

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

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON FRIDAY, 18TH OCTOBER 2019 - DAY 103

103

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

GWEN MALONE STENOGRAPHY
SERVICES

APPEARANCES

SOLE MEMBER: MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF
APPEAL

REGISTRAR: MR. PHILIP BARNES

FOR THE TRIBUNAL: MR. DIARMAID McGUINESS SC
MR. PATRICK MARRINAN SC
MS. SINÉAD McGRATH BL
MR. JOHN DAVIS, SOLICITOR

FOR GARDA NICHOLAS KEOGH: MR. MATTHIAS KELLY SC
MR. PATRICK R. O'BRIEN BL
MS. AISLING MULLIGAN BL
INSTRUCTED BY: JOHN GERARD CULLEN SOLICITORS
MAIN STREET
TOWNPARKS
CARRICK-ON-SHANNON
CO. LEITRIM

FOR SUPERINTENDENT
NOREEN McBRIEN: MR. PAUL CARROLL SC
MR. JOHN FERRY BL
INSTRUCTED BY: CARTHAGE CONLON
O'MARA GERAGHTY McCOURT
SOLICITORS
51 NORTHUMBERLAND ROAD
DUBLIN 4

FOR ASSISTANT COMMISSIONER
FINTAN FANNING: MR. PAUL McGARRY SC
MR. STEPHEN O'CONNOR BL
INSTRUCTED BY: SEAN COSTELLO & COMPANY
SOLICITORS
HALIDAY HOUSE
32 ARRAN QUAY
SMITHFIELD
DUBLIN 7

FOR GARDA FERGAL GREENE,
GARDA STEPHANIE TREACY
& GARDA DAVID TURNER: MR. PATRICK McGRATH SC
MR. JAMES KANE BL
MR. EOIN LAWLOR BL
INSTRUCTED BY: MS. ELIZABETH HUGHES
MS. ÉABHALL NÍ CHEALLACHÁIN
HUGHES MURPHY SOLICITORS
13 WELLINGTON QUAY
TEMPLE BAR
DUBLIN 2

FOR

1. COMMISSIONER OF AN GARDA SÍOCHÁNA
2. CHIEF SUPERINTENDENT PATRICK MURRAY
3. CHIEF SUPERINTENDENT MARK CURRAN
4. DETECTIVE INSPECTOR MICHAEL COPPINGER
5. CHIEF SUPERINTENDENT LORRAINE WHEATLEY
6. RETIRED DETECTIVE SUPERINTENDENT DECLAN MULCAHY
7. ASSISTANT COMMISSIONER MICHAEL FINN
8. CHIEF SUPERINTENDENT ANTHONY MCLOUGHLIN
9. RETIRED ASSISTANT COMMISSIONER JACK NOLAN
10. RETIRED ACTING COMMISSIONER DONAL Ó CUALÁIN
11. RETIRED COMMISSIONER NOIRÍN O' SULLIVAN
12. ASSISTANT COMMISSIONER ANNE MARIE MCMAHON
13. CHIEF SUPERINTENDENT JOHN SCANLAN
14. SUPERINTENDENT ALAN MURRAY
15. SUPERINTENDENT AIDAN MINNOCK
16. INSPECTOR EAMON CURLEY
17. GARDA MICHAEL QUINN
18. RETIRED GARDA GERRY WHITE
19. CHIEF MEDICAL OFFICER DR. OGHUVBU
20. GARDA OLIVIA KELLY
21. RETIRED DETECTIVE SERGEANT TOM JUDGE
22. MR. ALAN MULLIGAN, ACTING EXECUTIVE DIRECTOR
23. RETIRED DETECTIVE CHIEF SUPERINTENDENT PETER KIRWAN
24. MR. JOE NUGENT, CHIEF ADMINISTRATIVE OFFICER
25. CHIEF SUPERINTENDENT KEVIN GRALTON
26. INSPECTOR BRIAN DOWNEY
27. MONICA CARR, HEAD OF DIRECTORATE, HUMAN RESOURCES AND PEOPLE DEVELOPMENT
28. MR. BRIAN SAVAGE
29. CHIEF SUPERINTENDENT ANNE MARIE CAGNEY
30. DETECTIVE INSPECTOR SEAN O'REARDON
31. INSPECTOR LIAM MORONEY
32. ASSISTANT COMMISSIONER DAVID SHEAHAN
33. CHIEF SUPERINTENDENT MATT NYLAND
34. CHIEF SUPERINTENDENT MICHAEL FLYNN
35. SERGEANT KIERAN DOWNEY
36. ASSISTANT COMMISSIONER ORLA MCPARTLIN
37. CHIEF SUPERINTENDENT MARGARET NUGENT
38. GARDA AISLING SHANKEY-SMITH
39. INSPECTOR TARA GOODE

INSTRUCTED BY:

MR. SHANE MURPHY SC
MR. MÍCHEÁL P. O'HIGGINS SC
MR. CONOR DIGNAM SC
MR. DONAL MCGUINNESS BL
MS. SHELLEY HORAN BL
MS. KATE EGAN BL
MS. ALISON MORRISSEY
MS. EMMA GRIFFIN
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR MS. OLIVIA O'NEILL:
INSTRUCTED BY:

MR. JOHN CONNELLAN BL
MR. PAUL CONNELLAN
T&N McLYNN
BASTION COURT
11-13 CONNAUGHT STREET
ATHLONE
CO. WESTMEATH

FOR AGSI,
INSPECTOR NICHOLAS FARRELL,
SERGEANT ANDREW HARAN,
SERGEANT AIDAN LYONS,
SERGEANT SANDRA KEANÉ:

INSTRUCTED BY:

MR. DESMOND DOCKERY SC
MS. SINEAD GLEESON BL
REDDY CHARLTON SOLICITORS
12 FITZWILLIAM PLACE
DUBLIN 2

I N D E X

W I T N E S S

P A G E

SUBMISSION BY MR. KELLY 6

GARDA NICHOLAS KEOGH

QUESTIONED BY MR. MCGUINNESS 10

1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 18TH
2 OCTOBER 2019:

3
4 CHAIRMAN: Morning.

5 MR. KELLY: Good morning, Chairman. 10:30

6 CHAIRMAN: I am sorry, Mr. Kelly, I am looking in the
7 wrong direction. Good morning Mr. Kelly. Yes.

8 MR. KELLY: Morning, Chairman. Garda Keogh is back.

9 CHAIRMAN: Very good. Thanks very much.

10 MR. KELLY: Yesterday, you very kindly gave everybody 10:30
11 an opportunity to think about the position and I said I
12 would make some very succinct submissions.

13 CHAIRMAN: Yes.

14
15 SUBMISSION BY MR. KELLY: 10:30

16
17 MR. KELLY: Our position is simply this, Chairman: We
18 say that where a member is not available for duty as a
19 result of an injury or work related stress, that
20 effectively what it amounts to is there has to be an 10:31
21 investigation and the 183 days of which we spoke
22 doesn't kick in because it's work related. We say that
23 it follows, obviously, from that, as a matter of common
24 sense, that local management is also obliged to address
25 the issues causing the member's stress. 10:31

26
27 Be that as it may, it's my view that what we should do
28 is just concentrate on the facts rather than get into
29 submissions about what the regulations say at this

1 stage. That can come later.

2 CHAIRMAN: Yes, I understand that.

3 MR. KELLY: The legal framework. That's the way I
4 would approach it, Mr. Chairman.

5 CHAIRMAN: Are you happy with that, Mr. McGuinness? 10:31

6 MR. MCGUINNESS: Yes. Mr. Kelly was kind enough to
7 inform me of his view of the position and certainly, I
8 mean obviously I went through the SAMS screen shots
9 with Garda Keogh, and I wasn't intending to take him
10 through regulations or -- 10:31

11 CHAIRMAN: No, no, I understand. For my part, I have
12 to say, I am grateful for the illumination of the
13 issues. I mean, Mr. Kelly has now summarised it in a
14 couple of sentences. I didn't know that that was the
15 position. I now understand that that was the position, 10:32
16 as a result of the exchanges yesterday and the
17 documents that were shown. So, as far as I'm
18 concerned, I am completely happy with that.

19

20 Mr. Murphy, you don't have anything really to say about 10:32
21 this, do you? Or if you do, do you agree with the
22 remarks of the last speaker.

23 MR. MURPHY: No, I don't think I do, Chairman.

24 CHAIRMAN: No, I don't think so.

25 MR. MURPHY: I think, as I understood, Mr. Kelly was 10:32
26 indicating that that's his client's and his view of the
27 regulations.

28 CHAIRMAN: Of course. What Mr. Kelly is saying is, as
29 I understand it, listen, the time for argument about

1 the scope and meaning of the regulations is another
2 day, we don't need to trouble at this stage, merely the
3 fact of the matter.

4 MR. MURPHY: Yes, Chairman.

5 CHAIRMAN: I also think it's useful that Garda Keogh 10:32
6 had the opportunity of saying, look, what's the essence
7 of my complaint? whether it's correct or not is
8 another thing, the essence of his complaint is: I was
9 categorised under one thing, it should have been
10 categorised under another, so that the question of the 10:33
11 reduction does never have arisen. That's essentially
12 as I understand what the situation is.

13

14 Okay, thanks for that, people. what do you say,
15 Mr. McGuinness? So you are ready to proceed with Garda 10:33
16 Keogh.

17 MR. MCGUINNESS: Yes, I am ready to proceed. In
18 advance of that, I should just say something in advance
19 to people for planning the next stage.

20 CHAIRMAN: Please do. 10:33

21 MR. MCGUINNESS: I had set a target date or time that I
22 might be finished with Garda Keogh's examination today
23 and having reviewed the few issues that are left, I
24 don't believe that I will finish my examination today.

25 CHAIRMAN: Yes. 10:33

26 MR. MCGUINNESS: But I do hope that I might finish by
27 Monday lunchtime.

28 CHAIRMAN: Right.

29 MR. MCGUINNESS: Obviously, I don't want to curtail

1 Garda Keogh in any way.

2 CHAIRMAN: No, but your estimate --

3 MR. McGUI NNESS: My estimate, all things being equal,

4 that I would expect to finish by lunchtime on Monday.

5 CHAIRMAN: Thank you very much. 10:34

6 MR. McGUI NNESS: That is without rushing myself or

7 Garda Keogh.

8 CHAIRMAN: So cross-examination would then begin.

9 MR. McGUI NNESS: Yes. Just for the assistance of

10 others, I have spoken to the various parties and the 10:34

11 proposal which has been put forward, Chairman, for your

12 approval, is that we would start over here with the

13 representatives of the members, the sergeants, the

14 inspectors and so forth and come around to Mr. Murphy

15 then, who has got a very extensive list of clients who 10:34

16 he represents and then Mr. Kelly.

17 CHAIRMAN: Mr. McGuinness, if you and your colleagues

18 have agreed on such a scheme, then I certainly won't

19 interfere with it. Obviously if it struck me that it

20 was in some way not satisfactory, I would say so. But 10:35

21 otherwise, I am satisfied with that. There's no

22 problem with that. So that's the way we will proceed.

23 So everybody then knows what the general scheme is, and

24 Garda Keogh knows sort of broadly speaking what to

25 expect. 10:35

26 MR. McGUI NNESS: Thank you, Chairman.

27 CHAIRMAN: Thanks very much. Very good. Now, Garda

28 Keogh. Thanks very much.

29

1 GARDA NICHOLAS KEOGH CONTINUED TO BE QUESTIONED BY
2 MR. MCGUINNESS, AS FOLLOWS:

- 3
- 4 1 Q. MR. MCGUINNESS: Good morning, Garda Keogh?
- 5 A. Good morning. 10:35
- 6 2 Q. When we were dealing with this issue last, which is
7 issue 12, concerning the misrecording of your sick
8 leave, I think you probably were aware from Athlone
9 Garda Station that it was Garda Olivia Kelly who was
10 processing your sick absences onto the system in 10:36
11 Athlone?
- 12 A. I read that. Like I know Garda Kelly was -- I know she
13 was doing something upstairs, but I actually -- it's
14 obvious that's her role.
- 15 3 Q. Yes. 10:36
- 16 A. As I said, I'm not au fait with anything to do the SAMS
17 system or anything.
- 18 4 Q. All right. Okay. Well, I am not going examine you in
19 detail about what her function is, but I think from
20 your point of view, when you or any other member 10:36
21 reports sick, that's often done over the phone?
- 22 A. Yes.
- 23 5 Q. Or by any other means of communication?
- 24 A. Yes.
- 25 6 Q. You will understand that a form, an SR1 is then 10:36
26 completed, the entries on it are made, starting the
27 process, as it were.
- 28 A. I understand that part of it, yes.
- 29 7 Q. Yes. Garda Kelly's job then, as she describes it in

1 volume 12, page 3640, is that she receives a form and
2 then she opens up the sickness absence management
3 system on the computer, and then she creates an entry
4 relating to the absence and then that entry is then
5 kept there until the guard returns to work and she can 10:37
6 then complete the details on the resumption of duty of
7 the member.

8 A. I would accept that. As I said, I don't know how it
9 works.

10 8 Q. Yes. 10:37

11 A. Yeah.

12 9 Q. She said that in the majority of the forms that the SR1
13 doesn't record the type of illness. I am going to open
14 your forms to you, just a few selected ones. There's a
15 large batch of them in the papers. 10:37

16 A. Yes.

17 10 Q. I am sure you have seen them. She said that she didn't
18 treat your sickness differently than any other member.
19 That you reported sick and returned to work on 18
20 different occasions between 20th December '14 until 10:37
21 your current absence at the end of December '15, isn't
22 that right?

23 A. Yes.

24 11 Q. According to her recollection, none of the SR1 forms
25 stated that a sickness was due to work related stress 10:38
26 but the medical certificates stated they did related to
27 work related stress?

28 A. Yes.

29 12 Q. Now obviously, like any employee, she would have leave

1 and holidays and somebody else presumably substituted
2 for her.

3 A. I read Garda Kelly's statement. I have no issue with
4 anything there.

5 13 Q. Yes. 10:38

6 A. Yeah.

7 14 Q. So the point is that as far as your absences were
8 concerned, she would receive the SR1, a medical cert
9 wouldn't come in at the time she triggers the system.
10 So when she creates the entry on SAMS, it's recorded as 10:38
11 an ordinary illness. And also, in particular, there
12 was no category on the system for recording work
13 related stress. I don't know if you accept that or
14 not?

15 A. I think we established that yesterday. 10:39

16 15 Q. Yes. She furnished a report to Superintendent McBrien
17 on 24th May '16 in relation to the changing of the SAMS
18 category, and that was something that had come about as
19 a result of your complaint arising from what you
20 discover with the doctor, the CMO, in December of '15. 10:39

21 A. Yes.

22 16 Q. That led to the change being made from ordinary illness
23 to mental health at that stage, in May '16, I think you
24 would agree with that?

25 A. Yeah. 10:39

26 17 Q. It might be helpful then to perhaps look at some of the
27 SR1s relating to you. These are found in volume 33 of
28 the papers. Maybe if we commence at page 9314. It's
29 just a sample. Some show nothing in the box, some show

1 handwritten entries. But these are the documents then
2 on which, whether it's Garda Kelly or somebody in her
3 absence, then input the information. That's one from
4 August, for example. There is "other" ticked in that
5 "ordinary illness category". If we go down the page, 10:40
6 this seems to be an important part of the system, as it
7 were, this portion in black ink there.

8
9 "An absence must be categorised as ordinary illness
10 until such time as a certificate in accordance with 10:41
11 rule 11.37 has been issued by the chief superintendent.
12 An absence must also be categorised as ordinary illness
13 until such time as it is classified as critical illness
14 by HRM CMO, at which time the absence category must be
15 amended accordingly." 10:41

16
17 So it seems to be a presumption that it's is an
18 ordinary illness until the system sort of finds it
19 otherwise. I am not asking you to comment on whether
20 that's is good or bad, but that seems to be the way. 10:41
21 Was that your understanding, in fact, at any stage or
22 did you know? Was that your understanding at the time
23 as to how the system worked or did you know?

24 A. As I said, I wouldn't really know how the system
25 worked. 10:41

26 18 Q. Okay.

27 A. Like, on this one like, I suppose I wouldn't like to
28 see Garda Olivia Kelly being put in a place of cannon
29 fodder, let's say, between a thing with myself and

1 nothing specified there. Then 9320. Sorry, that
2 related to the 15th, this relates to the 9th, 9320?
3 A. Just in relation to that, like, they did a fairly
4 comprehensive investigation in relation to that time,
5 that incident, the AWOL incident, let's say, there is 10:44
6 no way Garda management could have missed that I was --
7 you know, that I wasn't sick, work related stress,
8 could not have missed that in their -- that would my
9 argument or point.

10 23 Q. Yes, I understand, of course. Then 9322. This is 10:44
11 where it seems to get a tick in the "flu/viral" box,
12 for whatever reason, in June of '15, at this initial
13 reporting stage. If we go down to 9324, there's a "not
14 provided" one there. I think at different stages you
15 had certificates from Dr. Bartlett, some of them 10:45
16 related to abdominal pains?

17 A. That's years, that was -- we're going back a couple of
18 years. The work related stress starts the end of 2014
19 and it continues on, it's all work related stress.

20 24 Q. But in any event, as it's reported here initially, it's 10:45
21 a "not provided" one at that point in time. That is
22 9324. Then 9328 is an example that may be of some
23 interest or relevance. This is 20th April 2015. Just
24 scroll down a tiny bit more. I am not sure whose
25 signature that is, you probably recognise that. But 10:46
26 anyway, whoever made that entry, they put it under the
27 occupational injuries box there.

28 A. Mm-hmm.

29 25 Q. In a handwritten one as that.

1 A. Yes.

2 26 Q. And 9340, there's one on the 1st March. This is around
3 the time of the handover from Superintendent McBrien.
4 Again, that phrase is put in handwriting, but under the
5 other box, which is maybe of interest or relevance at 10:46
6 some stage. Then 9342, is in December '14, where we've
7 seen the couple of Dr. Bartlett's certificates which
8 were gastro, viral gastroenteritis, there is a tick
9 there in this initial report at that point in time.
10
11 Then, if we just go to 9331, this is a notification
12 then which seemed to follow on from you going over the
13 183 on the basis of ordinary illness at that point in
14 time. I mean, I think it's clear what your evidence is
15 going to be in relation to this question, but: when 10:48
16 would you have phoned in sick, I mean, you yourself
17 would never have mentioned flu viral?
18 A. Oh no.

19 27 Q. And you wouldn't have mentioned work related stress on
20 the phone as such, in those terms? 10:48

21 A. No, I would have just rang in and said --

22 28 Q. You're sick?

23 A. Yeah. That would have been, when would I have been
24 equally in the public office with other members ringing
25 in, it's, will you just put me down as sick. 10:48

26 29 Q. Yes.

27 A. Yeah. I wouldn't have ever asked, what are you sick
28 with or anything.

29 30 Q. It's just, I am trying to work through it

1 chronologically. In your statement, page 148-149,
2 which is a complaint actually to the Minister of the
3 14th June, you complain that Superintendent Murray
4 recorded you as being out sick with flu?
5 A. Sorry, the date to the Minister is on the -- 10:49
6 31 Q. 14th June 2016?
7 A. Oh sorry, yeah. Sorry.
8 32 Q. I think you accepted that Superintendent Murray had no
9 actual role in inputting the entries recording you as
10 sick, flu viral? 10:49
11 A. Well, he had to have been aware of it.
12 33 Q. Well, that's a different question. But in terms of the
13 actual misrecording of it, it would appear, through no
14 fault of Garda Kelly's -
15 A. No. 10:49
16 34 Q. - she was inputting into the system, flu viral?
17 A. Correct. No fault of Garda Kelly's.
18 35 Q. Exactly. Now, the issue of recording that, you seem to
19 blame Chief Superintendent Wheatley in some respect in
20 that regard, is that right? 10:50
21 A. Yes.
22 36 Q. Why is that?
23 A. Well, obviously there's the issue with the -- as I
24 said, there's the issue to do with this AWOL thing. So
25 they carried out a very comprehensive investigation to 10:50
26 do with me ringing in sick and whatever. It's fair
27 enough that a mistake could have been made in relation
28 to things with viral flu to work related stress
29 genuinely. But up to that point, once that point --

1 there can't be any mistake. It's not like it's an
2 accident, they have to have spotted it at that stage.
3 Then, as I stated, there's the issue where I am allowed
4 to appeal the discipline matter and I asked for the
5 copy of the statement which I had referenced the stress 10:51
6 that I was under at work and I don't get that copy from
7 Chief Superintendent Wheatley. So I am not saying -- I
8 don't know how -- I didn't get it, that statement when
9 I looked for it. And it referenced work related stress
10 in that statement. 10:51

11 37 Q. Well, perhaps there's also something else that you
12 might want to rely in the sense that, you had actually
13 gone to Dr. Bartlett on the 16th July and you had got
14 the certificate and you put that in and that had
15 formed, in fact, part of the paperwork in the 10:52
16 discipline inquiry, isn't that right?

17 A. Yes.

18 38 Q. So I mean, that was before Superintendent Murray and
19 Chief Superintendent Wheatley, isn't that right? That
20 certificate from your doctor was before them at that 10:52
21 point in time?

22 A. Oh in front of them, yes. Sorry, yes.

23 39 Q. Yes. Just to be clear about the different roles, I
24 think I should put what Superintendent Murray says in
25 his statement to the investigators at page 3094, which 10:52
26 is in volume 11. He says there, 1316, if you scroll
27 down slightly:

28
29 "I had no role in recording sick leave, including Garda

1 Keogh. I never entered data onto the sickness absence
2 management system. The district clerk in Athlone
3 performed that role. This became an issue in May 2016
4 and I was very anxious to bottom it out and the
5 district clerk was able to do that very quickly. It is 10:53
6 referred to in my statement. So on 23rd May 2016, I
7 got a call from Chief Superintendent Wheatley and she
8 said she had been called by Chief Superintendent
9 McLoughlin, that Garda Keogh had phoned him while drunk
10 and was complaining about the category under which his 10:53
11 illness was recorded. I never had any occasion to
12 record on the SAMS system, so I contacted the district
13 clerk and she furnished me with a report of the 24th
14 May, which I attach as exhibit PM 95."

15
16 Garda Kelly confirms that.

17
18 "I forwarded her report to the chief superintendent
19 Westmeath. From my enquiries into the allegation, it
20 had no foundation. Garda Keogh had been recorded in 10:54
21 the category of ordinary illness, sub category of flu
22 viral for some time, including before my arrival in
23 Athlone."

24
25 would you agree that that's factually correct? 10:54

26 A. Sorry, just something caught my eye previously.

27 40 Q. Yes.

28 A. I just recall reading Chief Superintendent McLoughlin's
29 statement, he refers to, you know, communications

1 between me and him. I don't remember him saying what
2 condition I was in or anything like that. But I see
3 Superintendent Murray here says that I was drunk. I
4 mean, I may have been or whatever, I don't know. But I
5 am obviously concerned about the -- I'm ringing Chief 10:54
6 Superintendent McLoughlin in relation to the category
7 or whatever. So, just it's interesting, I don't think,
8 from recollection, I don't think Chief Superintendent
9 McLoughlin goes into -- little comments, throwing in
10 little comments is what I am saying. Sorry, if you 10:55
11 can -- that part.

12 41 Q. You have been distracted.

13 A. Yes.

14 42 Q. That's perfectly understandable. It's really just what
15 Superintendent Murray says about his role there and the 10:55
16 fact that this is the way it had been recorded before
17 he came and he had nothing to do with the way it was
18 being recorded. I think you would agree with that?

19 A. Physically, physically he would have had nothing to do
20 with the way it's recorded. I would accept that. 10:55

21 43 Q. Obviously from the point of view of the system, we have
22 seen the way the system require it to be ordinary
23 illness, until it's certified as something else. This
24 is where the issue arises that you have complained
25 about, which is the duty to enquire into the causes of 10:55
26 the stress, isn't that right?

27 A. Yes.

28 44 Q. Because, if and when enquired into and then certified,
29 it can get you out of the category of ordinary illness,

1 perhaps into a category of occupational injury, isn't
2 that right?

3 A. Yes.

4 45 Q. Could I ask you to look at a document relevant to that,
5 from page 6144 onwards. This is from Mr. Mulligan in 10:56
6 HR to the chief super. It says:

7
8 "It is noted that the above mentioned member's absence
9 from 20th April 2015 to the 25th April was stress
10 related. 10:56

11
12 You should now interview this member in order to
13 establish the source of the member's stress and if it
14 is suggested as being work related, a full
15 investigation should be carried out. 10:56

16
17 This branch requires a full report, referral form and
18 medical certificates in accordance with... relating to
19 the above named member's absence.

20 10:57
21 Please ensure that the member is advised of the welfare
22 service. "

23
24 Then, if we go down to the next page, this is from
25 Chief Superintendent Wheatley. 10:57

26
27 "I refer to your correspondence dated 12th May and now
28 forward the attached report of Superintendent Murray
29 dated 20th May 2015.

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As outlined in the attached correspondence, the district officer Athlone advises that he cannot further explore the reasons for the member's alleged stress as the member is not willing to further discuss the issue, which he states arises out of the involvement and protections under the confidential reporting legislation. 10:57

The district officer Athlone, Superintendent Murray has advised that the member is engaging with the welfare service and has advised the member of its benefits to him. 10:57

Garda Keogh was due for review at the Garda occupational health service on 19th May 2015. 10:57

Then I think the next document is the report of Superintendent Murray. He says:

"I refer to your correspondence of the 12th May and that of Human Resources and People Development dated 7th May 2015. In addition, I attach a copy of my correspondence to you dated 2nd April 2015. As I indicated, Garda Keogh is providing information under Garda Síochána Confidential Reporting of Corruption or Malpractice Regulation 2007. 10:58

When I met the member on 26th March 2015, I discussed

1 his work absence, including the fact that his medical
2 certificates were indicating that he was suffering from
3 work related stress. The member was quick to point out
4 that he was a confidential reporter and had certain
5 protections in that role. He indicated that Assistant 10:58
6 Commissioner Western Region was investigating reports
7 and allegations that he has made to the confidential
8 recipient. Outside of disclosing that, the member was
9 reticent to discuss the work related stress he
10 indicates he is suffering from, relying instead on the 10:58
11 protections he has in the confidential reporting
12 legislation.

13
14 In these circumstances, I cannot further explore the
15 situation with the member. I am aware anecdotally that 10:59
16 a full investigation is being carried out into the
17 member's claims of corruption and malpractice. I have
18 no further information in relation to that
19 investigation. I understand that the member is
20 engaging with the welfare service via the investigation 10:59
21 he is involved in. I did, however, advise him of its
22 benefit."

23
24 He encloses these documents that were required by HQ.
25 You see that? 10:59

26 A. Yes.

27 46 Q. would you like to comment on that in any way?

28 A. well, I mean, I suppose, look, I am under a lot of
29 stress, I mean from the very start of this and then I

1 suppose, when I'm working, as I said, the very first
2 month was extremely difficult. Then the next, is it
3 after that, 17 months, I am working alongside Garda A
4 and there's the investigations going on and all that.
5 When Superintendent Murray, of course, arrives, he 11:00
6 certainly plays his own role in part of that stress as
7 far as I'm concerned.

8 47 Q. Yes, I understand that. But that would seem in an
9 almost strange way to sort of buttress what he's saying
10 there. You weren't in fact and didn't discuss any 11:00
11 aspect of the stress with Superintendent Murray at any
12 stage, I mean factually?

13 A. No, no, no. No, I did say, look, I'm under -- it's
14 work related. Well, as I said, the very first week he
15 said to me twice, you're under no stress. And he said 11:00
16 it twice. Like I mean, I don't think there is --
17 what's the discussion? It wasn't, are you, or, what's
18 wrong, or any question. It's, you are under no stress.

19 48 Q. In any event, the next document, 6147. I am sorry it
20 must be 6148. Sorry, that is only the instruction to 11:01
21 send out the report. If we go to 6169. This is dated
22 8th June and it's from Chief Superintendent wheatley.
23 It recites the absence from work. It says there in the
24 middle of the paragraph:

25 11:02
26 "Efforts have been made locally to establish the source
27 of the member's work related stress. However, the
28 member is reluctant to discuss the matter."
29

1 Did you meet, in fact, with Chief Superintendent
2 wheatley, do you remember? Do you recall that?
3 A. Yes.
4 49 Q. You were obviously off duty, but did she call out
5 to you? 11:02
6 A. She did, yes.
7 50 Q. Yes. Can you just tell us about that meeting?
8 A. If you can just give me the date?
9 51 Q. Yes. I think it was the 16th May?
10 A. '15? 11:02
11 52 Q. 16th May.
12 A. 2015?
13 53 Q. Yes.
14 A. We're on 2016, just for clarification?
15 54 Q. Yes. I beg your pardon. 11:03
16 A. I'm sorry.
17 55 Q. May I just read what she has said?
18 A. Yes.
19 56 Q. She said that you raised the issue in this context,
20 that she undertook to explore the matter, she made 11:03
21 enquiries with Superintendent Murray, Chief
22 Superintendent McLoughlin and also looked at the system
23 herself.
24
25 "It was established that, indeed, the member's absence 11:03
26 had been recorded as flu viral. The person keeping the
27 records provided an explanation as to why it had been
28 recorded in this manner. The system was limited and
29 the only place you could report work related stress was

1 mental health and there was a reluctance to use that
2 category. Following her intervention, the records were
3 amended to reflect certified absence as work related
4 stress."

11:03

5
6 I think she means under that heading. Then she
7 continues on in her statement at page 6117 to 6118:

8
9 "Garda Keogh appears to be of the belief that work
10 related stress automatically entitles him to full pay. 11:04
11 He is mistaken in that belief. When Garda Keogh raised
12 the issue of work related stress with Superintendent
13 Murray in 2014, he stated he couldn't disclose the
14 nature of work related stress as he was engaged in the
15 protected disclosure process. We could not advance the 11:04
16 matter. We advised HRM accordingly. Pay decisions are
17 a matter for HRM. They are the only people authorised
18 to issue instructions to Killarney regarding pay."

19
20 So, if we just continue on down there, she describes 11:04
21 the operation of the system. Sorry, if we go back to
22 6169 to 71. 6169. This is a report then, we see in
23 the second paragraph. If we continue down there, 6170,
24 she refers to the second report of the 20th May that we
25 have looked at. If we continue down, she does record a 11:05
26 discussion there in this paragraph, perhaps I should
27 read it out:

28
29 "While Garda Keogh's absences from duty have been

1 intermittent at times, his current absences from duty
2 have been for a protracted period and now exceeds 160
3 days. While Garda Keogh has returned to work on
4 occasion, he continues to attribute his absence to work
5 related stress arising from the matters being 11:06
6 investigated through the confidential reporting
7 mechanism. This was apparent during my own recent
8 meeting with Garda Keogh, when I enquired if he was
9 anxious to return to work. Garda Keogh advised me on
10 that occasion he attributes his current absence due to 11:06
11 work related stress by his involvement in the
12 investigations being progressed outside the Westmeath
13 division. Garda Keogh intimated he would not be
14 returning to work until these matters had been
15 concluded, as these matters were exacerbating his 11:06
16 condition. Details of this meeting were outlined in
17 correspondence to your office dated 19th May 2016 (tab
18 E). "

19
20 So she reported of that meeting earlier. 11:06

21 A. And she is accurate in what she says. Just for
22 clarification as well, from my meeting with Chief
23 Superintendent Wheatley, she's a lovely person, and
24 anything I ever heard about her, and these are even in
25 my circles, were very positive. But unfortunately just 11:06
26 on this, in relation to this she seems to have pitched
27 her wagon to Superintendent Murray. I suppose that's
28 why, apparently why she's here.

29 57 Q. Just to continue what she says next there:

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"Despite a number of enquiries with Garda Keogh to establish the source of his alleged work related stress, the member has continuously correlated his involvement as a confidential reporter to his absence through alleged work related stress. I am also conscious that the member's continued absence was the subject of a case conference in December 2015. It is apparent that while the member cites alleged work related stress that the reason for his continued absence, addiction treatment is also required by Garda Keogh. If successful, a return to his workplace is to be accomplished. This was borne out in the correspondence forwarded to Superintendent Murray by Inspector Downey following this case conference on the 9th December 2015. Reviewed by the chief medical officer on 18th December 2015, determined that the member is unfit to attend for work or for regular policing duties at present. While I am not on receipt of the advices of the chief medical officer following the member's review at the occupational health service on 19th May 2016..."

11:07

11:07

11:07

11:08

we will come to that.

11:08

"...I contacted the chief medical officer on today's date and I am advised that a previous advice in respect of Garda Keogh remain the same. The chief medical officer also outlined that should the member be deemed

1 fit to return to policing duties by his own medical
2 practitioner, that any return to work would only be
3 permitted following a review at the occupational health
4 service. I explained to the chief medical officer that
5 I was eager to have a case conference in respect of 11:08
6 Garda Keogh and was advised that same is being arranged
7 by his office.

8
9 Garda Keogh has never intimated that there were any
10 incidents which occurred in the workplace in Athlone 11:08
11 which were causing his alleged work related stress.
12 Garda Keogh has never made any report which warranted
13 investigation in accordance with the bullying
14 procedure. Indeed, all possible supports to facilitate
15 a return to work by Garda Keogh have been put in place 11:09
16 by district management team in Athlone and his welfare
17 has been prioritised through ongoing enquiries to
18 ensure the member is aware of and availing of the
19 employee assistance scheme.

20 11:09
21 In view of the foregoing, it has not been possible to
22 conduct a full investigation into Garda Keogh's absence
23 through alleged work related stress, nor do I believe
24 will any further or specific information be provided by
25 Garda Keogh which would enable the further 11:09
26 investigation of the claim. However, to be clear and
27 to avoid any doubt, I am to enquire if there is any
28 requirement to further investigate Garda Keogh's
29 absence through alleged work related stress. In the

1 event that the further investigation of this matter is
2 warranted, I would recommend that permission be granted
3 to appoint an inspector outside the Westmeath division
4 to conduct the same."

5
6 Now, one interpretation of that letter is that Chief
7 Superintendent Wheatley is (a) reporting as required,
8 (b) she has made what might be described as a
9 reasonable and proper effort to investigate the issue,
10 and (c) she is reporting accurately her view of the
11 position and she is suggesting that if it can be done,
12 it may be need to be done by way of an outside
13 inspector. Would that not appear that she is (a)
14 taking it seriously and reporting --

15 A. Again, there's something in that that I just twigged.

16 58 Q. Yes.

17 A. I went sick, I went sick on 26th December 2015.

18 59 Q. Yes.

19 A. With work related stress and I stay out. Now, whatever
20 way it's worded there, it appears to me it's like the
21 CMO, when I visited him, said, you are not fit to go
22 back to work. That wasn't the case, it was me that --
23 I couldn't -- I just wasn't strong enough to -- my
24 target was to keep going, to stay in work until at
25 least 2016, but I just couldn't make it. I had only
26 five days to go and I couldn't even do that. That was
27 my own target I had set. But when Chief Superintendent
28 Wheatley contacts me, we're in May, 17th May 2016, so I
29 am already, what, let's say, five months out and no one

1 -- I don't think anyone has come near me in that five
2 months. I think here there's every effort and all the
3 rest. No one comes near me, just from recollection, in
4 that five months. And again, there's stuff going on in
5 relation to the whistleblowers in other arenas that 11:11
6 prompt the Garda authorities to kind of do something,
7 address matters. But it's only because there's other
8 issues, I would argue, that are going on in political
9 arenas and courts or whatever. I don't think anyone
10 came near me for five months, to my recollection. 11:12

11 60 Q. Could I suggest that the reason may be that the first
12 issue over the misrecording of it was, in fact, raised
13 by you in May 2016? Is that not right?

14 A. It could be, I'm not -- I remember, like, in relation
15 to Chief Superintendent Wheatley's previously thing you 11:12
16 showed me, the previous thing was very accurate. Just
17 on this one, there was one or two little things that
18 I -- I suppose, just slight things that just needed to
19 be clarified.

20 61 Q. Yes. But obviously Chief Superintendent McLoughlin had 11:13
21 been in touch with you by this stage, isn't that
22 correct?

23 A. Just on dates, I cannot remember. Again, it probably
24 is 2016.

25 62 Q. Yes. 11:13

26 A. It is 2016, yes, when Chief Superintendent
27 McLoughlin -- yes, yes.

28 63 Q. Because at this stage, in June, at the time of this
29 letter is being reported up, there's consideration

1 being given within HQ to the issue of work related
2 stress and amending the code to provide for an extended
3 definition, which would bring it within the
4 categorisation of injury at work or occupational
5 injury. Chief Superintendent McLoughlin raised this in 11:14
6 an e-mail, which is dated the 4th June. It commences
7 on 9695, but if we go to 9696, he refers to two guards,
8 you are, I think, the first guard there. He poses the
9 question there:

10
11 "I pose this question: Is it right that they go on 11:14
12 reduced pay while the investigations are ongoing and
13 while the organisation decides on a new policy? These
14 are sensitive cases and have attracted significant
15 media attention. While this can't be used as a reason 11:15
16 for change, nonetheless it will bring considerable
17 pressures.

18
19 My own view is that this situation needs to be reviewed
20 as a matter of urgency. It may well be the case that 11:15
21 pay should not be reduced until these matters are
22 resolved. The members concerned would argue that it is
23 not their fault that they are sick. The organisation
24 carries a risk also while resolutions are being found."

25 11:15
26 That's part of a dialogue, if we go back a page, to
27 9695, Mr. Downey, who is there, if we just go down to
28 what he replies back. I don't want to get into what
29 this working group were doing, but Mr. Downey is

1 expressing a view in the second paragraph:

2
3 "However, the fact that causality is an issue presents
4 an opportunity to deal with each case on a case-by-case
5 basis based on medical assessment. If a GP's diagnosis 11:16
6 of work related stress is supported by the CMO, then I
7 see no issue with categorising the illness as
8 occupational injury or injury/illness on duty. This
9 places the matter firmly in the hands of the medical
10 profession and also allows AGS to categorise work 11:16
11 related stress with a causality medically assessed as
12 work related occupational injury on duty."

13
14 So that goes up to Chief McLoughlin that you had been
15 dealing with. If we go up the page. He's replying to 11:16
16 that. It says in the second paragraph -- he's
17 stressing obviously in the first paragraph the urgency
18 of the two cases. He says:

19
20 "I don't think there is any dispute over the reasons 11:16
21 for absence from work. Big leap to categorise them as
22 injury on duty. There should be another category such
23 as occupational injury, which in my view is safer.

24
25 The key point here is that they should not be on 11:17
26 reduced pay until it is proven that there wasn't a
27 causal link between reason for absence and work
28 related. We tend to reduce pay first while we wait on
29 decisions, thus increasing the stress and exacerbating

1 the problem."

2

3 would you agree that HQ have identified the dilemma
4 that the existing system had somebody like you in at
5 this point in time?

11:17

6 A. I would agree. That's fair.

7 64 Q. Seemed to be intended to address the issue. If we go
8 to 9694, just looking at the continuing dialogue. This
9 is addressed to a whole group of different people,
10 including Mr. Barrett, the executive director. This
11 relates to a particular proposal to amend the
12 definition. Just to note that. If we could go on then
13 to 9693, this is the response of Ms. Carr, who has made
14 statement to the Tribunal there. She is addressing a
15 number of different reasons for not keeping the system
16 as it is but proceeding in a cautious way, taking into
17 account a number of different ones. But in her
18 concluding paragraph she says:

11:18

11:18

19
20 "While it is not ideal to reduce the member's salary
21 while they were absent on sick leave, AGS should
22 continue to implement the current sick leave
23 regulations. Where sick absences follow appropriate
24 investigations are determined to be an injury on duty
25 or an occupational injury once the amendment to code
26 1137 has been approved or covered by the critical
27 illness protocol, any money due to the member will be
28 refunded. This will benefit AGS in the management of
29 overpayment of salary to members absent on sick leave."

11:18

11:19

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That is sort of advocating for perhaps the system to be left on its own. There is an e-mail then 9693, where Margaret Nugent says at the bottom:

11:19

"Given the issues highlighted by Chief Superintendent McLoughlin, can the matter be reviewed and the process agreed in the short-term to deal with such sensitive cases on a case-by-case basis? I look forward to reading your reply."

11:19

Then there's a further e-mail from Margaret Nugent addressed to Ms. Carr, it says:

"I met Garda X this afternoon as the acting protected disclosures manager in absence of Chief Superintendent McLoughlin. Having considered all the circumstances of the case, I am satisfied it is essential that a mechanism be found to immediately restore member to full pay in this case while matters are being investigated. Not to do so may be interpreted as management not supporting and protecting the member. It might also be regarded as penalisation."

11:20

11:20

She recommends that the matter be reviewed. So there seems to be a shift in management there towards adopting this position. Presumably you would be happy to see that?

11:20

A. Yeah. I am aware of it, with the certain controversies

1 that were going on.

2 65 Q. Yes.

3 A. The Gardaí were obviously under -- had to do something
4 in relation to whistleblowers. Chief Superintendent
5 McLoughlin got that incendiary role and one that
6 obviously going to be -- it might look handy, having a
7 cup of tea or coffee, meeting members and that, but
8 really, the dangerous role in probably the entire An
9 Garda Síochána. I have a feeling that he took some
10 brave steps, big steps as well.

11:21

11:21

11 66 Q. Obviously the dialogue continued. If we just go to two
12 more, I think. 9691. It's Ms. Carr who is responding
13 to Ms. Nugent there at the top of the page. There's a
14 process document being attached. This is Ms. Carr
15 addressing Ms. Nugent.

11:22

16

17 "I am of the firm belief that where members are deemed
18 to be unfit for duty by their GP or treating doctor,
19 their absence should be recorded as ordinary sick leave
20 and managed under the appropriate sick leave
21 regulations until all relevant investigations have been
22 completed.

11:22

23

24 However, having discussed matter with you, I am
25 attaching a proposed process document which would allow
26 GS support persons who feel unable to attend work due
27 to having made disclosures under the PD legislation.

11:22

28

29 I have highlighted issues which may require further

1 consideration and I would suggest that the advice of
2 head of legal affairs should be sought before
3 introducing this process.
4

5 If this process is to apply to any member currently 11:22
6 availing of sick leave, the PDM should advise the date
7 on which sick leave ceases and the date this
8 administrative leave commences. This may require
9 certification from the treating doctor. On receipt of
10 that information, the member's sick leave record can be 11:22
11 closed and the member returned to full pay. PDM will
12 also need to advise local management of the start date
13 for the administrative leave."
14

15 That goes up it seems, if we go to 9727. This was, I 11:22
16 think, the recommendation or it's from -- if we just
17 scroll down, we will see it's from Monica Carr, it's
18 slightly later, but it reflects I think the advice of
19 the CMO, which resulted in a case conference which
20 provided support you in terms of a treatment regime, 11:24
21 which was put in place at the expense of An Garda
22 Síochána at that point in time. I think an inpatient
23 treatment regime, isn't that correct?

24 A. Yes, there was an undertaking for the full, but they
25 ended up only -- it was two-thirds, I think. I had to 11:24
26 -- I have seen in some statements, yes, they undertook
27 to pay the full amount but -- and remember, I think I
28 was on reduced wages at the time. One-third. I'm not
29 making an issue about that, that is not relevant. As I

1 said, I had saved up, I was ready for a period where I
2 know I've to go on long sick. So for me that is --
3 we're going to enter the territory of siege warfare,
4 let's say, in military terms. So I am sort of prepared
5 for what's ahead of me. Yes. 11:25

6 67 Q. CHAIRMAN: Sorry, could you explain that, what do you
7 mean by that, Garda Keogh? You're prepared for siege
8 warfare?

9 A. Siege warfare.

10 68 Q. CHAIRMAN: what does that mean? 11:25

11 A. When I know I have to go sick, full-time out of work,
12 where basically --

13 69 Q. CHAIRMAN: But you were out sick full-time?

14 A. No, this is where I have to go out from the 26th of
15 December 2015. 11:25

16 70 Q. CHAIRMAN: December 2015?

17 A. My own target was just to get it into 2016.

18 71 Q. CHAIRMAN: No, don't mind that, just concentrate, siege
19 warfare, what does that mean?

20 A. It means when I go out sick from work, I am not going 11:26
21 to have my colleagues there, they're my colleagues, I'm
22 not going to be in work, so I'm away from work. Then,
23 of course, there's the penalisation of the financial
24 things that are due to follow. That's what I mean,
25 where essentially I'm -- 11:26

26 72 Q. CHAIRMAN: what was the treatment? They advised
27 treatment?

28 A. Sorry, yeah. That was where --

29 73 Q. CHAIRMAN: Did you get the treatment?

1 A. I did, yes.

2 74 Q. CHAIRMAN: what was that? In general. I don't want to
3 be prying into your -- just what was the general nature
4 of that? was it inpatient?

5 A. Inpatient, yes. I didn't take it up at the start. You 11:26
6 see, you have to be ready yourself --

7 75 Q. CHAIRMAN: Sorry, wait now.

8 A. Yes.

9 76 Q. CHAIRMAN: A question:

10 A. Yes. 11:26

11 77 Q. CHAIRMAN: They suggested treatment. Did you get
12 treatment?

13 A. Yes.

14 78 Q. CHAIRMAN: Of a general nature, you understand, I don't
15 want to be prying into private matters unnecessarily. 11:26
16 Okay, did you get the treatment?

17 A. Yes.

18 79 Q. CHAIRMAN: was it inpatient treatment?

19 A. Yes.

20 80 Q. CHAIRMAN: Over some fairly long period? 11:27

21 A. A month.

22 81 Q. CHAIRMAN: A month.

23 A. Roughly, yeah.

24 82 Q. CHAIRMAN: Okay. Did it work?

25 A. It did for 19 months, until the day I heard about a 11:27
26 certain promotion and then -- so for 19 months it did
27 work.

28 83 Q. CHAIRMAN: Okay. That was when? when did that start?
29 when did that treatment take place?

1 A. That was in around, I'll tell you, it was when the
2 world cup was on, sorry, the European championships
3 were on. So that would be the summer of --
4 84 Q. CHAIRMAN: 2016?
5 A. -- 2016. 11:27
6 85 Q. CHAIRMAN: The summer of 2016?
7 A. July, 14th July.
8 86 Q. CHAIRMAN: So July 2016 you had treatment of
9 approximately a month?
10 A. Yes. 11:27
11 87 Q. CHAIRMAN: That did you a lot of good. When you came
12 out then, let's say, from August 2016 you were good for
13 more or less two years?
14 A. 2018.
15 88 Q. CHAIRMAN: Is that what you said, did you say 18 months 11:28
16 or two years?
17 A. Nineteen months.
18 89 Q. CHAIRMAN: Over about 18 or 19 months?
19 A. Yes. 2018 was when I relapse.
20 CHAIRMAN: Okay. Thank you very much. Sorry, was that 11:28
21 the first time that anybody suggested that you have
22 treatment for stress?
23 A. I didn't, it wasn't treatment technically for stress.
24 I was using alcohol as a crutch and I suppose it was
25 alcohol was what the treatment was for. But I was 11:28
26 using alcohol as a crutch.
27 90 Q. CHAIRMAN: Sorry, while I am on this subject, did
28 anybody suggest treatment for stress?
29 A. I don't think -- I don't. No. Well, I have never -- I

1 don't think I have even heard of -- you're the first
2 person.

3 91 Q. CHAIRMAN: Nobody suggested that?

4 A. No.

5 CHAIRMAN: Okay. Thanks very much. Thank you. 11:29

6 92 Q. MR. MCGUINNESS: Just to go to 9690, this is just going
7 back in time to see how headquarters appear to deal
8 with the matter. If we just go down the page, we see
9 Ms. Nugent there. It's about the process document.
10 She is saying there: 11:29

11
12 "I have read the document. My only concern relates to
13 having consult with local management regarding the pay.
14 This may pose problems, particularly where local
15 management practices may be the source of complaint 11:29
16 relevant to disclosure. Furthermore, the disclosure
17 has to be kept confidential. Can an arrangement be
18 made whereby pay issues are sorted out in Navan,
19 including administrative leave, based on a
20 communication with the protected disclosure manager." 11:30

21
22 Then there is reference obviously in respect of Garda
23 X:

24
25 "In respect of Garda X and further to Mr. Barrett's 11:30
26 e-mail, can you ensure that all monies owned by virtue
27 of the member being on half pay for the last few weeks
28 is restored. You may wish to run the process by HoLa.
29 However, in the interim the member's pay needs to be

1 restored in full, including back monies. I have
2 advised the member that pay will be restored in full by
3 24th June 2016."
4
5 I don't want to go into the innards of HQ, but you were 11:30
6 aware through different communications with Chief
7 Superintendent McLoughlin and Mr. Barrett, that this
8 process was in being, isn't that right?
9 A. Sorry, this process?
10 93 Q. This process of addressing the issue of your pay and 11:30
11 categorisation of the illness, as it were?
12 A. Yeah.
13 94 Q. Can I ask you this: Have you received any
14 communication from An Garda Síochána to confirm what
15 your categorisation or medical classification on SAMS 11:31
16 is at present?
17 A. Oh, I don't know. I don't know, I'm sorry.
18 95 Q. All right. My understanding from the summary of the
19 SAMS entry is that your classification is still ordinary
20 illness, mental health. But that certainly for pay 11:31
21 purposes you have been categorised as being on full pay
22 due to work related stress?
23 A. Yeah. I'm on basic pay.
24 96 Q. Yes.
25 A. You see, sometimes work related stress, where, we'll 11:31
26 say, full pay they give allowances, where you get all
27 your allowances. I don't get those. I'm on what's
28 called -- I think it's termed just basic pay, standard.
29 It's fine, like is what I'm saying. I'm not giving

1 out.

2 97 Q. Yes. But just trying to draw all of the strands
3 together from our discussion and your evidence, the
4 complaints of targeting and discrediting, could I ask
5 you to encapsulate what you say they are in relation to 11:32
6 this issue and how they arise?

7 A. I think the whole -- like, certainly, as we have
8 established, in relation to that investigation into the
9 AWOL incident, where there is a fairly substantial --
10 as I said, there is room, and this just my opinion, 11:32
11 there is room for human error in relation to the flu to
12 work related stress back in around 2014 and that. You
13 know, I would understand that. But by 2015 or late
14 whenever it is, but certainly that investigation,
15 there's no way they would miss that I am out with work 11:33
16 related stress. There's just no way. And I would say
17 that is targeting, because they know I am out with work
18 related stress.

19 98 Q. CHAIRMAN: They being Superintendent Murray.

20 A. Murray. 11:33

21 99 Q. CHAIRMAN: If I understand this, please correct me if I
22 am wrong, Garda Keogh?

23 A. Yes.

24 100 Q. CHAIRMAN: You say, at least from the time of the AWOL
25 incident, if we can call it that? 11:33

26 A. Yes.

27 101 Q. CHAIRMAN: From then on, Superintendent Murray had to
28 be aware, you say he had to be aware that your absences
29 were due to work related stress?

1 A. Yes.

2 102 Q. CHAIRMAN: And he should have and he failed, as you see
3 it, and this was targeting, he should have instituted
4 an investigation as to the connection between that
5 condition and work? 11:34

6 A. Yes.

7 103 Q. CHAIRMAN: Is that essentially it?

8 A. Yes, yes.

9 104 Q. CHAIRMAN: With a view to the SAMS issue that was bound
10 to arise sooner or later? 11:34

11 A. Yes.

12 105 Q. CHAIRMAN: Is that right?

13 A. Yes.

14 106 Q. CHAIRMAN: The practical application was going to be
15 that you were reduced in salary in due course? 11:34

16 A. Yes.

17 107 Q. CHAIRMAN: But he should have identified this, knowing
18 that it could have implications for your pay, your sick
19 pay?

20 A. Yes. 11:34

21 108 Q. CHAIRMAN: Is that a fair way of describing this?

22 A. That's a very fair way. And as I say, I did go down to
23 €220 per week.

24 109 Q. CHAIRMAN: No, I am not concerned about the amount?

25 A. Okay. 11:34

26 110 Q. CHAIRMAN: Sorry, and I don't mean to cut you off on
27 that. The essence of it is, here was a situation, he
28 should have identified that and realised the
29 implications of it that might come up, were then coming

1 up, but might come up for reduction in pay, is that
2 right?

3 A. Yes, yes.

4 111 Q. CHAIRMAN: Because if it was work related after a
5 proper investigation, your full pay was secure? 11:35

6 A. Yes.

7 112 Q. CHAIRMAN: However long it lasted?

8 A. Yes.

9 113 Q. CHAIRMAN: Okay. Is that a fair way of describing your
10 complaint in this regard? 11:35

11 A. It is, Judge.

12 114 Q. CHAIRMAN: Let me ask you this - sorry to interrupt,
13 Mr. McGuinness - does that apply to anybody else, any
14 other specific person?

15 A. I don't understand. 11:35

16 115 Q. CHAIRMAN: You say Superintendent Murray should have
17 identified it, he was the district officer?

18 A. Yes.

19 116 Q. CHAIRMAN: And he should have appreciated that. Should
20 anybody else have appreciated that? 11:35

21 A. Judge, unfortunately, I think Chief Superintendent
22 wheatley, I'm not -- you see, unfortunately -- I'm
23 not -- I would say perhaps, just from different things,
24 in relation to the work related stress and the
25 statement and all of that. 11:36

26 117 Q. CHAIRMAN: Should she have done the same thing, should
27 she have realised?

28 A. I think so.

29 118 Q. CHAIRMAN: So she should have addressed that question?

1 A. She should have realised.

2 119 Q. CHAIRMAN: with a view to where it was going. That's
3 the essence of the complaint?

4 A. And certainly, Judge, even if you go back to that
5 infamous phone call of the 14th/15th, where I am 11:36
6 writing to Chief Superintendent Wheatley, she appears
7 just to take Superintendent Murray's side straight off.

8 120 Q. CHAIRMAN: I am not with you on this, you are losing me
9 here.

10 A. It's the phone call where we -- the only phone call 11:36
11 between myself and Superintendent Murray, where he
12 rings me on the morning to ask me why I wasn't in work,
13 in relation to the AWOL incident, where he writes down
14 the 14th and I say it's the 15th in my diary.

15 121 Q. CHAIRMAN: Hold on. We had that? 11:37

16 A. Yes, we did.

17 122 Q. CHAIRMAN: We had that discussion?

18 A. In relation to Chief Superintendent Wheatley is what I
19 am trying to --

20 123 Q. CHAIRMAN: We're talking across each other here? 11:37

21 A. Sorry.

22 124 Q. CHAIRMAN: It's all right, there's no problem. Just to
23 focus specifically. I have your complaint about
24 Superintendent Murray.

25 A. Mm-hmm. 11:37

26 125 Q. CHAIRMAN: Do you make the same complaint about Chief
27 Superintendent Wheatley in regard to the sick pay
28 issue?

29 A. Yes.

1 126 Q. CHAIRMAN: Okay. Thank you very much. And nobody
2 else?

3 A. No. I don't think so.

4 127 Q. CHAIRMAN: That's okay. Thank you very much.

5 128 Q. MR. McGUI NNESS: Garda Keogh, obviously the 11:37
6 certificates were coming in to the district
7 headquarters in Athlone, work related stress. You seem
8 to be arguing for a position that Superintendent Murray
9 knew that. So let's just assume that obviously, at the
10 moment. But that on foot of it, that he had the 11:37
11 responsibility to change your medical classification
12 and he had a responsibility to change your pay then.
13 But you've seen the way the system works, that
14 something is, as it were, required to be classified as
15 an ordinary illness and unless it's medically certified 11:38
16 to be something that puts it into a different category,
17 no reclassification takes place. Do you agree with
18 that; that you're perhaps burdening the superintendent
19 with responsibility for, firstly, the original
20 classification and, secondly, with a duty to reclassify 11:38
21 it himself?

22 A. I am burdening Superintendent Murray.

23 129 Q. Yes. He didn't start the classification of it as flu
24 viral, ordinary illness?

25 A. No, no, I understand that. 11:39

26 130 Q. Then in terms of him changing that, it seems to be from
27 the regulations that he doesn't have the responsibility
28 to change that, that the change occurs as a result of a
29 process of investigation and a subsequent medical

1 certification that it is, in fact, work related stress,
2 to take it out of another category?

3 A. Yes.

4 131 Q. Is that not...

5 A. Yeah, I think so. 11:39

6 132 Q. Can I put this portion from Dr. Oghuvbu's statement,
7 volume 13, page 2644. It's his understanding that the
8 acceptance and classification of absence as work
9 related stress by HRPD is not exclusively based upon
10 information in the medical certificate. Do you see, 11:39
11 I'm reading from number 2 there:

12

13 "It is my understanding that acceptance of
14 classification of a period of absence as work related
15 stress by Garda HRPD absence section is not exclusively 11:40
16 based on the information provided in medical
17 certification submitted by the member. It also
18 involves HRPD absence section and local management
19 ascertaining the work related factors or stressors
20 being reported by the member. I understand it is the 11:40
21 practice of HRPD absence section to record absences of
22 ordinary illnesses prior to the work related
23 circumstances being established."

24

25 A. That's what it says, I can't disagree with it. 11:40

26 133 Q. Yes. I have no more questions for Garda Keogh on this
27 issue?

28 CHAIRMAN: Yes.

29 MR. McGUINESS: But I think I should clarify one

1 thing.

2 CHAIRMAN: Yes.

3 MR. McGUI NNESS: I think I suggested in a question that
4 Garda Kelly's report of the 24th May was being sent to
5 Superintendent McBrien, it was going to Superintendent 11:41
6 Murray, in fact. I transposed the superintendents in
7 error.

8 CHAIRMAN: So that would mean that Superintendent
9 Murray would have known about the work related stress,
10 is that right? 11:41

11 MR. McGUI NNESS: No, no, he got the report from Garda
12 Olivia Kelly as to how the system operated.

13 CHAIRMAN: Oh right.

14 MR. McGUI NNESS: And the change that was then made.

15 CHAIRMAN: When was that? 11:41

16 MR. McGUI NNESS: 24th May 2016.

17 CHAIRMAN: 24th May 2016.

18 MR. McGUI NNESS: It's just an error in the
19 superintendents.

20 CHAIRMAN: Thank you very much for clarifying that, but 11:42
21 nothing arises that you want to ask Garda Keogh about.

22 MR. McGUI NNESS: No, indeed.

23 CHAIRMAN: Okay. Thanks very much. We will end on
24 that topic there, there's nothing else you want to say
25 about that? 11:42

26 WITNESS: Oh no. It's a very monotonous topic.

27 CHAIRMAN: Don't worry about that. Did you say
28 monotonous?

29 WITNESS: Monotonous.

1 CHAIRMAN: Don't worry about that. That's what we get
2 paid for. That is not a problem, Garda Keogh. We will
3 take a little break there, shall we, and then head into
4 the next. Which is the next one, Mr. McGuinness?

5 MR. MCGUINNESS: The next one is issue number 15, 11:42
6 relating to commendations.

7 CHAIRMAN: Right.

8 MR. MCGUINNESS: Denial of commendations.

9 CHAIRMAN: Right. That is the next matter on the
10 agenda. So, we will take a little break for a few 11:42
11 minutes and we will come back to that. Okay.

12

13 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED AS
14 FOLLOWS:

15

16 MR. MCGUINNESS: Chairman, just before we proceed on to
17 deal with this issue.

18 CHAIRMAN: Yes.

19 MR. MCGUINNESS: I should say that Mr. Kelly has told
20 me that he's not requiring the Tribunal to pursue any 11:58
21 further inquiry into issue number 13, the overtime
22 issue.

23 CHAIRMAN: Thank you very much. Thanks, Mr. Kelly.

24 MR. MCGUINNESS: If we could have Garda Keogh back
25 then, thank you. 11:58

26 CHAIRMAN: Thanks very much.

27 134 Q. MR. MCGUINNESS: Garda Keogh, we're dealing with issue
28 15, which relates to denial of commendations. I think
29 your complaint relates to three different incidents,

1 isn't that correct?

2 A. Yes.

3 135 Q. The first relates to the stabbing of a taxi driver and
4 that's on 4th August of 2014, is that right?

5 A. I can't remember the date. 11:59

6 136 Q. Yes. We will come to that now. The second relates to
7 the arrest of the person for burglary?

8 A. Yes.

9 137 Q. Then the third relates to the rescue of a lady from
10 drowning in the River Shannon? 11:59

11 A. Yes.

12 138 Q. If we just deal with the stabbing of the taxi driver.
13 I think you detail at page 85 of your statement to the
14 Tribunal that you were involved in securing the vehicle
15 at the scene, removing blood stained clothing for 11:59
16 examination. You phoned GISC Castlebar to have the
17 incident recorded on Pulse and you advised who the
18 assisting gardaí were. Can I stop there. That's
19 Castlebar and they record incidents that are reported
20 in to them. You're required to do that and do you that 12:00
21 by phone normally from the scene or thereabouts?

22 A. That's correct.

23 139 Q. We have, indeed, seen the transcript of the call, the
24 papers and you were asked, I think, on page 3, or maybe
25 page 5, if you are the investigating guard and you said 12:00
26 that you are. But you were recorded on the Pulse as
27 the investigating guard, is that the entry you put on
28 it yourself?

29 A. Yes. But at that time, they have to put an

1 investigating guard onto the system, on that. So
2 there's room for me to be -- there is room and it would
3 be normal, where, if they have to put another
4 investigating guard in, I would be then changed from
5 investigating guard down to assisting guard, which 12:00
6 would be the norm. But in this case I'm completely
7 removed off the Pulse incident altogether.

8 140 Q. Yes. You say in your statement you were recorded on
9 the Pulse as the investigating guard until you noticed
10 on the 8/8/2015 that your name had been removed from 12:01
11 the Pulse incident?

12 A. Yes.

13 141 Q. I think factually you were on duty on this night of the
14 3rd/4th August. I think you were going off duty the
15 next day, is that right? You were on leave for the 12:01
16 next few days?

17 A. I could have been, I just can't recollect.

18 142 Q. Okay.

19 A. Yeah.

20 143 Q. What you say about being taken off the case, according 12:01
21 to your statement, on page 86:

22

23 "What I mean by being taken off the case, is the record
24 of my involvement was erased from Pulse. It is
25 possible that the detective unit took over the case and 12:02
26 I have no issue with that. I just include it in my
27 statement because I was removed from the Pulse entirely
28 though I had worked on the case and where any
29 commendations arose, I would not be included. I do not

1 know who removed me from Pulse but I am sure this may
2 be checked. I would have no issue if I was moved from
3 investigating to assisting garda on Pulse, rather than
4 being removed entirely from the incident."

12:02

5
6 Obviously that triggered an inquiry as to the removal
7 of it. I think you have seen a statement from Garda
8 Shankey Smith, which is in our papers at volume 21,
9 page 6202. She records there that on 20th May 2019 she
10 received a request in relation to the history of
11 updates for that incident. She said that:

12:03

12
13 "On 4th August 2015, at 12:38:50, investigating garda
14 was updated from Garda reg number" which is you "to
15 Garda Niall Coviagan. I informed them that this was
16 updated by Garda registered number, Inspector Curley."

12:03

17
18 Then there is a subsequent query that she passed on to
19 Brian savage about whether the change could be still
20 visible from the front end or not. Mr. Savage
21 confirmed in his statement on the next page, in middle
22 paragraph there, the essential part is:

12:03

23
24 "I can confirm that if the investigating member was
25 changed 4/8/2015, then on the Pulse front end there
26 will be no evidence in the IOI list of the previous
27 investigating member having held that position. The
28 information is only available from the audit data."

12:04

29

1 It would appear to be the consequence of that, that
2 somebody looking at the incident thereafter, after the
3 change had been made after midday on the morning of the
4 4th, they wouldn't have seen that you were the
5 investigating guard, as such.

12:04

6 A. There's no issue. Just for clarifications purposes.

7 144 Q. Yes.

8 A. On that night, the suspects in that case were actually
9 involved in two robberies, two serious incidents. It
10 would be the norm for it to be the updated. Because
11 they were so serious, it could also be the norm for the
12 detective branch to take over that investigation. So
13 it would be expected and there's no issue whatsoever
14 that I am removed as investigating member. I mean,
15 that would be just normal there. The issue is, I'm
16 actually just removed completely off the whole
17 incident.

12:05

12:05

18
19 As I stated earlier, what would normally happen is, I
20 would be removed from role of investigating -- changed
21 from investigating member just to assisting member and
22 that would be normal, what would happen normally. But
23 in this case, I am actually removed completely from the
24 incident, as if I was never there.

12:05

25 145 Q. Yes. Sergeant Curley, in his original statement
26 relating to this, didn't recall if a form was
27 completed. That's an EPW1 form. I think just to
28 outline the process for commendation. There is a
29 procedure laid down for it, the EPW1 form is the

12:05

1 exceptional police work form, it's completed by the
2 member who is making the recommendation for
3 commendation, isn't that correct? It's submitted from
4 the district office to the divisional office for
5 consideration by a divisional board?

12:06

6 A. Yes. But, that has got stricter, that is the way it
7 is, let's say, now. I have loads of commendations over
8 the last, what, 20 years, for different incidents. I
9 don't ever remember filling out any EP1, or whatever it
10 is, I don't remember. For good police work, sometimes
11 the chief superintendent would just send -- if he sees
12 something that he thinks is good police work, he would
13 just send out a commendation. I think there are
14 perhaps different categories of commendations, I am not
15 sure, but, yeah.

12:07

12:07

16 146 Q. Okay. Do I understand from what you are saying, that
17 you don't yourself ever put forward a commendation
18 normally for anything that you have done yourself. It
19 would be a supervisor or somebody else who would
20 nominate you, as it were, is that right?

12:07

21 A. Yeah. As I said, they changed this, I don't know
22 whether they changed it or got more stricter on the
23 policy, I am not sure, but over the years I don't --
24 perhaps, I may have, where a form comes out, where
25 everyone in the unit gets a commendation and would you
26 sign your name to it and the commendation would come
27 out. Just any, anything to catch someone in progress
28 of crime or something like that, you'd usually just get
29 an automatic commendation.

12:08

1 147 Q. Superintendent Murray, in his statement to the
2 interviewers, the Tribunal investigators, said that he
3 had no knowledge of your involvement in the
4 investigation and that you hadn't made a statement for
5 the purpose of the investigation. Is the latter 12:09
6 correct?

7 A. Just, I think he even goes further, I think he says he
8 has little or no involvement at all, from just
9 recollection, I read somewhere. At some point he says,
10 he had little or no involvement at all. 12:09

11 148 Q. Yes.

12 A. That is just from recollection.

13 149 Q. Perhaps we will pull up 3092, just to deal with that.
14 He gives his answer at 1281:
15 12:09
16 "This was a robbery whereby there was a stabbing of an
17 elderly taximan on 3/8. To my recollection, I secured
18 the vehicle. . ."
19

20 Sorry, that is your answer that's being quoted. Could 12:09
21 we go down the page. If we go down to the next page.
22

23 "I am not sure if he is saying he was out of work
24 between 4th and 8th August."
25 12:10

26 I think you were in fact out of work, isn't that
27 correct?

28 A. I can check.

29 150 Q. Yeah.

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"I think the incident happened in the early hours of the 4th August 2015. It was quite a serious incident. It followed on later with another incident of a similar nature and both were investigated together. There was certain notoriety about it. I took a hands on approach with that case. I had no knowledge of Garda Keogh's involvement. I don't think he supplied a statement to the investigation file which went to the DPP. The file was done and completed through the incident room and the chief superintendent and I visited one of the victims the evening after it happened. I had no knowledge of Garda Keogh being involved in that one and to the best of my recollection and knowledge there is no statement on the investigation file from him. So I would interpret that as him being very little or no involvement. I believe he handed in a piece of clothing to the exhibits officer. Anyone who accesses Pulse, leaves a footprint. There is an audit trail of anyone who went through the incident and I can't see anyone having any reason to do what Garda Keogh alleges."

Now, we have seen that, in fact, you were taken off the record. Perhaps we will look at the details of the incident, because it transpired that, contrary to the recollection of Sergeant Curley in relation to the issue of commendation and Superintendent Murray, a number of members were nominated for a commendation,

1 isn't that correct?

2 A. I saw that, yes.

3 151 Q. So if we look at volume 38. Sorry, before we do that,
4 perhaps we will go to page 14706.

5 CHAIRMAN: 14706?

12:12

6 152 Q. MR. MCGUINNESS: Yes. There is a document that
7 Sergeant Monaghan I think has brought to your attention
8 just in recent days, it had escaped the process. It
9 appears to be an e-mail to Superintendent Murray on the
10 4th August at 4:33:25, half past four in the morning.
11 That is volume 52. We have reached volume 52 I think.
12 I think that's on the system.

12:12

13 CHAIRMAN: well, tell us what it says.

14 153 Q. MR. MCGUINNESS: Yes. There is a lot of detail about
15 the incident. I don't think I need to read the
16 details. But in the third line from the bottom, it
17 says:

12:13

18
19 "Garda CCTV was viewed, further enquiries have to be
20 carried out in relation to local CCTV. Family members
21 were contacted. Garda Keogh is investigating member
22 and will attend for further enquiries when he returns
23 from rest days. Search was carried out by members
24 under the (blank) in the general area."

12:13

25
26 So that is a report, you've seen that, have you?

12:13

27 A. I can't see it here, but I --

28 154 Q. CHAIRMAN: 52, thanks.

29 A. I have no issue. I accept what's in that is accurate.

1 155 Q. MR. McGUI NNESS: Yes.

2 A. Thanks.

3 MR. KELLY: Can I just say, Chairman, that these

4 volumes came late and Garda Keogh has --

5 CHAIRMAN: Absolutely. 12:13

6 MR. KELLY: I am not criticising.

7 CHAIRMAN: No, no, I understand, Mr. Kelly. He

8 wouldn't have seen it. But it's in his interest, I

9 think, to see this one.

10 MR. KELLY: Absolutely. 12:13

11 CHAIRMAN: It's good for him. We have it now up on the

12 screen.

13 MR. KELLY: Absolutely.

14 CHAIRMAN: Obviously we try to process the material as

15 quickly as we can, but this came in very late. I 12:14

16 appreciate your point. Yes. Just take a look at that.

17 WITNESS: Just for clarification, Judge, I didn't get

18 to actually read 50, 51, I glanced at them and I

19 haven't seen anything in volume 52.

20 CHAIRMAN: Don't worry in the slightest if you didn't 12:14

21 get to volume 52. But anyway, you have the page there.

22 WITNESS: Yes.

23 CHAIRMAN: And we're seeing it, yes.

24 MR. McGUI NNESS: It is really just the last three

25 lines. 12:14

26 CHAIRMAN: Yes.

27 MR. McGUI NNESS: This would appear to be, I'm not sure

28 whether it would be regarded as routine, but it would

29 seem to be appropriate to have drawn the

1 superintendent's attention to a serious stabbing
2 incident in the district on the night of the 4th.
3 CHAIRMAN: Yes.
4 MR. MCGUINNESS: And presumably that would be available
5 to the superintendent whenever he checked his inbox at 12:14
6 that point in time.
7 CHAIRMAN: Yes.
8 156 Q. MR. MCGUINNESS: I was going to ask you to look at the
9 details of the EPW1, which is volume 48, at page 13455.
10 It describes the incident there. If we scroll down 12:15
11 then, the details of the incident. Go on to the second
12 page there, and down. It gives a list of members
13 involved in the investigation. Onto the third page
14 then. I think that's Superintendent Murray there, and
15 he says: 12:16
16
17 "The investigative work carried out in these two cases
18 was of a very high quality. The suspects were
19 identified using sound police work as a basis for
20 bringing the case to conclusion. The culprits are 12:16
21 before the Circuit Court."
22
23 It gets certified there by the Chief Super Galton,
24 Superintendent Murray and this is the divisional board
25 certification down the page there, isn't that correct? 12:17
26 So there follows a number of commendations then from
27 page 13459 onwards, the next page onwards. The next
28 two pages onwards. There's several members and you're
29 not included in that list.

1 A. No.

2 157 Q. You've seen that, I think.

3 A. Yeah.

4 158 Q. So, it would appear that the EPW1 process was gone
5 through in relation to all of the people who 12:18
6 participated in the investigation. I think your diary
7 does confirm you were off for four days, is that right?

8 A. Yes. They were the rest days.

9 159 Q. They were rest days, yes. Obviously we have to hear
10 from Superintendent Murray, but it appears he singled 12:18
11 out all of the people who did the investigation, in a
12 sense that whilst the report from Sergeant Monaghan
13 refers to you as "the investigating member that should
14 attend to further inquiries when he returns from rest
15 days". The narrative of the incident here, just to go 12:18
16 back to it, on page 13455, details the different
17 investigative steps taken from the 4th onwards. Can I
18 just ask, from your recollection were you involved in
19 any of the subsequent steps as a matter of fact?

20 A. No, no. In relation to not making a statement, I was 12:19
21 never asked to make a statement.

22 160 Q. Okay.

23 A. I officially didn't exist at the scene. But one thing
24 that has caught my eye when I seen the commendations,
25 Judge, and this is the same for the next two incidents, 12:19
26 not alone am I not getting a commendation, none of the
27 members of my unit are getting commendations, and that
28 goes for the next two incidents as well. They should
29 have got commendations in relation to this matter and

1 the next two matters also. I suspect they didn't get
2 the commendations, you know, because I would have had
3 to get a commendation.

4 161 Q. Obviously you respond to the incident and you report it
5 in and you are asked whether you are the investigating 12:20
6 member and who is assisting you.

7 A. Hm-hmm.

8 162 Q. How would you describe in detail what you had done as
9 an investigating member?

10 A. Myself, and I can't even remember the guard that was 12:20
11 with me, we're the first on the scene. So, we met the
12 injured party, who I vaguely remember was covered in
13 blood, he was stabbed in the neck.

14 163 Q. CHAIRMAN: The taxi driver.

15 A. Yes, yes. He was an elderly man. So the priority was 12:20
16 a duty of care to him, to get medical assistance to
17 him. Just from recollection at the scene, we seized
18 his car, not seized his car, his car for technical
19 examination. I got clothing for evidence and I think
20 placed it into an evidence bag. I mean, for the 12:21
21 purpose of continuity of evidence as well, should that
22 case have been -- I don't want to go into the case,
23 because these were bad individuals who committed a very
24 bad crime. But just, I am sure you know in relation to
25 continuity of evidence and things like that, perhaps I 12:21
26 should have been asked to make a statement. I wasn't
27 asked to make a statement or anything like that.

28 164 Q. CHAIRMAN: What is the process? Do you have to get
29 asked to make it or do you make it?

1 A. No, no. You see, when I'm -- sorry, when -- in normal
2 procedure, normally, where I am off and because there
3 were serious incidents --

4 165 Q. CHAIRMAN: Don't mind about being off or on or anything
5 else? 12:22

6 A. Yeah.

7 166 Q. CHAIRMAN: You go to the scene, you see the man, blood,
8 he has been attacked, you attend to him and get a
9 medical -- I understand, you gather up clothes, you
10 explain to him, you take the car for forensic 12:22
11 examination, all that. What I would have thought. You
12 do that at the time?

13 A. Once the ambulance arrived to tend to him, we then
14 start our police work.

15 167 Q. CHAIRMAN: I understand. Now you have that. Now you 12:22
16 go back to the station. Do you make a statement about
17 that?

18 A. No, what happened then, I think at the scene, at the
19 scene, we were there at the scene for a good while and
20 I then ring, I think just from recollection, GISC in 12:22
21 Castlebar, who then put the incident onto Pulse. They
22 need an investigating member or a reporting member in
23 order to put the incident onto Pulse, to have it
24 recorded. It can't be recorded otherwise. So at that
25 moment I put myself down as the investigating member. 12:23

26 168 Q. CHAIRMAN: Of course, for the reasons you have
27 expressed?

28 A. Yes. I put all the other members, Sergeant Monaghan
29 was there overseeing everything and there was the rest,

1 other members in my unit would have arrived. As I
2 said, when I came back a couple of days later, at some
3 stage, I am not even sure when I noticed, but I notice
4 on the incident -- as I said, there's no issue, it's a
5 normal thing that I would be removed from 12:23
6 investigating, changed.

7 169 Q. CHAIRMAN: In the normal way, here's my question, I am
8 sorry to interrupt you. In the normal way would you
9 have made the statement about your involvement in the
10 matter or would you wait until you were asked by 12:24
11 somebody else?

12 A. I would wait, wait in a case like this, because the
13 detective branch take this over as a serious matter.

14 170 Q. CHAIRMAN: I understand that. So who would ask you to
15 make a statement? 12:24

16 A. There would be a Book of Evidence in this kind of case.

17 171 Q. CHAIRMAN: I understand.

18 A. So the person doing the Book of Evidence, whoever is in
19 charge.

20 172 Q. CHAIRMAN: which would probably be a detective? 12:24

21 A. A detective sergeant.

22 173 Q. CHAIRMAN: would come back to you?

23 A. Can I have a statement in relation to, let's say, for
24 evidence.

25 174 Q. CHAIRMAN: what record would you make at the time? 12:24
26 Because obviously, if it came back weeks or months
27 later, that would be a problem, but what record did you
28 make at the time?

29 A. Record of?

1 175 Q. CHAIRMAN: When you went to the station?
2 A. I would have just taken a note, I presume I took notes
3 off the injured party.
4 176 Q. CHAIRMAN: Are you with me? Do you understand me?
5 A. Not -- 12:25
6 177 Q. CHAIRMAN: If somebody comes back three months later
7 and says, remember that incident, we want a statement
8 from you about the preservation of the evidence. It
9 doesn't take much to work out that defence counsel
10 might be very interested in a gap and what you could 12:25
11 remember or couldn't remember. So I am just wondering
12 what the process is and what records you made about
13 your involvement in the case?
14 A. I would have made notes in my Garda notebook.
15 178 Q. CHAIRMAN: Okay. 12:25
16 A. You know, the normal details.
17 179 Q. CHAIRMAN: I follow.
18 A. Day, date, time, place, name and address of injured
19 person, date of birth. I have to take those notes
20 actually in order to record the incident onto Pulse. 12:25
21 180 Q. CHAIRMAN: I understand. What about preservation, what
22 about the man's clothing or the car, whatever, that
23 would also be in your notebook?
24 A. I just can't recollect, I presume.
25 181 Q. CHAIRMAN: Okay. 12:26
26 A. But I can't remember.
27 182 Q. CHAIRMAN: Thanks.
28 A. In relation to the clothing and that, I think I just
29 from recollection, I think Sergeant Monaghan was at the

1 scene, so he would, let's say, take charge at the
2 immediate scene of the area to say, the car, someone is
3 to take the car, to organise the car to be moved.

4 183 Q. CHAIRMAN: Can I ask you this, did somebody make a
5 statement on the night? 12:26

6 A. There would be no statement.

7 184 Q. CHAIRMAN: No statement.

8 A. On the night.

9 185 Q. CHAIRMAN: Okay.

10 A. Yeah. As I said, a Book of Evidence then would have 12:26
11 commenced.

12 186 Q. CHAIRMAN: I am a little surprised at that, to be
13 honest. I am a little surprised that nobody would
14 actually write down a statement, an account of what
15 happened? 12:26

16 A. Well, Judge, we are at the scene, we are a good while
17 at the scene.

18 187 Q. CHAIRMAN: I understand.

19 A. We've to do the --

20 188 Q. CHAIRMAN: So you've enough to keep you busy. 12:26

21 A. Busy.

22 189 Q. CHAIRMAN: Yes.

23 A. Judge, that wouldn't be the normally, that you
24 immediately make a statement on the night.

25 190 Q. CHAIRMAN: Okay. 12:27

26 A. We were busy with that and the norm in a thing like
27 that would be, when the book of --

28 191 Q. CHAIRMAN: When the Book of Evidence came to be done.

29 A. Yeah. When they are investigating it, they would write

1 out then, can we have a statement. A bit like the
2 Tribunal.

3 192 Q. CHAIRMAN: I am with you. You would have the relevant
4 information, the essential information in your
5 notebook? 12:27

6 A. Yes.

7 193 Q. CHAIRMAN: Everybody would have noted in their
8 notebooks and so on. Okay.

9 A. And equally, there's a Pulse record then which would
10 contain the GPS of the location. Everything. There is 12:27
11 a lot of stuff that has to be done.

12 CHAIRMAN: Thank you. Thank you very much.

13 194 Q. MR. MCGUINNESS: Just looking at your diary at page
14 13323? Do you have that with you there? We will just
15 put that up on the screen. I can read it out if you 12:27
16 wish. 13323?

17 A. The date on that?

18 195 Q. I'm sorry, the 3rd August?

19 A. '15?

20 196 Q. Yes, I beg your pardon. Do you have the original 12:28
21 there?

22 A. Mm-hmm.

23 197 Q. I think you have there:
24
25 "Night taximan stabbed at Bloomfield Drive." 12:28
26
27 Then "rest day". "Rest day". Entries about that.
28 "Rest day". And then on the you have:
29

1 "I noticed I was removed on Pulse from stabbing of
2 taximan. I seized clothes and..."

3 CHAIRMAN: "And car" for examination, I take it. "FE",
4 for examination, I am just working that out.

5 A. "TE", technical examination. 12:29

6 CHAIRMAN: Technical examination, sorry.

7 198 Q. MR. MCGUINNESS: Sergeant Monaghan's initial report to
8 Superintendent Murray said that you would be tending to
9 further enquiries on your return from rest days. You
10 obviously then discovered you were taken off Pulse. So 12:29
11 did you find out what was happening, as it were, in
12 relation to the investigation?

13 A. You see, I was aware that there was -- I think there
14 was another very serious -- I think it was a robbery as
15 well. I think it was the same suspects. I am not 12:29
16 sure.

17 199 Q. CHAIRMAN: That's right, from the description we have
18 just seen, yes.

19 A. So, other guards were obviously at the scene for that
20 robbery and I had nothing to do with that. 12:29

21 200 Q. MR. MCGUINNESS: That's what I was going to ask you?
22 A. Yeah.

23 201 Q. The commendation recommendation deals with the two
24 Pulse incidents?

25 A. Mm. 12:30

26 202 Q. And all of the offenders who were then caught in
27 relation to both of them. The commendation seems to be
28 related to the sort of joint criminal acts that were
29 brought to book by the police, which resulted in the

1 commendation then by Superintendent Murray. So, you
2 had, as it were, an important part at the commencement
3 of the first one?

4 A. Yes.

5 203 Q. No further or other part in the investigation of that 12:30
6 and then no part in the other one?

7 A. Yeah.

8 204 Q. Are you telling us that Sergeant Monaghan was left off
9 as well?

10 A. I think -- no, Sergeant Monaghan -- I don't think I saw 12:30
11 Sergeant Monaghan's name on the page.

12 205 Q. Who else was involved at the early stage with you?

13 A. There was, from recollection, Garda Séan Glennon. I
14 can't remember, I think he may have been in the patrol
15 car when we arrived at the scene and then we would 12:31
16 have -- because of the seriousness, we would have had
17 to call Sergeant Monaghan, he would have arrived down,
18 just from recollection, with some more guards, let's
19 say, from my unit, the unit that I was working,
20 attached to. None of us get a commendation whatsoever 12:31
21 and, as it happens, I only notice it was me that was
22 removed off Pulse. I think they are all left on Pulse.
23 But I also would argue they should all have got
24 commendations.

25 206 Q. CHAIRMAN: why should they have got commendations? 12:31
26 A. Because it was excellent police work, the preservation
27 of the scene and gathering the evidence.

28 207 Q. CHAIRMAN: Was that not routine?
29 A. It was routine but it --

1 208 Q. CHAIRMAN: I mean, to see to the man, to take the car
2 and so on?
3 A. It was, of course, it was routine. But when a case
4 like that then ultimately ends up as a big
5 successful case. 12:31

6 209 Q. CHAIRMAN: It deserved a commendation you say, then
7 everybody involved, in fairness, should have got it.
8 A. Everybody.

9 210 Q. CHAIRMAN: Okay.
10 A. That would be my argument. 12:32
11 CHAIRMAN: Okay.

12 211 Q. MR. MCGUINNESS: But when you went in on the 8th, did
13 you check who was on the Pulse for every bit of the
14 investigation or not?
15 A. Em... 12:32

16 212 Q. I mean obviously you noted that you were off. Were you
17 concerned to check to see whether others were off?
18 A. Oh yeah, no, I think I was -- I can't even remember
19 why -- I don't think I even checked. I don't think it
20 was like that I went on to Pulse to check, oh am I, 12:32
21 what's -- I think I checked to see what's happening
22 with this incident or something. Something along those
23 lines. And then, I saw the investigating member was I
24 think Niall Cogavin, just from recollection, I'm not
25 sure, from recollection, and as I said, there is no 12:32
26 issue, that would be the normal issue there. So I
27 think just scroll down to see -- like presuming I'm
28 down then, moved to assisting member. That would have
29 been fine. But then I noticed my name is completely

1 removed off Pulse. That would be -- I have never seen
2 that before. For example, the only time I have ever
3 heard of someone being removed completely off an
4 incident on Pulse is where you ring in to Castlebar,
5 the GISC, and you might call out Garda Murphy was -- 12:33
6 let's say we were in a station down in Cork, Garda
7 Murphy was with me and the person on Pulse says, do you
8 know Garda Murphy's long registration number and you
9 say, no, and you might say Garda John Murphy and they
10 might record a John Murphy. 12:33

11 213 Q. CHAIRMAN: The wrong person.
12 A. Which is a different John Murphy.

13 214 Q. CHAIRMAN: That could be changed and deleted, you'd
14 say, no, it was Garda Pat Murphy or Garda Murphy 36250,
15 as opposed to 266, whatever it was? 12:33
16 A. That person would then be removed off Pulse because
17 they clearly weren't there or involved.

18 215 Q. CHAIRMAN: A clear mistake?
19 A. Yes.

20 216 Q. CHAIRMAN: But otherwise, you say, it wouldn't be the 12:33
21 case?
22 A. Yes.

23 217 Q. CHAIRMAN: Okay.
24 A. I have never seen it before.

25 218 Q. MR. McGUI NNESS: Just in terms of Garda Cogavin, is he 12:34
26 part of the detective branch?
27 A. He was, yes.

28 219 Q. You said in your statement that you seemed to have no
29 trouble with the detective unit taking over the case.

1 would that not be de facto, you being replaced as
2 investigating member?

3 A. Oh yeah. I have given that here now, yes.

4 220 Q. I mean, are you blaming Sergeant Curley for targeting
5 in respect of this changing of it? 12:34

6 A. Changing is not the issue, that's the problem. I
7 wasn't change, I was completely removed.

8 221 Q. Yes.

9 A. Someone removed me. So, yes, it was targeting. From
10 recollection, I don't think any of the other members 12:34
11 that were there at the scene were just removed.

12 222 Q. Yes. This is a difficult question, because it's hard
13 to un-know something you have now learned, but: You
14 made your complaint against Superintendent Murray, was
15 it, originally? 12:35

16 A. Yes.

17 223 Q. You made your complaint without the knowledge that
18 other guards had got a commendation for involvement,
19 isn't that correct?

20 A. Yes, yeah. I think so. 12:35

21 224 Q. So you must have presumed that all of you who attended
22 at the scene of the first stabbing incident were
23 unfairly denied a commendation and you didn't know
24 anyone else had actually got one, isn't that right?

25 A. That's correct. That's correct. 12:35

26 225 Q. Now, in that state of knowledge, why did you regard
27 that as targeting when in your belief at the time
28 you're all being treated the same way, nobody got a
29 commendation?

1 A. The issue is in relation to the remove off Pulse, it
2 was removed off Pulse. Like it wasn't that it was
3 just -- in the normal run of things, it would have been
4 just changed to assisting member and that's end of
5 story. But I actually disappear. I was never at the 12:36
6 scene officially.

7 226 Q. Okay. So the fact that the investigating team that
8 dealt with the two incidents get commendations, that
9 has got nothing to do with it then?

10 A. Sorry? 12:36

11 227 Q. The fact that the two investigating teams that sort of
12 solved the two crimes and brought the culprits to book,
13 the fact that they get commendations has got nothing to
14 do with your complaint, their removal from Pulse?

15 A. I am not sure whether -- I presume -- I would imagine I 12:36
16 would have presumed that there were commendations going
17 to come out of this, because I was aware it was a big
18 thing and it was a successful outcome. So I would have
19 presumed there were commendations in the pipeline for
20 somebody. I was obviously aware I didn't get a 12:36
21 commendation and obviously I was aware that I had been
22 completely removed off Pulse. But what was news to me
23 and I am surprised, is that no member of my unit,
24 including Sergeant Monaghan, they never even got
25 commendations. 12:37

26 228 Q. Yes. Do you know whether the first responders in the
27 other taxi investigation got commendations?

28 A. I don't know that. But if -- if somebody was being
29 cute about it and being vindictive, they wouldn't have

1 given them commendations if they weren't -- if they
2 were to keep me out.

3 229 Q. CHAIRMAN: We're going to keep him out, therefore we
4 better make sure that we keep the others out as well?
5 A. I think that is -- yes. 12:37

6 230 Q. CHAIRMAN: Okay. But your real point is this, you say
7 two things: when the detectives got a commendation,
8 you say it would be normal for everybody who was
9 concerned with it in any sort of realistic way, for
10 everybody to get a commendation? 12:38

11 A. Yes.

12 231 Q. CHAIRMAN: Number one. And number two, related to that
13 is the fact that your name was removed from Pulse,
14 A. Yes.

15 232 Q. CHAIRMAN: which you say would also be a very unusual, 12:38
16 if not unique situation?
17 A. That's correct.

18 233 Q. CHAIRMAN: So they're interrelated in that way, is that
19 right?
20 A. Yes. 12:38

21 234 Q. CHAIRMAN: Okay. Thanks very much.
22 MR. McGUI NNESS: Turning on to the next issue.
23 CHAIRMAN: This is the burglary arrest.

24 235 Q. MR. McGUI NNESS: Yes. You complained that you weren't
25 commended for the arrest of a burglary? 12:38
26 A. Yes.

27 236 Q. Is that right?
28 A. Again myself or my partner on the night was not --
29 neither of us, is my understanding.

1 237 Q. who was that?
2 A. I think it was Ciarán Dempsey.
3 238 Q. Okay. It's been confirmed that there was no
4 commendation issued to anyone in respect of that
5 offence at any point? 12:39
6 A. Mm.
7 239 Q. I presume you accept that?
8 A. Yeah.
9 240 Q. Just going back to the previous incident for one
10 moment, it does appear to be a curiosity that at the 12:39
11 time you made your complaint you didn't know that
12 anyone else had been commended and Superintendent
13 Murray nor Inspector Curley, Sergeant Curley referred
14 to the commendations. Did you enquire from anyone as
15 to whether they had got a commendation or that they 12:39
16 were in for it?
17 A. Sorry, are you referring back --
18 241 Q. Yes.
19 A. -- to the previous incident?
20 242 Q. Yes, just go back to that for a moment. 12:39
21 A. Sorry. Did I? I don't think so, I don't know.
22 243 Q. If you hadn't heard of it, would it be surprising that
23 you wouldn't have heard of it? Is there some
24 possibility it was kept secret from you?
25 A. I don't know, I don't know. I just can't recollect the 12:40
26 sequence.
27 244 Q. All right. The burglary then, what was -- perhaps
28 without going into any detail about the accused or
29 the --

1 A. I won't name names.

2 245 Q. Yes. What were the circumstances of the burglary such
3 that it might entitle you to consider you should be
4 considered for a commendation?

5 A. Yeah. Just very briefly, I will just give -- outline 12:40
6 the incident.

7 246 Q. Yes.

8 A. Myself and Garda Dempsey were out on patrol and at such
9 -- I don't know if we received a report or an alarm
10 went off, it was a bakery shop, just from recollection, 12:41
11 but whatever way, we were right there on the scene. We
12 saw broken glass at the window and the two of us
13 straight out of the car, in through this, where the
14 window was smashed, and we gained entry into the shop,
15 the bakery. It was in darkness. We had our torches. 12:41
16 We searched the rooms and the back rooms, let's say, of
17 the bakery. It was actually -- we were kind of nearly
18 on our -- we didn't notice anything and we were -- I
19 think we were getting ready to, you know, just
20 whatever we were doing. But I, just on the way out, 12:41
21 shone the torch, there was a coat rack with a load of
22 coats and there was hoods from the coats hanging off
23 the coat rack. I remember just something, as I was
24 walking out, the torch, I saw a pair of shoes, a pair
25 of runners at the bottom of the coat rack. I just 12:42
26 turned the torch back onto the pair of runners and
27 there was --

28 CHAIRMAN: Hello, hello, hello! what have we here!

29 A. Then I saw a pair of legs and there was a person with a

1 hoodie, with the back turned up to me, blending in with
2 the coats, which I hadn't seen, neither of us had
3 spotted it the first time. Standing perfectly still
4 even with the torch on him, didn't move an inch. Of
5 course, we brought him -- we arrested him for burglary. 12:42

6 247 Q. CHAIRMAN: Okay. Good work.

7 A. That was the incident.

8 248 Q. MR. MCGUINNESS: Presumably you submitted an
9 investigation file in relation to that?

10 A. I presume, I can't just remember. 12:43

11 249 Q. Was it prosecuted to conclusion?

12 A. I presume, I presume. The burglar was caught in the
13 act. I can't remember what happened after that.

14 250 Q. CHAIRMAN: It doesn't necessarily follow that he
15 pleaded guilty, of course, as we know. But you think, 12:43
16 anyway, the matter was a successful conclusion from
17 your point of view obviously?

18 A. From recollection, I don't think the individual denied
19 or tried to make any reasonable excuse to be in the
20 shop. Actually, vaguely, I think the individual was 12:43
21 nearly sure kind of he was going to get away with it,
22 because we had been in there for a while searching.

23 251 Q. MR. MCGUINNESS: I mean, sometimes judges commend
24 gardaí in courts and then that can lead to a process of
25 commendation obviously. But the normal procedure seems 12:44
26 to be that a member's immediate supervisor would kick
27 off the process. Who was your supervisor in that case?

28 A. I'd say it was Sergeant Monaghan. But he wouldn't --
29 that -- I don't -- as I said, over the years --

1 sergeants never had to write on -- it wasn't standard
2 that a sergeant would have to write onto something
3 where a commendation comes down. Actually, I think I
4 have submitted something, it's probably more relevant
5 to the next issue, but, no, it's usually I think from 12:44
6 the chief's office, when they look down at serious
7 incidents and they see certain incidents, certainly the
8 likes of a burglar caught in the act, it would send out
9 an automatic commendation and there's no filling in
10 forms, EP, whatever they call them. As I said, I don't 12:44
11 even remember -- I never filled one out ever, just for
12 myself, from recollection.

13 252 Q. Do some members do that?
14 A. They do now. They're tightening up on it, I
15 understand, now. They're tightening it. And I think 12:45
16 it's wrong as well, that any member can claim they did
17 great police work. If they rescue a cat from a tree,
18 they can then write a report, I'm a great fella, can I
19 have a commendation.

20 253 Q. It's just Mr. de Bruir drew attention to the wording of 12:45
21 Directive 2603, which does provide that any member can
22 do it. So that if somebody felt themselves worthy, you
23 could in fact do it yourself. And some members do do
24 it.

25 A. Some do. And my point, my argument is: I don't think 12:45
26 I ever applied for a commendation for myself for
27 anything but yet I would have a lot of commendations
28 over the years.

29 254 Q. Yes.

1 255 Q. CHAIRMAN: And this is one, you would have expected
2 somebody to say, well, that was pretty good work to
3 alert or to notice, you know, you would expect that
4 somebody would know that?
5 A. Judge, if I wasn't a whistleblower, myself and Garda 12:46
6 Dempsey would have received commendations for that
7 incident.
8 256 Q. CHAIRMAN: Who did that go to? Who did your report go
9 to?
10 A. The report would have been on Pulse. So the Pulse 12:46
11 report would be the official report. Like, what I am
12 trying to say is: The chief in Mullingar, let's say,
13 would have spotted that whenever he was --
14 257 Q. CHAIRMAN: On Pulse?
15 A. At nine o'clock between Monday and Friday, whenever he 12:46
16 would -- he would have spotted that.
17 258 Q. CHAIRMAN: I was just wondering, what would the process
18 be? How would it go? Would it go through your
19 sergeant?
20 A. Sometimes the sergeant will write, if the sergeant 12:46
21 feels -- you know, sometimes the sergeant will write.
22 259 Q. CHAIRMAN: Would it go through the inspector or go to
23 the superintendent?
24 A. It would. If the sergeant writes on it, then it would
25 go inspector to the super. But the sergeant doesn't 12:46
26 necessarily have to write for a commendation. As I
27 said, I have often received commendations where no one
28 has written anything and a chief would spot something
29 and say, that's good work, give them commendations.

1 260 Q. MR. MCGUINNESS: Superintendent McBrien describes the
2 process in her statement at page 6204 onwards to 6207.
3 But the process is fairly simple as set out in the
4 directive. Everyone knows about it, isn't that right?
5 Everybody knows about the process?

12:47

6 A. Of the EP...

7 261 Q. Yeah, of initiating it?

8 A. Yeah. As I said, I have never used it. The only time
9 I would have ever signed one of those EPs is where
10 someone -- it could have been for, let's say, a unit
11 and everyone in the unit would sign for just a
12 commendation, as in the group. But I have never done
13 one for myself, if that makes sense.

12:47

14 262 Q. Yes. Perhaps we will look at just what she says on
15 page 6268. I mean, your story of the arrest does, of
16 course, display initiative and awareness etcetera. I
17 am sure this was retold in the station. But she is
18 being asked here about the burglary and she says:

12:48

19

20 "Is there any attempt to deny Garda Keogh a
21 commendation for a performance and if so, supply
22 details."

12:48

23

24 She has been advised of this complaint of yours, which
25 does relate to her period, doesn't it?

12:48

26 CHAIRMAN: This is when Superintendent McBrien was
27 there.

28 A. Yeah. Judge, just to clarify, I think all the
29 commendations that I would have got, for some reason I

1 think they came from the chief's office, not the
2 superintendent's office.

3 263 Q. MR. McGUI NNESS: But in any event, she says --
4 CHAIRMAN: But Superintendent Murray had nothing to do
5 with this one? 12:49

6 A. Oh yeah, I would accept that, yeah.

7 264 Q. MR. McGUI NNESS: So she says:
8
9 "No. . . ."
10 12:49

11 This is about an attempt to deny you a commendation.
12
13 "No, I actually complemented Garda Keogh on his duty at
14 one point i nformally."
15 12:49

16 Do you recollect that?
17 A. I can't recollect but I wouldn't dispute it.

18 265 Q. On the date that you refer to she was on leave. What I
19 just want to get around to is: You've put this in as
20 an element of targeting and bullying, that this thing, 12:49
21 this process didn't happen and didn't apply to you and
22 you didn't get this award. Who are you blaming, as it
23 were, for the targeting and the bullying or the
24 discrediting in this regard?

25 A. I would say the chief in Mullingar. 12:49

26 266 Q. Chief Superintendent Curran?
27 A. Yes.

28 267 Q. You think he got the file and decided --
29 A. He would have seen it on Pulse.

1 268 Q. He would have seen it on Pulse?
2 A. Would have, would have seen it on Pulse.
3 269 Q. Is that right?
4 A. Somebody from the chief's office. Like they would
5 monitor everything. He's the chief of westmeath, so he 12:50
6 would have monitor everything at the time in the
7 Mullingar district and the Athlone district. He then,
8 when he would see something like that, he would just --
9 the norm, prior to me becoming a whistleblower, the
10 norm would be, you'd just get a sheet of paper out with 12:50
11 a commendation, good police work, that's it. It's only
12 a little thing, but it's...
13 270 Q. Okay. So this should have stood out to him and you
14 think he must have seen it and he decided you weren't
15 going to get it? 12:50
16 A. As I said, if I wasn't a whistleblower, I definitely --
17 I have got commendations for way less.
18 271 Q. Okay. Like what?
19 A. I mean, I can't off the top of my head, you know. I
20 have one -- there's one incident I know of but I 12:50
21 wouldn't call it less. But I mean, it could be
22 anything. You could get a commendation for even the
23 successful theft of a shoplifter. You know, it could
24 be anything you could get commendation for good police
25 work. 12:51
26 272 Q. Okay.
27 CHAIRMAN: But the basis is that he should have seen it
28 on Pulse and deduced from that that this was good
29 police work.

1 A. Yes.

2 273 Q. CHAIRMAN: He wouldn't have any other information, he
3 wouldn't have reports or anything like that?

4 A. I have seen -- I have got commendations from --

5 274 Q. CHAIRMAN: Straight off Pulse? 12:51

6 A. Straight off, from the same chief superintendent, back,
7 let's say, 2013, you. But again, from 8th May 2014, my
8 commendation days are over. And, as I stated, anyone
9 that's working with me, they're not getting
10 commendations either. 12:52

11 CHAIRMAN: Okay.

12 275 Q. MR. MCGUINNESS: The third incident related to the
13 rescue of a lady from drowning?

14 A. Mm-hmm.

15 276 Q. In your statement at page 137, you say: 12:52

16
17 "Sergeant Monaghan applied for commendations for the
18 whole unit but nobody received any."

19

20 A. That's my recollection. 12:52

21 277 Q. You say in your statement to the investigators that:

22
23 "It's my belief that no commendations were granted as I
24 was the one who rescued the lady from the water, but
25 nobody told me that. In my experience, a rescue such 12:52
26 as this would bring about commendations from the
27 Gardaí."

28

29 A. Sorry, just to clarify that, that self praise that I've

1 done there is not accurate. The person actually behind
2 me that was holding me by the waist, the guard behind
3 me, I would have gone into the water as well, the
4 way -- where the woman had gone so deep down into the
5 Shannon.

12:53

6 278 Q. Yes.

7 A. I had to jump into a submerged boat, to try and lean
8 over and when -- the only part of her I could grab onto
9 was her hair, because she had gone down under, but her
10 body weight was pulling me down. Another guard came,
11 he grabbed me by the -- around the -- as I was about to
12 go over, by the hips and he counteracted with his body
13 weight behind. That was the way, we were able to drag
14 her around by the head of hair, around to kind of the
15 pier. Then, with the other -- called for the other
16 guards or I think there might have been an ambulance as
17 well, that we were all able to then get her up out of
18 the water then at that stage. But I, of course, had
19 the belt, I had handcuffs and batons and boots and
20 clothing. If that other guard hadn't grabbed me, I
21 would have gone in with that woman and, of course, we
22 would have ended up both going down together, because
23 naturally instinct, if one is drowning, you grab onto
24 anything. So, look, it was that. The guard behind
25 actually was -- and I shouldn't have just -- that makes
26 myself out to be --

12:53

12:53

12:54

12:54

27 279 Q. CHAIRMAN: what time of the day did this happen?

28 A. Sorry.

29 280 Q. CHAIRMAN: what time?

1 A. This was roughly 3 or 4am at night.

2 281 Q. CHAIRMAN: Totally dark?

3 A. Well, it was --

4 282 Q. CHAIRMAN: There was street lighting?

5 A. Street lighting, yes. 12:54

6 CHAIRMAN: Okay. Thanks very much. Sorry.

7 283 Q. MR. McGUINESS: Anyway, there is a description of it

8 in your initial statement. But page 91, you described

9 it there:

10 12:55

11 "Sergeant Monaghan was the sergeant present at the

12 scene. Later applied for commendations for everyone."

13

14 I think that's disputed. It seems to be the case that

15 no commendations were applied for, for anyone? 12:55

16 A. Just my recollection of that night was, I thought

17 Sergeant Monaghan said he was going applying for

18 commendations. That's just my recollection of that

19 night.

20 284 Q. Yes. 12:55

21 A. I don't want to get into any dispute with Sergeant

22 Monaghan on whether there was or wasn't, it's

23 irrelevant. The thing is, again, I'm aware of previous

24 instances where other guards would have saved persons

25 from the River Shannon, because there's a bridge there 12:56

26 and it's an urban area and people do things, and they

27 would have got -- they would have got a commendation.

28 In later times, of course, it was Irish -- the Water

29 Safety Council, so they would have got both a

1 commendation from the guards and the water safety
2 award, they would have got both of those. In this one,
3 that's fine, we get an award from the water safety
4 Council. The point is, we don't get any recognition
5 from the Guards. There's no commendations for any of 12:56
6 us on that incident again on the unit. And that, as I
7 said, that was a real team effort there on that one. I
8 think, if I'm correct, I think there was ambulance
9 there was well. I think they were there as well.

10 285 Q. Yes. I mean, this incident happened on 22nd September 12:56
11 2015. Within two months, Superintendent Murray had
12 nominated you with the other members for the Seiko Just
13 in Time award?

14 A. Why two months later? I spotted that. I was curious,
15 why would you do it two months later? I am just 12:57
16 curious about that.

17 286 Q. Well, we will come to that date and its importance in a
18 moment, but what you say in this portion of your
19 statement is that:
20 12:57

21 "In my belief, no commendations were granted as I was
22 the one who rescued the lady from the water but nobody
23 told me that."
24

25 Now, just to pause there. You do record in your diary 12:57
26 that Superintendent Monaghan told you he had applied
27 for a commendation and you put in your diary:
28
29 "But I doubt I'll get one."

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Isn't that right?

A. I may, I just don't remember.

287 Q. Right.

A. If you give me the page number.

12:58

288 Q. Yes. It's there at --

CHAIRMAN: 22nd September '15.

MR. MCGUINNESS: It's at page 1330.

A. Yes, I see it now, yes.

289 Q.

12:58

"Sergeant Monaghan said he would look for commendation for unit. I doubt I will get one."

We have been told by the Chief State Solicitor's Office that no commendations are on file and nobody applied for commendations. It would appear, perhaps inferentially, that it's because Superintendent Murray applied and nominated you all for the Seiko Just in Time award on 11th November 2015

12:58

A. That has absolutely nothing to do with commendations from the Guards.

12:58

290 Q. Yes.

A. I have no issue, the thing with the award is a completely separate thing. I am talking about the commendations from the Guards. I've read -- they have this in glowing light all over about this Water Safety award, that's fine, there's no dispute on that.

12:59

291 Q. That is a public award?

A. Yes, but the norm would be you would get commendation

1 from An Garda Síochána and you would get the award.

2 292 Q. But we are talking about allegations of bullying and
3 harassment, or targeting or discrediting by
4 Superintendent Murray; isn't that right?

5 A. Yes. 12:59

6 293 Q. What you say in your statement:

7
8 "Unusually in this situation, only Irish Water Safety
9 gave an award. This award was given on 8th November
10 2016, which was over a year after the incident occurred 12:59
11 on the 22/9. It's my belief that the recommendation
12 belatedly triggered by An Garda Síochána for an award
13 from the Irish Water Safety coincides with the issuance
14 and service of the Garda's receipt of your application
15 to the Personal Injuries Assessment Board in respect of 13:00
16 my civil proceedings against the Gardaí. It is my
17 belief that this was a guise to counteract the receipt
18 of the said application as it was difficult for the
19 Gardaí to perform a U-turn of their earlier position
20 not to follow Sergeant Monaghan's recommendation for a 13:00
21 commendation. Hence the unusual role of the sole award
22 from Irish Water Safety."

23
24 That's at page 91. You seem to be very clearly saying
25 that this was a reaction to the issuing of the 13:00
26 authorisation for your civil proceedings to go ahead.
27 That the Guards then belatedly triggered this
28 application for a water safety award?

29 A. Yeah. Yes, but again, like, just going back, I mean

1 with the two-month gap between the incident and
2 Superintendent Murray, I did find that absolutely so
3 curious in the timing. That two months later he just
4 decides to -- you know, will all different things
5 happened. Why didn't he do it -- you know, why would 13:01
6 he not have done it straightaway or within that week?
7 Like, why two months later does he apply for this
8 award? And equally, my argument is that it's nothing
9 to do with the award, it's the commendation, didn't get
10 a commendation from An Garda Síochána and to back it 13:01
11 up, just, in 2013 and I think I have submitted it
12 somewhere in the first few volumes, I may have it in
13 there, of commendations. In 2013, as an example, I was
14 off duty, I was involved in an incident, where there
15 was a group of people badger baiting in Offaly and with 13:02
16 the national parks, wildlife rangers, we went down and
17 at the scene confronted eight individuals, five of them
18 -- was it three of them are juveniles, five of them
19 were adults. So there were successful convictions in
20 that incident. The national parks wrote a commendation 13:02
21 to me to the chief superintendent of Mullingar and the
22 chief superintendent in Mullingar also wrote out his
23 own commendation to me on that incident. If that makes
24 sense. There was no application from me.

25 294 Q. Okay. 13:02

26 A. There was no -- this is where my argument is, you would
27 have got the water safety award and a commendation from
28 the Guards. And I gave that previous 2013 incident by
29 way of example.

1 295 Q. Yes. Well, could we just look at page 671 before we
2 break for lunch?
3 CHAIRMAN: I would be hoping that we could complete
4 this thing, if that's all right.
5 MR. McGUI NNESS: Yes. 13:03
6 CHAIRMAN: If you are happy enough and then we will
7 break enough, going on to a new one, you know. You
8 don't have much more, Mr. McGuinness, I am sure.
9 MR. McGUI NNESS: I will be five minutes, perhaps.
10 CHAIRMAN: Perfect. Thanks very much. If you would 13:03
11 prefer not, just let me know.
12 WITNESS: Oh no, no.
13 296 Q. MR. McGUI NNESS: This is your Plenary Summons, which
14 was issued on 13th April 2017, which is on the
15 preceding page. But it recites the authorisation that 13:03
16 was issued by the PIAB board?
17 CHAIRMAN: 28th October 2016?
18 MR. McGUI NNESS: 28th October 2016, yes.
19 297 Q. CHAIRMAN: In other words, the point you made in your
20 statement appears to be wrong. You said, the only 13:04
21 reason why Superintendent Murray put in the application
22 for the Just in Time award was because the PIAB
23 authorisation had come through for my proceedings. The
24 dates don't support that.
25 A. That 's fair. That's fair. 13:04
26 298 Q. CHAIRMAN: The PIAB authorisation is 28th October --
27 hold on a second, hold on. Maybe it`s wrong. It
28 doesn't matter. But the PIAB authorisation is 28th
29 October 2016 and the recommendation for the Just in

1 Time award is the 11th November 2015. Are you with me?

2 A. I am, yes, Judge.

3 299 Q. CHAIRMAN: Now, what do you say to that?

4 A. I accept it, the statement I made to the Tribunal on

5 the night of the deadline -- 13:05

6 300 Q. CHAIRMAN: It doesn't matter. Mr. McGuinness is

7 saying, that particular point appears not to be valid?

8 A. That point.

9 301 Q. CHAIRMAN: Because the dates don't match up?

10 A. I accept that. 13:05

11 302 Q. CHAIRMAN: You still say I still should have got the

12 two awards.

13 A. The commendation.

14 303 Q. CHAIRMAN: I understand that. But as to the specific

15 date, he didn't sit down and say, I will fix this now, 13:05

16 because he has got PIAB authorisation, I will fix that

17 by sending in an application and I will cover myself.

18 A. I have erred on that part.

19 304 Q. CHAIRMAN: That's fine. Mr. McGuinness wanted to

20 clarify that so we have the facts and the chronology 13:05

21 correct. You're happy with that?

22 A. I am. And I did say in that particular statement,

23 there are a number of things in that statement that

24 I --

25 305 Q. CHAIRMAN: Okay. 13:05

26 A. But my point is : I didn't get a commendation from the

27 Guards. Nothing to do with the water award.

28 306 Q. CHAIRMAN: Okay.

29 A. The commendation is the point.

1 CHAIRMAN: Yes.

2 307 Q. MR. MCGUINNESS: This passage from your statement that
3 I quoted from page 91, this is from the statement to
4 the Tribunal investigators here last year in 2018, in
5 August 2018. So you're making the allegation that he 13:06
6 readied up the recommendation for the Seiko award as a
7 response to this document that was issued by PIAB.
8 Let's be clear about that.

9 A. It appears I'm wrong in that.

10 308 Q. Pardon? 13:06

11 A. It appears I'm wrong in that.

12 309 Q. Yes.

13 A. I'm only human, I have obviously made a mistake on
14 that.

15 310 Q. Yes. So, Superintendent Murray's recommendation, 13:06
16 perhaps we will just look at that, volume 32, 9210.
17 This is the 22nd September, by the way, on the day of
18 the incident.

19

20 "I wish to draw your attention to an excellent piece of 13:07
21 work carried out by the members involved, led by
22 sergeant (blank) who, in a case at 3am in the dark
23 located Ms. (Blank) and saved her life. The actions of
24 the sergeant and his team warrant mention. I have
25 asked that they notify Irish Water Safety so their good 13:07
26 work is acknowledged."

27

28 Then, if we can go on to the next page. That's going
29 up to the chief super obviously. You're all on Pulse

1 for that, I think, isn't that right?

2 A. Oh yes, yeah.

3 311 Q. Then, if we go up to page 2383. Sorry, if we go to
4 page 2053 first. Could you go down the page?

5

13:08

6 "On 11th November 2015, I nominated seven members,
7 including Garda Keogh, for a Seiko Just in Time award.
8 I attach a copy of the correspondence PM 58. The
9 awards were presented to members on 8th November 2016
10 at a ceremony in Dublin Castle. This was the second
11 occasion on which I nominated members for recognition
12 of Seiko Just in Time awards. The members I nominated
13 on the first occasion were also recognised, receiving
14 Seiko watches as their rescue efforts put them in great
15 danger. There was not an ulterior motive for
16 nominating Garda Keogh for this award."

13:08

13:08

17

18 Then if we go to PM 58, that's at page 2383-6. You're
19 there under Sergeant Monaghan there at the top, you're
20 expressly named. There's quite a clear summary of what
21 happened there. And a high recommendation that you all
22 be considered for that. Then if we just look at the
23 next couple of pages as well. So, this is then the 2nd
24 November. There's notification of the award. If we go
25 down then, down to Sergeant Monaghan, you were given an
26 invitation there. Then the next page -- I'm sorry,
27 that's the SAMS absence page. Nothing to do with it.

13:09

13:09

28

29 I don't know whether you would regard a commendation or

1 an award in public in the castle as equal to or better
2 or inferior one to the other, but it seems to be
3 inconsistent with the targeting, that on the one hand I
4 won't give a commendation to all of the members because
5 I want to get at you, but I will nominate you for an 13:10
6 award. It seems on its face perhaps inconsistent.

7 A. It's like this, if I wasn't a whistleblower, I would
8 have perhaps got the award, but if I wasn't a
9 whistleblower I would have got a commendation along
10 with the rest of my unit for that event from An Garda 13:10
11 Síochána. There's no issue, the award, it's kind of a
12 separate matter altogether. From An Garda Síochána
13 there is no commendation, and that is my point. Me and
14 the rest of my unit normally would have got a
15 commendation from An Garda Síochána. And I have given 13:10
16 the example of prior thing from 2013.

17 312 Q. It appears from your diary that Sergeant Monaghan told
18 you he would apply for commendations. Do you think he
19 applied and it was refused or did you ever ask him his
20 happened his intention? 13:11

21 A. He said it on the night that he was going to apply for
22 commendations. I am not sure after that, like what the
23 sequence of events were. I don't know. Like, again, I
24 mean, it's possible, that -- again, we spent a bit of
25 time at the scene again. 13:11

26 313 Q. Yes.

27 A. Although he may have said what he said, let's say, I do
28 recall back at the station and, ah, my boots and
29 everything were all wet from the submerged boat. There

1 was a bit of work to do. So he mightn't have had time
2 equally, if he didn't. I'm not going to dispute what
3 Sergeant Monaghan did or didn't do.

4 314 Q. We will hear from him in due course. But the final
5 question on this issue: was there a lot of grumbling 13:11
6 among all the people who jumped in the Shannon and
7 searched the river bank, that they didn't get a
8 commendation? From the others?

9 A. I don't -- you see -- I finished on --

10 315 Q. Perhaps I overstated it, but you jumped into a boat 13:12
11 anyway?

12 A. I jumped into a boat and the other guard had to jump
13 into the same boat to grab me as well.

14 316 Q. Yes.

15 A. And this is, again as I said, from -- what's -- I go -- 13:12

16 317 Q. CHAIRMAN: From the end of December?

17 A. The end of December.

18 318 Q. CHAIRMAN: Yes.

19 A. So, where is this? We're in September, is it, or
20 October? 13:12

21 CHAIRMAN: September.

22 MR. McGUI NNESS: well, this is September?

23 319 Q. CHAIRMAN: October, November, so there's three months
24 really?

25 A. Yeah, there is. I don't remember. 13:12

26 CHAIRMAN: Okay.

27 320 Q. MR. McGUI NNESS: Okay.

28 A. Again, as I said, there's never, oh -- a commend ation,
29 it's not a huge thing.

1 321 Q. CHAIRMAN: No, I understand.
2 A. It's tiny, symbolic thing.
3 322 Q. CHAIRMAN: You don't want to make too much of it?
4 A. Usually they come down, you get one, it's thrown in
5 your locker and, oh, I got a commendation. And pretty 13:12
6 much, you wouldn't put it in a frame or anything. It's
7 just another sheet of paper. But the point is, it's
8 the acknowledgment from An Garda Síochána.
9 MR. MCGUINNESS: Yes.
10 323 Q. CHAIRMAN: But for what it is worth, you say, you would 13:13
11 have expected to get both. You think it is sinister
12 and significant that you didn't get both?
13 A. And the normal --
14 324 Q. CHAIRMAN: Yes, I understand.
15 A. The normal thing is, we would have got both. I don't 13:13
16 want to sound...
17 325 Q. CHAIRMAN: That's fine. Mr. McGuinness wanted to
18 clarify that so we have the facts and chronology
19 correct. You're happy with that?
20 A. I am. I did say in that particular statement, there 13:05
21 are a number of things in that statement that I --
22 326 Q. CHAIRMAN: Okay.
23 A. But my point is: I didn't get a commendation from the
24 Guards. Nothing to do with the water award.
25 327 Q. CHAIRMAN: Okay? 13:05
26 A. It is the commendation, is the point.
27 CHAIRMAN: Yes.
28 328 Q. MR. MCGUINNESS: This passage from your statement that
29 I quoted from page 91, this is from the statement to

1 the Tribunal investigators here last year in 2018, in
2 August 2018. So you're making the allegation that he
3 readied up the recommendation for the Seiko award as a
4 response to this document that was issued by PIAB.
5 Let's be clear about that.

13:06

6 A. It appears I'm wrong in that.

7 329 Q. Pardon?

8 A. It appears I'm wrong in that.

9 330 Q. Yes.

10 A. I am only human, I have obviously made a mistake on
11 that.

13:06

12 331 Q. Yes. So, Superintendent Murray's recommendation,
13 perhaps we will just look at that, volume 32, 9210.
14 And the details r this is the 22nd September by the
15 way. On the day of the incident.

13:06

16
17 "I wish to draw your attention to excellent piece of
18 carried out by sergeant blank at 3am in the dark
19 located Ms. Blank and saved her life. The actions of
20 sergeant and his team warrant mention and I have asked
21 that they notify Irish water safety so their good work
22 is acknowledged."

13:07

23
24 Then if we go on to the next page, that is going up to
25 the chief super obviously. You're all on Pulse for
26 that. I think. Isn't that right?

13:07

27 A. Oh yes, yeah. Yes.

28 332 Q. And then if we go up to page 2383, sorry if we go to
29 page 2053 first. Could you go down the page?

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"On the 11th November 2015 I nominated seven members including Garda Keogh for Seiko Just in Time award. I attach a copy of the correspondence PM 58. These the awards were presented to members on the 8th November 2016 at a ceremony in Dublin Castle. This was the second occasion on which I nominated members for recognition with the Seiko Just in Time awards. The members I nominated on the first occasion were also recognised, receiving Seiko watches as their residue put them in greater danger. There was not an ulterior motive for nominating sac for this award."

13:08

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If we go to 2383-6, PM 58 and you're there under Sergeant Monaghan there at the top, you're expressly named. There's quite a clear summary of what happened there. And a high recommendation that you all be considered for that. Then if we just look at the next couple of pages as well. So, this is then the 2nd November. There's notification of the award. If we go down then, down to Sergeant Monaghan, and you were given an invitation there and then the next page -- I'm sorry that is the SAMS absence page. Nothing to do with it.

13:08

13:09

13:09

I don't know whether you would regard a commendation or award in the castle as equal to or better or inferior one to the other, but it seems to be inconsistent with the targeting, that on the one hand I won't give a

1 commendation to all of the members because I want to
2 get at you but I will nominate you for an award. It
3 seems on its face perhaps inconsistent

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5 have perhaps got the award, but if I wasn't a 13:10
6 whistleblower I would have got a commendation along
7 with the rest of my unit for that event from An Garda
8 Síochána. And there's no issue, the award is a -- it's
9 kind of a separate matter altogether. From An Garda
10 Síochána there is no commendation. And that is my 13:10
11 point. Me and the rest of my unit normally would have
12 got a commendation from An Garda Síochána and I have
13 given the example of prior, 2013.

14 333 Q. It appears from your diary that Sergeant Monaghan told
15 you he would apply for commendations, do you think he 13:10
16 happened and it was refused or did you ever ask him his
17 intention?

18 A. He said it on the night that he was going to apply for
19 commendations. I am not sure after that, like, what
20 the sequence of events were. But I don't know. Like, 13:11
21 again I mean, it's possible, that -- again we have to
22 spend a bit of time at the scene again.

23 334 Q. Yes?

24 A. Although he may have said, what he said let's say, I do
25 recall something back at the station and ah my boots 13:11
26 and everything were all wet from the submerged boat
27 there, was a bit of work to do, so he mightn't have had
28 time equally, if he didn't. I'm not going to dispute
29 what Sergeant Monaghan did or didn't do.

1 335 Q. We will hear from him in due course. But the final
2 question on this issue: was there a lot of grumbling
3 among all the people who jumped in the Shannon and
4 searched the river bank that they didn't get a
5 commendation? 13:12

6 A. I don't -- you see -- I finish on --

7 336 Q. Perhaps I overstated it, but you jumped into a boat
8 anyway?

9 A. I jumped into a boat and the other guard had to jump
10 into the same boat to grab me as well. 13:12

11 337 Q. Yes.

12 A. And this is, again as I said, from, what's -- I go.

13 338 Q. CHAIRMAN: From the end of December?

14 A. From the end of December.

15 339 Q. CHAIRMAN: Yes? 13:12

16 A. So, where is this? We're in September, is it, or
17 October?

18 CHAIRMAN: September?

19 MR. McGUI NNESS: well, this is September.

20 340 Q. CHAIRMAN: October, November, so there's three months 13:12
21 really?

22 A. Yeah, there is. I don't remember.

23 CHAIRMAN: Okay.

24 MR. McGUI NNESS: Okay.

25 A. Again as I said there, a commendation, it's not a huge 13:12
26 thing.

27 341 Q. CHAIRMAN: No, I understand.

28 A. It's a tiny, symbolic thing.

29 342 Q. CHAIRMAN: You don't want to make too much of it?

1 A. Usually they come down, you get one, it's thrown in
2 your locker. Oh, I got a commendation. And pretty
3 much, you wouldn't put it in a frame or anything. It's
4 just another sheet of paper. But the point is, it's
5 the acknowledgment from Garda Síochána. 13:13
6 MR. McGUI NNESS: Yes.

7 343 Q. CHAIRMAN: But for what it is worth, you say, you would
8 have expected to get both and you think it is sinister
9 and significant that you didn't get both?

10 A. And the normal -- 13:13

11 344 Q. CHAIRMAN: Yes I understand?

12 A. -- the normal thing is we would have got both. I don't
13 want to sound...
14 CHAIRMAN: That is the whole point. Thank you very
15 much. Are you happy with that? 2:15, thanks very 13:13
16 much.

17

18 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS
19 FOLLOWS:

20 14:17

21 MR. McGUI NNESS: Thank you, Chairman. Mr. Kelly has
22 informed me that he is no longer requiring the Tribunal
23 to pursue number 16 any further at this point in time.

24 CHAIRMAN: Number 16, Mr. Kelly. which, just remind
25 me? 14:17

26 MR. McGUI NNESS: It relates to phone tapping.

27 CHAIRMAN: Oh yes. Thank you very much. We can forget
28 number 16. Thank you very much.

29 MR. McGUI NNESS: I thank Mr. Kelly for that

1 communication.

2 CHAIRMAN: Thank you very much.

3 MR. McGUI NNESS: we concluded number 15, Chairman.

4 CHAIRMAN: Yes.

5 MR. McGUI NNESS: So I was going to proceed on to issue 14:17

6 number 17.

7 CHAIRMAN: Yes.

8 MR. McGUI NNESS: Complaints by Garda Keogh in relation

9 to the criminal investigation carried out by

10 Commissioner Donal Ó Cualáin. 14:17

11 CHAIRMAN: Yes.

12 345 Q. MR. McGUI NNESS: Obviously in context, you became aware

13 of his appointment very shortly after your protected

14 disclosure?

15 A. Probably within two weeks. 14:18

16 346 Q. Pardon?

17 A. Roughly two weeks.

18 347 Q. Are you talking about the first contact or becoming

19 aware of his appointment?

20 A. I think he sent me a letter. 14:18

21 348 Q. Yes.

22 A. Yeah.

23 349 Q. Obviously you met him and his team a large number of

24 time and you were in communication over quite a period,

25 over the phone and by letter as well? 14:18

26 A. I initially met him and Detective Superintendent

27 Mulcahy.

28 350 Q. Yes. In terms of keeping in touch with him and his

29 team and vice versa, there was a lot of contact over

1 the period of the investigation?

2 A. Yes. It was mainly with Detective Superintendent
3 Mulcahy.

4 351 Q. Yes. He was the lead investigator under the assistant
5 commissioner? 14:19

6 A. Yes.

7 352 Q. Obviously you weren't part of the investigation team.
8 You naturally had an interest in what might be
9 happening. You make statements, as required, dealing
10 with all different aspects of it that you were aware of 14:19
11 or had evidence of or suspicions or beliefs?

12 A. That's correct. Essentially I was their informant and
13 I handed the knowledge that I had and things that I was
14 aware of to them and any persons that had come forward,
15 I handed everything over to them, yes. 14:19

16 353 Q. This isn't a criticism at all, Garda Keogh, but in
17 terms of your own position, you had relatively little
18 sort of direct first-hand evidence to give, apart from
19 a few items that you handed over, in terms of physical
20 evidence? 14:20

21 A. I think -- sorry, can you just repeat that? There was
22 a lot of stuff, there was two separate things. There
23 was contents of an affidavit and then when I got to the
24 main complaint, which was the heroin collusion
25 complaint. 14:20

26 354 Q. Yes.

27 A. But didn't go into detail in the affidavits because
28 it's more complicated, yes.

29 355 Q. I am really just focusing, I suppose I should have been

1 more clear, in terms of first hand evidence. You
2 didn't have a lot of first hand evidence to provide to
3 them yourself?

4 A. Well I had one piece of primary evidence, which is the
5 DVD. 14:20

6 356 Q. Yes.

7 A. That was linked with the affidavit, yeah.

8 357 Q. Yes.

9 A. In relation to the main thing, a lot of circumstantial,
10 a lot of circumstantial evidence, yes. 14:21

11 358 Q. Yes. In terms of --

12 A. Sorry.

13 359 Q. The DVD, I think that was a DVD, was that of an
14 interview you had conducted?

15 A. Yes. 14:21

16 360 Q. With the suspect, the alleged -- the person who was
17 arrested anyway?

18 A. Yes, yes.

19 361 Q. Yes. The significance of it appears to be, correct me
20 if I am wrong, that Garda A's statement was read during 14:21
21 the course of the interview?

22 A. Yes.

23 362 Q. That statement contained the wrong address and,
24 therefore, the wrong sort of misidentification of the
25 suspect in that respect? 14:21

26 A. That's correct. There was also, though, other
27 statements I read out and there was a pattern of
28 collusion -- or sorry, not collusion, sorry, coercion,
29 excuse me, coercion contained in the DVD. Sorry.

1 363 Q. All that was on the DVD was the official Criminal
2 Justice Act record of the questioning of the suspect in
3 the police station?
4 A. Yeah.

5 364 Q. Isn't that right? 14:22

6 365 Q. CHAIRMAN: Can I just intervene. As I understand, in
7 the course of operation Loki, a person was
8 misidentified, that person was arrested?
9 A. Yes.

10 366 Q. CHAIRMAN: Sorry, there was a search, you conducted the 14:22
11 search.
12 A. Yes.

13 367 Q. CHAIRMAN: That person presented himself subsequently
14 and you questioned him?
15 A. That's correct. 14:22

16 368 Q. CHAIRMAN: Isn't that correct?
17 A. Yes.

18 369 Q. CHAIRMAN: During the course of that, it became
19 apparent to you that he was not the correct person and
20 you became confirmed in that view, that this was a 14:22
21 misidentification, this person had nothing to do with
22 the case, isn't that right?
23 A. That's correct. Yes.
24 CHAIRMAN: Okay.

25 370 Q. MR. McGUI NNESS: Am I wrong in my recollection that, in 14:23
26 fact, Garda A at one stage looked in and said, that's
27 not the right person?
28 A. Yes, I think you're correct there, yeah.

29 371 Q. So whatever steps or misrecording of the address or the

1 belief that it was X of particular address, he came in
2 and said, that's not the X, who had the same sort of
3 name as the actual suspect, isn't that right?
4 A. Yes. Yeah, there was -- it came in, I think it was
5 after the interview. I just can't remember. 14:23
6 372 Q. Yes.
7 A. But it was definitely --
8 373 Q. CHAIRMAN: My understanding is he came in during the
9 interview, at a time when you were already pretty
10 satisfied that this was the wrong person, he looked in 14:23
11 and confirmed that this was the wrong person. That's
12 my understanding of the descriptions that we have the
13 episode?
14 A. I'm not sure, because it was if it was during the
15 interview I would have been sitting across from the 14:24
16 suspect.
17 374 Q. CHAIRMAN: Yes.
18 A. There is a DVD which shows what happened anyway.
19 375 Q. CHAIRMAN: It's not important. But at any rate, at
20 some point, at some point during this process, Garda A 14:24
21 confirmed to you -
22 A. Yes.
23 376 Q. CHAIRMAN: - that this was the correct person, this was
24 a misidentified person?
25 A. That's correct, yes. 14:24
26 377 Q. CHAIRMAN: Okay. And you presented the DVD of that,
27 you obtained a DVD of that, had it in your possession
28 and you presented that to the investigating officers,
29 the Ó Cualáin?

1 A. No.

2 378 Q. CHAIRMAN: No?

3 A. I presented that to Judge McMahon.

4 379 Q. CHAIRMAN: Okay. Presumably it made its way to --

5 A. That's correct. 14:24

6 CHAIRMAN: Okay. Thanks very much.

7 380 Q. MR. McGUI NNESS: Now, in your statements you maintain

8 that there were serious and deliberate flaws with

9 regard to this investigation?

10 A. Yes. 14:25

11 CHAIRMAN: Yes. This is the Ó Cualáin investigation?

12 MR. McGUI NNESS: The Ó Cualáin, I beg your pardon,

13 Chairman, yes.

14 381 Q. would you say that the investigation was thorough?

15 A. It's very complicated. Parts of it were thorough. 14:25

16 Parts of it were thorough. There's a load of problems

17 with the investigation. That's why -- and it was a

18 very complicated investigation.

19 382 Q. Yes. But was that one of the serious and deliberate

20 flaws, that it wasn't thorough in some parts? 14:25

21 A. Well, you see, there was so many problems with the

22 investigation. Like to me, the stand out thing was,

23 when I presented the evidence to the investigation

24 team, there was enough evidence there if they wished to

25 look at a suspension or go down that road, but what 14:26

26 happened was, they conducted the investigation and when

27 they were taking the statements in relation to Garda A,

28 it was in Athlone Garda Station.

29 383 Q. Yes.

1 A. while Garda A was on duty.

2 384 Q. Yes.

3 A. He was hanging around the station and he was actually
4 watching everybody that was called in and out to make
5 their statement. 14:26

6 385 Q. We will come to that. That's part of it?

7 A. Yes.

8 386 Q. But my question was really related to the thoroughness
9 and you seem to be saying it wasn't, parts of it
10 weren't thorough. Are you in a position just to help 14:27
11 us from your perspective as to what you thought wasn't
12 thorough?

13 A. I mean, when the first phone was seized from Garda A, I
14 understand, it was Detective Mulcahy told me that the
15 phone had been wiped, that was the first phone that had 14:27
16 been seized from him. So that was in June or July I
17 think 2014.

18 387 Q. Yes, I think you're correct, it was seized on 13th
19 June, during the course of the taking of your
20 statement, isn't that right? 14:27

21 A. I don't know. I can't remember when but I know it was
22 seized. But it was obvious that Garda A had prior
23 knowledge that his phone was to be seized. Because
24 from my recollection of what Superintendent Mulcahy
25 told me, that the phone had actually been wiped. As 14:28
26 in, there's a machine -- I'm not an expert on phone --
27 the way these phone reading machines work, and I could
28 be wrong on this, but I think they can also delete
29 information off phones. There was one of those

1 machines in Mullingar. There was a member of the drugs
2 unit in Mullingar that operated that machine.

3 388 Q. Did he wipe it?
4 A. I don't know. I don't know.

5 389 Q. Do you know when it was wiped? 14:28
6 A. I don't know. Other than Superintendent Mulcahy told
7 me it had been wiped, that the information on the phone
8 had been wiped, which would -- sorry, yeah.

9 390 Q. Sorry, do you think that the suspect guard, do you
10 think he knew that there was an investigation? 14:28
11 A. Well he clearly knew there was an investigation.

12 391 Q. Yes.
13 A. There's no doubt.

14 392 Q. How do you think he knew there was an investigation?
15 A. The investigation team were over in Athlone taking the 14:29
16 statements about, let's say, him.

17 393 Q. Well, we're talking about the 13th June, when it was
18 seized. So he didn't know of any statements being
19 taken at that point in time. How do you think he may
20 have learned that there was an investigation or might 14:29
21 be an investigation?
22 A. Judge, the phone was wiped. He obviously had
23 information that his phone was going to be seized.

24 394 Q. How do you think he might have suspected that?
25 A. Somebody would have had to have tipped him off. 14:29
26 395 Q. Tipped him off about what?
27 A. His phone being seized.

28 396 Q. CHAIRMAN: About what?
29 A. That his phone was to be seized.

1 397 Q. MR. McGUI NNESS: Have you any information to suggest
2 that some of the investigation team tipped him off?
3 was that a lack of thoroughness?
4 A. No, I don't know, I have no idea, like I don't who
5 tipped him off. 14:30
6 398 Q. But you believe he was tipped off?
7 A. Well, I assume he was tipped off if the phone was
8 wiped, all the information --
9 399 Q. CHAIRMAN: Could he not have worked out that it was
10 likely that somebody was going to come around and say, 14:30
11 let's have your phone? Could he not have worked that
12 out?
13 A. That's a possibility as well Judge, yes.
14 400 Q. CHAIRMAN: I mean, if he looked at the television and
15 he saw the report of Ming Flanagan? 14:30
16 A. Yes.
17 401 Q. CHAIRMAN: Bizarrely, that might tell him there was
18 something afoot?
19 A. Yeah.
20 402 Q. CHAIRMAN: But just to be fair to you now, I don't want 14:30
21 to say, we have all the allegations that you have made.
22 I counted them up. Specific criticism, I understand
23 that. But it sounded like you were saying that
24 somebody from the investigation team tipped him off?
25 A. I can't - 14:31
26 403 Q. CHAIRMAN: Why get your phoned wiped? That's a new
27 one. Now I haven't seen that before. I want to be
28 fair to you. I mean, if are you making that, well and
29 good, okay. People will ask you about that. But is

1 that what you are saying?

2 A. I have no evidence it was someone in the investigation
3 team that tipped off. Like what is possible is,
4 somebody in the investigation team, and again, may have
5 said to somebody -- 14:31

6 404 Q. CHAIRMAN: But if you say that, it implies that you
7 believe that some garda tipped him off. And the
8 possibilities are somebody in the investigation team or
9 somebody elsewhere. And I am concerned to know, are
10 you actually saying that? I mean, look, everything is 14:31
11 possible?

12 A. Mm.

13 405 Q. CHAIRMAN: You know, everything is possible. But are
14 you saying that you think somebody tipped him off,
15 given that he could have worked it out himself? 14:32

16 A. Yes.

17 406 Q. CHAIRMAN: If he watched the television?

18 A. Correct, he could have worked it out himself. Equally,
19 he could have been tipped off. I cannot -- I don't --
20 I cannot go any further. 14:32

21 407 Q. CHAIRMAN: But if you leave it in the air, you are
22 leaving it in the air?

23 A. Unfortunately --

24 408 Q. CHAIRMAN: Now, you know as a garda what's evidence and
25 what's allegation and everything else, you know that? 14:32

26 A. Mm.

27 409 Q. CHAIRMAN: So are you leaving it in the air or can I
28 forget that?

29 A. I can't, I can't prove --

1 410 Q. CHAIRMAN: But do you think -- I know you can't prove
2 it, sure that's perfectly obvious that you can't prove
3 it. Sorry, I don't want to be unfair. I don't want to
4 give you a hard time and I don't want to be unfair. I
5 have 10 criticism of the Ó Cualáin report. All I want 14:32
6 to know is, do I write down 11, somebody tipped Garda A
7 off? Is that what you think or can I forget number 11
8 and leave 10 where they are? Do you know what I mean?
9 A. Yes.

10 411 Q. CHAIRMAN: The last thing I want to be is unfair to 14:33
11 you?
12 A. I am trying to think.

13 412 Q. CHAIRMAN: But equally, I don't want to leave something
14 hanging in the air that says, well, it could have
15 happened. I know it could have happened. Everything 14:33
16 could have happened, do you what I mean? I mean
17 Assistant Commissioner Ó Cualáin could have popped
18 around and said Garda A, you know. But there's no
19 suggestion. That would be, I hope, an absurd
20 suggestion? 14:33
21 A. I would doubt it was anybody in the investigation team
22 in that --

23 413 Q. CHAIRMAN: Was it anybody from any team that tipped him
24 off?
25 A. Oh, I can't say that, I can't say that, Judge. 14:33

26 414 Q. CHAIRMAN: As I say, sorry, look it, it sounds like I
27 am giving you a hard time, I'm not. I am just
28 concerned with making that I focus on the allegations
29 and I understand the ones you are making. Okay.

1 415 Q. MR. MCGUINNESS: I mean, perhaps equally, if not more
2 reasonably plausible, part of the allegations that you
3 had made against Garda A were that he had tipped
4 somebody off about disposing of their phones?
5 A. Oh yeah. 14:34
6 416 Q. Yes.
7 A. This is totally earlier, this goes back, isn't it, a
8 couple of years. Yes. Yes. It's a different thing
9 altogether, yeah.
10 417 Q. That was one of the allegations that was contained in 14:34
11 your list, isn't that right?
12 A. Yes, yeah.
13 418 Q. So, from your perspective, you knew that Garda A was
14 capable of dealing with phone evidence that he didn't
15 want police to see or have, isn't that right? 14:34
16 A. Yes.
17 419 Q. Now in that context, do you think Garda A, if Garda A
18 was involved in these matters, do you think the speech
19 in the Dáil could have alerted him to the possibility
20 that his activities were going to come under scrutiny? 14:35
21 A. Oh of course, yes.
22 420 Q. If the phone was wiped, and I have no idea what was on
23 the phone or when it was wiped or whatever, but is that
24 something, that the announcement might possibly well
25 have triggered such an action, if such an action was 14:35
26 done by Garda A?
27 A. I can't dispute the argument you're making.
28 421 Q. Yes.
29 A. But when I say the phone was wiped, my understanding is

1 when -- this is an official State phone and when
2 detective super -- I can't speak for the detective
3 superintendent.

4 422 Q. Yes.

5 A. This is just my understanding, is that, it contained 14:35
6 nothing, like no phone numbers, nothing at all. It was
7 completely blank.

8 423 Q. Yes. But was there some other reason why you think
9 that there might be evidence on the phone?

10 A. Well, that would have been a huge part of the main part 14:36
11 of the collusion investigation, was to do with contact
12 between Garda A and Ms. B.

13 424 Q. Now, you have been obviously very careful and accurate
14 to say yourself that your own affidavit didn't go into
15 any of the details? 14:36

16 A. No, what I did was --

17 425 Q. Sorry, go ahead?

18 A. Sorry, the way I did it was, I did it, I think, just
19 from recollection, my affidavit at point 8, the last
20 one, where I mentioned about the Operation Loki. In my 14:36
21 initial dealings with Detective Superintendent Mulcahy
22 and Commissioner Ó Cualáin, I said, look, here's this
23 affidavit but this is what I really want to talk to you
24 about, there's a separate thing here which is really in
25 my affidavit. Commissioner Ó Cualáin said, we're only 14:37
26 dealing with what's in the affidavit. Detective
27 Superintendent Mulcahy read through the thing and I was
28 just saying, look, there's this bigger thing here, and
29 I said, it is linked on point 8, I think it's point 8,

1 and Detective Superintendent Mulcahy said, yes, that is
2 linked, he said, yes, it's linked.

3 426 Q. CHAIRMAN: That's in, in other words.
4 A. Yes.

5 427 Q. CHAIRMAN: What you wanted to talk about was covered by 14:37
6 the heading in point 8?
7 A. Detective Superintendent Mulcahy said yes.

8 428 Q. CHAIRMAN: Okay.
9 A. Yeah.

10 429 Q. MR. McGUINESS: I am not in any way critical of you 14:37
11 for keeping your powder dry, if I can put it that way,
12 but had you told Deputy Flanagan when you provided him
13 with the draft affidavit, look, there's evidence that I
14 am concerned about on a State phone that this guard has
15 and don't mention anything about that? 14:38
16 A. Oh, I mean, I can't remember. And just for
17 clarification with the affidavit, it wasn't as simple
18 as -- and people may, including myself, thought that
19 I'll just speak to Deputy Flanagan and I'll go shouting
20 and roaring in the Dáil, it wasn't like that. Deputy 14:38
21 Flanagan said, I want an affidavit from you before we
22 go any further.

23 430 Q. No, I understand that.
24 A. Yeah.

25 431 Q. Am I correct in saying you drafted it in his office? 14:38
26 A. I'm not sure where I drafted it. I remember getting it
27 signed by a solicitor in Tullamore.

28 432 Q. Yes. But I suppose a more direct question is: Did you
29 have any discussion with Deputy Flanagan about phones

1 being an important part of it?

2 A. I am sure I did, but I can't, I just can't remember.

3 433 Q. Okay.

4 A. We're going -- when I started talking --

5 434 Q. CHAIRMAN: We're going back a long time, yeah. 14:39

6 A. Sorry, when I start talk to Deputy Flanagan is, oh,

7 it's -- I don't know, I can't remember.

8 435 Q. CHAIRMAN: The protected disclosure is the 8th May?

9 A. Oh yeah.

10 436 Q. CHAIRMAN: When he mentioned it in the Dáil and you 14:39

11 hand over your protected disclosure to Judge McMahon?

12 A. Yeah.

13 437 Q. CHAIRMAN: Does that help?

14 A. It's not as simple that.

15 438 Q. CHAIRMAN: No, I understand. 14:39

16 A. I didn't wake up on the 8th May and just decide I'm

17 going to make --

18 439 Q. CHAIRMAN: Precisely. The only reason I mentioned

19 that, is that you were trying to get a timescale and I

20 thought that's a helpful date? 14:39

21 A. Yes.

22 440 Q. CHAIRMAN: To remind you of, if that helps you?

23 A. Well, that a date I'll never forget.

24 441 Q. CHAIRMAN: Okay.

25 A. That -- it was -- I was months previously working -- 14:39

26 had made contact with Deputy Flanagan. It could have

27 been even as far as back as 2013, but it was maybe the

28 early months of 2014, I can't recall. I will just have

29 a glance. You see, I wasn't taking notes at the time,

1 because I don't start taking notes until I meet Judge
2 McMahon on the 8th May. That's because, in fairness to
3 Judge McMahon, he advised me, you know, in this
4 process, my advice is, don't write anything about this
5 in your Garda notebooks, get your own notes and keep 14:40
6 notes, because this could go on. In fairness, I
7 wouldn't be able to provide any evidence, anything
8 really, if I didn't --

9 442 Q. CHAIRMAN: Anyway, you think it went back a number of
10 months, certainly to the beginning of 2014, possibly 14:40
11 even into the latter part of 2013?

12 A. '13, yes.

13 443 Q. CHAIRMAN: Okay. Am I right? Possibly?

14 A. I have no date, but I distinctly remember, it was the
15 night there was a garda shot in Louth, I know there was 14:41
16 two guards killed up there in around the same time, but
17 there was a -- it was the night one of the guards, I
18 think, were being buried, I am not sure it was
19 Adrian -- it doesn't.

20 444 Q. CHAIRMAN: Garda Adrian Donoghue, is that right? 14:41

21 A. Yeah, it might have been him, I'm not sure. But Luke
22 Ming Flanagan was on Vincent Brown and I happened to be
23 watching it. Unfortunately, he started on that night
24 talking about Garda corruption and it was the night of
25 the garda funeral. And what he was saying was correct, 14:41
26 but he was saying it at the wrong time. But either
27 way, I was watching this and I then said, I actually
28 have the evidence to back up what Deputy Flanagan is
29 saying. And also, one-third of Athlone is in County

1 Roscommon and he was the TD for Roscommon. So, that's
2 how that kind of -- at some point --

3 445 Q. CHAIRMAN: You kind of fix it in your mind as around
4 about that time. Did you contact him then sometime
5 after that? 14:42

6 A. Yes.

7 446 Q. CHAIRMAN: Okay.

8 A. I had been in contact with him at some period after
9 that. And again, he didn't -- he was very careful. He
10 then put me in touch with Garda John Wilson and 14:42
11 basically said, if you're going ahead with this you're
12 going to need help and you're going to have to talk to
13 this man, who has been through it all. So, it was
14 Garda Wilson who was there from the start with
15 Sergeant McCabe. Then, at some point, as I said, 14:42
16 Deputy Flanagan asked for the affidavit and I got the
17 affidavit and that's history.

18 CHAIRMAN: Okay.

19 447 Q. MR. MCGUINNESS: Just going back to the phone issue,
20 because you do make the case there was a delay in 14:43
21 seizing evidence during which mobile phone evidence was
22 erased. Now, I suppose just starting at the beginning,
23 all of the incidents that you complained of dated from
24 several years prior to this date in June '14, isn't
25 that right? 14:43

26 A. This is do with the Ó Cualáin investigation?

27 448 Q. Yes, when that started?

28 A. I'm sorry, straight out, I actually can't remember what
29 the allegations I have made.

1 449 Q. Yes.

2 A. But I'll know them if they're just...

3 450 Q. I will run through them briefly. The operation Loki
4 2008/9/10?

5 A. Yeah. 14:43

6 451 Q. The theft of DVD on searches, February '11?

7 A. Oh, these are the affidavits in my complaint? Yes.

8 452 Q. The issue about being photographed, 2010; planting
9 evidence, December '12; preferential treatment --

10 A. Sorry, photograph? Photographed? 14:44

11 453 Q. You complained in one of your statement about the
12 suspect being photographed and a photograph being put
13 on Facebook as evidence?

14 A. Oh, yes.

15 454 Q. That was 2010. Preferential treatment in courts, March 14:44
16 '11; heroin in custody, November '09; cronyism, 2009;
17 public order and the phones, September '08; drugs
18 concealed, 2008. So those sort of nine incidents that
19 were being investigated, as it were, related to a
20 period between six years and two years before you made 14:44
21 your disclosure?

22 A. Yes.

23 455 Q. Isn't that right?

24 A. I think it did, yeah.

25 456 Q. You knew because you had some evidence yourself that 14:44
26 this suspect had colluded with a suspect to dispose of
27 phone evidence, isn't that right?

28 A. Yes.

29 457 Q. You hadn't, and I am not criticising you, just

1 mentioned phones in your protected disclosure?
2 A. Sorry?
3 458 Q. You didn't mention phones in your affidavit of
4 protected disclosure?
5 A. Right. I just can't, I can't recall what I put in. 14:45
6 459 Q. Yes. It doesn't appear that you mention phones as an
7 important part of the case to Judge McMahon when you
8 met him on the 8th.
9 A. As I said to you, the affidavit is only --
10 460 Q. I understand. 14:45
11 A. Is the minor part there. In the main complaint that I
12 made to Detective Mulcahy, phones are a huge, massive
13 part of that.
14 461 Q. Yes. But in terms of the seizing of a phone, is it the
15 case that you would have discussed an issue like that 14:45
16 with Judge McMahon
17 A. I may have. I may have. I just can't --
18 462 Q. Okay.
19 A. It's quite possible, but I can't remember. Because I
20 was in contact with Judge McMahon for a while after, 14:46
21 after the initial 8th May. And then -- yeah, then the
22 law changes and the protected disclosures comes in and
23 Judge McMahon then is no longer the confidential
24 recipient.
25 463 Q. Yes. But I am only talking really about the 8th May, 14:46
26 when you made it to him, when you met him outside
27 Dublin for that purpose and handed him the affidavit?
28 A. Okay.
29 464 Q. I'm just wondering, have you a positive memory of

1 mentioning phones or the importance of phones being
2 seized to him when you were meeting him for that
3 protected disclosure?
4 A. I just can't remember. No, I can't. I just can't
5 remember. I think the only note I have in relation to 14:46
6 that is just on the 8th May, I have:
7
8 "Mi ng announces allegations in Dáil and names me while
9 I meet Judge McMahon."
10 14:47
11 That's the only note for that day part, because I have
12 to go into work then that night and it's strange.
13 465 Q. Okay. Judge McMahon, in his statement to us, said he
14 was very surprised when he heard of Deputy Flanagan
15 reciting the details of the protected disclosure and 14:47
16 identifying you in the Dáil that day. That's as may
17 be. But the Pulse entry that you put in on, that we
18 have already dealt with, I just want to touch on it,
19 just from this point of view. Now, I am not assuming
20 that many gardaí watch Dáil debates, but a lot of 14:47
21 gardaí might have picked up on Deputy Flanagan's
22 allegation?
23 A. Mm-hmm.
24 466 Q. You would accept that?
25 A. Yeah. 14:47
26 467 Q. Local guards would have said, look, there's something
27 rumbling here, there's something started in this
28 process?
29 A. Yes.

1 468 Q. The entry on Pulse then, obviously that's done within
2 the station?

3 A. Yes.

4 469 Q. Do you consider that might, in retrospect, have been
5 perhaps unwise in the context of alerting somebody 14:48
6 involved in the offences that you wanted to have
7 investigated, that there was an investigation going to
8 go on?

9 A. No, as I already stated, that's one of the things that
10 I would go back and do again, just for myself in that 14:48
11 first month. I have explained earlier on in previous
12 evidence, you know, that was a very difficult time in
13 that first month.

14 470 Q. Yes.

15 A. Because there were guards there, especially with 14:48
16 younger guards, they didn't know like what was going
17 on. And then they thought -- I mean, they obviously
18 were probably thinking, you know, this, is it about me
19 and all the rest. And the older guards, as I said,
20 would have know, they were grand because they would 14:49
21 have known, had a fair idea of what I was going to be
22 saying.

23 471 Q. CHAIRMAN: But Garda A knew that you had checked him
24 out on the 18th?

25 A. I don't know when he -- 14:49

26 472 Q. CHAIRMAN: I'm sorry, I put that wrong. You checked
27 him out on the 18th?

28 A. Yes.

29 473 Q. CHAIRMAN: If he had seen fit to look up his own thing,

1 he would have seen it. At some point he became aware
2 of it because he wrote protesting about it?

3 A. Yes, Judge, there's no issue that he would have been
4 aware from the 8th May that --

5 474 Q. CHAIRMAN: He was in the frame? 14:49

6 A. There was something coming, yes.

7 475 Q. CHAIRMAN: Okay. what Mr. McGuinness is asking you is
8 this: You're blaming the Ó Cualáin investigation for
9 not grabbing the phone at an earlier time - just hear
10 me out for a second - whereas, in fact, in the 14:50
11 circumstances there was ample opportunity for a suspect
12 to wipe the phone if that was in a person's mind. Do
13 you follow me?

14 A. Yes, I do.

15 476 Q. CHAIRMAN: what do you say to that? 14:50

16 A. I take your point and you are correct. Your argument
17 is --

18 477 Q. CHAIRMAN: No, no, Mr. McGuinness is asking you, this
19 is a criticism you make, you say, look, they didn't get
20 started fast enough. I know you say they should have 14:50
21 come round to you or you should have got your thing
22 earlier, there was delay, I understand that. But on
23 this one, Mr. McGuinness is saying, okay, you say,
24 look, the phone was wiped, and he is asking you, was
25 there not ample opportunity for the phone to be wiped, 14:50
26 notwithstanding, even if they had been as efficient as
27 possible?

28 A. You're correct. And that would also tie in with --
29 where the DVDs were stored in that storeroom, I

1 understand, they were all moved in the first week.

2 478 Q. CHAIRMAN: Don't mind the DVDs, he will ask you about
3 the DVDs in due course or he won't or whatever. But on
4 the phone thing, you think there was opportunity?

5 A. There was opportunity. I will concede -- 14:51

6 479 Q. CHAIRMAN: Should we be absolving or at least reducing
7 the criticism of Ó Cualáin to take account of that?

8 A. Yeah, in relation to the phone --

9 480 Q. CHAIRMAN: The wiping of the phone?

10 A. -- and the DVDs, I accept there was that, yeah, that 14:51
11 that -- I can't blame them for that.

12 481 Q. CHAIRMAN: Okay.

13 A. Yes. I concede on that.

14 482 Q. CHAIRMAN: Okay, thank you very much. I am not trying
15 to get to you concede, I am just trying to follow up 14:52
16 the logic of where the exchange between you and
17 Mr. McGuinness is going, do you understand?

18 A. Yes. And the logic is correct, what you're saying,
19 yes.

20 483 Q. MR. MCGUINNESS: Conversely, following the logic 14:52
21 through, is the suggestion, and again it's not a
22 criticism, if you perhaps had not organised with Deputy
23 Flanagan to make the announcement in the Dáil or hadn't
24 put the matter on Pulse, the suspect, whoever he may
25 be, may not have been aware of the onset, initiation or 14:52
26 likelihood that an investigation team could seize the
27 phone?

28 A. You're correct there, but what's not being taken into
29 account is, Deputy Flanagan's point was, if you're not

1 named in the Dáil and -- if you are not named in the
2 Dáil and they go after you -- basically he did that to
3 have in on the public order for my protection.

4 484 Q. For your protection?

5 A. For my protection, was his point of that. 14:53

6 485 Q. I understand. You may take it that I would have the
7 height of respect for Deputy Flanagan in the sense that
8 I wouldn't anticipate that he would do anything
9 deliberately to try and prevent an investigation that
10 you had come to him to help launch, as it were, or that 14:53
11 he would want to see completed?

12 A. Yes.

13 486 Q. You accept that?

14 A. I didn't personally want -- I didn't want to be named
15 in the Dáil. But, like, he is correct, I think. He 14:53
16 said, this is for your protection, you know, to have it
17 on public record.

18 487 Q. Yes.

19 A. And I do -- in hindsight, I think he was correct there,
20 yeah. 14:53

21 488 Q. So, I mean, it may be a combination of matters, both, I
22 suppose the publicity, perhaps an alternative course of
23 not having said anything, might have led to the seizure
24 of the phone without the suspect realising it was going
25 to be seized? 14:54

26 A. Sorry?

27 CHAIRMAN: If things turned out differently -- well,
28 that follows Mr. McGuinness?

29 MR. MCGUINNESS: Yes.

1 CHAIRMAN: And Garda Keogh agree was that.

2 MR. KELLY: Judge, I am getting a little concerned that
3 we are embarking on a course where there is just a
4 succession of invitations to speculate. Now I
5 understand why that is, but I wonder how helpful it is 14:54
6 in the end.

7 MR. McGUINESS: well, it's helpful because it goes
8 directly to the issue of an allegation of delay in
9 seizing evidence.

10 CHAIRMAN: But I think Garda Keogh has very fairly, if 14:54
11 I am understanding, has very fairly said, listen, that
12 seems to be a reasonable proposition as a matter of
13 logic. He has explained, look, there's a difficulty,
14 name, not name and so on, and those were issues that
15 were canvassed, I think. But you agree that we can at 14:54
16 least dilute the criticism of Ó Cualáin in this
17 respect, taking account of the opportunity that
18 presented itself for anybody to dispose of any
19 incriminating material.

20 A. Yes. And that goes both for the clearance of that 14:55
21 storeroom and the seizure of the phone.

22 489 Q. CHAIRMAN: Okay.

23 A. Yes. I have already said I conceded on that.

24 CHAIRMAN: I think that deals with that particular
25 point. 14:55

26 490 Q. MR. McGUINESS: Except that there is a consequential
27 issue, the first time then the phones were mentioned by
28 you were in the course of the taking of your statement,
29 in June of 2014. Your statement I think was commenced

1 on the 7th June.

2 A. Yes.

3 491 Q. It went to the 11th and 13th?

4 A. Yes.

5 492 Q. Then signed on the 18th? 14:55

6 A. Yeah, you're correct, yes.

7 493 Q. It was at the stage on the 13th, the statement was

8 interrupted and once the phones, I think, were

9 mentioned during the course of that day or morning,

10 Superintendent Mulcahy said it became a priority once 14:56

11 they realised and were told for the first time that the

12 phones were important?

13 A. Mm-hmm.

14 494 Q. The phones were seized on that day, on the 13th?

15 A. I don't dispute it. 14:56

16 495 Q. Yes. It's just I want to suggest to you that it would

17 appear as a consequence from the conduct of the

18 investigation that they seized the phone at the first

19 opportunity possible, on the day they learnt of it?

20 A. Yeah, that is correct. Again, I didn't know, I didn't 14:56

21 know what the procedures were.

22 496 Q. Yes.

23 A. And I suppose it's is fair in hindsight to say they

24 didn't know either really. So...

25 497 Q. I understand that. 14:56

26 CHAIRMAN: Okay.

27 498 Q. MR. McGUI NNESS: One of the other complaints you made

28 was a delay in commencing the investigation, during

29 which evidence disappeared. Leaving aside now the

1 phones and the DVDs, is there anything else that comes
2 under that category of your complaint, is there any
3 other type of evidence?
4 A. They should have come to me sooner than a month after.
5 Really, if they had just met me even or sent someone 14:57
6 out to me or something, other than a letter, much
7 sooner than a month later. As I said, that month was
8 particularly difficult, that month. I said, everyone
9 knows I am here waiting to make this complaint, I'm
10 just waiting. I think I used the term -- 14:58
11 499 Q. MR. KELLY: Sorry to interrupt. It's probably my
12 fault, but has the transcript stopped running?
13 CHAIRMAN: Did the transcript stop running?~
14 MR. KELLY: If you follow.
15 CHAIRMAN: Art has gone to sort it out. We can assume 14:58
16 he has gone to sort it out, Mr. Kelly.
17 MR. KELLY: That's fine.
18 CHAIRMAN: You have a bit to go on this issue.
19 MR. MCGUINNESS: Yes. I have no problem taking a break
20 if we can sort out the feed. 14:58
21 CHAIRMAN: we will take a break and we will sort it
22 out. I am pretty sure it possibly is, but we will
23 check out what the situation is anyway. We would have
24 been taking a break sometime soon. Okay. That's
25 grand. Thanks very much. 14:59
26
27
28
29

1 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED AS
2 FOLLOWS:

3
4 CHAIRMAN: Thank you very much.

5 MR. McGUINESS: we are back on line. 15:10

6 CHAIRMAN: Thanks very much.

7 MR. McGUINESS: I think I should say, Chairman, we
8 haven't lost any of the transcript.

9 CHAIRMAN: Oh no, I would have thought so. Yes.

10 500 Q. MR. McGUINESS: Garda Keogh, I was just asking you 15:10
11 about the issue of delay in the commencing of the
12 investigation. I think on a previous day I suggested
13 to you that it was Assistant Commissioner Ó Cualáin who
14 phoned you on the 15th May and it was you who nominated
15 the 7th June for the commencement of the process of 15:11
16 interview?

17 A. I don't -- I don't think I can agree with that. On the
18 15th May assistant commissioner contacts me. Oh yeah.

19
20 "He says I understand there is another matter." 15:11

21
22 The other matter is obviously in relation to the
23 conclusion. I say:

24
25 "Far more serious than what's in the affidavit and we 15:11
26 have a job to do."

27
28 But em, I don't know, I didn't pick -- I picked the
29 location, not the date.

1 501 Q. He says you nominated?
2 A. No.
3 502 Q. You don't recollect that?
4 A. No, I dispute that.
5 503 Q. You dispute that? 15:12
6 A. I dispute that I picked the date.
7 504 Q. Okay.
8 A. I was available, sure I wanted to go get it started as
9 quick as possible.
10 505 Q. Okay. well, perhaps we will look at 7339, just on that 15:12
11 point. You see point number 1 there:
12
13 "I was appointed on the 9th May 2014 and spoke to Garda
14 Keogh within a week. The date of the first meeting was
15 determined by Garda Keogh." 15:12
16
17 A. No. No.
18 506 Q. Okay. Anyway, let's assume that the 7th June comes and
19 you haven't made your statement obviously. They have
20 what they have. You know what you have given them. 15:13
21 There's nothing -- you sent up nothing in the interim.
22 I mean between the 15th May, you had sent them nothing
23 further, or did you?
24 A. No. I had asked Judge McMahon, when I gave him the
25 DVD -- 15:13
26 507 Q. To send?
27 A. I asked him just to hold onto the DVD. If you could
28 just send in the affidavit and to hold on to the DVD
29 for a while is what I -- yeah.

1 508 Q. Okay. Let's take that delay anyway and let's not
2 assume anyone is either responsible for it or that it
3 wasn't deliberate. Do you accept it wasn't a
4 deliberate delay, on the part of the investigating
5 team? 15:13

6 A. You see, I don't know, I don't know. As I said, this
7 was the new process for me.

8 509 Q. Yes.

9 A. It was also a new process for them. But I really do
10 believe they should have come to me way sooner than a 15:13
11 month later.

12 510 Q. Okay. That amount of time passes and you've
13 complained, during which evidence has disappeared.
14 Now, I am not going to go back into the phones and the
15 DVDs? 15:14

16 A. Mm-hmm.

17 511 Q. Is there any other category of evidence that you think
18 was disappearing or had disappeared by the 7th June
19 when they came to meet you?

20 A. Well, there was drugs, I think it was commercial opium 15:14
21 or something like that in the storeroom with the DVDs,
22 a couple of kilos of it. I mentioned that to Detective
23 Inspector Mulcahy.

24 512 Q. On meeting him, was it, or during the statement, is it?
25 A. I would have -- I would have perhaps mentioned it on 15:14
26 the first day I met him. But I am not sure other than
27 I definitely mentioned it at some stage, because I put
28 it into my statement I think as well.

29 513 Q. I mean, might that have been subject to the same issues

1 we were discussing about the phones and the DVDs?

2 A. Correct, it would have, yes, because it was in the same
3 room as the DVD. So I would be conceding in relation
4 to -- it's the same, yeah.

5 514 Q. Okay. Obviously at the beginning I looked at your 15:15
6 overview of the serious and deliberate flaws with
7 regard to this investigation. When you say deliberate
8 flaws, can I just ask you to expand on that from your
9 own perspective.

10 A. The thing about the interview, the guards, interviewing 15:15
11 the guards in the Garda station while the suspect guard
12 is on duty is insane. You wouldn't see it in Police
13 Academy. It was just insane. Like, they have the
14 phone contact details and addresses of every guard.
15 There was nothing to stop them meeting guards at their 15:15
16 own homes or inviting them to meet somewhere else, some
17 other location. To get them to start making statements
18 in Athlone Garda Station in itself was absolutely
19 insane. Then, to do it while Garda A was present in
20 the station, because obviously I am aware that he was 15:16
21 then going approaching everyone that was being
22 interviewed and asking them, well, what were you asked
23 and what was said and this sort of stuff.

24 515 Q. Well, we will come to that. There is certainly -- I
25 think you did raise a complaint or somebody raised a 15:16
26 complaint that he was seeking to ask questions in the
27 station about the investigation team. It was brought
28 to Superintendent McBrien's attention, as was a
29 suggestion that you were making enquiries about the

1 team. She sent Sergeant Curley to tell each of you
2 separately not to ask anything about the team, is that
3 right?

4 A. I don't -- no, not with Sergeant Curley. My
5 recollection of this from reading through 15:17
6 Superintendent McBrien's notes, which were, as I said,
7 accurate, because I think she called a number of us up
8 into the office in Athlone and basically, when I -- I
9 can't speak for any of the others that were called up,
10 but for me, when she called me up, she said, listen, 15:17
11 there's an investigation going on, there's an
12 investigation team appointed to do it. She told me,
13 I'm calling you, saying the same thing as I'm saying to
14 you and a number of others, but I don't want anyone
15 talking about this investigation while it's going on or 15:17
16 anything in the station, I want everyone just get on
17 with their police work and let the investigation team
18 do their own work. And how -- she used a term, I don't
19 want you going off doing solo runs. That stuck out in
20 the notes, because I remember her saying that to me. 15:18
21 Like, I didn't have a note of that but I clearly
22 remember Superintendent McBrien saying that to me.

23 516 Q. Okay. But I suppose I am just headlining in my own
24 mind, in my question, deliberate flaws. Because it
25 would appear from the report that they followed a 15:18
26 recommendation on the Morris Tribunal and they had a
27 trained incident room coordinator, which was
28 established as an incident room, and that was in
29 Athlone Garda Station.

1 A. Sorry?

2 517 Q. Do you think that was a deliberate mistake or
3 deliberate in the sense of something more sinister?

4 A. Can you just - the incident -- I don't -- the incident
5 room I don't think was in Athlone Garda Station. 15:18

6 518 Q. Okay. So it was just the interviewing then is in
7 Athlone?

8 A. The interviewing, yeah. I think the interview --
9 the -- what was the --

10 519 Q. The incident room coordinator? 15:19

11 A. Yes. I think that was in Oranmore Garda station, I
12 think.

13 520 Q. All right. I mean, I don't know the rationale for them
14 deciding to do interviews, but obviously most of the
15 guards who might be available would be on duty in 15:19
16 Athlone obviously. Do you say that was in some way not
17 just a careless or a bad decision, but are you saying
18 it was improper and in some way corrupt or malicious or
19 deliberately --

20 A. Oh yeah, I do, yes. 15:19

21 521 Q. In what way?

22 A. I do.

23 522 Q. I would be anxious to hear your view on that?

24 A. Yes, my view on this.

25 523 Q. Yes. 15:19

26 A. It was designed so that guards were not going to come
27 forward with information.

28 524 Q. You think.

29 A. That is what I believe.

1 525 Q. who took that decision, do you think?
2 A. I don't know.
3 526 Q. CHAIRMAN: well, it had to be Assistant Commissioner Ó
4 Cualáin, Detective Inspector Mulcahy or Detective
5 Inspector Coppinger, is that right? It had to be them? 15:20
6 A. I wouldn't believe -- I don't think it would have -- it
7 had to be the first two, I would say.
8 527 Q. CHAIRMAN: It had to be somebody?
9 A. Yes, yes. But -- yes.
10 CHAIRMAN: Okay. 15:20
11 528 Q. MR. McGUI NNESS: But with the intention of frustrating
12 the proper and full investigation of your allegations?
13 A. Yeah.
14 529 Q. CHAIRMAN: we'll make sure the guards don't make proper
15 statements by carrying them out in Athlone? 15:20
16 A. No, no. No. My point is, they could have met all
17 these guards off --
18 530 Q. CHAIRMAN: Clearly. I understand the point you are
19 making. Everybody in the room, Garda Keogh,
20 understands the point you're making and I am sure that 15:20
21 everybody probably has a view as to the wisdom or the
22 prudence of carrying out interviews in those
23 circumstances. Do you know what I mean?
24 A. Yeah.
25 531 Q. CHAIRMAN: So assume that everybody has views about 15:21
26 that and they can be discussed in due course.
27 Mr. McGuinness is focusing on a statement saying, where
28 you say:
29

1 "I believe this was deliberately facilitated in an
2 effort to suppress honest statements being made by way
3 of informal intimidation."
4

5 which says that the investigators were frustrating 15:21
6 their own investigation and doing it deliberately. It
7 wasn't just a stupid thing -- sorry, it wasn't just a
8 mistake or negligence, that they were deliberately, and
9 that's a big thing to say. Now, I mean, if you're
10 saying it, that's what you're saying 15:21

11 A. Yeah.

12 532 Q. CHAIRMAN: But are you really serious about that?

13 A. I have to be serious about it, because, Judge, why else
14 would they do that? They couldn't be that negligent.
15 They couldn't be that negligent, to do that in the same 15:22
16 station while the same -- while the suspect garda is on
17 duty. In the same station and while he's on duty, I
18 just, I cannot say, I couldn't say that that's just out
19 of negligence, it's too big a thing under the
20 circumstances to be negligent. 15:22

21 533 Q. MR. McGUINESS: well, can I just touch on a few
22 strands of your statement. I am looking at them
23 together and I hope not unfairly. I just want to raise
24 them, each of them, in this context now that you've
25 talked about it. On page 35 of your statement, you say 15:22
26 that:

27
28 "Murray had served under Assistant Commissioner Ó
29 Cualáin at the western region."

1 A. Yes.

2 534 Q. Are you implying something from that, or is the
3 Chairman to take some connotation of an improper or
4 over --

5 A. I can't say, I don't know what happened behind the 15:23
6 scenes. But what subsequently transpires the way -I,
7 the way it appeared to me, is ultimately that they were
8 at the time, I believe, trying to suppress obviously
9 people, discussed that, people coming forward and there
10 was problems with the investigation, as I have said. 15:23
11 Superintendent Murray, I'm of course paying, if --
12 if -- my argument, if they were trying to cover it up
13 or whatever, my argument was that I was there and
14 present, I was working in the station and obviously I
15 was hearing as well who was being interviewed, what's 15:23
16 being said, what's going on. I was in the know, as was
17 Garda A. I was obviously finding and hearing new
18 information, I was passing it on to Detective Inspector
19 Mulcahy. I believe that Ó Cualáin then, when
20 Superintendent Murray arrives, the objective of -- one 15:24
21 of his objectives was to get me out of Athlone, so
22 Ó Cualáin could conduct the investigation in the manner
23 -- in whatever way he wanted to do it and I was
24 basically a torn in his side, because I was kind of
25 trying to, I suppose, push them, get them -- I was 15:24
26 trying to encourage them, there's evidence here, if you
27 can look that way, let's say.

28 535 Q. Can I just ask you this: Superintendent Murray, of
29 course, wasn't implicated in any of your allegations

1 541 Q. CHAIRMAN: Assistant Commissioner, wasn't he? Then he
2 was acting Commissioner later, but at this stage he was
3 Assistant Commissioner?
4 A. He was assistant commissioner, and I think Noirín is
5 acting commissioner. 15:26

6 542 Q. MR. McGUI NNESS: Commissioner O'Sullivan?
7 A. She's acting, I think.

8 543 Q. CHAIRMAN: At the time she may have been acting
9 commissioner before she became commissioner. Okay.
10 A. Which means that Assistant Commissioner Ó Cualáin is 15:26
11 the second in command in An Garda Síochána, so he is a
12 very powerful person.

13 544 Q. CHAIRMAN: Surely the deputy commissioner would have
14 been the second in command, if we are speaking in that
15 way? 15:27
16 A. No. well, there is no commissioner --

17 545 Q. CHAIRMAN: I thought it went commissioner, deputy
18 commissioner, assistant commissioner?
19 MR. McGUI NNESS: I think there are two deputy
20 commissioners. 15:27
21 CHAIRMAN: Yes. But the order, if I am an assistant
22 commissioner I may get promoted to be a deputy
23 commissioner, am I right about that?
24 A. You are correct. But what I am trying to say is: I
25 think Nóirín O'Sullivan was the acting commissioner at 15:27
26 the time.

27 546 Q. CHAIRMAN: Yes?
28 A. And Donal Ó Cualáin then was, he was assistant
29 commissioner and during the investigation he becomes

1 acting deputy commissioner.

2 547 Q. CHAIRMAN: Okay. All right. But whether or which.

3 A. I actually recall congratulating him --

4 548 Q. CHAIRMAN: whether or which.

5 A. -- at one meeting, that. 15:27

6 549 Q. CHAIRMAN: whether or which.

7 A. Yeah.

8 CHAIRMAN: Okay.

9 550 Q. MR. MCGUINNESS: But certainly as of this period in
10 2014, Commissioner Callahan had gone on the 25th March 15:28
11 2014, Deputy Commissioner O'Sullivan was acting as
12 acting commissioner and at the time of --

13 A. That's what I was trying to say, yeah.

14 551 Q. But at the time of Superintendent Murray's assignment
15 in -- I suppose, the decision must have been made in 15:28
16 early 2015, but he's in over you for March 2015, isn't
17 that correct?

18 A. Yes.

19 552 Q. So (a) he has got nothing to do with you or what is
20 happening in the investigation between May '14 and he 15:28
21 coming in, in March '15, isn't that correct?

22 A. Technically, yes. Technically.

23 553 Q. So it is Superintendent McBrien under whose command
24 between May '14 until her departure at the end of
25 February '15 that the investigation team is in Athlone 15:29
26 doing the interviews, isn't that right?

27 A. Yes.

28 554 Q. Okay. Did you protest to her about that?

29 A. I just can't recall.

1 555 Q. Right.

2 A. But I know -- you see, I can't recall, I am not sure
3 whether I did there, because I was dealing with
4 Detective Inspector Mulcahy and I definitely protested
5 with Detective Inspector Mulcahy. There was one stage, 15:29
6 like, for example, I happened to be in public office.
7 There was Detective Inspector Mulcahy, Detective
8 Inspector Coppinger and Garda A, the four of us. Garda
9 A happened to be photocopying or something while they
10 were talking to me. And Detective Inspector Mulcahy 15:29
11 said, come on, we'll go down to a back room, have a
12 private chat. So myself and Detective Inspector
13 Mulcahy were talking and I was actually saying, this is
14 a joke, like, that you're conducting the investigation
15 when Garda A is on duty. And actually when I opened 15:30
16 the door in the private room, down the back of the
17 station, Garda A walked by. He had been up in the
18 public office when we were up there and then when
19 Detective Inspector Mulcahy, when we went down to a
20 back room in the back part of the station, he then -- 15:30
21 as I said, I opened the door, Garda A walks by and I
22 just look back at Detective Inspector Mulcahy, I didn't
23 say anything, because I didn't have to, I had already
24 previously said this is a joke, what's happened.

25 556 Q. Just to go back to the point at issue, your suggestion 15:30
26 that Assistant Commissioner Ó Cualáin put Murray in to
27 get you out --

28 A. Yeah.

29 557 Q. -- now, had he responsibility for appointing him there

1 or assigning him there as divisional district officer
2 in March '15?

3 A. They would have, they would have known each other
4 because Superintendent Murray would have worked under
5 Assistant Commissioner Ó Cualáin. Assistant 15:31
6 Commissioner Ó Cualáin was based in Galway. And he was
7 in command of the western region. Superintendent
8 Murray was under that command. He at the time was, he
9 was both in Gort and in Roscommon.

10 558 Q. Yes. But at the time we're talking about, when Chief 15:31
11 Murray is there over you, in March, April, May '15, has
12 all the interviewing not ceased in Athlone station?

13 A. Yes.

14 559 Q. And it had ceased before Super Murray was assigned
15 there? 15:31

16 A. Yes.

17 560 Q. So what did Super Murray do while he was your chief, as
18 it were, to either frustrate willingly or deliberately
19 the investigation or the interviewing of witnesses?

20 A. Em... 15:32

21 561 Q. You seem to be suggesting he was deliberately put in by
22 the assistant commissioner to get you out --

23 A. Yeah.

24 562 Q. -- of the way --

25 A. Yes. 15:32

26 563 Q. -- while the interviews were taking place? Did I
27 misunderstand that?

28 A. No, no.

29 564 Q. Sorry.

1 A. The investigation is still going on, ongoing. The
2 statements, Detective Inspector Mulcahy does,
3 -obviously I made protest about the way the statements
4 are being conducted, he then obviously does it, you
5 know, the proper way and he starts -- he doesn't 15:32
6 continue -- it's not done in the station or anything.
7 And when it becomes, when he is meeting, taking
8 statements outside of the station, whatever, I actually
9 don't know what's going on at that stage.

10 565 Q. Yes. 15:33

11 A. Which is probably the -- and when I don't know, I don't
12 think anyone else then is...

13 566 Q. I mean in fairness to you, you identified this as an
14 issue early on, and I think you raise the issue in mid
15 August perhaps that you were unhappy that this was 15:33
16 taking place. And are you saying to your knowledge and
17 in your sight that stopped and changed at some
18 particular point?

19 A. It did.

20 567 Q. And were they doing interviews off-site, somewhere else 15:33
21 in Athlone?

22 A. Yes. Well, I don't know where they were doing them --

23 568 Q. Okay.

24 A. -- but they were still, yes. The investigation went
25 on, you see, in to 2015. '14, '15. Yeah. 15:33

26 569 Q. But that's why I am not quite sure what allegation
27 you're suggesting that the Assistant Commissioner
28 Ó Cualáin had in putting Murray in to facilitate, to
29 getting you out to facilitate the sabotage of the

1 investigation?

2 A. Yeah, yeah. Because, I'll give you, by way of example:
3 There was one particular day, Garda A denied that he
4 was the person who had the official phone, which was
5 the first phone that was seized from him, he denied 15:34
6 that and both him and chief superintendent I think both
7 said, no, this is a phone that is a drugs unit phone
8 and everyone has access to it.

9 570 Q. Shared by everyone?

10 A. Yes. And that wasn't the case. 15:34

11 571 Q. Yes.

12 A. That wasn't the case.

13 572 Q. There was a variety of evidence, but tended to show,
14 did it not, that Garda A had it most of the time if not
15 all of the time, is that what you are saying? 15:34

16 A. All of the time.

17 573 Q. Is that right?

18 A. Mm-hmm.

19 574 Q. But, what are you saying? Garda A, he didn't agree
20 with that, is that your point? 15:34

21 A. No, sorry, my point was: I got annoyed over -- I was
22 obviously fuming over this, so I then went to get the
23 station, the record for just members with the phone
24 numbers for every guard in the station, which was held
25 in the public office. And I went to photocopy that 15:35
26 number to show that Garda A's name is beside that
27 particular phone number. That, in other words, this is
28 not a unit phone, he has commandeered this or whatever
29 as his own phone, which is irrelevant. But when I went

1 to photocopy that, the old phone records from another
2 chief superintendent, a former superintendent's time in
3 the station, I found a list of the old phone numbers
4 that were hidden in, it just happened to be under the
5 sheet when I went to photocopy it, and on that I found 15:35
6 a phone number which was a different phone number to
7 Garda A's phone number. So I then went back and I
8 checked notes of what I had received from the person on
9 10th May 2014, various --

10 575 Q. CHAIRMAN: In Galway, yes. 15:36

11 A. Yeah.

12 576 Q. CHAIRMAN: Go on.

13 A. I am not sure if it was that date, or, as I said, that
14 person contacted me by way of text or phone calls a few
15 times after that. 15:36

16 577 Q. CHAIRMAN: Don't mind that, go on. And that was the
17 meeting in Galway or some other occasion?

18 A. Afterwards. And I found another phone number for Garda
19 A and when I matched that other phone number for Garda
20 A, I saw then that what the person who had come forward 15:36
21 and had recited a phone number from five years of his
22 own recollection, five years previously, that of the
23 ten digits in the phone number he had seven of them
24 correct and he was only out slightly towards the end, I
25 think, on three digits. And I then informed Detective 15:36
26 Inspector Mulcahy that this was, that this was the
27 phone number that the person who had come forward was
28 actually referring to. This was the correct phone
29 number.

1 578 Q. CHAIRMAN: Even though they weren't precisely the same,
2 they were sufficiently close to give you the belief --
3 A. Yes.

4 579 Q. CHAIRMAN: -- the conclusion --
5 A. Yes. 15:37

6 580 Q. CHAIRMAN: -- that this was the number, okay, for Garda
7 A?
8 A. Yes.

9 581 Q. CHAIRMAN: Okay.
10 A. And Superintendent Mulcahy agreed with me on that. He 15:37
11 agreed with me on that. And he then, he then, in
12 fairness to him, he started making progress then on
13 phones and on that stuff. And Detective Inspector
14 Mulcahy, he -- and when I am critical of the Garda
15 investigation, he turned -- he was a top class 15:37
16 investigator when he got his teeth into it. It took
17 him a while to get his teeth into it, but when he got
18 his teeth into it, he was a top class investigator.

19 582 Q. CHAIRMAN: This is Superintendent Mulcahy?
20 A. Mulcahy, Mulcahy, yes. Yes, so that's an example of -- 15:38

21 583 Q. CHAIRMAN: Okay.
22 A. -- I am in the station, I found this piece of evidence.
23 And if someone was interested in covering the whole
24 thing up, the last thing they want is someone like me
25 finding something like this, which it turned out to be 15:38
26 possibly a very important piece of evidence, so...

27 584 Q. MR. McGUINESS: Okay. I mean, if you found it there,
28 it had been left there and obviously if somebody had
29 wanted to destroy it, it might be taken --

1 A. No, no, no, sorry, it was found by accident. It was on
2 a slip -- the original sheets of paper --

3 585 Q. CHAIRMAN: Sorry, your point, I am understanding this.
4 Your point is that it was unhelpful -- sorry, having
5 somebody on board and in the station who was alive to 15:38
6 all the issues meant that that person, i.e. you, might
7 well turn up something of relevance?

8 A. Yeah.

9 586 Q. CHAIRMAN: which is what happened, you say, in this
10 particular case? 15:39

11 A. Yes.

12 587 Q. CHAIRMAN: Admittedly more or less by accident?

13 A. It was completely.

14 588 Q. CHAIRMAN: Or entirely?

15 A. Yes. 15:39

16 589 Q. CHAIRMAN: I am sorry, entirely by accident?

17 A. Yes.

18 590 Q. CHAIRMAN: And therefore, it made sense to get rid of
19 such a person?

20 A. That's what I believe. 15:39

21 591 Q. CHAIRMAN: That's really the logic.

22 A. Yeah.

23 592 Q. CHAIRMAN: So you think -- and when I say you think,
24 you believe, suspect, conclude that the assistant
25 commissioner was keen to get rid of you in case you 15:39
26 might do some more sleuthing around the place and come
27 up with more stuff?

28 A. That's correct. That is correct. And I actually read
29 a note somewhere in the documents where Assistant

1 Commissioner Ó Cualáin at some stage wrote, where he
2 said something, something along the lines of, if this
3 complaint were proven it would have very negative, it
4 would be very negative for An Garda Síochána as an
5 organisation. Something along those lines. Something 15:40
6 along those lines.

7 593 Q. CHAIRMAN: I mean, you do realise that it's a very
8 serious allegation to make?

9 A. Mm-hmm. I know.

10 594 Q. CHAIRMAN: That he comes down ostensibly to carry out 15:40
11 an investigation, but he is actually trying to
12 undermine it at the same time.

13 A. No. No. What I am saying is -- no, I am making that,
14 the allegation towards Ó Cualáin, not Mulcahy. Not
15 Mulcahy or Coppinger. 15:40

16 595 Q. CHAIRMAN: Okay?

17 A. What I am trying to say is: when Mulcahy and
18 Coppinger, they get their teeth into it and they're --

19 596 Q. CHAIRMAN: So they prevent, they prevent -- I mean, I
20 am just trying to get this straight to know what you 15:40
21 are saying. They prevent their superior from
22 frustrating the process?

23 A. I don't know what went on behind the scenes.

24 597 Q. CHAIRMAN: Is that right? Am I getting that right?

25 A. I don't, I wouldn't -- they, all I can say is -- 15:41

26 598 Q. CHAIRMAN: They tried to prevent?

27 A. They were tenacious, both of them were tenacious
28 investigators.

29 599 Q. CHAIRMAN: Okay. And were they straight up --

1 A. Yes.

2 600 Q. CHAIRMAN: -- doing the best they could?

3 A. Yes, they were. Originally, at the start I think I

4 previously said, myself and Detective Inspector

5 Mulcahy, there is no, there isn't much trust at the 15:41

6 start, and if you just go --

7 601 Q. CHAIRMAN: No, but that builds up?

8 A. That builds up.

9 602 Q. CHAIRMAN: And you're satisfied?

10 A. Yeah. 15:41

11 603 Q. CHAIRMAN: Okay. But you say this was the intention of

12 the assistant commissioner and did he achieve that?

13 A. I don't think so. Because I managed to stay in work

14 long enough and gather enough evidence, that look, I

15 think they were six years, the investigation ultimately 15:41

16 transforms into this.

17 604 Q. CHAIRMAN: Okay?

18 A. So they're six years messing around in total with this

19 investigation.

20 605 Q. CHAIRMAN: Let me ask you this, Garda Keogh: If he 15:42

21 wanted to, if the plan was I will put in Superintendent

22 Murray -- I am just trying to understand where you're

23 coming from.

24 A. Yes.

25 606 Q. CHAIRMAN: If the plan was I will put in Superintendent 15:42

26 Murray to get rid of this awkward fellow, why didn't he

27 do it earlier? Why did he wait for a year? It's not a

28 year. It's March. But why didn't he do it earlier?

29 A. I don't know. I don't know.

1 607 Q. CHAIRMAN: wouldn't it have been much more efficient to
2 do it earlier?

3 A. You see when I find that phone number, I can't, I think
4 it's a good while --

5 608 Q. CHAIRMAN: Do you follow me? 15:42

6 A. Yes, I understand.

7 609 Q. CHAIRMAN: I am just trying to understand it. And you
8 are saying that this is the case. And I am saying,
9 well why wouldn't he do it, I will fix this situation
10 now, I will put my man in to get rid of him, leaving 15:42
11 aside all the other issues, why would he wait until
12 March, the next year? Okay. That is what is occurring
13 to me. Okay?

14 A. Yes.

15 CHAIRMAN: All right. Now, where are we? How much 15:43
16 more have you got to go, Mr. McGuinness?

17 MR. MCGUINNESS: There is a very considerable amount in
18 this and then --

19 CHAIRMAN: No, I understand. Thanks very much.

20 MR. MCGUINNESS: I am not going to be finished by four 15:43
21 o'clock.

22 CHAIRMAN: well, I appreciate that people have
23 arrangements and people have travel arrangements and
24 things. Anyway, I dare say you are probably glad for a
25 break after the week of evidence. well, there's more 15:43
26 to it, but we are getting, we are getting there.

27 Mr. McGuinness will be finished on Monday, and we will
28 get started. So, you know, you're probably more than
29 halfway through. Okay. Thanks very much. Thank you

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very much.

MR. MCGUINNESS: Thank you Chairman.

THE HEARING THEN ADJOURNED UNTIL MONDAY, 21ST OCTOBER
2019 AT 10: 30AM

15:44

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