  
16           not and has not had a close relationship with Paul  
17           Williams.

18  
19           Sir, some of Superintendent Taylor's phones, phone  
20           bills, laptop and emails have been made available to 14:15  
21           the Tribunal and are being examined, including those  
22           already examined as part of the section 62 criminal  
23           investigation referred to earlier. The Tribunal has  
24           also received former Commissioner Martin Callinan's  
25           phone, which was previously with the Fennelly 14:15  
26           commission. That phone was not forensically examined  
27           as part of that commission, but will now undergo  
28           analysis as part of Tribunal's work. The Tribunal has  
29           recently received a further phone which was formally

1 used by former Commissioner Callinan which will also  
2 undergo analysis.

3  
4 Sir, Superintendent Michael Flynn of the  
5 telecommunications section of An Garda Síochána 14:16  
6 provided a statement to the Tribunal on the 16th May  
7 2017 in relation to a number of phones that the  
8 Tribunal wished to take possession of in order to  
9 thoroughly investigate the matters within its terms of  
10 reference. The statement indicates that there were six 14:16  
11 phones granted to Commissioner O'Sullivan throughout  
12 the relevant period, with an additional six allocated  
13 to former Commissioner and three allocated to  
14 Superintendent Taylor.

15 14:16  
16 Sir, not all of these phones have been located. In  
17 total, there are fifteen mobile phones which are of  
18 interest to the Tribunal, only four of these have been  
19 located by Gardaí, including one delivered to the  
20 Tribunal just yesterday along with an iPad, both of 14:16  
21 which were assigned to Commissioner O'Sullivan and will  
22 be sent to the forensic service of Northern Ireland for  
23 examination.

24  
25 Superintendent Flynn indicates that a full search is 14:17  
26 ongoing for the remaining phones. In the meantime  
27 Superintendent Flynn has instructed technicians "*to*  
28 *ensure that no mobile phones are disposed of when*  
29 *replaced or returned*". Previously, various seems had

1           been in place to donate "old, obsolete and broken  
2           mobile phones" to charities such as the Jack and Jill  
3           Foundation.  
4

5           Sir, Superintendent Taylor's Protected Disclosure of           14:17  
6           the 30th September 2016 also refers to a meeting  
7           between John McGuinness and former Commissioner  
8           Callinan in the car park of Bewley's Hotel.

9           Superintendent Taylor's statement to the Tribunal  
10          states that he was not present at the meeting, but he           14:17  
11          recalls that it was arranged in haste, and in what  
12          might seem to be quite unusual circumstances.  
13

14          Term of reference (i) requires the Tribunal:  
15

16          *"To investigate whether a meeting took place between*  
17          *former Commissioner Callinan and Deputy John McGuinness*  
18          *on the 24th January 2014 in the car park of Bewley's*  
19          *Hotel, Newlands Cross, County Dublin and to examine and*  
20          *consider the circumstances which led to any such*           14:18  
21          *meeting, the purpose of such meeting and matters*  
22          *discussed at such meeting."*  
23

24          In your interim of the 17th May 2017, sir, you point  
25          out that this issue is indivisible from the question of           14:18  
26          Superintendent Taylor's alleged briefing.

27          Superintendent Taylor stated:  
28

29          *"A few days before Sergeant McCabe was due to attend*

1           the PAC hearing in January 2014 I recall that I  
2           attended Dundalk Garda Station as we were to conduct a  
3           press conference... The Commissioner was to attend for  
4           that press conference but I had travelled in advance to  
5           make preparations... After the Commissioner arrived, I 14:19  
6           briefed him in the superintendent's office in Dundalk  
7           Garda Station. During that briefing I was informed by  
8           the Commissioner that he had a telephone conversation  
9           with John McGuinness, then Chairman of the PAC, who he  
10          informed me had agreed to meet with him. The location 14:19  
11          of the meeting was Bewley's Hotel at Newlands Cross as  
12          it was on Mr. McGuinness's route home. I knew the  
13          Commissioner had been trying to reach out to  
14          Mr. McGuinness in his capacity as Chairman of the PAC  
15          concerning Sergeant McCabe. The Commissioner never 14:19  
16          discussed with me what he wanted to discuss with  
17          Mr. McGuinness. He had mentioned Mr. McGuinness quite  
18          often in the previous days.

19  
20          I had to delay the press conference as the Commissioner 14:20  
21          decided to leave Dundalk and to immediately travel to  
22          meet Mr. McGuinness. The Commissioner returned later  
23          that day, perhaps at about 4:00pm or after, and the  
24          press conference was held then. The Commissioner never  
25          discussed the meeting with me save to confirm it took 14:20  
26          place."

27  
28          Deputy McGuinness and former Commissioner Callinan  
29          confirm that the meeting took place at the time and

1 place specified in the terms of reference. They also  
2 agree that Sergeant McCabe was discussed at that  
3 meeting. They differ fundamentally, however, in their  
4 accounts of how the subject was broached. Deputy  
5 McGuinness gave a statement to the Tribunal on the 28th 14:20  
6 March 2017 in which he recalls the meeting, and I  
7 quote:

8  
9 *"Mr. Callinan asked if I was aware of issues*  
10 *surrounding Mr. McCabe's personal life. I stated that* 14:20  
11 *I had heard vague rumours and gossip that Mr. McCabe*  
12 *had abused someone and that he was a paedophile but*  
13 *that I had been assured by Mr. McCabe that these*  
14 *rumours were lies, and that he had heard them before*  
15 *and that they were malicious falsehoods. Mr. Callinan* 14:21  
16 *stated to me that the rumours were true, that*  
17 *Mr. McCabe had sexually abused someone and that he was*  
18 *not a credible person. Mr. Callinan stated that an*  
19 *investigation into Mr. McCabe's activities was*  
20 *underway. Mr. Callinan then asked me was I aware* 14:21  
21 *Mr. McCabe had sexually abused family members. I was*  
22 *shocked and extremely troubled by what Mr. Callinan was*  
23 *telling because the allegations being made were extreme*  
24 *and the person relaying them to me, as well as the fact*  
25 *that an investigation had commenced, was the* 14:21  
26 *Commissioner of An Garda Síochána. When he left my car*  
27 *Mr. Callinan put his hand on my arm and stated that*  
28 *Mr. McCabe was not reliable and could not be trusted*  
29 *and suggested that I had gotten myself and the Public*

1 *Accounts Committee into a lot of trouble by pursuing*  
2 *the penalty points issue."*

3  
4 Deputy McGuinness's statement to the Tribunal states  
5 that he kept a handwritten note of the meeting. A copy 14:22  
6 of the handwritten note is now with the Tribunal. The  
7 relevant extracts are noted as:

8  
9 *"Callinan*  
10 *McCabe* 14:22  
11 *Sexual abuse!*  
12 *Individual + family*  
13 *Don't trust him*  
14 *Story not credible*  
15 *Investigations ongoing* 14:22  
16 *He's not credible."*

17  
18 Sir, former Commissioner Callinan for his part in his  
19 statement to the Tribunal of the 13th March 2017  
20 describes the meeting as follows: 14:22

21  
22 *"During the course of the meeting Deputy McGuinness*  
23 *asked why was Sergeant McCabe raising these issues. He*  
24 *asked if it was because of the file that went to the*  
25 *DPP. It was clear he was already aware prior to our* 14:23  
26 *meeting that Sergeant McCabe had been the subject of a*  
27 *criminal investigation. His query in this regard was*  
28 *not in response to nor was it prompted by anything I*  
29 *had said. I responded by telling him that if he knew*



1           *about the file that went to the DPP he knew what the*  
2           *DPP had decided. He indicated to me that he knew all*  
3           *about the allegation underlying the investigation."*

4  
5           *The former Commissioner provided the Tribunal with an* 14:23  
6           *additional statement on the 30th May 2017, further*  
7           *responding to the allegations that had been made by*  
8           *Deputy McGuinness, which he denies. And I quote:*

9  
10          *"At paragraph 11, McGuinness alleges that I asked him* 14:23  
11          *if he was aware of issues surrounding Mr. McCabe's*  
12          *personal life. This is not correct. As I indicated in*  
13          *my previous statement, Mr. McGuinness already appeared*  
14          *to be aware of the fact that Sergeant McCabe had been*  
15          *the subject of a criminal investigation and the nature* 14:24  
16          *of that investigation. He said that he had been*  
17          *assured by Sergeant McCabe that these rumours were all*  
18          *lies, that he had heard them before and that they were*  
19          *malicious falsehoods. Mr. McGuinness was the one to*  
20          *raise the issue at our meeting, however the word* 14:24  
21          *"paedophile" never entered the conversation.*

22  
23          *I did not at any time state to Mr. McGuinness that*  
24          *Mr. McCabe had sexually abused anyone or that he was*  
25          *not a credible person.* 14:24

26  
27          *I never at any stage indicated to Mr. McGuinness that*  
28          *an investigation into Mr. McCabe's activities was*  
29          *underway. Indeed this would have been entirely*

1           *contrary to my understanding of matters at that time.*  
2           *I was aware that the investigation in 2006 had long*  
3           *since completed from reading the reference to it in*  
4           *what is referred to by the O'Higgins Commission as the*  
5           *Byrne/McGinn report. I am clear in my mind that there* 14:25  
6           *was no new investigation ongoing at that time in*  
7           *relation to allegations of sexual assault against*  
8           *Sergeant McCabe, nor was I aware of any fresh*  
9           *allegation of any description against him.*

10  
11           *I never at any stage indicated to Mr. McGuinness that*  
12           *Sergeant McCabe had sexually abused family members.*

13  
14           *As I indicated previously, I never stated that*  
15           *Sergeant McCabe was not reliable and could not be* 14:25  
16           *trusted. What I did say to Mr. McGuinness was that*  
17           *some of the allegations made by Sergeant McCabe in*  
18           *relation to the fixed charge penalty system was*  
19           *questionable, in that a number of those allegations*  
20           *turned out to be untrue and Assistant Commissioner* 14:25  
21           *O'Mahoney's report highlighted some of those issues."*

22  
23           *Sir, Commissioner O'Sullivan in her statement to the*  
24           *Tribunal of the 13th March 2017 says:*

25  
26           *"I was not aware of any meeting between Commissioner*  
27           *Callinan and Deputy McGuinness as outlined by Deputy*  
28           *McGuinness... I was not at, and had not been invited to*  
29           *participate in, the press conference with Commissioner*

1            *Callinan is alleged to have postponed for this purpose,*  
2            *and I had no knowledge of any proposed arrangements for*  
3            *a meeting or indeed of the meeting between former*  
4            *Commissioner Callinan and Deputy McGuinness. I first*  
5            *became aware of such a meeting when the matter was* 14:26  
6            *reported in the media following a statement made at*  
7            *that time by Deputy John McGuinness."*

8  
9            Sergeant McCabe's Protected Disclosure of the 26th  
10           *September 2016 reports Superintendent Taylor stating,* 14:26  
11           *and I quote:*

12  
13           *"Commissioner O'Sullivan would have known of the*  
14           *meeting in the car park of Bewley's Hotel because*  
15           *Commissioner Callinan always kept her informed of such* 14:27  
16           *matters."*

17  
18           Superintendent Taylor told your investigators that:

19  
20           *"I would have sent out a press invite 24 before [the* 14:27  
21           *press conference] that would have been sent to all the*  
22           *media and to Garda senior management team, including*  
23           *the Deputy Commissioner."*

24  
25           Sir, Superintendent Taylor in a statement taken by your 14:27  
26           investigators reiterated that he was not at the meeting  
27           in Bewley's car park on the 24th January 2016, but was  
28           present at the Public Accounts Committee meeting the  
29           previous day. You will recall that this was the

1 meeting at which the then Commissioner Callinan  
2 described whistleblowers as "*disgusting*" which he  
3 subsequently clarified, and I quote:

4  
5 *"Was not in reference to the character of either* 14:28  
6 *Sergeant McCabe or former Garda Wilson, but the manner*  
7 *in which personal and sensitive data was*  
8 *inappropriately appearing in the public domain without*  
9 *regard to due process and fair procedures."*

10 14:28  
11 According to Superintendent Taylor, after the PAC  
12 meeting and with then Deputy Commissioner O'Sullivan,  
13 then Garda Communications Director Andrew McLindon,  
14 Assistant Commissioner John O'Mahoney and Deputy  
15 McGuinness, all present in the room, Commissioner 14:28  
16 Callinan referred to Sergeant McCabe as, as I quote, a  
17 "*kiddie fiddler*" in conversation with Deputy  
18 McGuinness. The Tribunal is currently attempting to  
19 establish whether any of these other persons present  
20 heard the comments allegedly made by former 14:29  
21 Commissioner Callinan to Deputy McGuinness.

22  
23 Former Commissioner Callinan provided an additional  
24 statement to the Tribunal on the 30th May 2017 denying 14:29  
25 the allegation made by Deputy McGuinness in relation to  
26 their conversations on the 23rd January 2014. He  
27 asserts the following:

28  
29 *"Mr. McGuinness states that at the conclusion of the*

1 *hearing on the 23rd January 2014 he approached me to*  
2 *thank me for attending the Committee. This is correct*  
3 *and it was certainly his normal practice to do so after*  
4 *such meetings. I recall that we exchanged pleasantries*  
5 *and engaged in mundane conversation about it having* 14:29  
6 *been a long day and so on. While I believe the then*  
7 *Deputy Commissioner Nóirín O'Sullivan and other*  
8 *colleagues were in the vicinity preparing to leave, I*  
9 *am unsure as to whether they were party to any*  
10 *conversation I had with Mr. McGuinness. His assertion* 14:29  
11 *that I said "this man fiddles with children, this is*  
12 *outrageous" is simply incorrect and untrue."*

13  
14 Sir, the Comptroller and Auditor General, Seamus  
15 McCarthy, also gave a statement to the Tribunal on the 14:30  
16 13th March 2017 recalling the PAC meeting of the 23rd  
17 January 2014, and I quote:

18  
19 *"Commissioner Callinan appeared at that meeting as*  
20 *accounting officer. In the lobby outside the Committee* 14:30  
21 *meeting room, I met Commissioner Callinan and we spoke*  
22 *briefly. No one else was party to the conversation,*  
23 *which lasted probably not more than about five minutes.*  
24 *I had previously had no direct personal communication*  
25 *or conversation with Commissioner Callinan about my* 14:30  
26 *report [about the penalty points allegation]. I do not*  
27 *know recall any conversation (beyond normal social*  
28 *greetings) on the day with other senior garda*  
29 *personnel.*

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*Early in his conversation with me Commissioner Callinan referred to Sergeant McCabe by name and made statements to the effect that Sergeant McCabe was not to be trusted, that he had questions to answer, and that there were allegations of sexual offences against him.*

14:31

*I responded to the effect that my report was not an investigation of any of the whistleblowers' allegations; that it was based on analysis of random sample of fixed charge notice cases extracted by my office's examination team from the garda records; and that my findings were not affected or influenced by the whistleblower's motives. I did not probe the nature of the alleged sexual offences to which he had referred and he did not provide any information in that regard. I did not acknowledge Sergeant McCabe as being the whistleblower who had contacted my office....*

14:31

14:31

*During the subsequent Committee meeting I thought about what Commissioner Callinan had said to me personally about Sergeant McCabe and realised that the words he had used meant that Sergeant McCabe was accused of and was being investigated for alleged sexual offences. I concluded that his statement referred to the alleged involvement of Sergeant McCabe in the loss of a computer in a paedophile case in Cavan/Monaghan, of which I was previously aware."*

14:32

14:32

1 Sir, former Commissioner Callinan has responded to this  
2 statement in his additional statement, in which he  
3 recalls meeting Mr. McCarthy but denies introducing the  
4 allegations against Sergeant McCabe into the  
5 conversation, and I quote: 14:32

6  
7 *"I recall meeting Mr. McCarthy outside the Committee*  
8 *room on the 23rd January 2014 on the stairs leading*  
9 *down to the lobby and the Committee rooms.*

10 *Mr. McCarthy spoke about his audit and we briefly* 14:33  
11 *chatted about a number of fixed charge penalty notices*  
12 *and previous audits where weaknesses in the system were*  
13 *highlighted. He mentioned a file he had received from*  
14 *a whistleblower in 2012, which prompted the audit.*

15 *Even though Mr. McCarthy did not name the* 14:33  
16 *whistleblower, I was satisfied that Sergeant McCabe was*  
17 *a party. I believe that this would have been obvious*  
18 *to all concerned at this point.*

19  
20 *I indicated to Mr. McCarthy that some of the* 14:33  
21 *allegations made by Sergeant McCabe on the fixed charge*  
22 *penalty system were questionable as a number of the*  
23 *allegations made were subsequently proved to be*  
24 *incorrect. Mr. McCarthy said he had heard the rumours*  
25 *about Sergeant McCabe being investigated over an* 14:33  
26 *allegation of a sexual nature. He did not elaborate*  
27 *on, nor specify, what these rumours were. I indicated*  
28 *to Mr. McCarthy that this was several years ago and*  
29 *that the Director of Public Prosecutions directed no*

1 prosecution. That was the extent of the conversation  
2 on that subject.

3  
4 I did not at any point state that Sergeant McCabe was  
5 not to be trusted nor that he had questions to answer. 14:34  
6 I did not state that there were any allegations of  
7 sexual offences against him."

8  
9 Sir, former Commissioner Callinan vehemently denies all  
10 the allegations made against him. He says: 14:34

11  
12 "I wish to state categorically that I did not direct  
13 Superintendent Taylor to brief the media to the effect  
14 that Sergeant McCabe was motivated by malice or  
15 revenge. Nor did I direct Superintendent Taylor to 14:34  
16 encourage the media to write negatively about  
17 Sergeant McCabe. It is also incorrect to allege that I  
18 instructed Superintendent Taylor to encourage the media  
19 to report that Sergeant McCabe was therefore driven by  
20 his own improper agendas. 14:35

21  
22 It is undoubtedly a matter of public record that I did  
23 disagree with the manner in which Sergeant McCabe was  
24 disclosing personal, sensitive data pertaining to  
25 members of the public to the Public Accounts Committee 14:35  
26 and other third parties. However, I reject any  
27 suggestion that I directed Superintendent Taylor to  
28 engage in any improper campaign to negatively brief the  
29 media to the effect that he was driven by an improper



1 agenda.

2  
3 *I note in Superintendent Taylor Protected Disclosures*  
4 *that he alleged that there was a campaign at the*  
5 *highest level in An Garda Síochána involving me as the* 14:35  
6 *Commissioner and the then Deputy Commissioner Nóirín*  
7 *O'Sullivan, to discredit Sergeant McCabe. I absolutely*  
8 *refute that allegation. I have no knowledge of any*  
9 *such meetings, nor have I ever received any report of*  
10 *such a campaign within An Garda Síochána.* 14:36

11  
12 *I specifically wish to state that I did not direct*  
13 *Superintendent Taylor to draw journalists' attention to*  
14 *the complaint of criminal misconduct made against*  
15 *Sergeant McCabe. Nor did I direct him to suggest to* 14:36  
16 *journalists and others that this was the root cause of*  
17 *his agenda.*

18  
19 *It is striking that the allegation made by*  
20 *Superintendent Taylor is made without any reference to* 14:36  
21 *the surrounding detail, context or the circumstances in*  
22 *which the purported direction was made. Given the*  
23 *extraordinary nature of this allegation, that I gave*  
24 *him such a direction, it is remarkable that the account*  
25 *he has given devoid of any such detail and puts me in* 14:36  
26 *the position of being able to do little more than*  
27 *simply deny it, which I do fully....*

28  
29 *I was not aware of the creation, distribution and use*

1 by Tusla of a file containing false allegations of  
2 sexual abuse against Sergeant McCabe that was sent to  
3 the Gardaí in 2013. Therefore, the implication that I  
4 used such information to discredit Sergeant McCabe in  
5 some way is wholly unfounded." 14:37

6  
7 Sir, the former Commissioner does however admit to once  
8 sharing information about the allegation made against  
9 Sergeant McCabe in his statement:

10 14:37  
11 "In late 2013 I spoke with the then Minister for  
12 Justice Alan Shatter TD. This was in connection with  
13 the report prepared by Assistant Commissioner John  
14 O'Mahoney, which I believe Minister Shatter received on  
15 the 28th March 2013. 14:37

16  
17 This was in the context of a briefing with the  
18 Minister. I believe that on the occasion in question  
19 we spoke by telephone. During the course of  
20 conversation Mr. Shatter specifically asked me if there 14:38  
21 was anything in the background relating to  
22 Sergeant McCabe that he should be aware of. In  
23 response I told him that there had been an allegation  
24 of inappropriate contact by Sergeant McCabe with a  
25 child in 2006. I made it clear to him that the matter 14:38  
26 had been investigated and that a file had been sent to  
27 the DPP who had directed no prosecution."

28  
29 Sir, it will be apparent from the foregoing that there

1 are substantially different accounts of the same  
2 incidents being given by the various protagonists. We  
3 hope to hold hearings on this matter in October and  
4 November of this year and to explore the contradictions  
5 with a view to making your task of deciding where the  
6 truth lies easier. 14:38

7  
8 I now turn to the broadcasts on RTÉ on the 9th May on  
9 the leaked O'Higgins Report.

10  
11 Sir, the report of the O'Higgins Commission was  
12 delivered to the Minister For Justice and Equality on  
13 the 25th April 2016. As in many previous instances it  
14 may be fair to note that the publication of this report  
15 was perhaps precipitated by the leaking of the report  
16 and discussion on RTÉ throughout the 9th May 2016. 14:39

17  
18 Sir, what is involved in your investigation here is  
19 whether *"briefing material prepared in Garda*  
20 *Headquarters influenced or attempted to influence"* 14:39  
21 these broadcasts. It is said that contrary to the duty  
22 of the media, the reports were not accurate and in  
23 particular that Sergeant McCabe *"was branded a liar and*  
24 *irresponsible"*.

25  
26 The only place to begin in such an inquiry is with the  
27 actual text of the broadcasts concerning the O'Higgins  
28 report. On the television news at one o'clock on RTÉ,  
29 the word "lie" was indeed used in the following

1 context, and I quote:

2  
3 *"Paul Reynolds: It was the allegations of*  
4 *Sergeant McCabe of corruption and malpractice in Garda*  
5 *Síochána that threatened public confidence in the* 14:40  
6 *police service. These led to the establishment of the*  
7 *O'Higgins Commission.*

8  
9 *Its report, seen by RTÉ news, has found there were*  
10 *problems with Garda management and resources at many* 14:40  
11 *levels but no evidence of garda criminality or*  
12 *corruption. It identified serious failings in eight*  
13 *criminal investigations from Bailieboro Garda Station.*  
14 *These included assaults, dangerous driving and child*  
15 *abuse. The most serious began with a report called "a* 14:40  
16 *savage attack" on a taxi driver, Mary Lynch, by Jerry*  
17 *McGrath, who was only charged with a minor assault.*  
18 *This was strongly criticised by the report. While on*  
19 *bail for that McGrath first abducted a five-year-old*  
20 *child but was given bail again and then went on to* 14:41  
21 *murder Sylvia Roche Kelly. The Commission found that*  
22 *the investigations were led by junior, inexperienced*  
23 *and probationary Gardaí and the Commission said that*  
24 *the failings were at a human level caused by poor*  
25 *individual performance and in many cases by poor* 14:41  
26 *supervision. The investigations were characterised by*  
27 *errors and delays and the report found that victims of*  
28 *crime were not well served by Gardaí or GSOC*  
29 *investigations.*

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*On Sergeant Maurice McCabe, the Commission says he acted out of genuine and legitimate concerns and is a dedicated and committed member of the Gardaí. It also said that he was prone to exaggeration and while some of his complaints were upheld, others were found to be overstated, exaggerated unfounded and were withdrawn.*

14:41

*On the former Garda Commissioner, the report says "it must be stated clearly and ambiguously [sic] --"*

14:42

That should be unambiguously, sir.

*-- "it must be stated clearly and unambiguously there is not a scintilla of evidence to support an allegation of any corruption against the former Commissioner" and that Martin Callinan was entitled to have his reputation vindicated. The Commission also found the former Minister for Justice Alan Shatter's actions were entirely reasonable and appropriate and that he took the allegations of garda whistleblowers very seriously. The report concluded that much of what happened could have been avoided or resolved if garda inspector had been appointed to Bailieboro Garda Station.*

14:42

14:42

14:42

*John Finnerty: And Paul is in studio now. Paul, first of all, where does this leave complaints by whistleblower Maurice McCabe?*

1 *Paul Reynolds: Well, Sergeant Maurice McCabe is*  
2 *described in this report as the central figure in this*  
3 *investigation and it says that he acted out of genuine*  
4 *and legitimate concerns, he showed courage, he*  
5 *performed a public service at considerable personal* 14:43  
6 *cost and that he is due the gratitude of the general*  
7 *public and the Garda Síochána. It does also say that*  
8 *while some of his complaints were upheld others were*  
9 *found to be exaggerated, overstated and were withdrawn.*  
10 *And it also said that while the sergeant was never less* 14:43  
11 *than truthful in his evidence to the Commission it did*  
12 *highlight a number of incidents, including cases where*  
13 *he wrongly claimed that a minor assault was a rape, he*  
14 *alleged there had been an attempt to poison a father*  
15 *and son when there was no evidence to support this, the* 14:43  
16 *Commission found, and also the Commission says, that he*  
17 *lied in a report to a senior officer."*

18  
19 Sir, on a programme known as RTÉ Six One, in other  
20 words the ordinary television news that people may 14:44  
21 watch if they are back home from work in time, that  
22 notion of a lie was repeated but it was not repeated on  
23 the nine o'clock news bulletin television. Here is the  
24 relevant extract:

25 14:44  
26 *"Sharon Ní Bheoláin: Well, Paul Reynolds is with us*  
27 *here in studio. Paul, we've had the internal garda*  
28 *reports, we've had the Sean Guerin report, we have this*  
29 *commission report now, is this the end of the saga as*

1 far as garda failure allegations is concerned?

2  
3 Paul Reynolds: well, in this case it looks like it. I  
4 mean, if you look at where we are today, the former  
5 Commissioner Martin Callinan lost his job, the former 14:44  
6 Minister for Justice, Alan Shatter, lost his job, and  
7 the former Garda confidential recipient, Oliver  
8 Connolly, lost his job and they're not going to get  
9 those jobs back.

10  
11 In relation to Sergeant Maurice McCabe, the 14:45  
12 Commission's report has found that he's displayed great  
13 courage, that he acted in the interest of the public  
14 service and that he should be commended and trusted by  
15 the public and within An Garda Síochána. But it also 14:45  
16 highlights a certain amount of criticism in relation to  
17 him. It says a lot of his complaints aren't upheld,  
18 and perhaps most damning of all it does say in the  
19 report that he told a lie in an internal garda report.

20  
21 However, he still remains a serving of An Garda 14:45  
22 Síochána and the report says he is a dedicated and  
23 committed members of the force. On the broader issue  
24 though, this Commission's report has raised fundamental  
25 questions about how the Garda investigate serious crime 14:45  
26 and particularly in these cases their ability to  
27 investigate serious crime has fallen well short of what  
28 the public demands from an organisation charged with  
29 this responsibility. Interestingly enough, similar

1           *questions and similar findings were made in the*  
2           *internal Garda report, the Byrne/McGinn report, which*  
3           *was referred to in the Commission report. But that was*  
4           *never published. The public didn't know about it and*  
5           *we are only now aware of the detail of all these cases* 14:46  
6           *thanks to the publication of the Commission's report*  
7           *and indeed thanks to the work of Sergeant Maurice*  
8           *McCabe and the fact that he did blow the whistle on*  
9           *this sort of thing and pushed it so far. However, in*  
10          *relation to this, perhaps if the Gardaí had been more* 14:46  
11          *open about their own failings, perhaps if they had*  
12          *acted quicker, if they had, as the report says,*  
13          *appointed an inspector in 2006 when one was looked at,*  
14          *we wouldn't be in the position we're in today."*

15  
16          Sir, there were also a number of relevant radio  
17          broadcasts on the same. On Morning Ireland, Paul  
18          Reynolds again refers to Sergeant McCabe telling a lie:

19  
20          *"Fran McNulty: It's just gone half past eight, we'll* 14:47  
21          *come to news headlines presently. Paul, chapter 10*  
22          *details an assault at Crossan's Pub in Bailieboro in*  
23          *County Cavan on the 23rd May 2017.*

24  
25          *Paul Reynolds: Yeah. This was a probationer garda* 14:47  
26          *again investigated this case. A probationer garda is a*  
27          *trainee garda, just out of Templemore. In some of*  
28          *these cases the probationer who investigated these*  
29          *cases, it was their first case. On the 23rd May 2017*



1 Mr. R was attacked in a pub. He received injuries to  
2 his face and head. He was helped from the pub by a  
3 friend. Collected by his wife. He went to hospital  
4 two days later and was diagnosed "minor head injury and  
5 concussion". Ten months later two suspects were 14:47  
6 arrested. One was charged and remanded on bail at  
7 Monaghan District Court. The victim however later  
8 withdrew his complaint and the DPP directed the charge  
9 be withdrawn. Now it transpired that the probationer  
10 garda had in fact encouraged the victim to withdraw his 14:48  
11 statement and the victim was misled in relation to  
12 evidence in the case. The commission found that  
13 "unfortunately in this instance, the trust the victim  
14 and his wife had in the Gardaí" quote "was not  
15 justified". 14:48

16  
17 Fran McNulty: And what about Sergeant Maurice McCabe's  
18 claims in this case?

19  
20 Paul Reynolds: Well it says, the report says that 14:48  
21 Sergeant McCabe was quite right to be suspicious of the  
22 fact that the complaint had been withdrawn. Quote:  
23 "It is clear from the evidence of AC Derek Byrne that  
24 he considered Sergeant McCabe's complaints in the  
25 matter substantiated." But also the details the 14:48  
26 Sergeant submitted in his complaints were exaggerated  
27 and wrong. The Commission found that Sergeant McCabe  
28 was "incorrect to say that" quote "an ambulance was  
29 called and that the injured party was rushed to

1 *hospital that night". Quote: "He did not attend*  
2 *hospital until two days after the incident." It also*  
3 *pointed out Sergeant McCabe said the victims were*  
4 *linking a personnel trauma to an assault but it later*  
5 *emerged that this was not the case. This trauma was* 14:49  
6 *not being linked to the investigation. Also, while on*  
7 *the one hand the Commission said Sergeant McCabe was*  
8 *"never less than truthful in his evidence" that he gave*  
9 *to the Commission, it also says that he lied during*  
10 *this case, or, as the Commission puts it "told this* 14:49  
11 *untruth" in a report to a senior officer. On the 3rd*  
12 *March 2008 the Commission report says "the sergeant*  
13 *reported that a complaint had been made to GSOC", end*  
14 *quote, when he knew, the Commission says, he was quote*  
15 *"aware" that this was not the case. He told the* 14:50  
16 *Commission that the reason for the untruth was that he*  
17 *felt the victim and his wife had been badly treated and*  
18 *that he knew the reference to GSOC would ensure the*  
19 *matter would receive attention. Quote, "while his*  
20 *concern was genuine and commendable," the Commission* 14:50  
21 *said "it was unacceptable to furnish false information*  
22 *in a report"."*

23  
24 Later, on the Today with Séan O'Rourke programme,  
25 presenter Keelin Shanley, in posing a question to the 14:50  
26 reporter Mick Clifford referred to Sergeant McCabe  
27 having told a lie:

28  
29 *"Keelin Shanley: And just, Mick, to put some of what*

1           *we understand to be in the report, it says that the*  
2           *sergeant, Sergeant McCabe, was never less than truthful*  
3           *in his evidence, it highlighted through a number of*  
4           *incidents, including cases where he wrongly claimed a*  
5           *minor assault was a rape, he alleged that there had* 14:51  
6           *been an attempt to poison a father and a young son when*  
7           *there's no evidence to support it, and he lied in a*  
8           *report to a senior officer. The Commission has said*  
9           *that whilst his concerns were genuine and commendable,*  
10          *it was unacceptable to furnish false information in a* 14:51  
11          *report."*

12  
13          Sir, as to the word "irresponsible", this does not  
14          occur anywhere in any of the broadcasts. The  
15          description does, however, appear in Sergeant McCabe's 14:51  
16          Protected Disclosure of the 26th September 2016.

17  
18          while the word "lie" does not appear in relation to  
19          Sergeant McCabe in the O'Higgins Commission Report we  
20          would point out that an equivalent expression does 14:52  
21          indeed occur at one point.

22  
23          This was where the Commission was reporting on an  
24          investigation into an assault on the 23rd May 2007 in a  
25          public house in Bailieboro, when a man suffered serious 14:52  
26          injuries to his head and face. This man was helped  
27          back to his flat and was collected there by his wife  
28          who then brought him to Cavan General Hospital. In  
29          March 2008 two suspects were arrested in connection

1 with the assault and detained for questioning.  
2 However, on the 28th November 2007 the injured party  
3 made a statement withdrawing his complaint in  
4 controversial circumstances which were indeed  
5 criticised by Mr. Justice O'Higgins. Other aspects of 14:52  
6 the investigation were deemed unsatisfactory, including  
7 the delay in compiling the file, which was described as  
8 "*inordinate and inexcusable*". There was also  
9 inordinate delay in interviewing witnesses and internal  
10 communications during the investigations were poor. A 14:53  
11 lack of professionalism was shown in taking statements,  
12 including that many were unsigned and the supervision  
13 of the relevant garda officers was regarded as  
14 inadequate. Sergeant McCabe had complained to  
15 Superintendent Clancy on the 20th January 2008 about 14:53  
16 the investigation files not being completed or being  
17 very poor, together with the non-performance of  
18 officers in relation to their work.

19  
20 Sir, apparently with a view to getting Superintendent 14:53  
21 Clancy to take this case seriously, Sergeant McCabe  
22 informed him that the victims had lodged a complaint  
23 with the Garda Síochána Ombudsman Commission. This was  
24 not so and, as Mr. Justice O'Higgins found, Sergeant  
25 McCabe knew full well that this was not so. In plain 14:53  
26 parlance, this was a lie. Perhaps in the context of  
27 the call to duty and the findings of the Commission in  
28 favour of the complaints made by Sergeant McCabe, it  
29 was a very small matter. Indeed, one would ponder in

1 in the context of a report lasting 362 pages how a  
2 journalist might manage to find this one flaw. Was it  
3 reported with emphasis? That, sir, is a matter for  
4 you. Here, in any event, is the relevant paragraph,  
5 10.86 of the report:

14:54

6  
7 *"In a report of the 3rd March 2008 Sergeant McCabe*  
8 *informed Superintendent Clancy of the complaints which*  
9 *had been made to him by [the victim of the assault and*  
10 *his wife]. He reported that a complaint had been made*  
11 *to [the Garda Síochána Ombudsman Commission], although*  
12 *he was aware this was not the case. He told the*  
13 *Commission that this the reason for this untruth was*  
14 *that he felt [the victim and his wife] had been badly*  
15 *treated and he knew that the reference to [the Garda*  
16 *Síochána Ombudsman Commission] would ensure that the*  
17 *matter would receive attention. While the concern was*  
18 *genuine and commendable it is unacceptable to furnish*  
19 *false information in a report."*

14:54

14:55

14:55

20  
21 Sir, we have nothing more to say about this matter. We  
22 hope to hold hearings on this matter in  
23 October/November when the issues will be explored in  
24 detail.

14:55

25  
26 I now turn to the credit, credibility and the O'Higgins  
27 Commission.

28  
29 Sir, as we have mentioned before, you are required to

1 investigate whether *"false allegations of sexual abuse*  
2 *or any other unjustified grounds were inappropriately*  
3 *relied upon by Commissioner O'Sullivan"* during the  
4 hearings of the O'Higgins Commission. In making an  
5 opening statement on the 27th February 2017, sir, you 14:55  
6 touched on this matter by recording your expectation  
7 that those cross-examining witnesses were expected to  
8 come to the point. This can be understood to mean that  
9 the parties to the Tribunal should concentrate on facts  
10 in issue and not on issues of credit unless it is 14:56  
11 absolutely necessary. You, sir, went on to say:

12  
13 *"While cross-examination is an instrument for finding*  
14 *the truth, it can also be used to obfuscate and to*  
15 *divert attention away from the central issues. It is 14:56*  
16 *expected that the represented parties will provide*  
17 *their legal representative with clear and instructions;*  
18 *that they will tell them what facts they will later*  
19 *testify to. Cross-examination as to credit can be*  
20 *legitimate. That may or may not be at the discretion 14:56*  
21 *of counsel. It may depend on the client or it may be*  
22 *within counsel's hands. The credit of a witness may be*  
23 *important, apart from their opportunity of observation,*  
24 *sureness of memory or possible motive. Where a witness*  
25 *is coming from may be germane in some cases. If, for 14:57*  
26 *instance, a prisoner sharing a cell with an accused*  
27 *person on remand on a charge of murder claims that the*  
28 *accused confessed his motive to him for killing the*  
29 *victim, then the fact that the prisoner as a witness*

1           *himself has a previous fraud conviction is important.*  
2           *It would be less important if he had been unfaithful to*  
3           *his girlfriend or perhaps had done something*  
4           *discreditable whilst under strain or while young. The*  
5           *law of evidence allows the control of cross-examination* 14:57  
6           *as to the credit of a witness based on its usefulness*  
7           *to the determination of the facts at issue and its*  
8           *length. That is a rule of commonsense."*

9  
10          Sir, evidence of disposition or reputation is tightly 14:57  
11          controlled by the law of evidence. Reputation as to  
12          good character may be introduced by an accused in a  
13          criminal case but not by one of the parties to a civil  
14          suit. Evidence as to bad character in a criminal trial  
15          is restricted to clearly defined exceptions to the 14:58  
16          general rule that such evidence is inadmissible.  
17          Clearly, where an issue arises as to the witness's  
18          means of knowledge or perhaps their opportunity for  
19          observation, cross-examination may undermine the  
20          credibility of a witness's account without at the same 14:58  
21          time attacking the character of the witness. When,  
22          however, one moves to credit, counsel is in the realm  
23          of undermining the character of a witness with a view  
24          to demonstrating that the witness should by reason of  
25          unrelated behaviour or disposition be disbelieved. 14:58

26  
27          Even textbooks tend towards confusion in this area by  
28          mistaking issues as to credibility with the diminution  
29          of credibility due to lack of credit worthiness of a

1 witness. In the civil case, *Clayton v. Cashman* [2006]  
2 IEHC 360, Peart J referred to the judicial assessment  
3 of evidence as including the consistency of the  
4 witness's evidence with what is agreed, and clearly  
5 shown by other evidence to have occurred, the internal 14:59  
6 consistency of the witness's evidence, that consistency  
7 with what the witness said on other occasions, the  
8 credibility of the witness generally and the witness's  
9 demeanour.

10  
11 There is a clear distinction, sir, between suggesting  
12 to a witness that they are wrong because they had  
13 limited opportunity to view an event and clearly  
14 stating that a witness is not telling the truth because  
15 of unrelated matters. Examples of the latter would 14:59  
16 perhaps include some previous convictions of the  
17 witness, lies told on previous occasions and perhaps  
18 some interest in the outcome of the proceedings. The  
19 former is designed to demonstrate that a witness cannot  
20 be relied upon on this occasion because his testimony 15:00  
21 is vulnerable to objective scrutiny when contrasted to  
22 the other known or proved facts. The latter is  
23 designed to expose the witness as someone who because  
24 of their bad character is incapable of belief.

25  
26 Sir, within the terms of reference as set by the  
27 Oireachtas, you will find reference to a requirement to  
28 consider whether Sergeant Maurice McCabe was "*driven by*  
29 *agendas*", that agenda being based on "*an allegation of*



1 *criminal misconduct made against him*" and that in  
2 consequence he wished to take revenge against the  
3 Gardaí. It may be argued that a cross-examination  
4 along those lines involves an attack on the character  
5 of Sergeant McCabe so as to expose him as someone who 15:00  
6 should not be believed.

7  
8 Sir, the Tribunal has been in correspondence with  
9 Commissioner O'Sullivan as to whether she wishes to  
10 waive legal privilege in relation to whatever 15:01  
11 instructions she gave to counselling appearing on her  
12 behalf before the O'Higgins Commission.

13  
14 Furthermore, it is worth pointing out that counsel on  
15 behalf of the Commissioner also appeared on behalf of 15:01  
16 24 other named Gardaí. They included Assistant  
17 Commissioner Catherine Clancy, retired Chief  
18 Superintendent Colm Rooney, Superintendent Noel  
19 Cunningham, retired Superintendent Maura Lernihan,  
20 retired Chief Superintendent John Grogan, Chief 15:01  
21 Superintendent Michael Clancy, Superintendent Noel  
22 Carolan, Superintendent Karl Heller, Assistant  
23 Commissioner Kieran Kenny, retired Superintendent John  
24 Courtney, Superintendent Gerard Redmond, retired Deputy  
25 Commissioner Walter Rice, Chief Superintendent Brendan 15:01  
26 Cloonan, Assistant Commissioner Dermot Jennings, Chief  
27 Superintendent James Sheridan, Superintendent Thomas  
28 Maguire, Assistant Commissioner Fintan Fanning,  
29 Superintendent John G O'Brien, Superintendent Niall

1 Featherstone, former Commissioner Fachtna Murphy,  
2 former Commissioner Martin Callinan, Sergeant Gavin  
3 Scott, Assistant Commissioner Jack Nolan and  
4 Superintendent Gerard Wall.

5  
6 As you will be aware, sir, legal privilege as we find  
7 it in this context is absolute. Where a party is  
8 requested to consider waiving the privilege it is made  
9 absolutely clear to them that no adverse inference will  
10 be drawn from their failure to assert what is a legal  
11 entitle. However, the Commissioner, in the  
12 circumstances of this Tribunal, has taken the  
13 exceptional approach of waiving her privilege. This  
14 should make your task considerably easier and the  
15 Tribunal is grateful to the Commissioner for the stance  
16 adopted by her.

17  
18 Sir, the O'Higgins Commission was set up on 3rd  
19 February 2015 and on the 25th April 2016 Mr. Justice  
20 O'Higgins sent his final report to the Minister for  
21 Justice. As in all such exercises, clearly between the  
22 set up of the Commission and the commencement of  
23 hearings there was a period of preparation.

24  
25 The Commission heard 34 days of evidence and day one  
26 commenced on Thursday, 14th May 2015. What is of  
27 particular interest in relation to the report is that  
28 the vast majority of it relates to issues as to what  
29 happened or did not happen. There is very little in

1 the report that could be regarded as contest as to  
2 credibility, as where two people have a private meeting  
3 or encounter and each later tell diametrically  
4 different accounts. Usually cross-examination as to  
5 credit arises in that context.

15:03

6  
7 Sir, on day 2 of the hearings of the O'Higgins  
8 Commission a reference was made by Chief Superintendent  
9 Colm Rooney to the supposed incident of 1998 which,  
10 when ultimately remembered and reported by Ms. D in  
11 2006, was described by the Director of Public  
12 Prosecutions on the 5th April 2007 as not being an  
13 assault let alone a sexual assault.

15:04

14  
15 Against an objection by counsel for the Commission, who  
16 pointed out that the evidence appeared to be outside  
17 the terms of reference, Chief Superintendent Rooney  
18 described an incident in late 2007 when he alleged  
19 Sergeant Maurice McCabe came to him, and I quote:

15:04

20  
21 *"Demanded of me that I write to the Director of Public*  
22 *Prosecutions and challenge the decision that the*  
23 *Director of Public Prosecutions had made in respect of*  
24 *him."*

15:04

25  
26 Replying to the objection of counsel for the Tribunal,  
27 counsel for the Garda Commissioner and other Gardaí  
28 stated:

15:04

1           *"Can I say, Judge, perhaps you should hear us since*  
2           *this is a private hearing. The relevance may be in the*  
3           *context of motivation for certain facts or for certain*  
4           *matters or indeed credibility in relation to the*  
5           *certain matters."*

15:05

6  
7           Counsel for Sergeant Maurice McCabe intervened at this  
8           stage and asked for clarification as to whether the  
9           questions proposed were going to be asked *"on the firm*  
10           *instructions of the Commissioner and that he knows the*  
11           *answers that he is seeking from this witness"*. There  
12           was also a reference to the appropriateness of this  
13           potential line of examination. After a short break  
14           there was some legal argument during by counsel for the  
15           Commissioner said the following:

15:05

15:05

16  
17           *"I have instructions from the Commissioner, Judge.*  
18           *This is an inquiry dealing with allegations of*  
19           *malpractice and corruption on a grand scale by members*  
20           *of the police... My instructions are to challenge the*  
21           *integrity certainly of Sergeant McCabe and his*  
22           *motivation... his motivation and his credibility in*  
23           *mounting these allegations of corruption and*  
24           *malpractice... That is the position, Judge."*

15:05

15:06

25  
26           There then followed the following exchange between  
27           counsel for the Commissioner and Mr. Justice O'Higgins:

28  
29           *"Mr. Justice O'Higgins: Yes. It seems, unless I am*

1 *mistaken... that your case is in relation to the*  
2 *matters under investigation subject only perhaps to*  
3 *matters that deal with general staffing levels, the*  
4 *condition of the Garda station in Bailieboro, that most*  
5 *of the matters deal with factual issues and you are* 15:06  
6 *saying that Garda McCabe's complaints on your*  
7 *instructions are motivated, that they are not properly*  
8 *motivated, that they are not genuine, that they are*  
9 *done for improper motives.*

10  
11 *Counsel: whatever the reasons are for it on his side* 15:06  
12 *and it runs right through all the --*

13  
14 *Mr. Justice O'Higgins: But you are attacking his*  
15 *motivation and you are attacking his integrity.* 15:07

16  
17 *Counsel: Right the way through.*

18  
19 *Mr. Justice O'Higgins: Full stop.*

20  
21 *Counsel: Yes. Full stop.* 15:07

22  
23 *Mr. Justice O'Higgins: So be it.*

24  
25 *Counsel: Yes."* 15:07

26  
27 Following further argument, Mr. Justice O'Higgins  
28 pointed out that if there was no issue on the facts the  
29 issue of credibility would not arise. Following

1 further argument a break was bought by counsel for the  
2 Commissioner and on resumption he simply said:

3  
4 *"My instructions are re-confirmed."*

5  
6 Sir, on Monday, 18th May 2015, which was the third day  
7 of hearings, the following question was put by counsel  
8 for the Garda Commissioner to  
9 Superintendent Cunningham:

10  
11 *"Superintendent, you were that Sergeant McCabe had a*  
12 *personal grievance with the guards (sic), you don't*  
13 *have to say what the grievance was, but you were aware*  
14 *of that?"*

15  
16 Superintendent Cunningham said that he was and then  
17 asked to *"put a timeframe on when you became aware of*  
18 *the personal grievance"* and replied that it was *"early*  
19 *in 2007"*.

20  
21 Sir, as you will be aware from reading the materials  
22 before you, the complaint to the Gardaí from Ms. D was  
23 made on the 5th December 2006 and Sergeant McCabe was  
24 interviewed in relation to it on the 22nd December  
25 2006. Various other statements were taken and a full  
26 garda investigation file was sent to the Director of  
27 Public Prosecutions on the 1st March 2007.

28  
29 On day 3 of the hearings of the O'Higgins Commission,

1 Sergeant McCabe was giving evidence on one of the  
2 modules and was cross-examined by counsel for the Garda  
3 Commissioner. The following question was put to  
4 Sergeant McCabe:

5  
6 *"Then we know that you have a personal grievance with*  
7 *the guards, isn't that right?"*  
8

15:08

9 Sergeant McCabe denied this and said that in relation  
10 to the letter from the Director of Public Prosecutions  
11 that his issue with Superintendent Cunningham was the  
12 fact that this decision of the Director of Public  
13 Prosecutions had been with him for three weeks before  
14 the news had been passed on. That is to  
15 Sergeant McCabe.

15:09

15:09

16  
17 Later, an issue was introduced into the proceedings as  
18 to whether Superintendent Cunningham had been told by  
19 Sergeant McCabe that he had only made a complaint  
20 against Superintendent Clancy in order to get hold of  
21 the actual text of the letter from the DPP. Again on  
22 day 4 of the hearings, it was suggested that  
23 Sergeant McCabe had sought what was described as "*a*  
24 *declaration of his innocence from the Director of*  
25 *Public Prosecutions in relation to the allegation that*  
26 *was made against him*".

15:09

15:09

27  
28 Sir on day 29 of the hearings, which was Wednesday, 4th  
29 November 2015, Mr. Justice O'Higgins returned to the

1 exchange that had taken place on day 3 of the hearings,  
2 this arose in circumstances where the Commissioner,  
3 Nóirín O'Sullivan, was actually present at the  
4 Commission, and Mr. Justice O'Higgins, referring to the  
5 earlier day 3 interaction between him and counsel, he 15:10  
6 asked for further clarification in relation to what he  
7 perceived to be an attack on his motivation and  
8 integrity.

9  
10 Counsel sought to clarify what he had previously 15:10  
11 submitted by saying that he had never intended to  
12 suggest *malá fides* on the part of the Sergeant McCabe.  
13 Is there a difference between a lack of integrity and  
14 *malá fides*? Counsel was asked by Mr. Justice O'Higgins  
15 as to whether he was continuing by "*attacking his* 15:11  
16 *motivation and... attacking his integrity*". Counsel  
17 replied:

18  
19 *"In relation to the corruption and malpractice*  
20 *allegations, yes. He has alleged corruption on the* 15:11  
21 *grand scale against Superintendent Clancy, as he then*  
22 *was, and Superintendent Cunningham and also against*  
23 *former Commissioner Callinan... amongst others. He*  
24 *indeed also made allegations of corruption against*  
25 *Assistant Commissioner Byrne and Chief Superintendent* 15:11  
26 *McGinn. He withdrew these allegations but he was*  
27 *invited to withdraw allegations of corruption against*  
28 *former Commissioner Callinan and he refused to do so...*  
29 *As far as the Commissioner was concerned at all stages*



1 *I had instructions to challenge Sergeant McCabe in*  
2 *relation to motivation and credibility."*

3  
4 In response to a mention from Mr. Justice O'Higgins,  
5 again of integrity, counsel replied "*No, there was no* 15:12  
6 *mention of integrity*".

7  
8 Mr. Justice O'Higgins rightly pointed out that in  
9 indeed integrity had been mentioned previously by  
10 counsel at an earlier hearing, and if someone was 15:12  
11 "*motivated by malice or some such motive that impinges*  
12 *on his integrity*". While this may be regarded as the  
13 introduction of credibility into what is an  
14 increasingly cloudy and fraught set of submissions to  
15 Mr. Justice O'Higgins, counsel for the Commissioner 15:12  
16 clarified, if clarification it was, that his  
17 instructions were, and I quote, to challenge "*his*  
18 *motivation and his credibility only*" and that this was  
19 in relation to "*mounting these allegations of*  
20 *corruption and malpractice*". 15:13

21  
22 Mr. Justice O'Higgins then confirmed "*Sergeant McCabe's*  
23 *integrity is not now being challenged*". There was then  
24 a further clarification from counsel for the  
25 Commissioner: 15:13

26  
27 "*Judge, the Commissioner has a duty of care to all*  
28 *members. She wasn't acquiescing and then she has to*  
29 *hold the balance between on the one part she has*

1           *Sergeant McCabe who she has a concern for and for his*  
2           *welfare, and on the other hand she has a concern for*  
3           *superintendents who are under her control and she has*  
4           *to hold the balance. She cannot come down on the side*  
5           *of Sergeant McCabe and say I agree with everything he* 15:13  
6           *says without challenge or I am simply acquiescing to*  
7           *everything he says."*

8  
9           Sir, facts may be challenged, and clearly were  
10          challenged throughout the rest of the hearings before 15:14  
11          Mr. Justice O'Higgins, but this appears to be the last  
12          reference to the sexual assault allegation as a means  
13          of undermining Sergeant McCabe as a witness. The only  
14          other mention in the transcript occurs on day 32, which  
15          was on Tuesday, 8th December 2015, and this is in an 15:14  
16          entirely different context when Superintendent  
17          Cunningham agreed that Sergeant McCabe was, and I  
18          quote, "*a very dedicated member of*" the police and that  
19          every officer with whom he had "*worked*" could "*vouch*  
20          *for this*". He also spoke about the strain that 15:14  
21          resulted from the sexual assault allegation.

22  
23          Sir, such an allegation does have a tendency to ruin  
24          lives and cause people to come to the conclusion that  
25          because an allegation has been made that it is not 15:14  
26          baseless but correct. Sergeant McCabe was under enough  
27          strain in consequence of the allegation having been  
28          made in the first place. It was clearly adjudicated  
29          upon by the Director of Public Prosecutions. Any fair

1 minded person applying the presumption of innocence and  
2 looking at the allegation in context would not have  
3 mentioned the matter again. Indeed, Sergeant McCabe  
4 was fully entitled, insofar as he could, to leave it in  
5 the past and to consign it to history. 15:15

6  
7 Sir, it is for you to decide whether this allegation or  
8 indeed if any other unjustified grounds were  
9 inappropriately relied upon by Commissioner O'Sullivan  
10 to discredit Sergeant Maurice McCabe during the hearing 15:15  
11 of the O'Higgins Commission.

12  
13 It is hoped that this matter will be dealt with in  
14 December of this year.

15 15:15  
16 Sir, if I can just touch lastly and briefly in relation  
17 to the privilege against revealing a confidential  
18 source.

19  
20 Sir, there are a number of forms of privilege which 15:16  
21 protect people from disclosing information or documents  
22 relevant to court proceedings, notwithstanding their  
23 relevance to the proper administration of justice and  
24 this may encompass journalistic privilege. This,  
25 however, is heavily dependent on the circumstances. It 15:16  
26 does not seem to us that there is any blanket privilege  
27 against the protection of sources by journalists and  
28 nor does it emerge from any decided case either in  
29 Ireland or before the European Court of Human Rights

1 that the privilege is absolute. In other words,  
2 journalists do have a privilege against the disclosure  
3 of sources but this depends on the facts and it may be  
4 overridden.

5  
6 The great American jurist John Henry Wigmore in his  
7 Treatise on the Anglo-American System of Evidence in  
8 Trials at Common Law suggest that there are four  
9 conditions that need to be satisfied before a  
10 particular relationship of confidence can override the 15:17  
11 general principle that the law is entitled to the  
12 evidence of every person. These conditions are:

- 13 1. The communication must originate in a confidence  
14 that will not be disclosed;
- 15 2. This element of confidentiality must be essential 15:17  
16 to the full and satisfactory maintenance of the  
17 relationship between the parties;
- 18 3. The relationship must be one which in the opinion  
19 of the community ought to be sedulously fostered; and
- 20 4. The injury that would inure to the relation by the 15:18  
21 disclosure of the communication must be greater than  
22 the benefit thereby gained for the correct disposal of  
23 the litigation.

24  
25 Sir, these general principles have been recognised in a 15:18  
26 number of cases concerning sacerdotal privilege,  
27 informer privilege and also with journalistic  
28 privilege. However, every such privilege is subject to  
29 the overriding principle that there may be

1 circumstances where the interests of justice override  
2 the community's interest in the maintenance of the  
3 confidential relationship.

4  
5 The innocence at stake exception is an example of that 15:18  
6 in relation to informer privilege, though there the  
7 appropriate action by the authorities appears to  
8 discontinue a prosecution. Nevertheless an informer  
9 may waive privilege by making public declarations as to  
10 the subject matter or by voluntarily coming forward to 15:19  
11 a public forum and seeking to be heard.

12  
13 Sir, as you are well aware exactly, this occurred  
14 before the Morris Tribunal in relation to the  
15 confidential relationship which up to that point had 15:19  
16 existed between a garda superintendent and a supposed  
17 source, who was in fact working on his behalf in a most  
18 unconventional way.

19  
20 Diplomatic privilege may also be waived and, as we have 15:19  
21 referred to earlier, Commissioner O'Sullivan has waived  
22 her entitlement to legal professional privilege with  
23 regard to her communications to her counsel at the  
24 O'Higgins Commission. It should be noted that it is  
25 her privilege and not that of the lawyers who represent 15:19  
26 her.

27  
28 Sir, you will be aware of the leading case under the  
29 European Convention on Human Rights, which is *Goodwin*

1 v. *United Kingdom*. There, in a ruling, which has been  
2 repeated since, it was first delivered in 1996, the  
3 European Court of Human Rights stated as follows:  
4

5 *"Protection of journalistic sources is one of the basic* 15:20  
6 *conditions for press freedom, as is reflected in the*  
7 *laws and the professional codes of conduct in a number*  
8 *of contracting states and is affirmed in several*  
9 *international instruments and journalistic freedoms...*  
10 *Without such protection, sources may be deterred from* 15:20  
11 *assisting the press in informing the public on matters*  
12 *of public interest. As a result, the vital public*  
13 *watchdog role of the press may be undermined and the*  
14 *ability of the press to provide accurate and reliable*  
15 *information may be adversely affected. Having regard* 15:20  
16 *to the importance of the protection of journalistic*  
17 *sources for press freedom in a democratic society and*  
18 *the potentially chilling effect an order of source*  
19 *disclosure has for the exercise of that freedom, such a*  
20 *measure cannot be compatible with Article 10 of the* 15:21  
21 *Convention unless it is justified by an overriding*  
22 *requirement in the public interest."*

23  
24 Sir, these principles which bear kinship, at least in  
25 reasoning, with the wigmore analysis have been applied 15:21  
26 by that Court whenever the issue of journalistic  
27 privilege has been referred to it. In *Mahon v. Keena*  
28 [2009] IESC 64, those principles were applied by the  
29 Supreme Court in the context indeed of a Tribunal of

1 Inquiry. The court emphasised in its analysis of the  
2 relevant case law that the right to freedom of  
3 expression is not unlimited and that the press must not  
4 "overstep certain bounds". Article 10, therefore, does  
5 not "guarantee a wholly unrestricted freedom of  
6 expression even with respect to press coverage of  
7 matters of serious public concern".

15:22

8  
9 We would also point out that the High Court has held in  
10 *Walsh v. News Group Newspapers* [2012] IEHC 353, that a  
11 privilege against the disclosure of a confidential  
12 source cannot be asserted by a journalist in respect of  
13 communications where the identity of that source has  
14 been disclosed. Sir, as we have mentioned earlier,  
15 exactly the situation arose in the Morris Tribunal.  
16 Recent decisions of the European Court seem to suggest  
17 that this may not be dispositive of the issue.

15:22

15:22

18  
19 Do we have the same situation here? You will be aware,  
20 sir, that at the heart of your investigation are two  
21 protected disclosures that would be protected by  
22 legislation against any form of publication. In  
23 reality, what we are concerned with is one particular  
24 disclosure, namely that of Superintendent David Taylor  
25 of the 30th September 2016. In consequence of various  
26 interactions between him and the Garda authorities and  
27 with Sergeant Maurice McCabe, he has waived any  
28 statutory or any other kind of privilege that he may  
29 have.

15:23

15:23

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29

Therefore, he has voluntarily come forward into the public domain. He has not only identified himself as the source but also the information he claims he was briefed to disseminate. He has also disclosed the manner in which he used journalists to spread what can only be referred to as gossip.

15:23

The allegations made by Superintendent Taylor have been widely publicised to the detriment of the character and standing of former Commissioner Callinan and his successor Commissioner O'Sullivan.

15:24

Sir, the notion that there is no smoke without fire may be a very powerful one here. Certainly those against whom unjustified allegations are made in the sphere of sexual violence have cause for complaint because it is a rare, as we have mentioned, that fair-minded people will immediately apply the presumption of innocence. That is part of the training of lawyers and it may not be part of the training of journalists, much less those of the consumers of news.

15:24

15:24

But what about these allegations? Are these not serious? Are these not allegations which may lead people to conclude that at the very top in Garda Headquarters they are engaged in determined efforts to destroy any person who would undermine the notion that members of the Gardaí can do no wrong? Is there a

15:25



1 situation here of overriding public interest in seeking  
2 out the truth?

3  
4 But then we also have the perspective of  
5 Superintendent David Taylor. If he is wrong in what he 15:25  
6 says then he could perhaps be characterised as a most  
7 mischievous individual. It is not right to attack and  
8 undermine peoples' characters, by which I mean former  
9 Commissioner Callinan and Commissioner O'Sullivan,  
10 unless such calumny is based in truth. 15:25

11  
12 He has publicly come forward and identified himself as  
13 a source. Is this therefore the situation that arose  
14 in the Irish courts in the *walsh* case? Furthermore, he  
15 has waived any privilege through a formal document 15:26  
16 provided to this Tribunal. In what way does the  
17 protection of the very important relationship of  
18 journalists and their sources come under threat through  
19 his actions? Has Superintendent Taylor not come to the  
20 public and asked to be believed and does not part of 15:26  
21 this necessarily involve us asking the journalists he  
22 says he sourced information to, to confirm what he is  
23 saying? Or perhaps they may refute what he is saying  
24 and lay bare a lie.

25  
26 Sir, these ultimately are all questions that you must  
27 decide.

1                   **Concluding Remarks**

2                   We will be in a position to distribute relevant  
3                   documents in relation to the first section of our work  
4                   which concerns Rian, the Health Service Executive and  
5                   the Child and Family Agency, otherwise known as Tusla, 15:27  
6                   tomorrow. The work will thus unfold. People should  
7                   watch the website because these hearings will take  
8                   place in two weeks time and we intend concluding as  
9                   soon as we possibly can.

10  
11                   Sir, we intend to come directly to the point in terms  
12                   of what questions we ask witnesses and we would ask our  
13                   colleagues who need to ask questions, and only if they  
14                   need to ask questions, to do the same. We hope that  
15                   this opening statement has outlined what the potential 15:27  
16                   issues are and where the lines of controversy may be  
17                   drawn as between the witnesses and the protagonists.

18  
19                   **THE HEARING THEN ADJOURNED**

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