

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

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1921, ON 17 FEBRUARY 2017, 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 MONDAY, 21ST OCTOBER 2019 - DAY 104

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

GWEN MALONE STENOGRAPHY
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I N D E X

W I T N E S S

P A G E

G A R D A N I C H O L A S K E O G H

Q U E S T I O N E D B Y M R . M C G U I N N E S S 6

1 THE HEARING RESUMED, AS FOLLOWS, ON MONDAY, 21ST
2 OCTOBER 2019:

3
4 MR. MCGUINNESS: Good morning. Garda Keogh, please.

5 10:34

6 GARDA NICHOLAS KEOGH CONTINUED TO BE QUESTIONED BY
7 MR. MCGUINNESS, AS FOLLOWS:

8
9 1 Q. MR. MCGUINNESS: Garda Keogh, when the Tribunal rose on
10 Friday, you had been outlining your view that Assistant
11 Commissioner Ó Cualáin had in some way assigned
12 Superintendent Murray to the district -

10:34

13 A. Yes.

14 2 Q. - in order to get you out?

15 A. Yes.

10:35

16 3 Q. Now, have you any evidence of that?

17 A. Well, as I said, Superintendent Murray came from
18 Assistant Commissioner Ó Cualáin's region. And in
19 relation to the length of time, I had time to -- I was
20 trying to think over the weekend, in relation to the
21 time, judge, you asked me a question about why did it
22 take me a year for it to happen. Just, the only two
23 things that I was thinking of was: It's not -- Noreen
24 McBrien was the superintendent at the time. It's not
25 as a simple as just to pluck a superintendent out of
26 one place and put another superintendent in. There's a
27 process. And the other thing is, like, I'd say they
28 were still indecisive, you know, and they just didn't
29 know. And that goes back to when I originally made --

10:35

10:35

1 when I made my disclosure on the 8th May and when I
2 made Judge McMahon, and as I said, I had asked him to
3 hand the affidavit but to hold onto the DVD. The
4 relevance of that, Judge, is: I know how An Garda
5 Síochána works, and I would have been aware that on the 10:36
6 evening of the 8th May, that they would have figured
7 out who Garda A was. Because, as I said, it was public
8 knowledge. It would have taken a couple of phone
9 calls. By that evening they would have known who Garda
10 A was. And they would have gone -- someone would have 10:36
11 gone, I assume, gone into B branch, if not that night
12 the next day, removed the personnel file and --
13 MR. MURPHY: I am sorry, Chairman, I wonder if I just
14 might raise a concern at this stage. The witness
15 appears to be speaking about matters which are entirely 10:37
16 conjecture and speculation, and talking about third
17 parties he is not identifying. He appears to have no
18 direct evidence of these matters at all. I do object
19 to the introduction of tertiary or even far removed
20 evidence, is this even represents evidence at all. 10:37
21 CHAIRMAN: My understanding, Mr. Murphy, is that
22 Mr. McGuinness recalled what Garda Keogh said on
23 Friday.
24 MR. MURPHY: Yes.
25 CHAIRMAN: And he asked him a simple question. what 10:37
26 evidence have you got for that?
27 MR. MURPHY: Yes.
28 4 Q. CHAIRMAN: I would like to know what evidence you have
29 for that.

1 A. I have no direct evidence.

2 5 Q. CHAIRMAN: Because I will write down, one, two, three
3 four.

4 A. No, I have no direct evidence.

5 6 Q. CHAIRMAN: Now, guard, let me put it this way. 10:37

6 A. Yeah.

7 7 Q. CHAIRMAN: You, as a member of the Gardaí, know what
8 evidence is?

9 A. Yes.

10 8 Q. CHAIRMAN: And you know what direct evidence is? 10:38

11 A. Yes.

12 9 Q. CHAIRMAN: And you know what hearsay evidence is?

13 A. Yes.

14 10 Q. CHAIRMAN: We may have our disagreements about the
15 finer points of the law of evidence, I spent a great 10:38
16 deal of time discussing points of the law evidence, but
17 the basic principle is pretty clear to the man on the
18 street and to you and me. So, when Mr. McGuinness
19 says, have you any evidence for that, what do you say
20 to him? 10:38

21 A. No, no direct.

22 11 Q. CHAIRMAN: And when you say no direct evidence, I am
23 waiting, his next question is: What indirect evidence
24 do you have?

25 A. Well, Judge, to explain, I can give direct evidence in 10:38
26 relation to when I asked Judge McMahon to withhold the
27 DVD.

28 12 Q. CHAIRMAN: Yes.

29 A. This is evidence I can give. At that point, I'm aware

1 there's two ways An Garda Síochána are going to deal
2 with --

3 13 Q. CHAIRMAN: Hold on a second, so we know where we are
4 going.

5 A. Yeah. 10:39

6 14 Q. CHAIRMAN: And we are not totally swithering around in
7 a swamp of uncertainty. 8th May 2014.

8 A. Yes.

9 15 Q. CHAIRMAN: Assistant Commissioner Ó Cualáin had not yet
10 been appointed. 10:39

11 A. Yes.

12 16 Q. CHAIRMAN: So, I can take it we can rule out any
13 intention on his part at that stage?

14 A. Yes, yes.

15 17 Q. CHAIRMAN: So, what relevance is it what happened on
16 the 8th May 2014? I mean, listen, I am only trying
17 to -- I want to write down what your evidence is.
18 Look, you know what I am here to do? 10:39

19 A. Yes, Judge.

20 18 Q. CHAIRMAN: I am here to try to make sense of all this. 10:39
21 So, Mr. McGuinness says to you, what evidence do you
22 have, you say, I have no direct evidence. Implying,
23 when you say that, that somehow there is some other
24 body of evidence. Because that's what it implies.
25 When you say, oh, I have no direct evidence of it, that 10:39
26 implies there is some other evidence?

27 A. I understand, Judge.

28 19 Q. CHAIRMAN: So the evidence to nail Assistant
29 Commissioner Ó Cualáin does not start on the 8th May?

1 A. No.

2 20 Q. CHAIRMAN: I know that?

3 A. Right.

4 21 Q. CHAIRMAN: Because he wasn't appointed on 8th May?

5 A. He was appointed on the 9th, I think. I think it was 10:40

6 9th.

7 22 Q. CHAIRMAN: Right.

8 A. Yes.

9 23 Q. CHAIRMAN: But when you handed over your thing or

10 didn't hand over your document, okay. So anyway, what 10:40

11 evidence do you have to say that -- sorry, I will start

12 again. What do you mean by evidence other than direct

13 evidence? What are you talking about?

14 A. Okay. When I asked Judge McMahon just to withhold the

15 other things, the other item, the primary evidence, the 10:40

16 DVD, the reason I did that was I knew there was only

17 two ways An Garda Síochána would want to deal with

18 this. One was head on and the other was to do what

19 they had previously done in internal matters, to try

20 and go down the road of a cover up. And I was 10:41

21 trying -- at the time, because there was no new

22 commissioner --

23 24 Q. CHAIRMAN: So you didn't hand over the DVD?

24 A. I gave it to --

25 25 Q. CHAIRMAN: You gave it to Judge McMahon? 10:41

26 A. Yes.

27 26 Q. CHAIRMAN: With some instructions that he was or was

28 not to hand it over?

29 A. I asked him to hold onto it in case they went down the

1 road of option B.

2 27 Q. CHAIRMAN: Okay. Then at some point did you tell him
3 or ask him to hand it over to the Guards?
4 A. Yes.

5 28 Q. CHAIRMAN: When was that? 10:41
6 A. That was before I was to meet Detective Superintendent
7 Mulcahy.

8 29 Q. CHAIRMAN: Okay, some short time before that?
9 A. The 7th June, was the day I was meeting him.

10 CHAIRMAN: Okay. Now, back to Mr. McGuinness's 10:41
11 question: what evidence have you that Assistant
12 Commissioner Ó Cualáin assigned Superintendent Murray
13 to get rid of you?
14 A. I have no evidence. I don't think I have evidence. I
15 don't think that I have evidence, only -- I suppose, I 10:42
16 mean I was trying to --

17 30 Q. CHAIRMAN: I sorry, let me interrupt you. I can
18 understand it if you say, I have no evidence but my
19 suspicion is.
20 A. Yes. 10:42

21 31 Q. CHAIRMAN: I mean, I have no problem with that?
22 A. Yes.

23 32 Q. CHAIRMAN: But at least we know where we are going with
24 that, do you what I mean?
25 A. Yes. 10:42

26 33 Q. CHAIRMAN: I write down, no evidence, his suspicion?
27 A. Yes.

28 34 Q. CHAIRMAN: Is that the situation essentially?
29 A. That is --

1 35 Q. CHAIRMAN: Don't just say it now because I am saying
2 it?
3 A. No, no, but I have said it all a long in my statements
4 and everything, Judge.
5 CHAIRMAN: Okay. 10:42
6 36 Q. MR. MCGUINNESS: It would appear that what you're
7 basing your belief on is conjecture, speculation and
8 suspicion then?
9 A. Yes. well, I have to look --
10 37 Q. Yes. 10:43
11 A. I have to look at it from my point of view.
12 38 Q. Yes, I understand.
13 A. It's easy for other people to look at it here from a
14 different point of view. Yeah.
15 39 Q. CHAIRMAN: There is only one way I can look at it. I 10:43
16 mean, apart from being heavily criticised, which is not
17 a problem for me, I would be laughed at. I mean,
18 there's only one way I can look at it. That's: what
19 is the evidence? who says what, who knows of it? Do
20 you know what I mean? That's the only way I can. But 10:43
21 if Mr. McGuinness says, was it speculation, conjecture
22 and opinion, that's okay, I understand that.
23 A. It is my belief.
24 40 Q. CHAIRMAN: Yeah.
25 A. Even now, Judge. 10:43
26 CHAIRMAN: Okay.
27 41 Q. MR. MCGUINNESS: I am sure you have seen, Garda Keogh,
28 in Superintendent Murray's statement that he says that
29 when he came in March '15, you know, a lot of the

1 witnesses had been interviewed, he didn't know what had
2 happened and he wasn't privy to the investigation. But
3 can I be clear, are you suggesting in some way that
4 Superintendent Murray then interfered in the
5 investigation as a result of being sent there by 10:44
6 Assistant Commissioner Ó Cualáin?

7 A. No. I never, I never said or implied anything like
8 that.

9 42 Q. Okay. All right. Well, can we just deal with one
10 small point. You complained in your statement, you 10:44
11 know, that the criminal investigation went on for five
12 years. But I think it seems from the chronology that
13 Assistant Commissioner Ó Cualáin, having been appointed
14 in May, reported, sent in his report to the DPP's
15 office in November 2015, which was effectively a period 10:44
16 of 18 months, for what looks like a complex
17 investigation. You wouldn't think that was an
18 unreasonable delay, would you, or would you?

19 A. No, no. No. But the criminal investigation, it
20 transforms then into a disciplinary investigation. 10:45

21 43 Q. Yes.

22 A. After that, yeah.

23 44 Q. But from the point of view of the decision-making, I
24 think you have probably seen that the assistant
25 commissioner for the region appointed Assistant 10:45
26 Commissioner Jack Nolan to be ready to do the
27 discipline?

28 A. Yes.

29 45 Q. I mean that's standard practice, if there are serious

1 allegations it will trigger the initiation of both,
2 isn't that right?

3 A. Yes. I remember I did receive a letter from Assistant
4 Commissioner Jack Nolan saying he was appointed to deal
5 with the disciplinary investigation. 10:45

6 46 Q. Yes.

7 A. Yeah.

8 47 Q. Now, I think is it not common practice that for the
9 disciplinary investigation, it waited to see what was
10 the outcome of the result of the submission of the file 10:45
11 to the director, isn't that right?

12 A. Yes.

13 48 Q. And that's normal course?

14 A. Yes.

15 49 Q. Obviously there is a delay, but it's a normal 10:46
16 procedural delay. You became aware that the director
17 decided that no charge was being to be preferred as a
18 result of the investigation?

19 A. Yes.

20 50 Q. So it was accordingly then proper then to try and 10:46
21 progress the discipline side. I mean, put it this way:
22 If there had hadn't been a disciplinary inquiry, you
23 would be even more concerned that there was no genuine
24 attempt to look at your allegations, I take it, if they
25 decided they weren't going to look at discipline at 10:46
26 all?

27 A. At this stage, I think I have already gone to GSOC at
28 this stage, in relation to the criminal investigation.

29 51 Q. Well, you certainly made a complaint to GSOC as of the

1 2nd October 2015, isn't that right?

2 A. Yeah.

3 52 Q. But as far as the disciplinary investigation is
4 concerned, that then took its course and we will come
5 to that obviously in a minute. But going back to your 10:47
6 concerns about the Ó Cualáin investigation, one of them
7 was that there was a failure to suspend any person
8 suspected with concerns or consequences for potential
9 witnesses. And you, I think, met the assistant
10 commissioner on the 13th August. That was one of the 10:47
11 first concerns you raised on that date, isn't that
12 right?

13 A. Yes.

14 53 Q. If we look at page 3960 of the documents, at the last
15 two lines there. This is the 13th, your meeting. This 10:48
16 is Assistant Commissioner Ó Cualáin telling you that
17 the suspicion was a matter for assistant commissioner
18 HRM and that he was in communication with HRM in this
19 regard. Just go down the page then.

20 10:48
21 "Assured him that Athlone Garda Station would no longer
22 be used as a base for enquiries into matters raised by
23 him."

24
25 That was another issue you raised at that point in 10:48
26 time. So, that would appear on its face there, if it's
27 correct obviously, that your concerns were being
28 addressed then when you raised them. But I am not
29 sure, did you see in the papers that the assistant

1 commissioner had, in fact, written already to the
2 assistant commissioner western region on the 11th
3 August, two days before this, in relation to the issue
4 of suspension?

5 A. Just sorry, Ó Cualáin was the assistant commissioner of 10:49
6 the western region, I think.

7 54 Q. Well --

8 A. Just -- sorry, maybe...

9 55 Q. The assistant commissioner in HR is the person who gets
10 consulted, isn't that right? 10:49

11 A. Yeah.

12 56 Q. He wrote back. Perhaps if we look at that. Volume 38,
13 page 10815. This relates to the issue. There's
14 consideration obviously being given there, it states
15 what the issues are under the policy. You know there's 10:50
16 a policy document relating to suspension of members.
17 The considerations are set out there on the left and
18 the right, primary and secondary considerations. If we
19 just scroll down. Were you not consulted in that
20 context, to give permission for your statement to be 10:50
21 given through HR?

22 A. Yes. Detective Superintendent Mulcahy did ask me about
23 would I give my statement to HR and I said no. And the
24 reason I said no was I didn't know, as I said I didn't
25 know earlier on in all this any of the senior officers, 10:51
26 I wouldn't have known their names or known anything.
27 So I didn't know who to trust or anything at that
28 point. It wasn't fully explained to me that he
29 couldn't have been -- that Garda A couldn't be

1 suspended unless -- unless a statement was provided to
2 HR.

3 57 Q. Yes.

4 A. I just didn't know that at the time.

5 58 Q. Okay. Assistant Commissioner Ó Cualáin, in a statement 10:51
6 on the page that we were looking at, says at page 3961
7 that he gave a briefing document re Garda A's
8 employment status to Assistant Commissioner Fanning.
9

10 "Fanning requested NK's statement of complaint to be 10:51
11 made available. NK refused this. D/Superintendent
12 Mulcahy and Assistant Commissioner Ó Cualáin therefore
13 felt the question of Garda A's deployment status could
14 not be progressed."
15 10:52

16 You weren't aware of that. You don't think it was a
17 direct request for Garda A --

18 A. Garda A, is it?

19 59 Q. In relation to Garda A's suspension, that your
20 statement was being sought? 10:52

21 A. No, you see, I didn't understand that. I don't
22 think -- I don't think -- I just don't think it was
23 explained to me properly. I didn't understand. What I
24 was afraid of was, my statement went to HR, that there
25 was a greater chance then of it being leaked some way. 10:52

26 60 Q. Okay.

27 A. I mean, I was thinking of obviously witnesses in the
28 statement and different people I had named.

29 61 Q. Yes.

1 A. I had a concern there, you know. That was -- I
2 didn't -- that was the main reason why, because I
3 didn't know, I didn't understand what I understand now
4 at the time, that I had to take that into
5 consideration; that it could have been leaked and I was 10:53
6 very fearful of that.

7 62 Q. Right. If we scroll down that page. You see there
8 that guidance was given by the assistant commissioner
9 on the 16th September in those terms. He refers to the
10 unwillingness and he goes on to say: 10:53
11
12 "The question of the suspension of Garda A was
13 revisited in May 2015."
14
15 He wrote to the commissioner with an update in that 10:53
16 regard. Presumably, you weren't aware of that at that
17 time?

18 A. No. No.

19 63 Q. Were you aware or otherwise that Assistant Commissioner
20 Ó Cualáin, in September 2014, had met with local 10:54
21 management, including Chief Superintendent Curran and
22 Superintendent McBrien in relation to the issue of
23 suspension of Garda A?

24 A. I wouldn't have been aware of it at the time.

25 64 Q. Okay. I am just highlighting these. 10:54
26 A. I don't think I would have been aware of it.

27 65 Q. Yes.

28 A. It may have been said to me, I just don't know.

29 66 Q. I'm highlighting these to suggest that your concerns in

1 relation to the possible suspension of the member were
2 (a) identified, it would appear, by the assistant
3 commissioner. He sought guidance from HQ, as it were,
4 consulted with local management, who weren't aware of
5 the content of your protected disclosures, isn't that 10:55
6 right?

7 A. Yeah.

8 67 Q. A decision was taken and it's perhaps one that you
9 disagree with or would have wanted a different
10 decision, but it seems on the face of it, would you 10:55
11 agree, to have been receiving proper attention?

12 A. If I could go back in time.

13 68 Q. Yes.

14 A. I would have definitely given a statement -

15 69 Q. I understand that. 10:55

16 A. - in to HR.

17 70 Q. Yes.

18 A. But I have already outlined my reasons why at that time
19 I didn't.

20 71 Q. Yes. 10:55

21 CHAIRMAN: But that left them in a situation -

22 A. I understand.

23 72 Q. CHAIRMAN: - of not having any evidence on which to
24 justify a suspension?

25 A. I understand. 10:56

26 73 Q. CHAIRMAN: Isn't that right?

27 A. Yeah. well, for HR, you see, the investigation team
28 would have had evidence. It's a bit of a -- the
29 investigation team would have had evidence, they would

1 have been aware of the -- they had the DVD and that at
2 this stage. But in relation to the HR, as I said, I
3 didn't know what I know now in relation to how things
4 work and that.

5 74 Q. MR. MCGUINNESS: Ultimately, we have touched on it 10:56
6 before and I don't think I need to go into the
7 documents, they are there and speak for themselves. It
8 was revisited in particular in circumstances where
9 somebody had come forward locally to Garda Ryan and had
10 provided a new piece of evidence, which the 10:56
11 superintendent brought to the investigation team. That
12 led to a recommendation to headquarters from local
13 management for the suspension, isn't that right?

14 A. Yes. I only read that in the documents, I was never
15 aware of that. 10:57

16 75 Q. Okay.

17 A. Yeah.

18 76 Q. I suppose it would seem to follow that you, having been
19 become aware of the documents, didn't know that when
20 you were making your complaints or statement to the 10:57
21 Tribunal; that that had been the process?

22 A. In relation to going to HR?

23 77 Q. Yes.

24 A. Yes, I explained all that.

25 78 Q. Does that allay your concerns that the issue of 10:57
26 suspension was properly dealt with, to be able to see
27 how now the process had taken its course?

28 A. I understand. As I said, I don't think it was
29 properly -- I don't think it was explained to me, ever,

1 that there cannot be a suspension unless you statement
2 goes to HR. I don't think that was said to me, it was
3 just, will you disclose your statement to HR.

4 79 Q. Yes.

5 A. From my recollection. And, as I said, I was afraid in 10:58
6 case there were leaks then. I didn't know anything,
7 who was in HR. Then I was afraid in case there would
8 be leaks and the statement would go into the wrong
9 hands.

10 80 Q. Okay. I mean, just in terms of process, I take it that 10:58
11 you understand that the mere fact that a disclosure is
12 made under the 2014 Act, the Act doesn't provide for
13 automatic suspensions of persons to whom they relate.

14 A. Yeah.

15 81 Q. It doesn't deal with it at all in that sense. 10:58

16 A. Yes.

17 82 Q. So, it seems as a matter of law and practice and policy
18 it's is dealt with in the normal way?

19 A. Mm-hmm.

20 83 Q. whatever that normal way may be. You would agree with 10:59
21 that?

22 A. Oh, yeah, look, this is five years on. If I could go
23 back -

24 84 Q. Yes.

25 A. - five years ago with the knowledge I have now, there'd 10:59
26 be so many things that would be different, that I would
27 have -- but I can't go back.

28 85 Q. Yes. No, I understand that. One of the other issues
29 you raised, which you've touched upon yourself,

1 statements were taken from Gardaí in inappropriate
2 circumstances at a time when a colleague accused by you
3 was on duty and was able to be seen by witnesses.

4 A. Mm.

5 86 Q. I think you have explained why you have said that. But 10:59
6 I suppose you knew what your allegations were?

7 A. Yes.

8 87 Q. The investigating team knew what they were?
9 A. Yes.

10 88 Q. And it was inevitable that they were going to have to 11:00
11 interview all of the members in Athlone?

12 A. Yes.

13 89 Q. Isn't that right?
14 A. Yes.

15 90 Q. Obviously as a result of the publicity given to it, 11:00
16 most of the members knew they were going to be
17 interviewed?

18 A. Yes.

19 91 Q. So it wasn't a question, was it, of the investigating
20 team's cover being blown, as it were? 11:00

21 A. Oh no, on this one now, on this one, this is different.
22 On this one, as I have said, they could have gone --
23 they had all the home addresses and phone numbers and
24 that, they didn't have to do it in the station. I
25 mean, Garda A, not alone was he on duty but he never 11:00
26 left the station when the interview teams were there.
27 Like, he just walked around the station all day. That
28 was -- like, from recollection, he didn't go out on
29 duty or patrol or anything, he just walked around and

1 was able to say see, you know, who was being
2 interviewed and that. So that one, I can't concede
3 there.

4 92 Q. I suppose there perhaps might have been three ways of
5 dealing with it. Either he got suspended and it was 11:01
6 proper to suspend him at some time, or, you got
7 transferred, or, he got transferred or you were both
8 put off side on some of administrative leave. But,
9 you've seen the statements of Superintendent McBrien
10 and Superintendent Murray, I mean there is no procedure 11:01
11 for transferring someone because they've made an
12 allegation or because someone has made an allegation
13 against you?

14 A. Yeah, I understand that, I do understand that and
15 allegations are only allegations, yes. 11:01

16 93 Q. So in the sense of it presenting a dilemma for
17 management, if management weren't aware of the full
18 detail of the complaints, it does make it more
19 difficult for them to try and exercise normal, sort of,
20 powers. 11:01

21 A. I understand that now, yeah.

22 MR. KELLY: Chairman, I hesitate to interrupt, but
23 there is actually a fourth, at least, option. That is
24 that the statements be taken somewhere other than --

25 MR. McGUI NNESS: Yes. 11:02

26 MR. KELLY: But I think in fairness, it ought not be
27 now put to the witness that there is merely three.

28 CHAIRMAN: well, I'm aware of it, Mr. Kelly.

29 MR. KELLY: Yes.

1 CHAIRMAN: I think Mr. McGuinness said that there was
2 two ways of doing it or three ways of doing it and then
3 he gave a number of ways. But I mean, obviously the
4 complaint is, whatever the situation, whatever the
5 status of the allegation or the complaint, irrespective 11:02
6 of any of that, if you are conducting an investigation
7 don't conduct it in a situation where a person
8 crucially involved is hanging around, available or in a
9 position to eyeball whoever it is. That's essentially
10 the complaint, isn't that right? 11:03

11 A. Yes, Judge.

12 CHAIRMAN: So I am understanding that.

13 MR. McGUI NNESS: Yes.

14 94 Q. CHAIRMAN: But, I mean, Mr. McGuinness is exploring
15 various possibilities and so on, do you know. But I 11:03
16 mean, that's the essence of your complaint.

17 A. Yeah.

18 95 Q. MR. McGUI NNESS: Nothing in my questions, Garda Keogh,
19 suggest that I am unaware of your complaint. Your
20 complaint is very clear in that regard. That was a 11:03
21 matter which occurred obviously not as a reason of
22 anything you were responsible for, that was the way
23 they started the investigation, isn't that right?

24 A. Yes.

25 96 Q. Right. we will be hearing from those in charge in due 11:03
26 course. I don't think I need to say anything more
27 about that particular complaint.

28 CHAIRMAN: No. I think it's a pretty clear statement
29 and we will hear what the other participants have to

1 say. You complained, as I understand, August 2014,
2 that stopped, according to Assistant Commissioner Ó
3 Cualáin.

4 A. I understand so.

5 97 Q. CHAIRMAN: You probably don't know the date? 11:04

6 A. Yeah.

7 98 Q. CHAIRMAN: But there came a time, you said something
8 about it, and they said, okay.

9 A. Yeah.

10 99 Q. CHAIRMAN: All right. 11:04

11 A. Yes.

12 CHAIRMAN: Thanks very much.

13 100 Q. MR. MCGUINNESS: Obviously the issue of when it stopped
14 or whether some members came back there is an issue we
15 are looking at. Superintendent Murray, in his 11:04
16 statement, seems to suggest that at some stage when he
17 had arrived there was some interviewing going on in
18 Athlone, but that might have been re-interviewing, we
19 are looking into that?

20 A. Yeah, that could have been interviewing going on where 11:04
21 they were at this point going to the guards' housing or
22 meeting them in hotels or something like that, perhaps,
23 which would have been appropriate.

24 101 Q. Yes.

25 A. Just not in the station. 11:05

26 102 Q. You think some of it may not have been in the station?

27 A. I don't --

28 103 Q. You don't know.

29 A. No, no, I didn't say, I was actually trying to -- on

1 the contrary there, no. I think from when I pointed
2 out to Detective Superintendent Mulcahy what, like -- I
3 mentioned all this last week. But, no, my
4 understanding is they didn't, they didn't go back and
5 continue on the way they were doing taking statements 11:05
6 in the station.

7 104 Q. Your perception was that there was a change?
8 A. I understand that. That's my understanding, that at
9 some point they didn't continue on in the station, that
10 they did it away -- 11:05

11 105 Q. CHAIRMAN: Yes, but the fact that it happened at all
12 you say is a serious complaint?
13 A. Yes. Judge, as I said, it was just too -- the
14 allegation in itself was too big to be negligent. As I
15 said, I mean, I would have been aware that -- 11:05

16 106 Q. CHAIRMAN: Yes.
17 A. I understand.

18 107 Q. CHAIRMAN: Well Mr. McGuinness is helpfully pointing
19 out that it may have happened notwithstanding the
20 intention or decision not to do it. It may have 11:06
21 happened that some further interviews took place.
22 which would reinforce the point you're making. Okay.
23 Right. Thanks, Mr. McGuinness. Now.

24 108 Q. MR. MCGUINNESS: Yes. Just in terms of the issue of
25 sharing and shifts. We've received a lot of A85s for 11:06
26 your shift from, I think it's May?
27 A. May '14 to October '15.

28 109 Q. May '14 to October '15, yes. It shows a variety of
29 different overlappings, but Superintendent McBrien in

1 her statement said that you have overlapped, that is
2 page 832. Do you understand what she means by that?

3 A. I do, yeah.

4 110 Q. What do you think she means by that?

5 A. You see, this goes into the rostering system. Where I 11:07
6 would have been on, let's say, unit C, regular duty and
7 Garda A was attached at the time to I think the
8 detective branch. Whatever unit that he was on, it
9 would have had a, let's say, half overlap most of the
10 time with my unit and at different periods there would 11:07
11 be just different sort of overlap periods. I think --
12 I think I worded it in my own statement that, like, not
13 all of the time, but a lot of the time there was
14 overlap, yeah.

15 111 Q. Yes. I mean, we have obviously looked at them and 11:07
16 they're available to you and your team and everyone
17 else, we see an overlap for 57 days in that period of
18 just one hour, where you are sort of, as it were
19 passing. We see, according to our view of it, that you
20 were on duty on the exact same shifts only for eight 11:08
21 complete shifts?

22 CHAIRMAN: Only for which?

23 112 Q. MR. McGUI NNESS: Eight complete shifts?

24 A. They're complete shifts, okay.

25 113 Q. Yes. 11:08

26 A. But there were a couple of days there I recall, where
27 Garda A came into the station when he wasn't supposed
28 to be on duty, into the station.

29 114 Q. Yes.

1 A. And I don't know, I just can't remember off hand where
2 they are in the A85s.

3 115 Q. CHAIRMAN: That's a matter, if you like, to do with
4 suspension.

5 A. Okay. 11:08

6 116 Q. CHAIRMAN: That's clear. The shift question, do you
7 agree with Superintendent McBrien about the half shift
8 point?

9 A. Oh absolutely, yes.

10 117 Q. CHAIRMAN: Okay. 11:09

11 A. Yeah, yeah.

12 CHAIRMAN: Now, Mr. McGuinness is putting to you a very
13 specific thing. Is that the period May '14 to October
14 '15 you're talking about?

15 MR. MCGUINNESS: Yes. 11:09

16 CHAIRMAN: Just give us those figures again. Garda
17 Keogh, let's see what you think of them, if it sounds
18 right to you.

19 MR. MCGUINNESS: well, I suppose there's three
20 different -- we see that during the 533 days between 11:09
21 those dates, that Garda Keogh and Garda A were on duty
22 together for 339 hours.

23 CHAIRMAN: Hours?

24 MR. MCGUINNESS: Yes. And secondly, that between those
25 dates they overlapped by at least one hour on 57 days, 11:09
26 and that between those days you were on duty on the
27 exact same shift for eight complete shifts. The
28 numbers may not be exact, because there's quite a
29 number of illegible entries in relation to Garda Keogh

1 and a number of entries for Garda A where the shift
2 details aren't filled in. The precise details may not
3 be that important. I mean, the fact is that it was
4 happening in a variety of ways at different days and
5 different -- how do you think that ought to have been 11:10
6 dealt with?

7 A. I mean, they can rejig, they can rejig the units
8 around. The local management can rejig the units
9 around. They do it every now and then. So they could
10 have done that, that we wouldn't have been overlapping. 11:10

11 118 Q. Yes. But it would seem perhaps difficult for me to
12 envisage that there would never be, sort of, contact or
13 very hard to avoid contact or passing or seeing each
14 other really when you're operating out of the same
15 station? 11:11

16 A. Sorry, can you --

17 119 Q. You think it would have been easy to try and minimise
18 that opportunity for contact?

19 A. Well, there was always the opportunity for some sort
20 of -- like, even a simple thing like going to the 11:11
21 bathroom, things like that.

22 120 Q. Yes.

23 A. You know.

24 121 Q. I mean, one of the things you mentioned in passing a
25 number of times is the issue of Garda A and access to 11:11
26 arms?

27 A. Mm.

28 122 Q. You relate a particular incident which you say occurred
29 and you describe it as having taken place in the public

1 office, is that right?

2 A. Yeah, well the public office is divided into two.
3 There's a wall and there's a gap and it goes out into
4 the back, where the CCTV screens are. So technically
5 it was between the public office and the back part of 11:12
6 the public office, which is the CCTV area.

7 123 Q. But you describe it in the following way that:

8
9 "He takes out his gun from the safe behind me in the
10 public office so that I can see him from where I am 11:12
11 seated in the tinted glass in front of me. I remember
12 saying to myself when I saw his reflection taking out
13 his gun behind me, that if he shoots me everyone will
14 know I was telling the truth."

15 11:12
16 Sergeant Haran, in his interview with the Tribunal
17 investigators, said there isn't a firearm safe in the
18 public office.

19 A. There's a safe, there's a safe in -- the first part of
20 what I said there, actually, just on recollection, is 11:12
21 not -- the first part of what I said is not -- it's not
22 that I could see him. I was sitting in a chair, in
23 front of me is the glass part of the two hatches.
24 There's the two hatches, as I described, when the two
25 ladies came into the station, they both wrote their 11:13
26 statements, where I described that. That glass part,
27 when those hatches are closed there's a reflective
28 glass, a reflective sealant or some kind of thing like
29 sellotape on the --

1 124 Q. CHAIRMAN: It's not a mirror?
2 A. No.
3 125 Q. CHAIRMAN: But you can see, as you can with a glass or
4 a window?
5 A. Yes. So I couldn't -- it was in the glass, in the 11:13
6 reflection in the glass that I was looking at. I could
7 see behind my shoulder, into that little part, where I
8 was in between the public office and the CCTV area, the
9 CCTV area, where there was a safe and he had a gun in
10 his hand. Judge, I didn't ever say that he pointed the 11:14
11 gun or did anything or he didn't go and show the gun,
12 parade the gun in front of him. I was just making the
13 point, like I was there and he's is just around, just
14 behind me with a gun and obviously I could see the
15 handgun in his -- like he's holding the handgun. 11:14
16 126 Q. MR. McGUINESS: Yes. But do you agree that the guns
17 are not kept in the public office, they're kept down
18 the hall in a safe?
19 A. You see, at the time there was renovations and there
20 was -- there was a small -- there was one safe where I 11:14
21 just described, in that gap area, because there was
22 books, folders, like what's behind us, and underneath
23 that was the safe. But there was another safe for a
24 while around corner, in the back of the CCTV room. I'm
25 not sure if that was the gun safe at the time. Perhaps 11:14
26 it's since been moved. There were doing renovations in
27 the -- but I am nearly sure, I could be wrong, that the
28 gun safe was around the back in the CCTV area at that
29 stage, there was a larger safe than the safe that --

1 127 Q. Sergeant Haran, in a statement at 11761, says there
2 were two safes, the one in the public office, keeps,
3 and presumably other things, but a book to record the
4 issue or return of the firearm and that the guns are
5 kept in a gun safe around the corner, down the hall, 11:15
6 away from the public office?
7 A. Well, I don't know what -- around the corner, if around
8 the corner is in the CCTV room, well, that's there. If
9 that safe was moved somewhere else, it's very possible.
10 I think the safe was only temporarily there for -- the 11:15
11 gun safe. I don't know like. That's what happened.
12 That's the way --

13 128 Q. CHAIRMAN: Can you give me a date for that incident?
14 A. Sorry.

15 129 Q. CHAIRMAN: Can you give me the date for that incident? 11:16
16 I don't know if the date I have is correct.
17 A. Judge --

18 130 Q. MR. McGUI NNESS: I think you specified in your
19 statement that I read there that it was on 5/5/2015?
20 A. Okay. 11:16
21 CHAIRMAN: 2015?
22 MR. McGUI NNESS: Yes. Page 129 of the Tribunal papers.
23 CHAIRMAN: Thank you very much.

24 131 Q. MR. McGUI NNESS: In your statement to the
25 investigators. 11:16
26 A. Judge, my diary has it on the 4/5. Oh hang on, Judge.
27 It's 6am, and there's the past midnight thing.

28 132 Q. CHAIRMAN: Okay. Just give me a date.
29 A. It would've been 5/5, sorry.

1 133 Q. CHAIRMAN: 20?

2 A. '15.

3 CHAIRMAN: Thank you. Thanks very much.

4 134 Q. MR. MCGUINNESS: You mentioned this to Superintendent
5 McBrien, isn't that right. Perhaps we will look at
6 volume 5, page 1295. 1295. The way she records it
7 that:

11:16

8

9 "During the course of the interview I had with Garda
10 Keogh on this date, he expressed concerns that Garda A
11 is carrying an official firearm, bearing in mind the
12 amount of pressure he could come under as a result of
13 the current investigation being carried out by
14 Detective Superintendent Mulcahy.

11:17

15

16 Please report what weapons Garda A has access to. In
17 addition, as his direct supervisor can you monitor the
18 situation regarding Garda Keogh's wellbeing and if you
19 believe there is foundation for Garda Keogh's concerns.
20 If there is any change in Garda A's wellbeing that
21 causes concern, especially regarding his access to
22 weapons, please bring it to my attention."

11:17

11:18

23

24 In her statement and her notes she portrays it in a
25 sense, as I interpret it, that you weren't coming and
26 expressing a fear or Garda A, but of concern for him in
27 a sense, and then obviously whether he should have
28 access to a firearm, is that context, is that fair?

11:18

29 A. Yeah. Look, I'm aware of previous incidents that

1 happened in Garda stations where one guard shot another
2 guard, turned the gun on himself. Then there's other
3 incidents where other guards have -- I'm going back as
4 far as the 1940s here and where guards have shot other
5 guards and things like that.

11:18

6 135 Q. Wise to be cautious, I suppose. But she is seeking a
7 report from Sergeant Curley. Perhaps could we look at
8 page 492? You see on the second paragraph there:

9

10 "Received a report dated 17/6 seeking information on
11 the member's access... reported back to the district
12 officer on my report dated 22/9/14 that I was satisfied
13 with his fitness to carry a firearm...."

11:19

14

15 A. Sorry, which paragraph?

11:19

16 136 Q. It's the second paragraph, starting "I reported back".

17 A. Okay.

18 137 Q. I was reading too quickly.

19

20 "I reported back to the district officer on my report
21 dated 22/9/14 that I was satisfied with his fitness to
22 carry a firearm and outlined his access to the official
23 firearm store in Athlone. I undertook to continue to
24 monitor the member and report upon any concerns I have.
25 In addition, on 22/9/2014 I outlined the welfare sports
26 to Garda A, should he be in need of same. Please find
27 a copy of such reports attached at appendix 17."

11:19

11:20

28

29 I think that's on page 554. Perhaps we will just look

1 at that. I am sorry, that is the original report. We
2 will come back to Sergeant Curley's report there, 552,
3 it's two pages back. Thank you. This is what he
4 reported up.

11:21

5
6 "I note the attached report.

7
8 Garda A does not have an official issue firearm. He
9 does, however, have access to station issue firearms,
10 which include four Smith & Wesson revolvers and two SIG 11:21
11 pistols and the associate ammunition for each.

12
13 I have no concerns at this time regarding Garda A's
14 wellbeing. I will continue to monitor Garda A and
15 should I have any concerns, I will report same 11:21
16 immediately.

17
18 On today's date I spoke with Garda A and outlined to
19 him the welfare sports available."

11:21

20
21 So, there appears to be appropriate management concern
22 and attention to the issue, would agree that is fair?

23 A. Yeah, that's fair enough.

24 138 Q. Yes.

25 A. Again, my point is really: should he. With this going 11:22
26 on and there's other people under a lot of pressure in
27 the station and have access to guns.

28 139 Q. Yes. One of your other concerns was that there was a
29 failure to revisit a crucial witness who had come

1 forward with vital information?

2 A. Mm-hmm.

3 140 Q. Did you have in mind the person you had met on the 10th
4 May, the evening of the 10th May in Galway?

5 A. Yes, yes. Yeah. 11:22

6 141 Q. Perhaps we will look at --

7 A. Sorry, which statement? I know it's my statement
8 you're referring to, but just, is it the one to the
9 Tribunal the night before -- the night of the deadline
10 that I sent in. I'm just trying to work out which 11:23
11 statement.

12 CHAIRMAN: Can I just help you. You made a series of
13 statements, including a very formal one, I think
14 assisted by your solicitor, prepared by a solicitor on
15 your instructions. It was a very formal thing. And 11:23
16 what we did then was to list the complaints.

17 WITNESS: Okay.

18 CHAIRMAN: Do you follow me?

19 WITNESS: Yeah.

20 CHAIRMAN: So one might be in an original statement, 11:23
21 one might be in a somewhat subsequent one, do you know
22 what I mean?

23 WITNESS: Yeah.

24 CHAIRMAN: So it doesn't follow. So, for instance, the
25 complaint about the interviewing of witnesses, off hand 11:23
26 I can't remember precisely which one that came in, but
27 clearly that's a relevant complaint to be listed. This
28 one is that you said a crucial witness had come forward
29 with vital information and the investigation team met

1 in July 2014 but didn't go back to him for about six
2 months and so on.

3 WITNESS: Yes.

4 CHAIRMAN: So that was one of the things you said. So
5 that's a complaint you level at the Ó Cualáin
6 investigation. Do you follow me? 11:24

7 WITNESS: Yes.

8 CHAIRMAN: That's where we are, Mr. McGuinness?

9 MR. MCGUINNESS: Yes.

10 CHAIRMAN: Does that bring it back to you. 11:24

11 WITNESS: It does, yeah.

12 142 Q. MR. MCGUINNESS: I just wanted to draw your attention
13 to page 3902. This is Detective Superintendent
14 Mulcahy's statement. If we just perhaps go up a couple
15 of lines there. It says: 11:24

16
17 "Having attempted to contact (blank) on several
18 occasions on the number provided to me by the reporter,
19 it appeared to be disconnected. I brought this to the
20 notice of the reporter on 1/7/2014 and he advised me 11:25
21 that (blank) had changed his number. Having got the
22 new number from the reporter, I managed to make contact
23 at 19:50 on 2/7 with (blank) and the person that had
24 met with the reporter on 10th May 2014 and outlined his
25 concerns regarding Ms. B and Garda A. (Blank) agreed 11:25
26 to meet with me on 3/7, he rang me back at 22:22,
27 stating he didn't think he wanted anything more to do
28 with it. I explained to him that we could meet and get
29 his story and that we would not do anything until I

1 could give him a guarantee as to what would happen. He
2 agreed to take a call at around 10:00pm on the 3/7. He
3 was not sure as to how the process worked and I ensured
4 that I would not do anything without a meeting
5 explaining to him." 11:26

6
7 Can we scroll down. Right to the start of the
8 paragraph there.

9
10 "He said he was worried about the consequences for 11:26
11 him."

12
13 He describes then what happened.

14
15 "He agreed to meet us at his home later that day. Told 11:26
16 me to ring back at 1200."

17
18 Is goes on there to where that paragraph concludes:

19
20 "He declined to commit anything to writing but he 11:26
21 agreed to consider the matter."

22
23 And refers to a contemporaneous note. There's a lot of
24 contact, attempted contact to be made then by Detective
25 Superintendent Mulcahy in the next paragraph. If we go 11:26
26 down onto the next page. It outlines various attempts
27 at contact and further meetings. So, would you agree
28 that the team seemed very keen to, in fact, try and get
29 a statement from this person?

1 A. Yes. Yes, Judge. Just in relation to the contact,
2 what that -- like that is true in relation to that
3 person dropping phones. Because, the person did stay
4 in contact with me for a while and then dropped phones
5 and then, sometime later got text messages from the 11:27
6 person and eventually the person ultimately dropped the
7 phone completely and I never had any contact with that
8 person since.

9 143 Q. Yes. But they actually obtained a signed statement,
10 albeit that it was sort of saying that the person 11:27
11 didn't want to say anything further or get more
12 involved or do anything?

13 A. I understand. I understand.

14 144 Q. One of your other concerns then was that Garda A was
15 treated unduly favourably in respect of his interview. 11:28
16 How would you describe your concern in that regard?

17 A. Well, in that I would have argued firstly they would
18 have had a power of arrest, could have made an arrest
19 and done a proper interview.

20 145 Q. Yes. Obviously a decision to make an arrest in a 11:28
21 matter such as this, it would probably normally be made
22 at some sort of a case conference: Will we arrest a
23 suspect, or, when will we arrest?

24 A. Mm-hmm.

25 146 Q. But would you anticipate that that, in fact, would have 11:28
26 been an important step and that they may have decided
27 not to take for a particular reason?

28 A. Obviously part of my argument is the particular reason,
29 the road they went down.

1 147 Q. Yes.

2 A. I would say they should have made an arrest. They had
3 enough evidence there to make an arrest.

4 148 Q. Obviously if an arrest is made there can't be a
5 rearrest unless there's significant evidence emerging 11:29
6 after that. Presumably that --

7 A. That's a possibility. Look, that's a possibility.

8 149 Q. Yes.

9 A. But obviously as we go on and see how things end up.

10 150 Q. Yes. I mean, it seems to be the position of the 11:29
11 detective superintendent in his statement at 3907 and
12 7339, that they wanted to have conducted all other
13 relevant enquiries before they went to Garda A.

14 A. Oh yeah. As I said from the start, just to clarify: I
15 wasn't attacking everything with the investigation. 11:30

16 151 Q. Yes.

17 A. Some things in the investigation were very thorough.

18 152 Q. Yes. I mean, one possible benefit of seeking a
19 voluntary interview is that if it's refused you can
20 proceed to an arrest or you can proceed to an arrest 11:30
21 after it's taken place as well, isn't that right?

22 A. Yeah, yeah.

23 153 Q. But if there's an arrangement being set up to do a
24 voluntary interview, I suppose there has to be an
25 agreement reached as to the when and where of it? 11:30

26 A. Mm-hmm.

27 154 Q. Isn't that right?

28 A. Yeah.

29 155 Q. I mean, we'll hear obviously the rationale of it

1 directly from the witnesses, but that perhaps mightn't
2 appear that unreasonable in the circumstances. The
3 wisdom of it is one thing, but do you see that as part
4 of an attempt to discredit you, that they did that
5 intentionally to target you in some way? 11:31

6 A. I would have at the time or perhaps making my
7 statements. In hindsight again now, you've explained
8 it very well there in your question.

9 156 Q. We have to hear the evidence obviously, but I am just
10 putting the proposition to you that there may well be 11:31
11 proper reasons for it. And I am asking you now, you
12 having looked at the documents and the statements and
13 looking inside the investigation, are you saying here
14 today that that treatment was favourable, unduly
15 favourable and that it was done to target you or 11:31
16 discredit you in some way?

17 A. Well, it was very lenient, just from recollection, what
18 I've read. It was very lenient. I'm not sure it was
19 -- but it was a caution statement, I think, from
20 recollection. 11:32

21 157 Q. Yes.

22 A. I think was it a statement, and this is just from -- I
23 am not a hundred percent on this, is this a statement
24 that he was able to do it, his solicitor handed in and
25 -- I just can't remember actually there. 11:32

26 158 Q. Yes.

27 A. Because I have had no direct evidence to offer.

28 159 Q. I mean, I am coming to the end of this issue now in the
29 next couple of questions, but this investigation,

1 you've seen the investigation report and the letter
2 that went to the DPP.

3 A. You see --

4 160 Q. Into your protected disclosure allegations?

5 A. You see, I mentioned a couple of times last week and I 11:32
6 don't want to go on about it, perhaps there's a reason
7 or something, but I believed there was another report.

8 161 Q. I am asking you about Assistant Commissioner Ó
9 Cualáin's report into your allegations. You have seen
10 the whole of that covering investigative report sent to 11:33
11 the director?

12 A. I have seen the report that's in the documents here.

13 162 Q. Yes.

14 A. Yes.

15 163 Q. Have you yourself been involved in an investigation as 11:33
16 complex at that?

17 A. As this one?

18 164 Q. Yes.

19 A. Oh, not as this one, no.

20 165 Q. Have you seen investigation files of that sort of 11:33
21 magnitude, reflecting work over a period of 18 months?

22 A. Can you just rephrase?

23 166 Q. It was obviously a lengthy investigation.

24 A. Yes.

25 167 Q. Eighteen months to get to the crime file to the DPP? 11:33
26 A. Yeah.

27 168 Q. You've agreed it was complex.

28 A. Oh yeah.

29 169 Q. Are there elements of it -- you were probably

1 disappointed with the result but are there elements of
2 it in any part which you see as targeting you or
3 discrediting you?

4 A. The big thing with it, it's back to the thing in the
5 station; the taking of statements and suppression. I 11:34
6 mean, for any guards that were humming and hawing about
7 telling the truth and to see that done, I mean you'd
8 have to be very brave to come forward with the truth.
9 Half brave and half mad.

10 170 Q. Is that the only -- and I don't say only in pejorative 11:34
11 way, is that the criticism you have? Does that lead
12 you to the conclusion that this was an investigation
13 which targeted you and refrained from properly
14 investigating your allegations deliberately?

15 A. Yeah. 11:35

16 171 Q. Is that it?

17 A. It did discredit me. Like, the way they went and took
18 the statements, I mean where Garda A is in duty, on
19 duty in the station. This was over a number of days.
20 And doesn't leave the station, is just walking around 11:35
21 the station, you know, for a guard -- like, it
22 shouldn't have been done like that. If they wanted to
23 get the real truth, they should have met individual
24 guards off-site, at a hotel or at home or some other
25 Garda station or somewhere else. Just not there. 11:35

26 172 Q. I mean, the investigation was intended to see what
27 evidence there was to support your allegations?

28 A. Mm-hmm.

29 173 Q. You saw the assistant commissioner's conclusions in

1 relation to each of your allegations?

2 A. Mm-hmm.

3 174 Q. Included in that was a description that there was
4 substance to some of your allegations in relation to
5 obviously the suspicions of contact with a particular 11:36
6 person involved, but well short, it would seem from the
7 investigation, of establishing things to justify a
8 prosecution?

9 A. I would argue the assistant commissioner downplayed in
10 the findings. There's a lot of stuff in those findings 11:36
11 there that -- I don't know how they could have come to
12 the findings in relation to it. Like, as I said,
13 there's the videotape there, that's rock solid and it
14 seems --

15 175 Q. CHAIRMAN: That is the video of the interview? 11:36

16 A. Yes, but it appears to be downplayed in the findings
17 there.

18 176 Q. MR. MCGUINNESS: I mean, you would interpret the
19 evidence differently, is that really what you are
20 saying? 11:37

21 A. If it was me, I would -- I would -- fair enough, I
22 mightn't be impartial. But if I had that evidence with
23 the videotape, with the coercion part as well I mean in
24 there, and I understand it was found there was no
25 coercion. Look, I don't know what to say to that. 11:37

26 177 Q. CHAIRMAN: Coercion?

27 A. This is coercion, in he statements, when the statements
28 are being read out --

29 178 Q. CHAIRMAN: Coercion?

1 A. where persons are sent out -- undercover guards --
2 179 Q. CHAIRMAN: Undercover guards phone up people whose
3 numbers they have and they say, will you tell me
4 whatever it is?
5 A. Yes, yes. 11:37
6 180 Q. CHAIRMAN: You think that's coercion?
7 A. No, no, it's not as simple as that. The people that
8 phones, the persons who phoned clearly had nothing and
9 the undercover guards kept asking, can you get me
10 whatever. 11:38
11 181 Q. CHAIRMAN: You think that's coercion, rightly or
12 wrongly. I'm not saying it's not coercion, I am
13 saying, well you think that's coercion. If somebody
14 says I don't have any, well can you get me some?
15 A. It's not as simple -- just one more sentence. 11:38
16 182 Q. CHAIRMAN: You weren't here at the time, you were in
17 Australia at the time when this thing happened, isn't
18 that right?
19 A. Yes.
20 183 Q. CHAIRMAN: So your knowledge is knowledge of what 11:38
21 people told you after?
22 A. No, I have the statements in front of me and I have the
23 prisoner in, Judge.
24 184 Q. CHAIRMAN: Yes.
25 A. I read out over the statements and it's clear that 11:38
26 these guys then have -- it's cocaine they're looking
27 for.
28 185 Q. CHAIRMAN: Yes.
29 A. They've no cocaine, they're saying they've no cocaine,

1 but the guards a number of times are saying --

2 186 Q. CHAIRMAN: They are saying --

3 A. One individual is saying, well, we will try and get you

4 something from someone else.

5 187 Q. CHAIRMAN: Yes. 11:38

6 A. And then they say, that person had nothing. And the

7 guards have kind of duped them into thinking that they

8 met them in a nightclub in Athlone prior to that and

9 they knew each other. Then they go again to say, well,

10 can you get me, it's for my girlfriend's birthday or 11:39

11 something, a party, can you please try and get me

12 something. And after they said, well, we don't have --

13 that person didn't have anything, okay, we'll try

14 again. And they go to another drug dealer and they get

15 the cocaine. They say, sorry, how much do you want? 11:39

16 €100 worth of cocaine. Then they meet the guard, the

17 undercover guards and they sell the undercover guards

18 the cocaine for €100. So they don't even make anything

19 out of it.

20 188 Q. CHAIRMAN: As you understand from the informants? 11:39

21 A. No, from the statements, Judge.

22 189 Q. CHAIRMAN: Right.

23 A. It's in the statements.

24 190 Q. CHAIRMAN: No, but making the money, let's focus, is as

25 you understand from what people told you? 11:39

26 A. No. This is the statements.

27 191 Q. CHAIRMAN: Right, okay.

28 A. That I read out --

29 192 Q. CHAIRMAN: One way or another, you consider that to be

1 coercion?

2 A. Yes.

3 193 Q. CHAIRMAN: Okay, fair enough, that's what you think it
4 is. Okay.

5 A. There's a video, the DVD is there, it's in there, it's 11:40
6 where I read out these statements.

7 194 Q. CHAIRMAN: Yes.

8 A. The statements are very clear and I just read them all
9 out. It's reading out the statements, I am kind of
10 going, this is a bit mad. 11:40
11 CHAIRMAN: Okay.

12 195 Q. MR. MCGUINNESS: I am not obviously going to start a
13 debate with you about his conclusions or the evidence
14 on all of the particular issues in terms of detail, but
15 I just ask you to comment on how he expressed them in 11:40
16 the most general way as they are in the report at page
17 1182. It's under the heading "conclusions", which is
18 part 16 of the report. If we scroll down there to
19 conclusion. As recorded there, it says:
20
21 "A number of the allegations made by the reporter are 11:40
22 plausible and have substance."
23
24 That doesn't appear to discredit you?

25 A. No. Well, I mean, as I have said, I believe they 11:41
26 downplayed this. Just on this, I'm confused, because,
27 as I said, I understand there is another report and the
28 investigation veers off into a different direction and
29 it gets even more messier, it's stuff that I didn't

1 bring into it.

2 196 Q. CHAIRMAN: wait now. On this report, we're talking now
3 at this moment, Mr. McGuinness is asking you about this
4 report. There are other reports but this report is the
5 one that went to the DPP, based on your complaints, 11:41
6 your allegations in the protected disclosure.

7 A. Yeah.

8 197 Q. CHAIRMAN: Do you understand. Okay. So let's just
9 focus on this for the moment?

10 198 Q. MR. MCGUINNESS: It continues: 11:41
11
12 "While the investigation uncovered suspicions of
13 criminal behaviour by gardaí in Athlone, in particular
14 the allegation surrounding the destruction of evidence
15 which was facilitated by Garda A in the alleged tipping 11:42
16 off of Ms. B and (blank). The circumstantial evidence
17 may fall short of what is required to bring a criminal
18 prosecution.

19
20 The allegations made by the reporter, who was a member 11:42
21 of the drug unit, stem from behaviours and work
22 practices he observed on that unit.

23
24 The poor work practices includes the management of
25 sources outside the CHIS system by individuals in the 11:42
26 drug units, this exposed... individual members and,
27 indeed, the sources themselves with danger.

28
29 The concerns raised by the reporter with the

1 confidential recipient and referred to the then interim
2 commissioner having examined and set out in the
3 investigation file.

4
5 There have been recent developments which may have 11:42
6 bearing on matters contained in this file. On 9th
7 October 2015 as a result of information received by
8 members of this investigation from a confidential
9 source, warrants pursuant to Section 10 were obtained
10 before a judge of the District Court." 11:42

11
12 It details then that as a result of that searches were
13 carried out and things were seized and they were under
14 examination. I think you will have seen that the
15 conclusions of that were then sent to the DPP again, 11:43
16 who concluded that there still wasn't any basis for
17 initiating a prosecution.

18 A. I understand that, yeah. I accept -- yes, I accept
19 that.

20 MR. McGUINESS: Chairman, that's all I intend to ask 11:43
21 on this.

22 199 Q. CHAIRMAN: Okay. Thanks very much. Anything else you
23 want to say about the Ó Cualáin report? Now, we have
24 been over it and obviously people will ask you
25 questions about it, anything else you want to say about 11:43
26 it?

27 A. Yeah, well, Judge, one of my last conversations with
28 Detective Superintendent Mulcahy was where he asked me
29 a number of questions in relation to two incidents,

1 A. The other one he knew about, the first thing I was
2 thinking to myself, how did he find out about that?

3 205 Q. CHAIRMAN: But let me ask you this, Garda Keogh: Let's
4 assume that there were other investigations in which
5 Detective Superintendent Mulcahy was concerned, would 11:45
6 you be satisfied that they were properly carried out or
7 would you have some complaint about them?

8 A. I don't think, I think they identify --

9 206 Q. CHAIRMAN: Do you understand me? I mean, from the
10 point of view of targeting or discrediting, I have your 11:45
11 point about the Ó Cualáin report or reports, if you
12 like. Now, if we look at the other one, assuming there
13 is evidence about them, and I'm not sure I know
14 anything about it, maybe I should but I don't, are you
15 making any complaint about those in respect of 11:46
16 targeting or discrediting?

17 A. Well, yes.

18 207 Q. CHAIRMAN: Okay, explain.

19 A. Because, Detective Superintendent Mulcahy obviously
20 identified there's other problems here in Athlone, he 11:46
21 is clearly investigating and digging deep into the
22 underworld of Athlone.

23 208 Q. CHAIRMAN: Yes, I'm with you.

24 A. There's no issue there.

25 209 Q. CHAIRMAN: Yes. 11:46

26 A. He is clearly doing that. He is, in fairness, under
27 the terms of the protected disclosures, keeping me
28 informed of the progress he's making. But he did
29 inform me there's another unregistered informant and

1 what he's saying is mad, we're going to have to open up
2 a whole new investigation into this. I don't think
3 there was a whole new investigation, I think that they
4 realised they were going to go into quagmire of
5 minefields and closed it down, the whole thing. 11:47

6 210 Q. CHAIRMAN: But that's Detective Superintendent Mulcahy,
7 you're saying, was concerned in closing this down?

8 A. No, I don't believe it was him. Because he told me -

9 211 Q. CHAIRMAN: Okay.

10 A. - we're going to have to open up -- 11:47

11 212 Q. CHAIRMAN: Okay. So you think there was another
12 inquiry or other inquiries?

13 A. Yes. And someone higher than super --

14 213 Q. CHAIRMAN: Hold on. I understand, that were being or
15 could have been carried out or could have been pursued 11:47
16 to a better stage?

17 A. Mm-hmm.

18 214 Q. CHAIRMAN: And that would have tended to support the
19 allegations that you were making; is that right?

20 A. I can't say that, because they would have -- yes, they 11:47
21 would have -- you see, I don't know -- all I can go on
22 is what the D/super said, what this other unregistered
23 informant is saying, based on what he is saying,
24 they're going to have to open up a whole new
25 investigation. 11:48

26 215 Q. CHAIRMAN: Right.

27 A. Which spears -- where it comes out is --

28 216 Q. CHAIRMAN: But that doesn't have anything to do with
29 your complaint?

1 A. Well it would, it would, because a lot of the same --

2 217 Q. CHAIRMAN: It would tend to confirm or in some way
3 corroborate the case that you were making?

4 A. Yes. And there's the same characters involved and
5 things like that.

11:48

6 CHAIRMAN: I see, okay.

7 218 Q. MR. MCGUINNESS: In any event, Garda Keogh, whatever
8 about your natural curiosity in relation to that, this
9 investigation looked at the complaints made in your
10 protected disclosure. That's what we are concerned
11 about in terms of targeting?

11:48

12 A. Yes.

13 219 Q. You understand that?

14 A. Yes.

15 MR. MCGUINNESS: Thank you.

11:48

16 CHAIRMAN: Very good. Shall we take a break there? Is
17 that a convenient time?

18 MR. MCGUINNESS: Thank you, Chairman.

19 CHAIRMAN: Very good, we will take a little break
20 there. Thanks very much.

11:49

21

22 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED, AS
23 FOLLOWS:

24

25 220 Q. MR. MCGUINNESS: Garda Keogh, I am moving on to issue
26 18, which is your complaints relating to the bullying
27 and harassment investigation carried out by Assistant
28 Commissioner Michael Finn. As you are aware and as
29 you've pointed out in your statement to the Tribunal

12:03

1 and at the interview with investigators, at that point
2 in time that investigation was still ongoing, isn't
3 that right? Earlier this year, just to give an
4 overview of how it went, it may be helpful, Assistant
5 Commissioner Finn ultimately reported to Assistant
6 Commissioner O'Brien, his appointing officer. You
7 lodged an appeal against the findings, as you are
8 entitled to do, under the policy document, isn't that
9 correct?

12:04

10 A. Yes.

12:04

11 221 Q. As part of that appeal, the deputy commissioner, as he
12 is also apparently entitled to do, is to seek some
13 expert advice for the purpose of allowing him decide
14 the appeal. He commissioned Mr. de Bruir, that we have
15 referred to, to offer his views in an audit that you
16 have referred to. Then ultimately, the deputy
17 commissioner too upheld the outcome of the bullying and
18 harassment inquiry. You were informed of that and you
19 were informed of each at the time it was being taken
20 obviously. We will just look at the complaints then in
21 relation to that. But to begin at the beginning, as it
22 were, it would appear that the Minister for Justice
23 sought a Section 41 report in July, at the end of July
24 2016, isn't that correct?

12:04

12:05

25 A. Yes.

12:05

26 222 Q. Your solicitor, on your instructions obviously, had
27 been writing, making a number of complaints and
28 bringing a great deal of matters to her attention -

29 A. Yes.

1 223 Q. - at that point in time. As a result Section 41 was
2 triggered, which enables or empowers the minister to
3 seek from the commissioner a report?
4 A. Yes.

5 224 Q. A report was sought, to be provided within a month. In 12:06
6 that context, Chief Superintendent McLoughlin, who had
7 become the protected disclosure manager, whom you had
8 been dealing with.
9 A. Yes.

10 225 Q. And it would appear satisfactorily at this point in 12:06
11 time, in 2016, he wrote to Deputy Commissioner
12 Ó Cualáin, seeking an update on the allegations that
13 had been made by you, an allegation in respect of the
14 investigations, what issues were included in it,
15 including bullying and harassment, so that he could 12:06
16 properly advise the Commission of a report to the
17 Minister, you would agree with that?
18 A. Yes.

19 226 Q. Chief Superintendent McLoughlin, at page 3234, I don't
20 think we need to look at it I think at the moment, but 12:07
21 said:
22
23 "On 16th August 2015, I received a letter from
24 Ms. Kathleen Hassett, informing me there was no record
25 of Garda Keogh under sexual harassment and the bullying 12:07
26 policy."
27
28 I think it is the position, you hadn't made a complaint
29 under the policy at that point in time?

1 A. Yes.

2 227 Q. Yes. Then further down there. Sorry, scroll back up,
3 Superintendent McLoughlin says that on the 18th, if we
4 go over to the next paragraph:

5 12:07

6 "On the 18th I received a letter from Garda Keogh dated
7 16th August 2016. In this letter Garda Keogh provided
8 me with his consent in respect of certain actions he
9 expected of me. He highlighted that the issue of most
10 concern at that time was the harassment he alleged he 12:08
11 endured from elements within Garda management. He
12 continued by offering his specific views on the
13 particulars of the matter carried out by him."

14
15 So, Chief Superintendent McLoughlin then details: 12:08

16
17 "On 19th August 2016, I carried out a number of actions
18 in respect of Garda Nicholas Keogh. Firstly, I wrote
19 to GSOC seeking a report in respect of their
20 investigation. I also sent an update on the progress 12:08
21 made in respect of a Section 41(2) report that was
22 directed by the commissioner. I wrote a letter to
23 Garda Keogh advising him of matters in respect of his
24 pay. I formally asked him if he had logged a complaint
25 regarding the bullying and harassment he had alleged 12:08
26 and reminded him of the structures pertaining to
27 promotion competitions in An Garda Síochána. Lastly, I
28 wrote to the civilian director HR in An Garda Síochána
29 to enquire about the status of Garda Keogh's pay."

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It would appear at that point in time, the issue of Superintendent Murray's promotion was concerning you also, is that right?

A. I just don't recall Chief Superintendent McLoughlin telling me that part; that I reminded him of the structures pertaining to promotion competitions. I don't recall that. 12:09

228 Q. Okay. Okay. Well, in any event, he received a letter back from you, if we just go down there: 12:09

"On 5th September 2016, I received a handwritten letter from Garda Keogh dated the 1st September. This letter informed me that Garda Keogh had not reported his alleged harassment within An Garda Síochána, in keeping with standardised policy practice. Instead, Garda Keogh had drawn the attention of named others to his alleged harassment. The letter also referred to number of documents which Garda Keogh said he sent me on 28th August 2016 in relation to the harassment he claimed. 12:10
When these documents referred to by Garda Keogh arrived at my office, I noted that they were a compendium of diverse letters, statements, notes and Pulse printouts. I preserved that compendium for the record." 12:10

He says, on the next page, that he phoned you then on the 7/9?

A. This is 2016?

229 Q. Yes, 2016. Just go down the page there. He says, just

1 highlighting there in the middle of the previous
2 paragraph, dealing with the 8th September, he says:

3
4 "In this correspondence I highlighted the fact that it
5 had now been confirmed that Garda Keogh had not made an 12:10
6 internal report about his allegations of bullying and
7 harassment, but in its place had raised such matters
8 with others."

9
10 He then goes on to refer -- 12:11

11 A. It's probably not a big deal, but just my record has
12 that Chief Superintendent McLoughlin rang me on the
13 8/9/2016.

14 230 Q. Yes.

15 A. I'm sure it's not -- 12:11

16 231 Q. Perhaps we will go back up to that page and see what
17 reference there is to the phone call. He says there:

18
19 "Accordingly, I made a phone call to Garda Keogh on the
20 7th September at 1:15. In summary, I informed him that 12:11
21 bullying and harassment was a matter for An Garda
22 Síochána. I informed Garda Keogh that if he wished to
23 pursue his bullying and harassment allegation, then it
24 was necessary for him to make a formal complaint in
25 keeping with the policy." 12:11

26
27 He says he has a note of that. Do you recall that
28 phone call, whether it was the 8th or the 7th?

29 A. Whether it was the 8th or the 7th, I don't know, or

1 probably irrelevant in this case. I have it down as
2 the 8th. I don't recall the phone call but obviously I
3 have a note of it and he has a note of it, there was a
4 phone call.

5 232 Q. Yes. 12:12

6 A. I have:

7

8 "Chief Superintendent McLoughlin rang re harassment
9 wages to be paid."

10 12:12

11 So the same thing we're talking about.

12 233 Q. Yes. He goes on to detail, on page 3237, dealing with
13 sick pay issues first. Just towards the bottom of the
14 page there, he refers to this phone call about full pay
15 etcetera? 12:13

16

17 "The very next day, on the 7th October I phoned Garda
18 Keogh to both inform him about his restoration to full
19 pay and to enquire after his wellbeing. In this regard
20 Garda Keogh informed me that he was well but said that 12:13
21 he was unhappy that his bullying and harassment
22 complaint was to be investigated in An Garda Síochána.
23 Garda Keogh alleged that as the commissioner was a
24 party to this harassment, he was of the view that an
25 investigation into his circumstances ought to be 12:13
26 conducted externally. He informed me that he had
27 written to the Minister about this matter."

28

29 Then, if we just go down to the paragraph dealing with

1 the 12th:

2

3 "The next day, on the 12th October, I wrote to Garda
4 Keogh at his home. I formally advised him of his
5 return to the payroll. I also requested that he 12:13
6 indicate in the interests of clarity and completeness,
7 if it was his intention to make a complaint under
8 harassment policy in addition to other complaints made
9 by him. On 24th October 2016, I received from Garda
10 Nicholas Keogh a handwritten letter dated 20th October 12:13
11 2016, from which I gathered that Garda Keogh did wish
12 to formally proceed with his complaint of bullying and
13 harassment. And so, on the 26th October, I wrote to
14 the director of civilian HR and confirmed that that was
15 so. " 12:14

16

17 I think that was the first occasion, despite all the
18 things that had happened and despite all of the
19 correspondence which complained of it, that you
20 actually made the decision to invoke the policy, isn't 12:14
21 that correct?

22 A. Yes. I think -- I think I had gone to GSOC about it
23 and they said, you have to go through the -- invoke the
24 internal policy before you can come to us, from
25 recollection. 12:14

26 234 Q. Yes. I think you were informed of the appointment of
27 Chief Superintendent Scanlan, is that correct?

28 A. Yes.

29 235 Q. You raised issues in relation to that. I think a

1 decision was made that he would take your statement but
2 he wouldn't investigate it?

3 A. Yes.

4 236 Q. You were happy with that?

5 A. Yes. 12:15

6 237 Q. Accordingly, you met him on the 27th of March, isn't
7 that correct?

8 A. Yes. Yes.

9 238 Q. He took a statement from you. I think you complained
10 that that went missing then? 12:15

11 A. Yes.

12 239 Q. Perhaps we will just look at Volume 14, page 3868.
13 This is a letter dated 31st March 2017, enclosing a
14 copy of your statement. It's addressed to the
15 assistant commissioner eastern region. I think that 12:16
16 was Assistant Commissioner Fanning at that point in
17 time?

18 A. Yes, just from clarification.

19 240 Q. Yes.

20 A. When you say I took issue with Chief Superintendent 12:16
21 Scanlan, it was actually for him, because he had been
22 my superintendent prior, when I was talking to him I
23 said, this is going to be messy, be better off staying
24 out of this. That was -- you know, and I told him, I
25 said, like, you know, I would have worked under you. 12:17

26 241 Q. Yes.

27 A. In other words, that could be a get out clause to get
28 out of getting involved in this, because it is very
29 messy stuff.

1 242 Q. Yes. Assistant Commissioner Fanning describes what he
2 did, I think on page 6451. If we just look at that.
3 There's detail that we don't need to go into, but four
4 lines from the bottom there, he says:

12:17

5

6

"On the 31st March..."

7

8

If we go up a few lines. Scroll up.

9

10 "On the 31st March, I received correspondence from
11 chief superintendent Portlaoise containing a copy of a
12 17-page statement dated 27th March 2017."

12:18

13

14

Then he goes on to say, three lines down:

15

12:18

16

17

18

19

20

21

22

23

24

25

26

27

28

He says:

29

12:18

1 "On 21st April 2017, my office wrote to executive
2 directive human resources and people development
3 enclosing a report dated 12th April 2017 from chief
4 superintendent Portlaoise, together with a document of
5 Garda Keogh dated 2nd March 2017, with relevant 12:19
6 appendices and outlined that I would give the matter
7 further consideration and report more fully in early
8 course the correspondence acknowledged by executive
9 director human resources and people development on the
10 28th April 2017. 12:19

11
12 On 16th May 2017, I corresponded with Garda Nicholas
13 Keogh, informing him that I was on annual leave and I
14 was anxious to proceed with the matter. I also
15 enquired if he had any further material to offer and to 12:19
16 respond to my office before 30th May 2017."

17
18 He then details that you contacted Inspector McCarthy.
19 So it would appear that you were being kept informed as
20 to what was happening at that point in time. You 12:19
21 appear to have told him there, sort of line 6 onwards:

22
23 "Garda Keogh indicated that he was satisfied that all
24 of his issues were included in both his signed and
25 unsigned statements and that I was examining the matter 12:20
26 and would correspond further in course."

27
28 There's further correspondence then informing you of
29 the matter, resting with the executive director. He

1 appears to be writing then to the executive director,
2 urging that there be no delay in the matter. But you
3 hadn't heard yourself directly from anyone else at that
4 point in time, is that right?

5 A. In relation to the -- there's a lot in it, sorry, this 12:20
6 is complicated even for me.

7 243 Q. Yes.

8 A. So I just --

9 244 Q. Inspector Fanning there on the last -- or Assistant
10 Commissioner Fanning was saying on those last few lines 12:20
11 there that he wrote telling you that the matter was
12 effectively with the executive director at that point
13 in time?

14 A. Right.

15 245 Q. Do you recall getting that? 12:20

16 A. Look, I can't recall just getting --

17 246 Q. Yes.

18 A. I got a lot of letters over --

19 247 Q. Yes.

20 A. I would accept that. 12:21

21 248 Q. Yes. It would appear, whatever the circumstances,
22 Assistant Commissioner Finn wasn't appointed until the
23 middle of November 2017. Were you yourself aware of
24 any reason why it had taken so long?

25 A. No. Look, all I knew is there was a delay. But I had 12:21
26 made my statement to Chief Superintendent Scanlan in
27 Portlaoise, was in March. We're on 2017, isn't it?
28 March 2017. The next thing, for a period of six months
29 I don't know anything about it, from my recollection.

1 249 Q. Yes. But in any event, you came to meet Assistant
2 Commissioner Finn, isn't that correct?

3 A. Yes.

4 250 Q. Would you like to describe that meeting?

5 A. Yeah. I think it was in Mullingar. There was my 12:22
6 solicitor, there was Assistant Commissioner Finn, Chief
7 Superintendent Myers and a female inspector, I can't
8 remember her name. Basically, at the meeting I had
9 submitted my complaint in writing, so he had that in
10 writing. 12:22

11 251 Q. Yes.

12 A. And it clearly outlined who I was making complaints
13 about. Assistant Commissioner Finn kept asking me over
14 and over again, but who are you making your complaint
15 about, is it a corporate allegation or is it some other 12:22
16 allegation. And I just said, look, I said, I'm making
17 a complaint about -- I named three people out, and I
18 said, that's it, like I'm naming them out, it's in
19 writing. He kept going on after that, but like, who
20 are you making your complaint after? This is the way 12:23
21 it was, as if I didn't know who I was making my
22 complaint about. It was in writing and I verbally just
23 told him and told him a number of times during the
24 meeting. He kept asking me this question over and over
25 again: But who are you making your complaint about? 12:23

26 252 Q. Yes. I mean, when Chief Superintendent Scanlan sent
27 the report in, it did seem to be an issue in
28 headquarters as to who precisely, because, I, mean
29 you've seen the bullying policy itself, it does appear

1 to be, I don't say rigid, but it's obviously very
2 formalistic in the sense that it lays down the
3 structure of the investigation. Because those in
4 respect of whom the allegations are made are meant to
5 be made aware of them at a very early stage, given the 12:24
6 allegation and giving a chance to respond and be
7 interviewed and review the documents. That'd be a
8 pretty normal set of fair procedures in the
9 circumstances then, I take it?

10 A. Yes. 12:24

11 253 Q. Yes. So it would appear that Assistant Commissioner
12 Finn was very keen to pin down definitively who you
13 were making the allegations against, isn't that right?

14 A. Well, it was there in writing and I told him and there
15 was only three, so I mean... 12:24

16 254 Q. Okay. Ultimately, it was confirmed further in writing,
17 through your solicitor, who the three were, isn't that
18 right?

19 A. Yes.

20 255 Q. And by you then in statements, isn't that correct? 12:24

21 A. Yes.

22 256 Q. All right. Now, I suppose the issue of delay is one
23 that concerned you. Can I just ask you, knowing the
24 bullying policy structure, are you satisfied or not
25 that Assistant Commissioner Finn followed the procedure 12:25
26 set out in the policy?

27 A. I don't know. I don't know. I can't -- a lot --
28 again, a lot of the stuff, what I thought again and
29 what I read in the volumes there, I really don't know

1 what happened in this particular part.

2 257 Q. Okay. Well, it seemed to follow then that you haven't
3 made any explicit -- it's not part of your complaints
4 that he failed to adhere to the policy or follow it as
5 required? 12:25

6 A. I don't know. I can't remember exactly what's in the
7 policy.

8 258 Q. Yes, okay. It obviously required going to those
9 persons whom your complaints related to and getting
10 their account and giving them an opportunity to answer 12:26
11 them, isn't that right?

12 A. Mm-hmm.

13 259 Q. I think by June 2018, am I correct in saying, that he
14 was in a position to serve on you then all of the
15 documents and responses, isn't that right? 12:26

16 A. Yeah.

17 260 Q. You, with your solicitor presumably advising you, had a
18 reasonable opportunity to reply to all of the defences,
19 as it were, put in by the officers, and you did that at
20 length? 12:26

21 A. Yeah.

22 261 Q. The issue of delay, could you articulate in your own
23 words how you say Assistant Commissioner Finn targeted
24 you or discredited you as a result of your protected
25 disclosures? 12:27

26 A. Well, the first meeting, that meeting, that meeting in
27 Mullingar.

28 262 Q. Yes.

29 A. As I said, most of the meeting was just: But who are

1 you making your complaints about? And I'd name the
2 names. But you're not sure who you're making your
3 complaints -- And I said, well, it's in the names that
4 are in the statement and the names I'm just after
5 telling you. This went on and on. And then, just from 12:27
6 recollection, from reading the Finn report or the way
7 it was investigated, like, it would appear I make
8 complaints about like nearly everyone in Athlone, when
9 it was just the three, the three senior officers that I
10 had made -- 12:27

11 263 Q. I think Assistant Commissioner Finn kept notes and they
12 are part of the papers. Perhaps we will just look at
13 those, at 4220, 4221 and 4222. There's some discussion
14 now about the complaints and then, at the bottom of the
15 page, it says: 12:28

16
17 "Who are you making complaints against?"

18
19 Pat Murray, two chiefs in Mullingar, Mark Curran and
20 Lorraine Wheatley. There was a sergeant in the chief's 12:28
21 office who may have been pulling their strings, but I'm
22 not sure that your investigation will show this.

23
24 You will have to tell me who you are making the
25 complaints against. 12:28

26
27 There are a lot of people named in the correspondence,
28 I need to know who the complaints are being made
29 against."

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And you say then:

"Pat Murray, that is crystal clear. Mark Curran - yes. I'm not making a complaint against Noreen McBrien and Lorraine Wheatley. I've an issue with John Scanlan because the complaint went missing.

12:29

So against Pat Murray and Mark Curran?

My mind is open to Mark Curran. I thought it was him because he was friends with Aidan... I know it's coming from the chief's office but I'm not sure who is doing it."

It just goes on. Mr. Cullen is then recorded. Assistant Commissioner Finn says:

"My scope is limited to the policy."

12:29

It just goes down there into a bit more discussion about the procedure. Just scroll down there. At the bottom of the page we go back to identifying them.

12:29

"Superintendent Pat Murray is one. I'm not sure about Mark Curran but my mind is open. When he left Lorraine Wheatley came and she's sound. And that sergeant is there all the time and he's friends on the Facebook

1 with A.
2
3 If it is the sergeant but if I don't get a complaint
4 against him, then I won't be putting a complaint
5 against him. 12:29
6
7 I am not sure who is responsible for the Mullingar
8 thing.
9
10 If you go to Mark and Lorraine and they say they were 12:30
11 busy and just signed the document.
12
13 I need to find out who you are saying who is
14 responsible so that I can put it to the people.
15 12:30
16 It's is in the documents."
17
18 There's more discussion about it there. You still seem
19 to be leaving it open there on Mark Curran and then you
20 say: 12:30
21
22 "It is Pat Murray and Mark Curran."
23
24 A. They're already in the statement.
25 264 Q. Yes. 12:30
26 A. Just to point out, these are Garda notes.
27 265 Q. I understand, I am going to ask you whether you think
28 they're accurate. Perhaps if we just go on down there.
29 If we scroll down a bit further. Assistant

1 Commissioner Finn says:
2
3 "I need to be clear whom I need to approach and
4 investigate. Right now the complaint is against Pat
5 Murray and Mark Curran. Nick, you will need to tell me 12:30
6 if he wants me to put allegations to other persons or I
7 won't go to other persons."
8
9 You say:
10 12:31
11 "If Mark Curran says it was someone else?
12
13 Then I would come back to you and we'd take it from
14 there."
15 12:31
16 You say:
17
18 "Throw in Lorraine Wheatley so."
19
20 Assistant Commissioner Finn: 12:31
21
22 "You're you are happy with this. Do you want some time
23 out?"
24
25 Do those notes give an accurate reflection of the 12:31
26 discussion?
27 A. Somewhat, somewhat accurate.
28 266 Q. Yes.
29 A. It is true, Lorraine wheatley, I know I am humming and

1 hawing in that, in relation to in relation to Chief
2 Superintendent wheatley, but, of course, just on review
3 of evidence kind of, to work out in my head, just for
4 continuity of stuff, she is -- I've to make a complaint
5 against both her and Mark Curran. 12:31

6 267 Q. For consistency, is it?
7 A. Yeah, and continuity -

8 268 Q. Continuity?
9 A. - of the whole thing like. The Guards, there's a chain
10 of command structure. 12:32

11 269 Q. Yes.
12 CHAIRMAN: I don't understand continuity.

13 A. When I'm making a -- for certain instances that have
14 happened within -- let's say, to do with, for example,
15 Superintendent Murray, reports and different things are 12:32
16 going up through Chief Superintendent wheatley.

17 270 Q. CHAIRMAN: Yes.
18 A. And that's what I mean by just continuity of the
19 documents and things like that. Continuity.

20 271 Q. CHAIRMAN: Does that mean that you say because Chief 12:32
21 Superintendent wheatley was the senior officer who
22 received reports from Superintendent Murray, that you
23 think it's necessary to name her as being involved in
24 bullying and harassment?

25 A. Yes. 12:33

26 272 Q. CHAIRMAN: I'm having a little difficulty with that, to
27 be honest.

28 A. Yeah.

29 273 Q. CHAIRMAN: Because I can understand you say, look,

1 Superintendent Murray was guilty of bullying and
2 harassment. That makes sense. I am not saying it's
3 write, but that makes sense.

4 A. Yes.

5 274 Q. CHAIRMAN: But if it just happens that whoever it is, 12:33
6 chief superintendent, it could be, you know Chief
7 Superintendent Keogh or Chief Superintendent Ryan or
8 anybody else, whoever it was, you throw them in as
9 well. I'm not understanding -- there's no personal
10 involvement, in other words, at that level, is that 12:33
11 correct?

12 A. Yeah, I think I've clarified --

13 275 Q. CHAIRMAN: Yes, that's that is what I want to you do?

14 A. In relation to Chief Superintendent wheatley, the thing 12:33
15 where she -- for the purpose of the appeal, where she
16 appears to completely side in relation to the phone
17 call with Superintendent Murray. Then there's where I
18 don't get -- I'm looking for the statement that I made
19 to Superintendent Alan Murray and I don't get that.

20 276 Q. CHAIRMAN: Okay, I'm seeing your point. So you say 12:34
21 that Chief Superintendent wheatley was personally
22 involved in a process at different times that you say
23 represented bullying and harassment, and included in
24 that is the response that she made to Superintendent
25 Alan Murray and your appeal about that. That's 12:34
26 bullying and harassment? I am not saying it's not
27 bullying and harassment or it doesn't look like it, I
28 just want to know, is that the essence? That's where
29 Chief Superintendent wheatley comes in, is that right?

1 A. Yeah. Judge, I am nearly getting confused myself.

2 277 Q. CHAIRMAN: Right. Let's keep it very simple. Let's
3 keep it very simple.

4 A. Mm.

5 278 Q. CHAIRMAN: Don't get confused. We're not here to have 12:35
6 confusion. Mr. McGuinness says to you, you're there
7 talking to Assistant Commissioner Finn and his team?

8 A. Mm-hmm.

9 279 Q. CHAIRMAN: Okay. You complain, I mean, I am just 12:35
10 trying to use as neutral a word as possible, you
11 complain that he keeps sort of badgering you to name
12 the people that you say are guilty of bullying and
13 harassment?

14 A. Mm-hmm.

15 280 Q. CHAIRMAN: That's where we are at the moment? 12:35

16 A. Yes.

17 281 Q. CHAIRMAN: Okay. Now, I know why you say
18 Superintendent Murray, because that's one of the main
19 areas we have to explore. Okay. You referred to Chief
20 Superintendent wheatley? 12:36

21 A. Yes.

22 282 Q. CHAIRMAN: Mr. McGuinness asked you, why did you
23 nominate her as being guilty of bullying and
24 harassment. Now, nobody is suggesting that she was or
25 she wasn't or that you are right or that you are wrong, 12:36
26 nothing like that. And you said, for continuity?

27 A. Mm-hmm.

28 283 Q. CHAIRMAN: And I said, I don't understand that. And
29 you said, well, there's a chain of command. That, of

1 course, I do understand. So I was wondering, was it
2 just because she was the senior officer over
3 Superintendent Murray, that you were blaming her or
4 accusing her of bullying and harassment, or was there
5 something else? 12:36

6 A. As I've just stated, there was that incident to do with
7 the appeal, where she appears to have taken a side on
8 that.

9 284 Q. CHAIRMAN: Yes.

10 A. And she could have, if she wanted to, like she could 12:36
11 have dealt with -- just whether -- right or wrong in
12 relation to the thing.

13 285 Q. CHAIRMAN: That's okay.

14 A. To just establish -- there's obviously a different
15 version from the chief superintendent and the guard, 12:37
16 and as a chief I would have said, perhaps she could
17 have been impartial, get the phone records and
18 establish the date of the phone call, is one thing.

19 286 Q. CHAIRMAN: They are response to your appeal in respect
20 of the Superintendent Alan Murray issue? 12:37

21 A. Yes.

22 287 Q. CHAIRMAN: Is that right?

23 A. Yes.

24 288 Q. CHAIRMAN: Her response to that -

25 A. Yes. 12:37

26 289 Q. CHAIRMAN: - you say represented bullying and
27 harassment.

28 A. Yes.

29 290 Q. CHAIRMAN: And that's something you wanted included in

1 Assistant Commissioner Finn's report?

2 A. Yeah. That was all, I think, in my statement.

3 291 Q. CHAIRMAN: Don't mind whether it was or wasn't. Don't
4 mind that for the moment. That is another day's work,
5 if you like, whether it was or not. Somebody is going 12:37
6 to debate that. But that's an involvement directly
7 with you of Chief Superintendent wheatley?

8 A. Yes.

9 292 Q. CHAIRMAN: Okay. Besides that particular involvement,
10 do you say that as the superior officer of 12:38
11 Superintendent Murray she also had responsibility?

12 A. I don't know that.

13 293 Q. CHAIRMAN: Do you understand me. I am just trying to
14 wonder what the complaint is about Chief Superintendent
15 wheatley? 12:38

16 A. I mean, I don't know, I don't know what went on behind
17 the scenes.

18 CHAIRMAN: Of course. Okay. I hope I understand that.
19 I think I do. Thank you very much.

20 294 Q. MR. McGUINESS: Just to draw something to your 12:38
21 attention, I don't think we need to look at it, but
22 Assistant Commissioner Finn says on page 4124, the
23 following, I will just read it out for you:

24

25 "At the behest of Garda Keogh, I procured a copy of the 12:38
26 statement that he made to chief superintendent Scanlan.
27 I read the statement prior to my meeting with him on
28 1st December 2017. I was not aware until I met him on
29 1st December 2017 that Garda Keogh wished to have the

1 content of his statement to Chief Superintendent
2 Scanlan in March 2017 included in my investigation. I
3 was not aware until I met him on 1st December 2017 that
4 he wanted to include additional material as part of his
5 complaint. It was not confirmed to me until I received 12:39
6 further correspondence from the solicitor dated 13th
7 December 2017, that the only persons against whom Garda
8 Keogh was specifically making the allegation of
9 bullying and harassment were Chief Superintendent
10 Wheatley and Mark Curran and Superintendent Pat 12:39
11 Murray."

12
13 Yes.

14 A. The first part of that, just the first part of that,
15 might it be read out again? It's just something that 12:39
16 I...

17 CHAIRMAN: Yes. Just check that again. Take your time
18 to have a look at it.

19 295 Q. MR. MCGUINNESS: You had, through your solicitor, I
20 think, made it clear that -- 12:40

21 CHAIRMAN: Just give him a chance, Mr. McGuinness.

22 MR. MCGUINNESS: Sorry.

23 CHAIRMAN: For a moment.

24 A. Just this line stands out:

25
26 "I was not aware..." 12:40

27

28 It's in the second paragraph, the third line, halfway
29 through the third line.

1 296 Q. MR. McGUI NNESS: Yes.
2 A.
3 "I was not aware until I contacted Garda Keogh that he
4 had previously made a statement to Chief Superintendent
5 Scanlan. I was not aware until I met him on 1st 12:40
6 December 2017 what matters he now wished to have
7 investigated by me, nor was it clear to me who he was
8 making a complaint..."
9
10 Just that part, "I was not aware..." 12:40
11 297 Q. CHAIRMAN: He says he didn't know -- when he met you,
12 he says he didn't know -- you may agree or not agree,
13 but he says when he met you he didn't know about the
14 Superintendent Scanlan statement. That's what he says.
15 what do you say about that? 12:41
16 A. No, I had rang -- I was in contact with the female
17 inspector that was under Mick Finn.
18 298 Q. CHAIRMAN: Yes.
19 A. And I remember saying to that lady, you're going to
20 have to get the statement, there's a lot in the 12:41
21 statement, you know.
22 299 Q. CHAIRMAN: This is the Scanlan statement.
23 A. The Scanlan statement, to speed it up for them, because
24 there was a good lot of stuff in that. So he would
25 have been aware of... 12:41
26 300 Q. MR. McGUI NNESS: I think there may be a different
27 reading of it. He seems to be saying that that when he
28 first contacted you he hadn't been aware of the
29 statement. Prior to the meeting then, which

1 subsequently took place on the 1st December, he had got
2 the statement and had read it.

3 CHAIRMAN: I'm sorry.

4 MR. MCGUINNESS: But he wasn't sure how much of it or
5 what part of it was going to be included within his
6 investigation? 12:42

7 CHAIRMAN: That's right.

8 301 Q. MR. MCGUINNESS: You may not have taken that up on the
9 day?

10 A. Obviously all of the statement was to be included, 12:42
11 because that is the purpose of why I made the statement
12 of bullying and harassment.

13 302 Q. Yes.

14 A. There's one other thing, there was a whole list of
15 appendices and documents, supporting documents as well, 12:42
16 attached with the statement.

17 303 Q. Yes. But he, for his part, and we looked at the notes,
18 you're entitled to say whatever you like about the
19 notes if you want to but, he for his part seems to have
20 been focused on the people that he would have to go to. 12:42
21 So he wanted you to fix that definitively and you then
22 did that in correspondence.

23 A. Yeah.

24 304 Q. But to be clear about the outcome of his investigation,
25 he conducted it and made his enquiries, you responded 12:43
26 to all of the defences, if I can put it that way, that
27 were put in, and he reached his conclusions. Now
28 they're contained in volume 18 at appendix 65. We can
29 go through them one-by-one if you wish on all of the

1 complaints. But what is your complaint about his
2 conclusions? Is it that he just came to an adverse
3 conclusion to you?

4 A. Yeah, Judge, there's plenty of supporting documents in
5 the -- plenty of supporting documents to back up 12:43
6 certain things I was saying. He seems just to have
7 ignored parts of it and downplayed certain things.

8 305 Q. And are there any that particularly stand out?

9 A. We've gone into a lot of this last week.

10 306 Q. Yes. 12:44

11 A. Last week.

12 307 Q. Yes.

13 A. Stuff where there was very strong evidence on, he just
14 finds, oh, there's no evidence or nothing to see here,
15 kind of. Like there was evidence, there was evidence, 12:44
16 some form of evidence kind of, that they shouldn't have
17 been just, oh, the evidence isn't strong enough, or no
18 evidence on certain matters.

19 308 Q. Okay. So you're of the view that he should have come
20 down in favour of your complaints by reference to the 12:44
21 material you sent him?

22 A. I think there was enough evidence there to back up
23 those complaints. Perhaps not all, perhaps not all of
24 them.

25 309 Q. Yes. 12:45

26 A. But certainly some. He finds, he finds the thing in
27 its entirety.

28 310 Q. Yes.

29 A. It's like it's just, no, nothing to see here at all.

1 311 Q. But from his point of view or from anyone looking at
2 his point of view, without adopting it obviously, he
3 hasn't been involved in the Ó Cualáin investigation
4 into your disclosures.

5 A. Yes.

12:45

6 312 Q. And he hasn't been involved in any way, it would seem,
7 in local management or in any way connected with the
8 events you were complaining about.

9 A. I understand that, yeah.

10 313 Q. So on what basis do you say that his conclusions were
11 intended to or did target you because of your protected
12 disclosures?

12:45

13 A. Like, his conclusions, my complaints are against just a
14 small group, just three senior officers. I have plenty
15 of evidence in, in parts, like, as I said, not in --
16 perhaps not in everything, but I had enough to hold
17 them up, to get them to the points that they were
18 actually -- I could put on paper and sign my name to
19 them that they were a complaint. He seems to have
20 just, I think at this stage, just a circle, the wagons
21 exercise, protect the senior officers. Because as
22 well, he seems to divide it up then and there's -- from
23 recollection, there's notices on other members,
24 virtually anyone I named in the complaint gets served a
25 notice that I'm making an allegation against them,
26 which I wasn't making an allegation against others.
27 It's kind of --

12:46

12:46

12:46

28 314 Q. Well, it seems to indicate on the one hand that
29 obviously those people responded as if you had made a

1 complaint?

2 A. Yeah.

3 315 Q. But looking at it from the point of view of the
4 investigator, was he not gathering evidence from
5 parties who were involved in it, who were in a position 12:47
6 to say something about the events that you were
7 complaining about?

8 A. Yeah. But, the other side is, I don't know exactly
9 what sort of an investigation Assistant Commissioner
10 Finn carried out. I don't know. I just got the 12:47
11 findings really at the end. I accept there was certain
12 documents where I reply back and that. But then there
13 was the findings, I read them and then I believed that
14 I had a case to appeal it and that's why I appealed it.

15 316 Q. Yes. But are you making the case that he, Assistant 12:47
16 Commissioner Finn, through his conduct of it and his
17 findings, targeted you because you had made the
18 protected disclosures that you had made?

19 A. I mean that would be my -- that would be -- I would --
20 I would -- at this point, at this stage, I wouldn't be 12:48
21 the flavour of the month with senior officers because
22 I'm still pursuing and pushing.

23 317 Q. Yes. But is that the basis upon which you're
24 expressing that view?

25 A. Yeah. well, yes, that would be one, yeah. 12:48

26 318 Q. Okay. In terms of the delay in the conclusion of the
27 report, he was appointed on the 15th November and he
28 reported on 20th December 2018, a period of 13 months.
29 Does that appear an unreasonable period as far as you

1 were concerned?

2 A. 13 months.

3 319 Q. Yes.

4 A. To conduct that complaint

5 320 Q. Yes. 12:49

6 A. I think their own policy has 28 days or something like

7 that. But I accept that was -- they would never have

8 achieved that in 28 days, obviously.

9 321 Q. Yes.

10 A. Because this would be more complicated. But 13 months 12:49

11 is stretching it a fair bit.

12 322 Q. Yes. In terms of the period from March '17, when you

13 first made your statement to Scanlan, until Assistant

14 Commissioner Finn actually was appointed, it would seem

15 that he, Assistant Commissioner Finn, was keen to 12:49

16 establish what happened during that period. Could I

17 ask you to look at page 6451? If we go down here, we

18 have seen some of this earlier, but if we continue

19 down.

20 CHAIRMAN: This is explaining the period between 27th 12:50

21 March 2017 and the appointment of Assistant

22 Commissioner Finn?

23 MR. MCGUINNESS: This is Assistant Commissioner

24 Fanning's involvement at this stage. If we proceed on

25 down there. 12:50

26 CHAIRMAN: Yes.

27 MR. MCGUINNESS: Perhaps there is an easier and quicker

28 way of doing it. If we go to page 10475.

29 CHAIRMAN: Thanks very much.

1 MR. McGUI NNESS: It will be slightly easier.

2 CHAIRMAN: Was Assistant Commissioner Finn involved in
3 the period between late March and his own appointment,
4 Mr. McGuinness?

5 MR. McGUI NNESS: Involved? 12:51

6 CHAIRMAN: Involved in the process.

7 MR. McGUI NNESS: No. No, he wasn't.

8 CHAIRMAN: Well, then I'm sure -- I'm sorry.

9 MR. McGUI NNESS: He's writing here to Mr. Barrett.

10 323 Q. CHAIRMAN: Yes. Let me just ask, Garda Keogh, it looks 12:51
11 like, that's what I am just checking, I am checking
12 with Mr. McGuinness, he says that between March 27th,
13 when you made this statement, and the appointment of
14 Assistant Commissioner Finn in November, okay, so March
15 to November, looks like a long time to initiate an 12:51
16 inquiry.

17 A. Yes.

18 324 Q. CHAIRMAN: Okay. But it doesn't appear, whoever is to
19 blame for it or what systems or person or persons are
20 to blame and whether it was targeting or not, it 12:52
21 doesn't appear that Assistant Commissioner Finn is one
22 of them. Maybe I'm misunderstanding. Are you with me?

23 A. Yes, I am. And, of course, I assume, incorrectly, I
24 assume, it's only again having read these documents.

25 325 Q. CHAIRMAN: Yes. 12:52

26 A. I assume that John Scanlan had withheld the documents.
27 And again, in relation to that, I see he didn't -- he
28 did send the documents on the --

29 326 Q. CHAIRMAN: Whether he did or he didn't.

1 A. Yeah.

2 327 Q. CHAIRMAN: I mean, I am not suggesting that anybody did
3 or didn't, it appears to leave Assistant Commissioner
4 Finn in the clear in respect of any delay between the
5 27th March and the date when he was appointed in 12:52
6 November?

7 A. I think so. I think so.

8 328 Q. CHAIRMAN: The 13 months after that, I have your point,
9 you say, look, okay, it was going to take more than 28
10 days, but you say 13 months is stretching it. I 12:53
11 understand that. That's Assistant Commissioner Finn.

12 A. I may not be correct on the 28 days, but it's --

13 329 Q. CHAIRMAN: Don't mind that. I don't mean to dismiss
14 that. I am saying, you complain about the 13 months,
15 that I have. The six months or whatever it is before 12:53
16 that, between 27th March and 15th November, does not
17 appear to involve Assistant Commissioner Finn.

18 A. Just, sorry, the dates, the 16th March.

19 330 Q. CHAIRMAN: You made your statement?

20 A. The 17th. 12:53

21 CHAIRMAN: No, no, I am confusing you. You made your
22 statement at the end of March.

23 A. Yes.

24 331 Q. CHAIRMAN: 27th March 2017?

25 A. 2017, yeah. 12:53

26 332 Q. CHAIRMAN: Assistant Commissioner Finn was appointed, I
27 think on the 15th November, I will be corrected if I am
28 wrong, in November, yes, 15th November 2017. So we
29 have 27th March, 15th November. Okay?

1 A. Yes, yes.

2 333 Q. CHAIRMAN: Assistant Commissioner Finn was appointed?

3 A. Yes, so he couldn't have --

4 334 Q. CHAIRMAN: It would appear to clear him for any delay
5 up to then. 12:54

6 A. Yes.

7 335 Q. CHAIRMAN: whoever else may be at fault or not at
8 fault, we don't know.

9 A. Yes.

10 336 Q. CHAIRMAN: Are we happy with that? 12:54

11 A. Yes.

12 CHAIRMAN: Okay. Is that the situation,
13 Mr. McGuinness?

14 MR. MCGUINNESS: Yes, if we just see that page, he
15 seems to be enquiring into there. 12:54

16 CHAIRMAN: Assistant Commissioner Finn is enquiring as
17 to why it took so long to get to where we are, okay.

18 MR. MCGUINNESS: Yes. And then on the next page there
19 is another e-mail from Assistant Commissioner Fanning
20 to Assistant Commissioner Finn, where he gives him sort 12:54
21 of a quick response.

22 CHAIRMAN: Accounting for the --

23 MR. MCGUINNESS: Yes.

24 CHAIRMAN: Yes.

25 MR. MCGUINNESS: But then, much more significantly, 12:55
26 Inspector McCarthy, on behalf of the Assistant
27 Commissioner Fanning, gives a blow by blow of what
28 happened, between pages 10478 and 10481. I don't know,
29 Garda Keogh, whether you have seen those four pages in

1 volume 37 before, but if we scroll down there, it gives
2 a chronology, starting at that date on the 20th.
3 CHAIRMAN: He describes the paper trail.
4 MR. MCGUINNESS: Exactly.
5 CHAIRMAN: Of exactly who consulted -- everybody was 12:55
6 consulting everybody else.
7 337 Q. MR. MCGUINNESS: Yes. Now there may be some individual
8 periods of time when there's delay in responding to
9 correspondences but that was material sent to Assistant
10 Commissioner Finn because you and your solicitor were 12:56
11 complaining of the delay in completing his
12 investigation and so were the others, the subject of
13 it, isn't that correct?
14 A. I understand that.
15 338 Q. All right. 12:56
16 A. Yes.
17 CHAIRMAN: Okay.
18 339 Q. MR. MCGUINNESS: That would perhaps seem to indicate
19 that Assistant Commissioner Finn was keen to respond to
20 the complaints that all sides were making as to the 12:56
21 lengthy period it was taking.
22 CHAIRMAN: Maybe it took him too long.
23 MR. MCGUINNESS: Yes.
24 CHAIRMAN: Maybe somebody else would have done it
25 faster. Maybe he should have done it faster. That 12:56
26 doesn't sound like targeting to me.
27 A. But there is, Judge --
28 340 Q. CHAIRMAN: I have your o other point, but the fact that
29 it takes him 13 months when somebody else might have

1 done it in 11?

2 A. Perhaps I may be incorrect on this, but there was --

3 you see, there was -- at some point Superintendent

4 Murray is going on for promotion.

5 341 Q. CHAIRMAN: Yes. 12:57

6 A. And I mean, for me --

7 342 Q. CHAIRMAN: Yes.

8 A. -- the way I look at it, you know, was he trying to

9 facilitate --

10 343 Q. CHAIRMAN: I understand that point. I think that 12:57

11 Mr. McGuinness may get on to that point at a later

12 stage. You say, look, he was dragging out the

13 investigation so as to leave the field clear for

14 Superintendent Murray to get his promotion. That I

15 understand as being something that is targeting and 12:57

16 discrediting. But on its own, if it takes me three

17 months to produce the judgment as opposed to two

18 months, I don't think anybody can say they were

19 targeted, do you know what I mean?

20 A. Yes. 12:57

21 344 Q. CHAIRMAN: But if you say it was deliberately -- I have

22 that point. Okay.

23 345 Q. MR. MCGUINNESS: But certainly as of the day he first

24 met you, 1st December 2017, I think Superintendent

25 Murray's promotion came through in January '18, isn't 12:58

26 that correct?

27 A. I'm a bit mixed up, because he's promoted, his

28 promotion is backdated, his promotion was backdated.

29 346 Q. I understand that.

1 CHAIRMAN: Could we leave -- if it's convenient. That
2 is the next and I think the final issue, is that right?
3 MR. McGUI NNESS: No, no, there's some other issues. I
4 am leaving this issue and I am finished with this
5 issue. 12:58
6 CHAIRMAN: Thanks very much. So, I have your point and
7 you want to say, look, you're uncomfortable about the
8 delay that took place, not so much because it took 13
9 months, although you think that's rather a long time
10 for it, but because you think that it might have or did 12:58
11 or was intended to facilitate Superintendent Murray's
12 path to promotion.
13 A. Yes.
14 347 Q. CHAIRMAN: Okay.
15 A. And, Judge, just again, as I said, I know we have said 12:58
16 there's no evidence or -- but from what I believed
17 earlier into what I -- what my perception was, that
18 Superintendent Murray was put in to get me out and that
19 he would be promoted, this is further backing up, let's
20 say, my belief on what Garda management are up to. 12:59
21 348 Q. CHAIRMAN: well, I'll tell you what now, we're just
22 leaving this at this moment because, we're not leaving
23 it forever, because there is an issue, you say,
24 concerning -- and it's one of the agreed issues,
25 concerning the promotion of Superintendent Murray to 12:59
26 chief superintendent?
27 A. Yes.
28 349 Q. CHAIRMAN: So we will leave that for the moment. Have
29 we now completed -- can I just ask you one question:

1 My understanding of your complaint, apart from this one
2 about delay and Assistant Commissioner Finn, my
3 understanding is that you say he shouldn't have reached
4 those conclusions, he was wrong to come to those
5 conclusions. 13:00

6 A. I believe that.

7 350 Q. CHAIRMAN: Lawyers would say, in respect of a report,
8 when they want to get around the fact that they don't
9 like the conclusions in the report, what we would say
10 is, no reasonable body, no reasonable person could have 13:00
11 reached such a conclusion, is that essentially what you
12 are saying?

13 A. Yes.

14 351 Q. CHAIRMAN: Based on the evidence, no reasonable person
15 could have come to that conclusion? 13:00

16 A. Yes, Judge.

17 CHAIRMAN: Okay. Thank you very much.

18 MR. McGUI NNESS: Chairman, just one final question.

19 CHAIRMAN: Yes, please.

20 352 Q. MR. McGUI NNESS: In the context of the appeal that you 13:00
21 took to Assistant Commissioner O'Brien, your complaint
22 is that he failed to uphold your appeal and that that
23 constitutes -- in the words of --:

24

25 "There's no acknowledgment whatsoever of the 13:00
26 correctness of my complaints of having been longly
27 harassed by garda officers, which has arisen since I
28 made my protected disclosures."
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CHAIRMAN: It's the same complaint, isn't that right?

A. Yes.

353 Q. CHAIRMAN: Insofar as anybody endorsed the report of Assistant Commissioner Finn, the shorter form applies? 13:01

A. Yes, Judge.

CHAIRMAN: Okay. Thank you. Mr. McGuinness, so we can let Garda Keogh stand down now for the moment, is that right?

MR. MCGUINNESS: Yes. Lunchtime, Chairman. 13:01

CHAIRMAN: Very good. Thanks very much. That leaves us with, well, whatever it leaves us with, we will get on with in the afternoon. Thanks very much. Okay around two o'clock. Thanks very much.

THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS FOLLOWS: 13:01

MR. MCGUINNESS: Chairman, the next issue listed is issue number 19, concerning whether the disciplinary investigation carried out by Assistant Commissioner Annmarie McMahon constituted discrediting or targeting of Garda Keogh. 14:02

CHAIRMAN: Yes.

MR. KELLY: Chairman, just before we go on to that, I appreciate we left issue 18, there is a matter that has arisen in relation to that, that I flagged up with Mr. McGuinness and he is looking into it. 14:02

CHAIRMAN: I am sorry, say that again, please,

1 Mr. Kelly, I'm sorry.

2 MR. KELLY: There is a matter in relation to 18 that
3 arises, which I have flagged up with Mr. McGuinness.

4 CHAIRMAN: Yes.

5 MR. KELLY: He needs a little time to look into it. He 14:03
6 is doing that. I am just flagging it at this stage.

7 CHAIRMAN: Very good. So we may have to come back to
8 number 18. Happy with that, Mr. McGuinness.

9 MR. MCGUINNESS: Yes, Chairman, I have undertaken to do
10 that. 14:03

11 CHAIRMAN: Thanks very much.

12 MR. KELLY: That's the point, I thought it right to
13 mention it to you.

14 CHAIRMAN: Thanks very much, that's very helpful.
15 Thank you very much. 14:03

16 MR. KELLY: Thank you.

17 CHAIRMAN: So we are on to Assistant Commissioner
18 McMahan.

19 MR. MCGUINNESS: Yes. In context, Assistant
20 Commissioner McMahan was appointed on 26th April 2017 14:03
21 to conduct a disciplinary inquiry which embraced a
22 person that we are not concerned with here in this
23 Tribunal at the moment, and others, including Garda A.
24 She conducted her inquiry and reported on 27th February
25 of 2019. That was considered by way of a peer review 14:04
26 of Assistant Commissioner McPartlin and was the result
27 then of a decision by Assistant Commissioner Sheahan,
28 which was reviewed in the context of the peer review
29 and Assistant Commissioner Sheahan's original decision

1 was on 17th May '19 to appoint Assistant Commissioner
2 McPartlin to do this peer review. She reported on the
3 peer review on 19th June 2019. Assistant Commissioner
4 Sheahan took account of that, and by decision of the
5 27th June of 2019, decided that no disciplinary 14:05
6 proceedings and the assembly of a board requiring the
7 disciplinary regulations was not going to take place
8 for the reasons set out in their statements.
9 CHAIRMAN: Yes.

10 354 Q. MR. MCGUINNESS: But, Garda Keogh, that's the sort of 14:05
11 timeframe. Obviously, we touched on this before, you
12 knew there was going to be and there was a disciplinary
13 inquiry into the matters arising from your protected
14 disclosures?
15 A. Yes, as I have already stated, I received a letter from 14:05
16 Assistant Commissioner Nolan.

17 355 Q. Yes.
18 A. Yes.

19 356 Q. Assistant Commissioner McMahon conducted that under the
20 discipline regulations? 14:05
21 A. I never got any letter from Assistant Commissioner
22 McMahon.

23 357 Q. No, but I mean, she wasn't obviously investigating you,
24 but she had your statement which you had made in
25 relation to Superintendent Mulcahy and Inspector 14:06
26 Coppinger. You don't know?
27 A. But I don't find out for a long -- I'm aware, Assistant
28 Commissioner Nolan has retired at some point.

29 358 Q. Yes.

1 A. I am trying to find out who is doing that
2 investigation.

3 359 Q. Yes.

4 A. I have not got a letter from Assistant Commissioner
5 McMahon and we write -- when I say we write, through my 14:06
6 solicitor, at the time, to acting Commissioner
7 Ó Cualáin to find out who is doing this investigation.
8 He sends a letter back to say Joe Nugent will be in
9 touch with you. He's the CAO for An Garda Síochána.
10 We don't get to find out then. Then, at some point, 14:06
11 Clare Daly writes to the Minister for Justice in
12 relation to the same thing, who is conducting this
13 investigation. I think he can't get involved or
14 something. Then we later write to Commissioner Drew
15 Harris, who is doing this investigation. He 14:07
16 acknowledges the letter, but in the end I find out it's
17 Assistant Commissioner McMahon.

18 CHAIRMAN: Okay.

19 360 Q. MR. MCGUINNESS: when do you say you found that out?

20 A. I can't -- you see, at first I heard, I would have 14:07
21 heard a rumour firstly. Because I was really trying to
22 find out who was conducting that investigation. So I
23 had heard a rumour at some stage and I didn't know and
24 I don't know when I, let's say, formally found out. I
25 can't even remember. 14:07

26 361 Q. Assistant Commissioner McMahon says in her statement at
27 page 5994 that on:
28
29 "2nd February 2017, I am aware that Superintendent

1 Lacey and Detective Inspector Maher met you by
2 appointment to seek consent from you to view statements
3 previously made by you to Detective Superintendent
4 Mulcahy for the purpose of the internal investigation."

14:08

5
6 A. Yes, that's correct.

7 362 Q. You gave that permission?

8 A. Yes.

9 363 Q. You did that. I think Detective Inspector Maher spoke
10 with you on the telephone then the following year, in
11 March of 2018?

14:08

12 A. Judge, I have no note of that. It's a very strange
13 thing, I saw the thing, I don't remember that
14 conversation, I have no note of it. I am not saying it
15 didn't happen but it's a very curious thing the way
16 that thing was done.

14:08

17 364 Q. Okay. Well, in any event, what you say at page 116 of
18 your statement is the following:

19
20 "What one knows at this stage is that Garda A has now
21 been suspended for colluding with criminals, other than
22 such very minimalist and unavoidable light touch
23 regulation garda collusion in serious drug crime have
24 been met here obfuscation, censorship, diversion, a
25 systematic failure to investigate in accordance with
26 basic policing protocols, a refusal to search for and
27 preserve incriminating electronic and documentary
28 evidence, a fragmentation of lines of inquiry and a
29 deferential refusal to interrogate or prosecute senior

14:08

14:09

1 368 Q. CHAIRMAN: It's not one of the issues we have to
2 investigate. Should she have investigated, was she at
3 fault in failing to arrest?
4 A. Judge, I didn't --

5 369 Q. CHAIRMAN: Question: Did Ms. B withdraw that 14:11
6 statement?
7 A. Yes. Five minutes later, Judge.

8 370 Q. MR. MCGUINNESS: That was a statement, correct me if I
9 am wrong, that in fact Assistant Commissioner Ó
10 Cualáin's team had procured as part of their 14:11
11 investigation, is that right?
12 A. I don't think so. No, I think it was out of Assistant
13 Commissioner McMahon's investigation into the
14 disciplinary matters. I read it in the documents. I
15 didn't know anything about it. 14:11
16 CHAIRMAN: Okay.

17 371 Q. MR. MCGUINNESS: Perhaps I will stand corrected, but
18 she did withdraw it and make allegations against those
19 who had taken the statement from her in her house.
20 A. I understand that. 14:11

21 372 Q. CHAIRMAN: would that affect your view as to whether
22 somebody should have been arrested?
23 A. No, because five months, she doesn't withdraw it until
24 five months later.

25 373 Q. CHAIRMAN: Yes. 14:12
26 A. Judge, I would argue --

27 374 Q. CHAIRMAN: So in the meantime, before she had withdrawn
28 it, you say Assistant Commissioner McMahon should have
29 made an arrest?

1 A. Yes. Yes. But, Judge --

2 375 Q. CHAIRMAN: She was doing a disciplinary investigation,
3 wasn't she?

4 MR. MCGUINNESS: Into other persons.

5 A. Yes, Judge, but this -- 14:12

6 376 Q. CHAIRMAN: Sorry, hold on. Let's get to the bottom of
7 this in the end. You say that's is targeting you,
8 because she didn't arrest?

9 A. No, but it's is discrediting, I would say discrediting.

10 377 Q. CHAIRMAN: How is it discrediting you? 14:12

11 A. Because I have made a statement back in 2014, I
12 understand Ms. B is not cooperating with the
13 investigation team there.

14 378 Q. CHAIRMAN: Yes.

15 A. And then, years later, are we get into 2018 I think, as 14:12
16 I said, I didn't know anything about this, Ms. B makes
17 a statement of admission.

18 379 Q. CHAIRMAN: Yes.

19 A. which is a fairly significant thing in the whole run of
20 things, Judge. 14:12

21 380 Q. CHAIRMAN: Yes.

22 A. And it's five months later --

23 381 Q. CHAIRMAN: when she withdraws it?

24 A. Yes, Judge.

25 382 Q. CHAIRMAN: So your point is, in the period of five 14:13
26 months during which it's live, so to speak, if I can
27 use that term.

28 A. Yes.

29 383 Q. CHAIRMAN: During which it's not withdrawn. In that

1 period, and this is a criticism levelled at Assistant
2 Commissioner McMahon, she should have arranged for the
3 arrest?

4 A. Yes.

5 384 Q. CHAIRMAN: Of a relevant party named in the Ms. B 14:13
6 statement?

7 A. Well, yes.

8 385 Q. CHAIRMAN: Is that correct?

9 A. That would be correct, yes.

10 386 Q. CHAIRMAN: Okay. 14:13
11 A. They could have had a case conference and said --

12 387 Q. CHAIRMAN: Don't mind about how they would have gone
13 about it, she should have arranged for the arrest.
14 That's okay. I just want to know, but that's a
15 complaint you make. Okay. 14:13

16 388 Q. MR. McGUINESS: But you will have seen that the
17 assistant commissioner, it would appear, partially
18 based a decision or a view on that, that a breach of
19 discipline perhaps should be, should be put forward in
20 that regard. Did you see that in the report? 14:14

21 A. I did.

22 389 Q. Presumably that's is making the point that are you
23 making, really. Whether she should have arrested Ms. B
24 in the course of a discipline thing is perhaps outside
25 the scope of it, but she appears to have considered the 14:14
26 various statements made by and about Ms. B to be
27 relevant to a discipline charge which she was concerned
28 with?

29 A. Like, Ms. B made the statement, I would say there was

1 enough grounds then to arrest Garda A.

2 390 Q. Could we stay on focus here, because we're talking the
3 discipline inquiry?

4 A. Okay.

5 391 Q. Okay. I understand the point you are making. But, 14:14
6 from the point of view of what use she is making or
7 could make or did make of Ms. B's position, she did
8 seem to use that as the basis for a recommendation that
9 a charge of breach of discipline was warned in that
10 instance? 14:15

11 A. What else? I mean --

12 392 Q. But how do you say that sort of acting upon -- let's
13 take it for granted that you are the trigger for the
14 inquiry that takes place in relation to that contact
15 between those two persons, but if a view is expressed 14:15
16 by an officer that there appears to be grounds to have
17 a breach of discipline on that issue, I mean surely
18 that's substantiating your complaint in that regard?

19 CHAIRMAN: Do you follow the point he is making.

20 A. I do, yeah. 14:15

21 393 Q. CHAIRMAN: Are you sure?

22 A. The fact that Ms. B is making a statement.

23 394 Q. CHAIRMAN: Hold on, do you follow the question?

24 A. Can you just repeat the question, please?

25 CHAIRMAN: Okay. 14:15

26 395 Q. MR. MCGUINNESS: You have made a number of original
27 allegations?

28 A. Mm.

29 396 Q. One of them related to the contact between Garda A and

1 this Ms. B and an issue concerning the disposal of
2 phones?

3 A. Mm-hmm.

4 397 Q. I am suggesting to you that the assistant commissioner,
5 having Ms. B's statement and other evidence relating to 14:16
6 it, although it was withdrawn, that founded the basis
7 for her decision to actually recommend the possible
8 convening of a board of discipline, to deal with that
9 issue in particular. Now, surely you can't say that
10 that's discrediting. That is, on any view, sort of 14:16
11 substantiating your complaint?

12 A. Yes, but I didn't know anything about this and as I
13 said, Assistant Commissioner McMahon never gave me
14 notice that she was conducting that investigation after
15 Assistant Commissioner Nolan retired and I never met 14:16
16 Assistant Commissioner McMahon at any point. She never
17 came to me and said, I am dealing with your complaint,
18 what's your view, what's your version of events.

19 398 Q. I wonder is that right, in this sense: Assistant
20 Commissioner Nolan, he retired on 20th April 2017, she 14:17
21 is appointed on the 26th April?

22 A. This is 2017, is it?

23 399 Q. Yes, 2017.

24 A. She is appointed.

25 400 Q. Yes. He retired on the 20th April 2017, so she is 14:17
26 appointed six days later. But the investigation that
27 had been established had already secured permission
28 from you to use all your statements?

29 A. Yes.

1 401 Q. You're not the focus of the alleged breach of
2 discipline?
3 A. No.
4 402 Q. No. So is it not up to the investigating member,
5 within the 2007 regulations, to proceed on the basis of 14:18
6 all of the material she had from you? I mean, it's not
7 about you now in this sense, within the context of the
8 regulations; it's about the wrongdoing of others, that
9 you have said presumably everything you wanted to say
10 in the statements? 14:18
11 A. Yes. Except that, when I met Superintendent Lacey and
12 Inspector Maher, I actually pointed out, there's four
13 members that's being disciplined but two of them
14 shouldn't be disciplined. That they were spreading,
15 spreading, let's say, the wrongdoing out to make it 14:18
16 appears maybe basically less serious. Spreading it
17 out. I pointed out to them that two of those I believe
18 shouldn't have been disciplined in relation to that.
19 They were two persons from the national drugs unit and
20 I pointed out that I didn't believe they should be 14:19
21 disciplined, because I didn't think they should have --
22 they had done anything wrong.
23 403 Q. Well, I mean, Assistant Commissioner McMahon, I mean
24 she notes that while she is not personally named by you
25 and in the absence of any clear differentiation between 14:19
26 the criminal or discipline investigation within your
27 statement, she once again reaffirmed that her
28 investigation was conducted with absolute
29 professionalism, complete impartiality and progressed

1 as expeditiously and diligently as possible. Insofar
2 as she seemed to express a view in relation to one of
3 your allegations, would you agree that there doesn't
4 appear to be any basis to suggest that she was
5 targeting you, in what she did and what she reported? 14:19

6 A. But how long did that discipline -- while it was in
7 Assistant Commissioner McMahon's care, while she was in
8 charge of it, like it's dragged out again for a lengthy
9 period of time again, from early 2017 up to 2019 then
10 on this one, I think. 14:20

11 404 Q. Well, so it's a delay you're concerned with?

12 A. There is a delay.

13 405 Q. There is a passage of time, certainly. But have you
14 anything to suggest that that delay was deliberately
15 caused with the intention of punishing you for your 14:20
16 disclosures?

17 A. At the time, somewhere in this period of time I am
18 writing to Assistant Commissioner Ó Cualáin, trying to
19 find out who is doing this investigation. And I'm
20 not -- like, under the protected disclosure bill, under 14:20
21 my understanding of it, someone is supposed to keep me
22 informed as to what's happening, and I am here writing
23 into them because I haven't a clue who is even
24 investigating this particular part.

25 406 Q. I mean, that may be an interesting question of law. 14:20
26 You think you were obliged to be kept informed of the
27 progress of any disciplinary inquiries as well?

28 A. Well, it emanates from the actual disclosure.

29 407 Q. But are you suggesting that a failure -- I mean, it's

1 not in the documents as a complaint, in terms of delay,
2 but are you suggesting that the failure to keep you
3 up-to-date was in some way designed to target you
4 because of your disclosures?

5 A. Yes. Yes. Because like, Assistant Commissioner Ó 14:21
6 Cualáin at this time I think is the acting
7 commissioner. He obviously knows a lot about it.

8 408 Q. CHAIRMAN: Just concentrate on Assistant Commissioner
9 McMahan?

10 A. Yes. 14:21

11 409 Q. CHAIRMAN: If you wouldn't mind?

12 A. Sure.

13 410 Q. CHAIRMAN: Now, what counsel says is, look, Assistant
14 Commissioner McMahan conducted a disciplinary
15 investigation, that was her job, not a criminal 14:22
16 investigation, a disciplinary investigation and she
17 reported that a disciplinary process be started?

18 A. Mm-hmm.

19 411 Q. CHAIRMAN: What was wrong with that?

20 A. You see, I don't know -- 14:22

21 412 Q. CHAIRMAN: It doesn't matter whether you knew or not.
22 Now you know. That sounds brusque and rude and I take it
23 back straightaway and I apologise for it. I don't mean
24 that in the slightest. Sorry. Leaving aside your
25 point that you should have been kept informed, to be 14:22
26 debated, were you entitled -- leave that aside for the
27 moment, okay. Maybe you should, maybe you shouldn't
28 be. But as far as it went, the disciplinary
29 investigation recommends that disciplinary proceedings

1 be started. How can you make a complaint about that?

2 A. But I don't know, I don't know what -- I don't know
3 what's happening.

4 413 Q. CHAIRMAN: I understand that. We have that. You
5 should have been kept, I understand that. But as a 14:23
6 matter of objective fact, once she came to the
7 conclusion that there should be disciplinary
8 proceedings, does that not --

9 A. I only read that in the documents.

10 414 Q. CHAIRMAN: I understand that. Now that you do read it 14:23
11 in the documents, does that let her off the hook,
12 except about the point about keeping you informed?

13 A. And there is the Ms. B incident.

14 415 Q. CHAIRMAN: And the fact that she should have been --
15 even though it was disciplinary, she should forget that 14:23
16 and make sure that Ms. B is arrested or somebody else
17 is arrested?

18 A. Well...

19 416 Q. CHAIRMAN: Okay.

20 A. It's new evidence which has come to light from 14:23
21 something that's being investigated since 2014.

22 417 Q. CHAIRMAN: I see your point. Okay. Thanks very much.

23 418 Q. MR. McGUINESS: In any event, an incident occurred in
24 November 2018, in relation to a phone call or several
25 phone calls that you made on the emergency service 14:24
26 number, which seem to relate to Assistant Commissioner
27 McMahon's husband?

28 A. Yes.

29 419 Q. Were you unaware at the time then that Assistant

1 Commissioner McMahon was doing the disciplinary
2 investigation?

3 A. I'd say I was aware at that time, yes, Judge.

4 420 Q. We don't need to go into the phone calls I think for
5 any particular reason at the moment, but the fact of 14:24
6 that led to Assistant Commissioner McMahon putting a
7 recommendation for a peer review in the report and
8 perhaps without which there wouldn't have been a peer
9 review. You saw that Assistant Commissioner McPartlin
10 came in then? 14:24

11 A. Yes.

12 421 Q. Then the matter was considered by Assistant
13 Commissioner Sheahan, both before the appointment of
14 the peer reviewer and after the appointment. They took
15 a decision, which is explained by them. You have seen 14:25
16 the explanations given in relation to the ultimate
17 outcome?

18 A. Yes.

19 422 Q. They will be giving evidence obviously, if necessary.
20 But that's the outcome of it. Apart from the fact that 14:25
21 obviously you would have wished a different decision,
22 you would have wished a different outcome, full blown
23 disciplinary proceedings.

24 A. At this stage of the game, at that stage of the game I
25 was just wishing it would all be over, because you have 14:25
26 to remember, this is dragged -- for each one of these
27 assistant commissioners that we are naming out, they've
28 only, let's say, one to two years, whatever, each in
29 what they are doing. Like I have gone -- this is going

1 on for me for years.

2 423 Q. Yes.

3 A. They do appear to me to be dragging it out.

4 424 Q. Deliberately?

5 A. I think so. 14:26

6 425 Q. Well, it seems if are you looking at it from a
7 bureaucratic point of view, there is a sequential
8 process going on in each case that has to be followed,
9 which inevitably takes time.

10 A. Reasonable time. 14:26

11 426 Q. Reasonable time.

12 A. Mm-hmm.

13 427 Q. But is that the only basis upon which you say then that
14 you were being targeted, because they were dragging it
15 out? 14:26

16 A. That would be my case there on that. Like all these
17 investigations, with the exception of the first one,
18 like they call seem to be dragged out. Like it goes
19 on, this whole episode has gone on for years, for,
20 whatever, 8th May 2014 and we're now at the end of 14:27
21 2019.

22 428 Q. I mean, I am not defending anything, but there is no
23 prescribed time for a sequential set of complex
24 investigations and procedures such as have been
25 followed. Obviously that's your major point on this 14:27
26 then?

27 A. Yes.

28 CHAIRMAN: Two things: Dragging it out and failing to
29 make arrests.

1 A. Yes.

2 429 Q. CHAIRMAN: Okay. Sorry, three, failure to keep you
3 informed?

4 A. Oh, yes, yeah.

5 430 Q. MR. McGUINESS: I am going to pass on from that issue 14:27
6 to issue number 20, complaints by Garda Keogh in
7 relation to the promotion of Superintendent Murray to
8 chief superintendent?

9 CHAIRMAN: Right.

10 431 Q. MR. McGUINESS: There's a statement in the additional 14:28
11 addendum to the Finn investigation, where you say at
12 page 322 of our papers, I don't think we need to open
13 it, you say:

14

15 "I did not realise that the bullying and harassment 14:28
16 complaint had gone missing until we found out that Pat
17 Murray was on the promotion list."

18

19 Now, are you differentiating between the first and
20 second promotion lists? 14:28

21 A. I can't remember off hand, but I presume it's the first
22 promotion list. Like, you have to understand, I don't
23 know whenever Superintendent Murray applies for his
24 promotion, I don't know that.

25 432 Q. Yes. Well, according to the statement he applied on 14:28
26 18th January 2016 for promotion. That's at page 2062.
27 You met Deputy Wallace on the 5th May, according to
28 your diary and the notes of the deputy. Then, on the
29 16th May, you wrote to the Minister complaining about

1 Chief Superintendent Murray, is that accurate?

2 A. Yeah.

3 433 Q. Superintendent Murray says that on 25th May 2016, he
4 received notification that he was successful in the
5 promotion competition. Is that something that is 14:29
6 publicised in An Garda Síochána?

7 A. No. Well, I don't think I would have known. In 2016,
8 I think is when I am meeting Chief Superintendent
9 McLoughlin.

10 434 Q. You are, yes, indeed. 14:29

11 A. Yeah, about trying to trigger the bullying and
12 harassment matter.

13 435 Q. Yes. But you apparently wrote on 14th June 2016 to the
14 Minister, the police authority and GSOC, casting
15 aspersions on his selection for promotion? 14:30

16 A. I don't think casting aspersions is the... I think I
17 just --

18 436 Q. Well, these are his words.

19 A. Oh right, sorry.

20 437 Q. You wrote to those bodies about the possibility of him 14:30
21 being promoted in an adverse way?

22 A. From my recollection, and I could be wrong, but I
23 thought all I sent to the policing authority was a copy
24 of my statement.

25 438 Q. CHAIRMAN: You said he shouldn't be promoted. 14:30

26 A. I could -- I can't remember -- can you --

27 439 Q. CHAIRMAN: That was the case you were making?

28 A. Oh yeah, of course.

29 440 Q. CHAIRMAN: This man should not be promoted?

1 A. Until the investigation is finished.

2 441 Q. CHAIRMAN: Yes.

3 A. Yeah.

4 442 Q. MR. MCGUINNESS: There's reference to another letter of
5 yours of the 2nd September 2016, again concerning the 14:31
6 same issue, you would agree with that?

7 A. Yes.

8 443 Q. Deputy Daly, according to Superintendent Murray's
9 statement, mentions the promotion issue in the Dáil on
10 the 5th October. Do you remember that happening? 14:31

11 A. There was a lot of things in the Dáil, so I can't
12 remember which one.

13 444 Q. Yes.

14 A. But I accept, yes.

15 445 Q. According to the diary, you appear to have met them, 14:31
16 your own diary, on 27th September 2016?

17 A. '16.

18 446 Q. That's page 13356, volume 47 of our books.
19 A. November '16?

20 447 Q. I'm sorry, the 27th September. 14:32

21 A. Sorry. Yeah. Yes, that's correct, the 27th September.

22 448 Q. Yes. Have you noted another meeting on the 16th
23 November about the promotion? 13358.

24 A. Yes.

25 449 Q. That seems to have been it in December in 2016. 14:32
26 Superintendent Murray says he was informed on the 20th
27 December that he wouldn't be promoted to chief
28 superintendent.

29 A. Right.

1 450 Q. So you knew his hat was in the ring, to put it
2 colloquially?
3 A. At that stage I would have.
4 451 Q. Without suggesting it was a personal animus, you
5 thought it inappropriate that his promotion should be 14:33
6 considered or happen until the bullying allegation had
7 been looked at?
8 A. Correct, yes. From my point of view, fair procedures
9 and due process and all, that would have been --
10 452 Q. That's your view. 14:33
11 A. If he were to be promoted, they should have just done
12 the investigation first, then promote him. But while
13 the investigation was ongoing, to promote him was --
14 appears to be what happened.
15 453 Q. Yes. Superintendent Murray refers to Deputy Wallace 14:33
16 apparently mentioning him and his possible promotion on
17 the radio on 14th February 2017, does that ring a bell?
18 A. No.
19 454 Q. No. In any event, according to his own statement, he
20 then applied for promotion again on 28th March 2017. 14:34
21 Were you aware of that at the time?
22 A. I wouldn't have been aware, you see, when he was
23 applying or anything like that.
24 455 Q. Yes.
25 A. I wouldn't have known that at the time. 14:34
26 456 Q. Yes. Deputy Wallace, according to again Superintendent
27 Murray, on the 30th March mentions the promotion in the
28 justice committee?
29 A. Is this '17 or '18?

1 457 Q. In '17.
2 A. I don't think I have a note of it but I would accept
3 that.
4 458 Q. Yes. I think your diary records you meeting Deputies
5 Wallace and Daly in relation to the promotion on the 14:35
6 10th April. That's at 13365.
7 A. 10th April 2016?
8 459 Q. 2017.
9 A. Ah sorry. Sorry. Sorry, the date of that?
10 460 Q. The date was 10th April 2017. It seems to read: 14:35
11
12 "Met Mick Clare Dublin re PM."
13
14 That's Pat Murray I presume you're referring to, is
15 that right? 14:36
16 A. Judge, I'm looking at my own, I'm looking at April
17 2017, 10th April 2017, and it's just not the same,
18 that's all, just to clarify.
19 461 Q. Oh! what's written in your box for the 10th April? Is
20 that April we're looking at? 14:36
21 MR. KELLY: You're looking at May.
22 MR. McGUI NNESS: I am looking at May, am I?
23 REGISTRAR: what page are you looking for?
24 MR. McGUI NNESS: I thought it was 13365.
25 A. 10th May, sorry, yes. 14:36
26 REGISTRAR: 13365, yes.
27 CHAIRMAN: It looks like it is May, Mr. McGuinness.
28 MR. McGUI NNESS: Let's go back to look at April, I will
29 have to confess my error.

1 REGI STRAR: 13364.
2 CHAI RMAN: Portlaoise.
3 462 Q. MR. McGUI NNESS: That must be the 10th May, that's my
4 mistake. Apologies. Superintendent Murray says that
5 he was informed on the 30th June then, 2017, that he 14:37
6 was successful for promotion?
7 A. Yes.
8 463 Q. Your diary then for the next few days has -- the 3rd
9 July, if we look at that?
10 A. Yeah. 14:37
11 464 Q. That seems to say:
12
13 "5pm Four Courts."
14
15 Is that: 14:38
16
17 "Sol i ci tor Mick and Cl are. Meet "somebody." Juni or
18 counsel about High Court i nj uncti on promoti on l i st."
19
20 A. Yes, Joel Jackson, junior counsel, about high court 14:38
21 injunction promotion list, yeah.
22 465 Q. Then the 5th there:
23
24 "Under pressure trying to stop promotions."
25 14:38
26 On the 9th:
27
28 "Write letter to GSOC. John Barrett."
29

1 And:
2
3 "Leo Varadkar promotions."
4
5 So you had, in fact, have been aware of his aspiration 14:38
6 to be promoted from early 2016.
7 A. Yes.
8 466 Q. All through 2016. You didn't make your bullying
9 complaint yourself until you told Chief Superintendent
10 McLoughlin in November '16 that you were now going to 14:39
11 make a bullying complaint?
12 A. Yes, but I'm not aware at that time that Superintendent
13 Murray has applied for a promotion to chief, at that
14 point. Like I wouldn't have known that. I am trying
15 to make it, fair enough around the same time, the 14:39
16 bullying and harassment complaint, but I am not aware
17 of the fact that he has applied for promotion. I
18 wouldn't have known that.
19 467 Q. That's why I put all those other dates to you, from
20 writing in May '16 right up until he is told at the end 14:39
21 of September that he won't be promoted. The deputies
22 that you were briefing were agitating it, that's a
23 neutral word, about the issue of his promotion. Was
24 that not at your behest?
25 A. I would have been meeting with -- I would -- when 14:40
26 Deputy Flanagan went to Europe, I then was working with
27 Deputy Clare Daly and Mick Wallace, they took over.
28 468 Q. I don't want to use the word in a sinister sense, but
29 you recruited them to raise the issue politically?

1 A. That's not fair, because there's the whole -- I am
2 trying to -- there's the whole other investigation, the
3 main thing is the bulk of the concerns and obviously
4 then, a lot of what we have gone through already in
5 relation to the bullying and harassment, I mean, of 14:40
6 course I keep them up-to-date with everything and then
7 I find out at some point that he is on --
8 Superintendent Murray is on the promotion list. And I
9 would have gone through everything, shown them
10 documents with certain things, you know. And I would 14:41
11 have --

12 469 Q. CHAIRMAN: Counsel is saying that you were making the
13 balls for them to fire?

14 A. Well --

15 470 Q. CHAIRMAN: They wouldn't have been protesting about 14:41
16 Superintendent Murray's promotion from it weren't for
17 you.

18 A. I provided them with the information.

19 CHAIRMAN: That's right. Yes.

20 471 Q. MR. McGUINESS: Just in terms of the sequence of 14:41
21 events then. It got as far as this, that you were --
22 was it you who seemed to be contemplating proceedings
23 or seeking advice on an injunction?

24 A. That --

25 472 Q. I don't want you to reveal any legal advice obviously. 14:41
26 A. Yeah.

27 473 Q. But I mean, were you attending there as a witness or
28 to --

29 A. As a witness.

1 474 Q. Yes.

2 A. From recollection.

3 475 Q. Who might be making the application for injunction, in
4 whose name might it have been?

5 A. I understand there was no application made. 14:42

6 476 Q. Right.

7 A. But Deputy Wallace, from recollection, was examining
8 the prospects.

9 477 Q. Yes. Obviously at this stage the policing authority
10 had taken over the function then of looking at the 14:42
11 matter?

12 A. Yes.

13 478 Q. You wrote to the policing authority, is that right?

14 A. I did at some point, yes.

15 479 Q. I think you note in your own diary on the 25th October, 14:42
16 that the gardaí had notified the police authority of
17 his complaint. That's your complaint. Is that right?
18 In your diary, 13370.

19 A. I see that's in my note. I don't know how -- I don't
20 know how I know that at that point, but that is in my 14:43
21 note.

22 480 Q. Yes. But in any event, you were in touch directly with
23 the policing authority yourself, were you?

24 A. No. No, I was never directly -- from recollection, I
25 sent them a copy of the bullying and harassment 14:43
26 complaint. I think it was more or less, look, I have
27 made a complaint here. I think there was -- my
28 argument would have been due process, fair procedures,
29 to put them on notice, perhaps this should be dealt

1 with first and then they can work away. But that this,
2 there is something, there is some sort of an
3 investigation supposed to be going on here.

4 481 Q. Yes. But as far as Superintendent Murray is concerned,
5 he says at page 3111 of our papers, he states that he 14:44
6 had no involvement in the delay of the bullying and
7 harassment investigation. He cooperated fully with it
8 from early 2018 and he was concerned about the delay
9 himself.

10 A. I saw that. 14:44

11 482 Q. Yes. That he and Chief Superintendent wheatley queried
12 the delay and they were anxious it be concluded as:
13
14 "...it was hanging over us."
15 14:44

16 Presumably you would understand that
17 A. "Over us"?

18 483 Q. Well, he's talking about the two of them there in the
19 one sentence just?

20 A. Yes. Again, I suppose that would answer a question 14:44
21 that was previously put to me earlier on in relation to
22 Superintendent Murray and Chief Superintendent
23 wheatley. As I stated, as I said in evidence some day
24 last week, I believe that she just hitched her wagon to
25 Superintendent Murray and that's why she was here. 14:45
26 But, sorry, going back to --

27 484 Q. They seem to be at one in expressing a desire to have
28 the investigation, the Finn investigation dealt with
29 quickly, that's I think all that --

1 A. Yes, I would accept that, yeah.

2 485 Q. It would appear that Superintendent Finn, whom you had
3 only met, he had been appointed in November?

4 A. Mm-hmm.

5 486 Q. So if Superintendent Murray is correct, he has twice 14:45
6 applied for promotion, the second time he gets to the
7 board, the policing authority make the decision on the
8 30th June that he be promoted, of '17?

9 A. Right.

10 487 Q. I mean months before you -- Assistant Commissioner Finn 14:45
11 is appointed, he's appointed in November '17?

12 A. Commissioner Finn -- sorry, for clarification.

13 488 Q. Yes.

14 A. Commissioner Finn is appointed on?

15 489 Q. November '17 and meets you on 1st December '17. 14:46

16 A. Okay, yeah.

17 490 Q. So he is in fact appointed a number of months after the
18 decision had been taken by the police authority that
19 Superintendent Murray be promoted?

20 A. I'm not sure about that. You see, when Superintendent 14:46
21 Murray is promoted, the promotion is backdated.

22 491 Q. Yes. No, it's backdated to 26th October 2017.

23 A. Right, okay.

24 492 Q. You're probably aware that Assistant Commissioner Finn
25 was involved in the certification process? 14:46

26 A. I saw that.

27 493 Q. Isn't that right?

28 A. Yeah.

29 494 Q. And that's in September 2017, again before he's

1 appointed to the disciplinary inquiry. Do you accept
2 that?

3 A. Just to get the -- he is appointed in September of --
4 this is 20 --

5 495 Q. '17, we're talking 2017 now? 14:47

6 A. Right.

7 496 Q. Sorry, perhaps if I go back over the three important
8 dates. Superintendent Murray says he was successful in
9 the competition to be appointed for promotion to become
10 a chief super on 30th June '17. You have no reason to 14:47
11 doubt that.

12 A. Yeah.

13 497 Q. Because it is the subject-matter of then public
14 discussion. But you know that the process then
15 requires a certification from the commissioner's 14:47
16 office?

17 A. Yeah.

18 498 Q. Isn't that correct?

19 A. Yes.

20 499 Q. Assistant Commissioner Finn was involved in September 14:47
21 2017, in writing a report, in fact, to Assistant
22 Commissioner Ó Cualáin?

23 A. Yes.

24 500 Q. For transmission to the policing authority?

25 A. Yes. 14:48

26 501 Q. That happened, those things both happened in September
27 2017?

28 A. Yes, I think so. I thought I saw two separate -- two
29 different reports, or perhaps I was reading the

1 statement, I'm not sure.

2 502 Q. Yes. Perhaps we will just look at page 3967, this is
3 Assistant Commissioner Ó Cualáin's statement: Just
4 there now. It's six lines down.

5 14:48

6 "On 6th September 2017 the secretary to the policing
7 authority wrote to Commissioner O'Sullivan seeking
8 clearance of a number of candidates, including Pat
9 Murray for appointment to rank of chief superintendent.

10 This correspondence was forwarded to assistant 14:48

11 commissioner governance and accountability for the
12 necessary enquiries to be carried out for completion of

13 the forms (A31). Assistant commissioner Michael Finn,
14 governance and accountability, responded directly to

15 the policing authority on 17th September 2017 with the 14:49

16 completed clearance forms for three candidates,

17 including Pat Murray. I was appointed by government as

18 acting commissioner on the 11th September and I was

19 aware that police authority now required the clearance

20 forms be formed by the commissioner or someone at 14:49

21 deputy commissioner level.

22

23 On 19th September 2017, having considered the report

24 submitted by Assistant Commissioner Michael Finn, which

25 showed there was nothing unfavourable on Superintendent 14:49

26 Pat Murray's record, I signed the clearance forms for

27 three candidates, including Pat Murray, and forwarded

28 them to the policing authority."

29

1 Do you see that?

2 A. I see that.

3 503 Q. That appears to have taken place a couple of months
4 before the appointment of Assistant Commissioner Finn
5 and before he works through, you say perhaps in a 14:49
6 delayed fashion, works through the bullying complaint,
7 from the time he met you onwards?

8 A. Yes. But I don't see anything then -- from when
9 Assistant Commissioner Finn is appointed to investigate
10 the bullying and harassment, I didn't see any letter 14:50
11 from the assistant commissioner to the policing
12 authority to say oh, by the way, this has cropped up
13 and I am investigating it.

14 504 Q. Yes. You will have seen from Assistant Commissioner Ó
15 Cualáin's statement that he says he wasn't aware of the 14:50
16 bullying complaint at the time he furnished the
17 certification?

18 A. I don't -- I don't believe that.

19 505 Q. Yeah.

20 A. He's the acting commissioner. 14:50

21 506 Q. I am just asking you, you have seen that?

22 A. Yeah.

23 507 Q. Yes. He will be giving evidence in relation to that.
24 But it would appear that the policing authority
25 required a report into those before they would sign off 14:50
26 on the appointment?

27 A. Yes.

28 508 Q. They got one in respect of it from Assistant
29 Commissioner Finn, as to what was involved, what was

1 the timescale, etcetera, etcetera. But they seem to be
2 happy to sign off on the appointment or the promotion
3 in the middle of January 2018?
4 A. I think, yeah, but I don't think he gets promoted until
5 March 2018. I don't think it's until March. 14:51
6 509 Q. Well, Superintendent Murray, in his statement, says
7 that:
8
9 "Ms. Hall on 29th January 2018..."
10 14:51
11 Following a meeting.
12
13 "... confirms the promotion and backdates it to 26th
14 October 2017."
15 14:51
16 That's at page 2077 of his statement. You think it
17 wasn't done until March?
18 A. I just have to -- perhaps -- Sorry, I thought I had a
19 note of something there.
20 510 Q. Okay. 14:52
21 A. I just can't find it.
22 511 Q. Maybe there are further things to be completed. But he
23 says he got a call then and was told that it was -
24 A. Promoted.
25 512 Q. - being done. Can there be delays in the promotion 14:52
26 actually happening? Is there a ceremony or some sort
27 of other formality to it?
28 A. I don't know. This is a new process.
29 513 Q. Yes.

1 A. In that the Policing Authority are for the first time
2 taking over the promotions.

3 514 Q. CHAIRMAN: Yes.

4 A. Where it previously was done by the Minister or the
5 government I think.

14:53

6 MR. McGUI NNESS: Yes.

7 515 Q. CHAIRMAN: The sense you have, if I understand it, and
8 the intention that you had with your solicitor and your
9 contacts with these various people was, I have serious
10 complaints of bullying and harassment against this
11 officer and the promotion shouldn't go ahead until
12 those matters are disposed of?

14:53

13 A. Dealt with, yes.

14 516 Q. CHAIRMAN: And whatever the sort of technicalities of
15 the dates and who said what to whom, that is the
16 essence of it, is that right?

14:53

17 A. That is my case.

18 517 Q. MR. McGUI NNESS: Superintendent Murray has provided his
19 notes, I don't know have you seen them, but on page
20 12413, it's a note relating to a phone call with
21 Mr. Nugent. He says:

14:54

22
23 "Phoned Joe Nugent 18:09, no answer, left message. He
24 phoned back 18:55 for two and half minutes. He said he
25 met PA as he said he would."

14:54

26
27 That's the Policing Authority.

28
29 "He said PA realised they can't continue treating me in

1 the same fashion by postponing. He said that they
2 wanted to make a decision in two weeks time at their
3 next meeting. He said he had undertaken to them, and
4 is doing the same to me, that he is going provide them
5 with everything they want to allow them move on with my 14:54
6 case. He said he is working with M Finn to provide a
7 report to the Policing Authority, an understanding of
8 where Mr. Finn is with the investigation by way of
9 providing an update re allegations, possible
10 conclusions, time lines etcetera. He said the PA 14:54
11 realised they were being unfair to me, he expected a
12 positive outcome and would contact me if anything
13 cropped up to change that. He said he was going to
14 include details in his report to the PA of my total
15 cooperation in every aspect of the matter. He asked I 14:55
16 phone him on Friday, 19/1 at the same time."
17

18 A. Sorry, something has sought my attention. "He said he
19 is working" this is "he said he is working with Mick
20 Finn". Basically, now I could have this wrong, but is 14:55
21 Joe Nugent named, did I see him there? He's the CAO,
22 or am I seeing things?

23 518 Q. He is the chief administrative officer?

24 A. Yes. Basically these are in contact in relation to
25 this promotion. 14:55

26 519 Q. Yes. It became an issue for the Policing Authority,
27 and obviously we're not inquiring into how they do
28 their business, we are not suggesting anything about
29 them, but they became aware of the issue and they were

1 keen, it would seem, to have more information, because
2 they had gotten from you your complaint?

3 A. Yes.

4 520 Q. So, it would seem natural that they would take some
5 time or trouble to find out what the answer was or what 14:56
6 was happening with them, isn't that right?

7 A. That's correct. Of course, at this point in time, I
8 don't know -- I don't know --

9 521 Q. CHAIRMAN: You don't know what's going on exactly?

10 A. -- what's going on, exactly, Judge. 14:56

11 CHAIRMAN: No.

12 522 Q. MR. MCGUINNESS: But in terms of Mr. Finn delaying the
13 bullying and harassment inquiry, it would seem on the
14 timescale that he, having only come into place from the
15 middle of November, it seems that the inquiry, which 14:56
16 took as long as you have complained it did, doesn't
17 appear to have been delayed. I mean, what appears to
18 have happened is that the Policing Authority had made
19 their decision and they themselves postponed it because
20 of your concerns, which appears to have delayed the 14:57
21 promotion rather than delayed the bullying inquiry?

22 A. Okay.

23 523 Q. I don't know, do you agree with that?

24 A. I'm not sure.

25 524 Q. Would you like to comment on it? 14:57

26 A. Em...

27 525 Q. I mean you will have an opportunity to hear all the
28 witnesses?

29 A. Sure.

1 526 Q. And to have your counsel question all the witnesses?
2 A. Mm-hmm.

3 527 Q. But if I can ask you at this stage: What do you see as
4 the targeting and discrediting of you as a
5 whistleblower in terms of the promotion issue? 14:57
6 A. As I said, I didn't see anything from Assistant
7 Commissioner Finn to the Policing Authority to say this
8 is -- let's say, after -- whenever he is appointed to
9 -- if I take it, to understand this correctly.

10 528 Q. Yes. 14:57
11 A. He has written to the -- he has signed off on the
12 promotion of Superintendent Murray, to say there's no
13 allegations against Superintendent Murray. Then the
14 Policing Authority are writing out, and as I said, I
15 only found this out lately. 14:58

16 529 Q. Yes.
17 A. But the Policing Authority are writing out to say,
18 obviously, is there anything there. At no point does
19 he come back afterwards and say, by the way, there is a
20 bullying and harassment complaint and I am 14:58
21 investigating it. Is my argument, is what I am trying
22 to say.
23 CHAIRMAN: I thought he did communicate.

24 530 Q. MR. McGUINESS: I thought that was the point; that the
25 Policing Authority, because he had -- I mean, it may or 14:58
26 may not be because he had signed a certification, but
27 they asked him then to furnish a report on what the
28 allegations were and what he was doing and when it
29 would be dealt with.

1 531 Q. CHAIRMAN: Isn't that right? I mean, at this stage, I
2 may have the dates wrong on this one, my understanding
3 is that you were writing in through your solicitor to
4 say, don't promote this man until this is sorted out?
5 A. Yes. 14:59

6 532 Q. CHAIRMAN: Meantime you were briefing Mick and Clare,
7 who are raising it wherever they could raise it, Dáil,
8 radio, anything else, don't promote this guy, there's a
9 serious complaint against him. Deputies Wallace and
10 Daly, I should say, rather than referring to them by 14:59
11 their informal names. But I mean, Superintendent
12 Murray complains to us that you were conducting a
13 campaign against him through the media, the Dáil, the
14 radio and anywhere else you could do it. That's his
15 complaint to us. You have seen that? 15:00

16 A. Yes.

17 533 Q. CHAIRMAN: Leaving aside the words complaints or
18 campaign, I mean it's true that you were trying to stop
19 him?
20 A. Yeah. I wanted the complaint to be dealt with as well 15:00
21 also.

22 534 Q. CHAIRMAN: Sorry, you wanted two things, you wanted
23 your complaint to be upheld and you wanted him to be
24 stopped?
25 A. I can't disagree. 15:00

26 535 Q. CHAIRMAN: That's the reality. You say, I'm right,
27 he's wrong, he has been mistreating me. That's your
28 case?
29 A. Yes.

1 536 Q. CHAIRMAN: That's part of why we are here.
2 A. Yeah.
3 537 Q. CHAIRMAN: You say he was mistreating me and so on.
4 So, the Policing Authority, as I understood, must have
5 heard something of this. So they write to the Guards 15:00
6 and say, what's up?
7 A. Yes.
8 CHAIRMAN: Am I missing that, Mr. McGuinness?
9 538 Q. MR. MCGUINNESS: That seems to be the sequence of the 15:00
10 to-ing and fro-ing. Obviously we have referred to some
11 of Superintendent Murray's notes. There's another note
12 at 12311, it's a day before this. It's a call from, it
13 seems, Assistant Commissioner Finn to Superintendent
14 Murray. It says:
15 15:01
16 "Call from M Finn. He said he sent me an e-mail. I
17 said he hadn't but he said he thought he did but might
18 not have. Said it was a courtesy call to tell me Ken
19 Ruane said..."
20 15:01
21 He's a legal adviser.
22
23 "He said he would send me the advice in an e-mail and I
24 could talk to Ken myself. He said he knew my promotion
25 situation and wanted to do it quickly. I asked if the 15:01
26 Policing Authority were waiting for the result and he
27 said they were and it was holding my promotion. I
28 asked Inspector Farrell, who was present, to make a
29 note of the fact that pressure was coming on from

1 Policing Authority to complete the investigation."

2

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That appears to, as it were, document what the concern was to get some report from the Policing Authority at that stage on what was happening?

15:02

6

A. I understand all that now. Judge, at the time I don't know.

7

8

539 Q. CHAIRMAN: Absolutely.

9

A. I'm blaming the Policing Authority. In particular, when I find out the promotion was there, I have more venom for Josephine Feely than I have for Noirín O'Sullivan at the time. Like I couldn't blame the -- I started looking at the whole front, I am fully aware of how the State was formed and up to the separation of powers and the Policing Authority. I believe the Policing Authority then go and make the promotion without writing any of this stuff. So my mind totally goes bananas and I start blaming the whole State at this stage, Judge.

15:02

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15:02

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540 Q. CHAIRMAN: Okay. As you say, you didn't know any of this stuff was going on. Yes.

15:02

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22

541 Q. MR. McGUI NNESS: I think I am going to pass on from that issue?

23

24

CHAIRMAN: Thanks very much.

25

542 Q. MR. McGUI NNESS: Garda Keogh, unless there is anything you would like to add to that.

15:02

26

27

A. I don't think so.

28

MR. McGUI NNESS: Okay.

29

CHAIRMAN: As I say, this will be ventilated, do you

1 know what I mean, fully.

2 MR. McGUI NNESS: I am passing on, Chairman, to issue --

3 MR. KELLY: Perhaps it might be a good time to take a

4 break.

5 CHAIRMAN: Certainly, just two seconds, Mr. Kelly. 15:03

6 Yes.

7 A. Having read the documents there, just to say, I

8 don't -- I shouldn't use the word venom, the Policing

9 Authority, I start looking at the Policing Authority,

10 GSOC and everybody, thinking this is all a big, you 15:03

11 know -- having said that, my thinking at the time was

12 not correct. Thankfully I have read all the documents

13 and I'm back to normal in my thinking, my thinking.

14 CHAIRMAN: I understand that. And the more material

15 comes out, obviously it affects your own understanding 15:03

16 of what was going on and one of the things maybe that

17 you may have considered, it strikes me that you have

18 considered, that the Policing Authority would be coming

19 back to you, treating you, so to speak, as a party to

20 the affair and you may have felt something of 15:04

21 disappointment or grievance that they weren't. I don't

22 know whether that's right and it doesn't matter whether

23 it's right or not, you have explained the situation as

24 you find it when more information comes in.

25 A. Yes, Judge. I wrongfully assumed that the Policing 15:04

26 Authority aren't writing to the Guards to say is there

27 more to this or anything. I, of course, when I hear

28 there's the promotion, I just say --

29 543 Q. CHAIRMAN: Okay.

1 A. Yeah, I then form a different view, which I now can say
2 was incorrect and I was kind of blaming the whole
3 State, all the organs of the State and everything. But
4 I didn't understand the Policing Authority were
5 actually doing -- no one informed me that they were. I 15:04
6 didn't --

7 544 Q. CHAIRMAN: Does that affect your view, does that affect
8 your -- we have listed complaint number 20, complaints
9 by Garda Keogh in relation to the promotion of
10 Superintendent Patrick Murray to chief superintendent 15:05
11 in 2017?

12 A. This is all linked.

13 545 Q. CHAIRMAN: what we have been talking about here, does
14 the information that you have garnered or the
15 understanding that you have, does that change your 15:05
16 complaint?

17 A. No, because Assistant Mick Finn -- from what I read,
18 Mick Finn never --

19 546 Q. CHAIRMAN: I am not asking you to change it or anything
20 like that. It hasn't changed? 15:05

21 A. No.

22 547 Q. CHAIRMAN: Okay.

23 A. Because I understand Mick Finn did not write in to the
24 Policing Authority at any point, or Donal Ó Cualáin, to
25 say, by the way, there actually is a complaint. 15:05

26 548 Q. MR. McGUIINNESS: At the original time they certify it,
27 is that it?

28 A. Yes.

29 CHAIRMAN: Anyway.

1 A. Or afterwards.

2 549 Q. CHAIRMAN: wait now. Garda Keogh hold on. Let's keep
3 this simple. Thanks very much. We have been over a
4 lot of this ground. All I wanted was to say, given
5 that you said, look, I now know and understand an awful 15:06
6 lot more than I understood at the time, had I known all
7 or some of that material, I might not have reacted as
8 excitedly as I did at the time. You're maintaining
9 your complaint nevertheless?

10 A. Yes. 15:06

11 CHAIRMAN: Okay, thank you very much. Yes, we will
12 take a little break. Have we much more to do?

13 MR. McGUINESS: we have two further issues, Chairman.

14 CHAIRMAN: very good. Thank you very much.

15 15:06

16 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED, AS
17 FOLLOWS:

18

19 550 Q. MR. McGUINESS: Garda Keogh, the next issue is issue
20 number 21, relating to the issue of the Tribunal order 15:25
21 being withheld. I think you are obviously aware, the
22 Tribunal was established on 17th February 2017, and
23 that Judge Charleton made an order under the Acts
24 relating to the preservation of evidence. Perhaps we
25 will look at that. Page 11468 first. Not perhaps the 15:25
26 best copy of it, but it refers to David Taylor's
27 protected disclosure and Maurice McCabe also. You're
28 probably well aware, or were you at that time, that the
29 allegations relating to those were contained in the

1 first set of issues?

2 A. Yes.

3 551 Q. Then, Garda Harrison's issue was (o)?

4 A. Yes.

5 552 Q. (n) and (o) and other people who were in similar 15:27
6 positions, and (p) was in a separate category?

7 A. P for parked.

8 553 Q. Did you pick up that phrase parked from the Chairman?

9 A. Yes.

10 554 Q. Did you attend his opening on the 27th February? 15:27

11 A. No.

12 555 Q. This order then seems to be in the context, in terms of
13 what it requires, is the preservation of everything,
14 but it deals more specifically with all sorts of issues
15 which are peculiarly related to the earlier modules. 15:27
16 Do you see that the essence of the order is one of
17 preservation. There is a heading there down there at
18 the bottom:

19

20 "It is hereby ordered that the Commissioner of An Garda 15:27
21 Síochána, her servants or agents preserve the following
22 evidence until further order."

23

24 So, it didn't have an expiry date, isn't that right?

25 A. It appears. 15:28

26 556 Q. The date that it did have related to whether the
27 commissioner wanted to make an application in relation
28 to the scope of the order. If we go to the second page
29 of it, it says at the very bottom of that page:

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"In the event of you wishing to object to the terms of the within order, by reason of the period it covers and/or the breadth of the order, or any other issue including privilege against disclosure, application may be made to the Tribunal sitting in Dublin Castle within eight working days." 15:28

So it allowed the commissioner to apply, if necessary, within that timescale if there was any problem with the order, you see that? 15:29

A. Yes.

557 Q. That order was served on the commissioner, I think it was subject of dissemination throughout the force in terms of informing the membership of An Garda Síochána of its existence in effect. 15:29

A. Just for clarification, I think Donal Ó Cualáin is the acting commissioner at this time, 2017. No?

558 Q. No, I think Commissioner O'Sullivan had been appointed?

A. Sorry. 15:29

559 Q. Now, you didn't get the order at or immediately when it was to be disseminated?

A. No.

560 Q. Certainly, whatever about your intentions, you didn't come and presumably you knew you didn't come within (a) to (o)? 15:29

A. Yes.

561 Q. Because you had been consulting obviously with the deputies, and they were, as it were, negotiating for a

1 category of others who had similar complaints that
2 ought not to be shut out?

3 A. Yeah, that's -- yes.

4 562 Q. You knew of their efforts and you knew that they had
5 succeeded in that respect, obviously? 15:30

6 A. Yes.

7 563 Q. May I take it then, that you knew your one, (p), wasn't
8 going to be dealt with for perhaps --

9 A. Correct, yes.

10 564 Q. As you have expressed it in your statement, you thought 15:30
11 that you should have been made aware of the order
12 because a failure to make you aware of the order
13 possibly prevented you from presenting your evidence in
14 relation to another guard within an eight-day period.
15 Is that not what you understood? 15:30

16 A. Em, I'm not -- I'm not -- my allegation on this is I
17 think simple. I'm not sure about that.

18 565 Q. All right, go ahead.

19 A. Yeah. It's basically, I understand that when the order
20 came out, basically it was served on me after the date 15:31
21 of the -- after the date that it was supposed to, that
22 I was supposed to have documents in for. There was
23 deadline on -- I think there was a deadline for
24 statements for the Tribunal, a deadline. So what I
25 have, I think, is the 13th March, would have been the 15:31
26 deadline to have statements in for part (p).

27 566 Q. Yes. I am drawing your attention to the order to show
28 you that it is an order of preservation of evidence in
29 the categories set out and it doesn't deal with the

1 provision of statements to the Tribunal.

2 A. Right.

3 567 Q. The order doesn't require anyone to provide statements,
4 nor does it fix a date by which they should be
5 provided. 15:32

6 A. I don't -- all I -- was there another order for module
7 (p).

8 568 Q. No. What you may have in mind is, in fact, the
9 Chairman sat in public on 27th February 2017, to
10 announce the existence and the business of the 15:32
11 Tribunal.

12 A. Mm-hmm.

13 569 Q. He made a request for those in possession of
14 information to furnish statements, insofar as
15 practicable, by the 13th March. It related obviously 15:32
16 to modules (a) to (o). Perhaps we can look at just a
17 few lines of the opening statement. It's a transcript
18 of the proceedings on that date. Just to read it
19 there, from the second last line, it says -- this is
20 towards the end of his address: 15:33
21

22 "Today the Tribunal is calling for all those people
23 with knowledge of matters in Terms of Reference (a) to
24 (o) inclusive to provide a written statement and to
25 forward this to Elizabeth Mullan, solicitor to the 15:33
26 Tribunal, at Dublin Castle. That statement should be
27 detailed and should be received by close of business on
28 this day fortnight, the 13th March. In that statement
29 any person should indicate whether they wish to assert

1 any form of ostensible legal professional privilege
2 against disclosure of evidence or documents or any form
3 of ostensible... as to privilege. If there is any such
4 assertions and it is giving a complete account of
5 events, then that's not ruled out, but at least we know 15:34
6 what needs to be explored."
7

8 The Tribunal goes on then to refer to its orders,
9 orders preserving and then it talks about witnesses and
10 interviewing. Then it talks about thereafter. And 15:34
11 then he says finally:
12

13 "Let me finally say, Terms of Reference (p) is not now
14 being considered unless there is some extraordinary
15 striking similarity that someone wishes to bring in in 15:34
16 unambiguous terms to the Tribunal's attention. For the
17 moment p stands for parked."
18

19 So, I think that would appear to be where you got the
20 13th March from. 15:34

21 A. Possibly.

22 570 Q. Okay. You will have seen that the call for statements
23 related to (a) to (o) issues. Your statement, which
24 you did rush in, obviously deals with all of your own
25 issues too, isn't that right, in (p)? 15:34

26 A. In (p), yes, and I think I got that in for the 13th
27 March.

28 571 Q. You did, yes.

29 A. Yeah.

1 572 Q. But what I am going to suggest to you is that the
2 failure to serve the preservation order, whether within
3 a week or two, wasn't a --
4 CHAIRMAN: Didn't make any difference.
5 MR. MCGUINNESS: It didn't make any difference? 15:35
6 573 Q. CHAIRMAN: Garda Keogh, as far as it goes, we have the
7 meaning of the preservation order, we have what Judge
8 Charleton said, it would appear from what they've said
9 that there is no basis in this complaint. That would
10 appear to be the case. If you are happy to let that 15:35
11 matter stand, no doubt your counsel and solicitor will
12 be examining that matter and we can return to that
13 matter. But on the face of it, assuming what
14 Mr. McGuinness says is correct, it would appear that I
15 am drawing a line through that issue. But never say 15:36
16 never, if somebody turns up an interpretation that has
17 an impact on that, we will revisit it. Are you happy
18 with that? Because I don't want to be challenging you
19 on the meaning of the statement by the Chairperson,
20 Judge Charleton, or anything else. But it looks as if 15:36
21 that's a mistake. It looks as if your complaint there
22 is a mistake. Now anybody can ask you anything they
23 like about that. They can say it's a deliberate -- or
24 whatever it is.
25 A. Yes. 15:36
26 574 Q. CHAIRMAN: I am not concerned with that, but for the
27 moment I am assuming that I'm drawing a line through it
28 for the reason that Mr. McGuinness has just said,
29 subject to revisiting it if counsel wishes to do so.

1 Is that all right?

2 A. Yes.

3 CHAIRMAN: Are you happy with that, Mr. McGuinness?

4 575 Q. MR. MCGUINNESS: Yes. I was just going to ask:
5 Inspector Minnock was asked to provide a report in 15:36
6 relation to the matter.

7 A. Mm-hmm.

8 576 Q. I don't know if you recall seeing that. But he
9 explains it in the way that I have explained it, in the
10 sense that that's how he analyses the issue. I mean, 15:37
11 there is no doubt that you didn't get the order when
12 the others got the order. But Inspector Minnock then
13 tried to serve the order?

14 A. This is the part, you see, I dispute, the service of
15 the order and that version of how it was served. 15:37

16 577 Q. Yes.

17 A. That's where I have --

18 578 Q. CHAIRMAN: Let's put it this way, if you want to
19 challenge Inspector Minnock on it, Mr. Kelly and his
20 colleagues will make a judgment on that. And if 15:37
21 somebody objects to any challenge -- but as far as I'm
22 concerned, if I have drawn a line through it and unless
23 somebody says that's wrong, then you have made a
24 mistake about it and it doesn't matter who tried to
25 serve it or didn't try to serve it, unless there is 15:37
26 some other relevance in their efforts to serve it. Do
27 you follow me? Who knows where this may take us but
28 for the moment, Mr. Kelly, that seems to be the
29 sensible thing to do, isn't it, to leave it on that

1 basis?
2 MR. KELLY: Yes, leave it for now. I will have a look
3 at it.
4 CHAIRMAN: Have a look at it, if you wish to come back,
5 yes. 15:38
6 MR. KELLY: Yes, on that basis.
7 CHAIRMAN: And equally, somebody might say, that's all
8 very well, that we're not dealing with number 21, but
9 the efforts of Sergeant Minnock to serve you, they have
10 something to do with the inquiry, because they 15:38
11 demonstrate something else. I can't see that. But if
12 somebody says that, we will debate that in due course.
13 That seems to be the best way to leave it.
14 MR. KELLY: That's right, there may be some relevance.
15 There may be some relevance in that. 15:38
16 CHAIRMAN: which remains to be revealed to us.
17 MR. KELLY: Yes. The Guards clearly thought that that
18 same date operated as this witness did, but be that as
19 it may.
20 CHAIRMAN: Okay. 15:38
21 MR. McGUI NNESS: Yes.
22 CHAIRMAN: All right, Mr. McGuinness, that seems to be
23 sensible, doesn't it?
24 MR. McGUI NNESS: I should have just said for the record
25 that obviously Inspector Minnock's statement and 15:39
26 report, are 11488 to 11489.
27 CHAIRMAN: Thank you very much.
28 579 Q. MR. McGUI NNESS: Issue 22, Chairman, complaints by
29 Garda Keogh that the Section 41 report was withheld

1 from him. This is a statutory report under the Garda
2 Síochána Act of 2005, whereby the Minister for Justice
3 can request that the Garda Commissioner provide a
4 report within the meaning of the section. That was
5 triggered and an interim report was sent to the 15:39
6 Minister on 9th September 2016, followed by a full
7 report on 11th October 2016. You may have recalled
8 earlier, we saw Chief Superintendent McLoughlin's
9 efforts to garner information together for the purposes
10 of the report? 15:39

11 A. Yes.

12 580 Q. Now your complaint, it's not addressed in your
13 statement, original statement to the Tribunal or the
14 investigators, but it was an issue that was raised in a
15 considerable degree of correspondence between your 15:40
16 solicitor and the Minister, isn't that correct?

17 A. Yes.

18 581 Q. Ultimately, it led to applications to the Minister
19 under the Freedom of Information Act and under the Data
20 Protection Act. The Minister made decisions refusing 15:40
21 access to the documents that you were looking for,
22 invoking different statutory grounds for doing so.
23 Including, I think, the fact that the reports had been
24 referred to GSOC also. I am not going to ask you about
25 the detail of those requests or the legality of the 15:40
26 decisions. The decisions were taken.

27 CHAIRMAN: By the Minister.

28 582 Q. MR. MCGUINNESS: By the Minister and the Tribunal isn't
29 reviewing the Minister's decisions. You understand

1 that?

2 A. Yes.

3 583 Q. But certainly from your point of view, you considered
4 and your solicitor must have considered that it was
5 reasonable to seek the reports, which included the 15:41
6 Ó Cualáin report, isn't that correct?

7 A. Yes.

8 584 Q. I think factually, Detective Superintendent Mulcahy had
9 offered to sit down with you and go through the whole
10 of the report in person with you, isn't that correct? 15:41

11 A. That's correct.

12 585 Q. I don't require you to justify it, but you didn't take
13 up that offer?

14 A. I didn't take up that offer and I should have taken it
15 up. But, Judge, at the time I was that annoyed with 15:42
16 him, just the way things were being dealt with, that's
17 why I didn't take up that offer. In hindsight, I
18 accept that was a silly thing to do.

19 586 Q. Now, there is obviously no suggestion involving
20 anything improper on the Minister's part, but do you 15:42
21 maintain a complaint against the commissioner or any
22 particular commissioner for not giving it to you as a
23 whole document? what is your complaint, I suppose?

24 A. Judge --

25 587 Q. The section 41 report? 15:42

26 A. I am actually not even certain on this one.

27 588 Q. CHAIRMAN: Sorry?

28 A. I'm not certain on this one.

29 589 Q. CHAIRMAN: I think you are right not to be certain of

1 this one, because I think it has nothing to do with me.

2 A. Yeah.

3 590 Q. CHAIRMAN: You may be right, you may be entitled to say
4 the Minister should have given it to me or the Minister
5 shouldn't, but it's not within the Terms of Reference 15:42
6 as I see it. So I am inclined to drop that one, unless
7 persuaded -- sorry.

8 MR. MCGUINNESS: I beg your pardon.

9 CHAIRMAN: Tell me what you were going to say before I
10 plunge in erroneously, Mr. McGuinness, you'll save me 15:43
11 from myself.

12 MR. MCGUINNESS: I was going to say, Chairman, that it
13 could well and perhaps maybe should be the
14 subject-matter of legal submissions, as to the duty of
15 the commissioner to provide it or otherwise insofar as 15:43
16 it relates to An Garda Síochána. But we can't involve
17 the Minister in the sense there is no jurisdiction.

18 CHAIRMAN: If it's is a report to the Minister, I would
19 require to be persuaded -- look, if the Minister writes
20 to the commissioner and says, I am invoking section 15:43
21 blank of the Garda Act and requiring you to provide me
22 with a report, that is a report, as I understand it,
23 when it comes that is, so to speak, owned by the
24 Minister, not by the commissioner. The commissioner is
25 there to provide the report. 15:44
26

27 Unless persuaded otherwise, I don't think that a
28 failure by the Minister to give a garda the report is
29 in any way a matter for this Tribunal. If somebody

1 suggests otherwise, well and good. I would have
2 thought that on your behalf, but maybe I'm wrong, I am
3 entirely wrong, that Mr. Kelly and his team have more
4 than enough to concern themselves with than this
5 particular little knotty legal problem, if you know 15:44
6 what I mean.

7 A. Judge, I can't remember anything about this particular
8 part.

9 CHAIRMAN: No complaint whatsoever. There is no
10 suggestion of any complaint that you have put in. At 15:44
11 least, sorry, unless somebody else comes to it, I am
12 not conscious of any complaint of putting in. I am
13 just telling you where I stand. So, insofar as it
14 arises, we will debate it, if it has to be debated, but
15 for the moment, Garda Keogh, you and I can leave it and 15:44
16 rest easy about this particular one. Okay.

17 591 Q. MR. MCGUINNESS: Thank you. Garda Keogh, I have
18 finished my examination of you as regards the 22
19 issues, but can I ask you this: You've made obviously
20 a large number of statements and provided the Tribunal 15:45
21 with a large number of documents.

22 A. Yes.

23 592 Q. Can I take it that you would wish and you would be
24 anxious for the Chairman to consider all of those
25 statements of yours and documents for the purpose of 15:45
26 his consideration at the end of the day in writing a
27 report?

28 A. Of course.

29 593 Q. Yes.

1 A. I don't think I have anything to hide, I supplied --
2 CHAIRMAN: In other words, rather than producing each
3 one and saying, do you stand over that and would you
4 like to make it evidence, you're taking the whole lot
5 of your complaints? 15:45
6 WITNESS: Yes.
7 CHAIRMAN: You are saying, in addition to everything I
8 have said here, I would like those to be taken in
9 account.
10 WITNESS: Yes. 15:46
11 CHAIRMAN: And anybody be a cross-examining you equally
12 can take it that you are standing over those documents.
13 WITNESS: Yes. There's one, just one statement, the
14 statement that I submitted on the 13th, that one, just
15 for the record, as I said, there's mistakes in that one 15:46
16 due to I thought there was a deadline and I was rushing
17 to get that in.
18 CHAIRMAN: Okay.
19 WITNESS: I didn't get to read over that. I amended,
20 to my knowledge, everything that was in that when I met 15:46
21 the Tribunal investigators.
22 CHAIRMAN: Right. So having made that qualification,
23 as I say, anybody can ask you anything about it.
24 Anything else, Mr. McGuinness?
25 MR. MCGUINNESS: No, Chairman. Obviously in terms of 15:46
26 the sequence of procedure, Garda Keogh will be
27 cross-examined then by those members represented by
28 solicitor or counsel and then by his own counsel and
29 team at the end of that cross-examination and then, if

1 we have further issues or queries, which we hope not,
2 hope to minimise it, we will raise that with Garda
3 Keogh at that stage.

4 CHAIRMAN: Raise that at the end. Okay.

5 MR. McGUI NNESS: He will be completed in his evidence, 15:47
6 subject to, I suppose, a very remote possibility of
7 recall at some stage. But that's a theory.

8 CHAIRMAN: Just let me say at this stage, Garda Keogh,
9 thank you for taking us through all the complicated
10 stories that we have been investigating and all the 15:47
11 many areas that are matters of concern for you and for
12 us here in the Tribunal. Thank you for doing that as
13 clearly as you did and your assistance in that. While
14 I am on that subject, I think I have to thank and
15 express my appreciation of Mr. McGuinness's mastery of 15:47
16 the material, which has brought us to a level of
17 understanding of these matters that I think would not
18 otherwise have been the case. So thank you both for
19 your contribution to the Tribunal, I am most grateful
20 for it. 15:48

21

22 Now, it being 15:47, call me a work shirker, but I am
23 not hugely enthusiastic about having people embark on
24 cross-examination for 13 or 12 minutes by the time I
25 finish saying this. So I think we will break there and 15:48
26 we will come back tomorrow morning. All right.

27 MR. McGUI NNESS: Thank you, Chairman.

28

29

1 CHAIRMAN: Thank you very much.

2
3 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 22ND OCTOBER
4 2019 AT 10:30AM
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