

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

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

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

HELD IN DUBLIN CASTLE
ON MONDAY, 4TH NOVEMBER 2019 - DAY 109

109

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

GWEN MALONE STENOGRAPHY
SERVICES

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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

C R O S S - E X A M I N E D B Y M R . M U R P H Y 6

1 THE HEARING RESUMED, AS FOLLOWS, ON MONDAY, 4TH
2 NOVEMBER 2019:

3
4 CHAIRMAN: Thank you. Good morning. Now, Mr. Murphy,
5 good morning. 10:32

6 MR. MURPHY: Good morning, Chairman.

7
8 GARDA NICHOLAS KEOGH CONTINUED TO BE CROSS-EXAMINED BY
9 MR. MURPHY, AS FOLLOWS:

10
11 MR. MURPHY: Good morning, Garda Keogh. I wonder if
12 you could be given Volume 12, 3640. Judge, I propose
13 to deal with issue 12, which I had stopped dealing with
14 last week. 10:32

15 CHAIRMAN: Thank you very much. 10:32

16 MR. MURPHY: On Mr. Kelly's behalf, to view certain
17 documents.

18 CHAIRMAN: Thanks very much. So you're starting with
19 issue 12, is that right?

20 MR. MURPHY: Issue 12, Chairman, which is the
21 complaints by Garda Keogh in relation to misrecording
22 of sick leave. 10:32

23 CHAIRMAN: Thanks very much. Yes, I have it here,
24 thank you.

25 1 Q. MR. MURPHY: Garda Keogh, I think you remember that 10:32
26 Mr. McGuinness showed you documents in relation to the
27 recording of your sick leave in the course of the first
28 week of the Tribunal's sitting. I think you remember
29 that.

1 A. Yeah, I just can't remember which document.

2 2 Q. I am asking you in general, do you remember he showed
3 you those documents, yes?

4 A. Yes.

5 3 Q. I think he also put it to you that there was 10:33
6 effectively a system for recording sickness in relation
7 to all members of An Garda Síochána?

8 A. SAMS system.

9 4 Q. SAMS system. I wonder if on the screen document 3640
10 could be put up, please. If you have volume 12 there, 10:33
11 Garda Keogh, could I ask you to look at page 3640.
12 This is the statement of Olivia Kelly of Athlone Garda
13 Station. I think you know Garda Kelly, she has been in
14 Athlone Garda Station since April 2013. I think again
15 there is nothing between us on this, you know that she 10:33
16 held the position of district clerk at Athlone Garda
17 Station since 1st December of 2014?

18 A. Yeah.

19 5 Q. I think also it's clear that one of her roles as
20 district clerk was to look after the sickness and 10:33
21 absence recording for all Garda members in the
22 district. I think you would agree with that?

23 A. Yes.

24 6 Q. Just to put to you what Garda Kelly will say. She will
25 say that when gardaí report sick, that the Member in 10:34
26 Charge completes an SR1 form and this outline the
27 member's details along with the reason for going sick.
28 The type of illness in the majority of cases is not
29 recorded on the SR1, were you aware of that?

1 A. I know about it.

2 7 Q. She will say that once she receives the SR1 form, she
3 then creates the absence of SAMS, which stands for
4 Sickness Absence Management System, and the entry on
5 SAMS remains open until the Garda member returns off
6 sick and she receives the SR1 with part B, resumption
7 section, completed. She will say, Garda Keogh, that
8 each illness is recorded in the same manner and no
9 member is treated differently. Do you agree with that?

10:34

10 A. I am not disputing anything.

10:34

11 8 Q. Also she will say, just again to explain this to the
12 Tribunal, that when members are on long-term sick
13 leave, it is requested by HRM, that's human resources
14 management, that when a member is approaching 92 days
15 continuous absence, that all the medical certificates
16 are scanned from the district office directly to the
17 HRM 6 section and that's what she did in respect of
18 you. I think she then said that presently she received
19 medical certificates monthly. She scans them into the
20 Athlone district selection mailbox, forwards them
21 directly to the HRM sick section for their attention,
22 to make sure the member is paid accordingly. She will
23 say:

10:35

10:35

24
25 "I never deviated or treated Garda Keogh's sickness any
26 differently to any other member of An Garda Síochána in
27 the Athlone district."

10:35

28
29 A. I never made any --

1 9 Q. Thank you.

2 A. -- accusation whatsoever that Garda Keogh did. There's
3 no dispute.

4 10 Q. I appreciate that. I have to put these matters to you
5 for the record to establish what was actually 10:35
6 happening.

7 A. Okay.

8 11 Q. Thank you. I think that she will also say that you
9 reported sick and resumed duty on 18 occasions since
10 20th December 2014, until your current absence, which 10:35
11 began on 26th December 2014, and that none of the SR1
12 forms stated that your sickness was due to work related
13 stress. I think you're aware of that fact, up to that
14 date.

15 A. Just -- 10:36

16 12 Q. Sure. I think she is saying that between 20th December
17 2014 to 26th December 2015, that none of the SR1 forms
18 stated that your sickness was due to work related
19 stress?

20 A. I can't answer on that, all I know is the medical certs 10:36
21 would have been work related stress.

22 13 Q. That is what I am putting to you. She accepts that
23 while the SR1s didn't state any cause of illness, that
24 your medical certificates when submitted all indicated
25 "work related stress". She will say that she received 10:36
26 the SR1, created the entry on SAMS and the form didn't
27 indicate the reason for your reporting sick, because
28 there was no medical certificate attached at the time.
29 She said she recorded a sickness as an ordinary

1 illness.

2 A. Yeah.

3 14 Q. She will also say in her evidence that at that time,
4 when you reported sick and unfit for duty, there was no
5 category on SAMS for "work related stress". She 10:37
6 recorded the certificates as they were submitted and
7 e-mailed -- each of these were sent on to the HRM sick
8 section and that copies of all of these certificates
9 have been disclosed. So, first of all, I just want to
10 put it to you that she will indicate that she was the 10:37
11 person responsible for making the entries, do you
12 accept that?

13 A. The original entries, yeah.

14 15 Q. She will say that there wasn't any category on SAMS for
15 work related stress. And she will say that she 10:37
16 effectively did this in relation to your certificates
17 as she did in relation to all of your colleagues who
18 reported sick during the same period of time. I think
19 there is no disagreement on that point. Thank you.

20 10:37
21 Just moving forward, she will say that on 23rd May
22 2016, at around four o'clock in the afternoon, she
23 received a phone call from Ms. Clare O'Regan from the
24 HRM sick section. Ms. O'Regan informed her that your
25 sick details were recorded as flu/viral, which was 10:38
26 incorrect, and that the correct category should be
27 mental health, due to your absence of being work
28 related stress. She will say that she did not
29 initially select this category due to the stigma

1 surrounding mental health and mental health was not the
2 cause of the illness outlined in the certificates that
3 she received. Do you understand?

4 A. Oh I understand.

5 16 Q. Yes. 10:38

6 A. But I did say last week, Judge, there's no way that
7 Garda Kelly can be made cannon fodder in relation to
8 this. This is the -- the problems in relation to here
9 are higher up and not to do with Garda Kelly.

10 17 Q. Garda Keogh, we will come back to that point in a few 10:38

11 moments, but Garda Kelly's evidence will be
12 unequivocal, that it was she who changed the illness
13 reason to mental health at the request of Clare O'Regan
14 from the HRM sick section, and Ms. O'Regan had
15 indicated to Garda Kelly that you had been liaising 10:39
16 with the Garda Commissioner or the commissioner's
17 office. On the same day she will say that
18 Superintendent Pat Murray contacted her in relation to
19 the changing of the illness category in SAMS, he looked
20 for a report about this and she provided him with a 10:39
21 report which outlined the anomaly which occurred and he
22 duly reported this up the line.

23
24 So, first of all I just want to suggest to you that all
25 of the evidence from Garda Kelly suggested that she and 10:39
26 she alone was responsible for making the entries on all
27 the documents that Mr. McGuinness showed to you. I
28 think you accept that.

29 A. I can't dispute that.

1 18 Q. Yes. In terms of the forms, can I ask you please be to
2 go shown volume 32, 9342. This is an example of one of
3 the SR1 forms that was shown to you by Mr. McGuinness.
4 A. 9342?
5 19 Q. Please. So here's one of the examples that was shown 10:40
6 to you earlier, indicating in the left-hand box, under
7 the heading "ordinary illness, category, please tick
8 one box only" the entry is ticked as "flu/viral", do
9 you see that?
10 A. Yes. 10:40
11 20 Q. Do you note that underneath that there is a paragraph
12 in writing, beginning with the word "an absence." Can
13 I just read that to you? Do you see that?
14 A. Yes.
15 21 Q. It says: 10:40
16
17 "An absence must be categorised as ordinary illness
18 until such time a certificate in accordance with code
19 1137 has been issued by the chief superintendent. An
20 absence must also be categorised as ordinary illness 10:41
21 until such time as it is classified as a critical by
22 HRM or the CMO, at which time the absence category must
23 be amended accordingly."
24
25 So, just to put it in visual terms, do you see the next 10:41
26 box, headed:
27
28 "Occupational jury/illness arising from duty category".
29

1 The position is under the system, I have to suggest to
2 you, that you don't get into that box until the
3 criteria in the lower passage has been fulfilled.
4 There has to be an examination of the situation, there
5 has to be an enquiry about what's the cause of the 10:41
6 stress, there has to be a medical certification. This
7 is all part of a system, I think you will agree. This
8 is not particular to you, it's the system applied to
9 all gardaí.

10 A. Yeah. 10:41

11 22 Q. Thank you. Again, I just want to put it to you that
12 Garda Kelly will say that that's the system that she
13 operated and that she alone made the entries in the
14 boxes as the forms came into her office. But can I
15 just move forward to volume 1, at page 148, please. 10:42

16 A. Yeah.

17 23 Q. Thank you. I think you will see here, this is a copy
18 of the letter that you wrote, it goes over the next
19 three pages, to the Minister for Justice and Equality,
20 Francis Fitzgerald TD, on 14th June 2016. I presume 10:42
21 you remember this letter?

22 A. Yes.

23 24 Q. Ultimately, I think you will agree, this is a letter of
24 complaint by you to the Minister?

25 A. More or less. 10:43

26 25 Q. Yes. Again, remember we've discussed over the last few
27 days, Garda Keogh, the question of perception and
28 reality. First of all, can I just ask you to turn over
29 to the first page, in the middle of the page, do you

1 see, as follows, you say:

2

3 "I understand that superintendent Tony McLoughlin has
4 corrected my sick leave record."

5

10:43

6

Then the next sentence:

7

8 "I was recorded as being out sick with flu by
9 Superintendent Pat Murray."

10

10:43

11

Do you see that?

12

A. Which page are you on?

13

26 Q. This is at page 148, the middle of the page, middle
14 sentence.

15

10:43

16

"I was recorded as being out sick with flu by
17 Superintendent Pat Murray."

18

19

Do you see that?

20

A. Yeah.

10:43

21

27 Q. I have to suggest to you, now with the benefit of what
22 you understand from Garda Kelly's evidence, would you
23 agree with me that that accusation is factually
24 incorrect?

25

A. It's probably factually incorrect for the period in
26 relation to what we've heard, just the evidence or the
27 statement from Garda Kelly. But we have clarified last
28 week in relation to the disciplinary matter, which was
29 in 2015, where I was disciplined in relation to the

10:43

1 AWOL incident, that there was no accident at that point
2 in time. There could have been no -- there was no
3 accident. It wasn't -- it was well known to Garda
4 management. So on this part I can't agree with you on
5 this. This letter is dated 14th June 2016. 10:44

6 28 Q. Yes. Si up to that time you're saying that the
7 recording of being out sick with flu was being done by
8 Superintendent Pat Murray. I have ti suggest to you
9 that there is no evidence of that at all?

10 A. Sorry, there is. There is evidence in relation to -- 10:44
11 we dealt with the AWOL matter last week, where as part
12 of the -- you made reference to I received a bunch of
13 documents and there was reference to a statement that
14 wasn't in the documents, which I said I never got. In
15 that bunch of documents were my sick certs, work 10:45
16 related stress. The statement that was withheld had
17 work related stress within that statement. And that
18 was an incident to do with 2015. This letter dates
19 2016. So I have already given in evidence, whatever
20 prior to that in relation to misrecording me off sick, 10:45
21 fair enough, but after that, from that incident, the
22 AWOL incident, where the work related stress
23 certificates and the statement that wasn't -- it was
24 withheld from me, however that occurred, I can't agree
25 with you on this part. 10:45

26 29 Q. You see, I have to suggest to you that the complaint
27 you made was very specific:

28
29 "I was recorded as being out sick with flu by

1 Superintendent Pat Murray."

2

3 would you agree with me that's simply incorrect?

4 A. I would agree he didn't personally record it.

5 30 Q. Would you turn then please forward to page 150, two 10:46

6 pages further on. And look, please, at the first

7 paragraph. You say:

8

9 "Garda management wouldn't give me a copy of my

10 statement which I had requested due to the fact that I 10:46

11 had stated in it the amount of stress that I was

12 under."

13

14 And here is the point I want to put to you, you told

15 the Minister: 10:46

16

17 "Whilst they were deliberately recording me as sick

18 with the flu."

19

20 I have to suggest to you that in the light of Garda 10:46

21 Kelly's evidence that's also factually incorrect, would

22 you agree with that?

23 A. No, I can't, because I'm just after going into this

24 part, I've just previously referred to this part a

25 moment ago. 10:46

26 31 Q. Yes.

27 A. This is connected with the last part.

28 32 Q. You see, I have to suggest to you, Garda Keogh, you

29 have no evidence whatsoever that they, whoever they

1 were, were deliberately recording you sick with the
2 flu, because Garda Kelly said that she entered that
3 entry and she entered the entry because of the reason
4 she has outlined in her statement and will outline in
5 her evidence, nothing to do with anybody else except 10:47
6 her?

7 A. No, it is nothing to do with Garda Kelly in relation to
8 the part after -- from that incident in 2015, Garda
9 Kelly cannot be blamed for that. It was known by Garda
10 management that I was out sick clearly with work 10:47
11 related stress. The one statement that was withheld
12 from me from that disciplinary incident was a statement
13 which contained the amount of stress that I was under.
14 And the medical certs were attached to that, to that
15 file as well. So, I can't, I can't agree with you on 10:47
16 that.

17 33 Q. Okay. Garda Keogh, you do understand what a record is,
18 don't you? You understand these medical documents are
19 records. You do understand that, don't you?

20 A. Yeah. 10:47

21 34 Q. You understand that a record means that something is
22 recorded by someone?

23 A. Yes.

24 35 Q. In this case we know it was Garda Kelly, isn't that
25 right? 10:47

26 A. Yes, who originally inputted the stuff.

27 36 Q. Yes.

28 A. I have no difficulty, no dispute on that.

29 37 Q. The record is her record. Now, I just have to suggest

1 to you that it's impossible for anybody else to have
2 deliberately recorded you as sick with the flu when the
3 only person who was recorded you as being sick with a
4 flu is Garda Kelly?

5 A. Judge, this is not -- this isn't entirely -- the way 10:48
6 this is being spun is not quite right. Because Garda
7 Kelly did what she did. There's no issue at all with
8 Garda Kelly did. But after that incident in 2015, it
9 cannot be blamed on Garda Kelly, anything to do with
10 work related stress, what I was out sick for. And bear 10:48
11 in mind, Judge, they're then in December of 2015 having
12 case conferences with the CMO to do with my sick, where
13 the CMO seems to be left -- the chief medical officer
14 seems to be left in the dark as to -- he is under the
15 impression it's just flu. 10:48

16 38 Q. Again, could I ask you to be shown volume 11, page
17 3094, please? This is a statement of Chief
18 Superintendent Pat Murray made to the Tribunal
19 investigators. Can I just draw your attention to line
20 1316? He will say in his evidence that he had no role 10:49
21 in recording sick leave for anybody, including you, and
22 that he never entered data on to the SAMS system,
23 because that was done by the system a clerk in Athlone,
24 Garda Kelly. would you agree with that?

25 A. I can't dispute that, that part of it, but I mean, I 10:49
26 had no role in -- like, I mean, I have never entered
27 data onto the -- I mean, I wouldn't expect him to have
28 entered data.

29 39 Q. Thank you. Then he will say in his evidence that in

1 May of 2016 an issue was brought to his attention
2 insofar as it became apparent that Chief Superintendent
3 wheatley told him that she had been called by Chief
4 Superintendent McLoughlin. And I think Chief
5 Superintendent McLoughlin had been liaising with you at 10:50
6 that time, isn't that right?

7 A. Yes.

8 40 Q. Chief Superintendent McLoughlin will say that he told
9 Chief Superintendent wheatley that you had phoned him
10 while drunk and that you were complaining to him about 10:50
11 the category under which your illness was recorded. Do
12 you remember that?

13 A. I am not sure in relation to -- is this in Chief
14 Superintendent McLoughlin's statement?

15 41 Q. Yes. So he contacts Chief Superintendent wheatley and 10:50
16 she then went to try and investigate what this was
17 about.

18 A. Yeah, but again, this is in 2016. In December 2015
19 Chief Superintendent wheatley and Superintendent Murray
20 are having case conferences with the CMO to do with my 10:51
21 sick. So they can't say they don't know anything about
22 it. It's simply not plausible. Your argument is not
23 plausible.

24 42 Q. Just come back for a moment, Garda Keogh, just look 10:51
25 very carefully at line 1316. Chief Superintendent
26 Murray is saying:

27
28 "I have no role in recording sick leave for anybody,
29 including Garda Keogh."

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That it simply wasn't in his territory at all, do you understand?

A. But role on, up until we come with the case conference with the CMO. I mean, they're having a conference with a Garda medical doctor and somehow he is not aware that work related stress is on the certs and that it's I'm going out sick with viral flu. So somebody is -- somebody is withholding this information from the doctor. They know that at this stage. 10:51

43 Q. Again I have to suggest to you that that is incorrect. But I am going to put it to you also, if you look down to page 3095, please, just the top line, you will see that Chief Superintendent Murray will say from his enquiries into your allegation it seemed to have no foundation, that you had been recorded in the category of ordinary illness, subcategory of flu/viral for quite some time, including before his arrival, your arrival -- his arrival in Athlone. would you agree that you had been recorded even prior to Superintendent Murray's arrival? 10:52

A. That's correct. I have said already, Judge, previously in evidence that there could have been a mistake with the viral flu thing for a period of time. But once the discipline matter from the AWOL incident occurred, that any mistakes or anything, there's no way a mistake can continue after that, because that whole discipline related to sick and sick and all the rest. So it could not have been missed. I don't know if I am explaining 10:52

1 it correctly. It just couldn't have been missed after
2 that.

3 44 Q. Well, you see, Garda Keogh, I have to put it to you
4 that insofar as there have been any issue in relation
5 to the recording, it had nothing to do with Chief 10:53
6 Superintendent Murray at all?

7 A. I can't -- I can't agree with you on that.

8 45 Q. Can I ask you just to move forward to page 3095.

9 A. Sorry, the recording. I can agree with you up until
10 the inputting of the sick had nothing to do with him. 10:53
11 But in relation to afterwards, he would have had
12 knowledge of stuff.

13 46 Q. CHAIRMAN: Could you answer me a question?

14 A. Yes, Judge.

15 47 Q. CHAIRMAN: What role do you say Superintendent Murray 10:53
16 had in misrecording your illness?

17 A. Judge, none in the misrecording, but after the
18 incident, the disciplinary matter of 2015, where there
19 was case conferences then held with the CMO, there
20 doesn't seem to be a mention of work related stress, 10:54
21 it's all flu viral.

22 48 Q. CHAIRMAN: Hold on. The complaint is, you may say,
23 look, they should realised, they should have this, that
24 and the other, but specifically misrecording. Now,
25 that's the complaint. 10:54

26 A. Right.

27 49 Q. CHAIRMAN: Somebody wrote down wrongly that you were
28 out with flu viral when you were out with work related
29 stress, that's is the complaint?

1 A. Yes.

2 50 Q. CHAIRMAN: what did Murray have to do with that?

3 A. Initially he didn't record, he did not record the --

4 51 Q. CHAIRMAN: But it wasn't his job to record it?

5 A. No, no, no. 10:54

6 52 Q. CHAIRMAN: Sorry, on what you appear to be agreeing, it

7 wasn't his business to be doing that?

8 A. No.

9 53 Q. CHAIRMAN: So?

10 A. Yeah, the point I am making -- 10:54

11 54 Q. CHAIRMAN: what did he do wrong? That's the question I

12 want to know.

13 A. He didn't inform the CMO or anything after that AWOL

14 incident, the chief superintendent, the CMO, anybody

15 there, that there's an issue with me going off sick 10:55

16 with flu and work related stress that's on my certs.

17 They had to have all --

18 55 Q. CHAIRMAN: I'm not understanding that.

19 A. They had to have known in relation --

20 56 Q. CHAIRMAN: Do you understand what I am trying to find 10:55

21 out? I can understand your complaint, I simply want to

22 know, Superintendent Murray, in what way did he fall

23 down in his job? In what way was it targeting or

24 whatever? what did he do wrong in relation to the

25 recording of your illness as flu viral and not work 10:55

26 related stress?

27 A. In inputting nothing in relation to the input of it.

28 57 Q. CHAIRMAN: Okay. But?

29 A. But after the incident where I was disciplined, where

1 you are holding case conferences in Dublin with the CMO
2 and all that part of it, they held those case
3 conferences on the --

4 58 Q. CHAIRMAN: wait now, Superintendent Murray was there at
5 that? 10:55

6 A. Yes.

7 59 Q. CHAIRMAN: So he's one of the people there?

8 A. Yes.

9 60 Q. CHAIRMAN: what did he do wrong?

10 A. well, nobody informed the CMO that there was a problem 10:55
11 where my medical certs --

12 61 Q. CHAIRMAN: He should have said, by the way -- so he
13 should have known about the medical certificates?

14 A. He had to have known.

15 62 Q. CHAIRMAN: Okay. I just want to get it clear. 10:56

16 A. Yes, Judge.

17 63 Q. CHAIRMAN: He had to have known because of?

18 A. Because when they disciplined me in relation to the
19 AWOL, as part of their investigation file they had
20 actually the certificates which said -- attached to 10:56
21 their own files.

22 64 Q. CHAIRMAN: Did Superintendent Alan Kelly not
23 investigate that?

24 A. Alan Murray, yes.

25 65 Q. CHAIRMAN: Alan Murray. Sorry, what did I say? 10:56

26 A. Yes. So in that --

27 66 Q. CHAIRMAN: How did Patrick Murray know from that?

28 A. Judge, he -- when Alan Murray sent his file, it would
29 have gone to Chief Superintendent wheatley and from

1 Chief Superintendent Wheatley it would have gone to
2 Superintendent Murray.

3 67 Q. CHAIRMAN: Right.

4 A. Now, at some stage it appears that one statement was
5 removed, the statement in relation to the work related 10:56
6 stress was removed. But what wasn't removed were the
7 sick certs, which had the work related stress sick
8 certs on them. At that point they had to have known --

9 68 Q. CHAIRMAN: Sick certs?

10 A. Doctors -- 10:57

11 69 Q. CHAIRMAN: Not just one relating to the AWOL period, is
12 that right?

13 A. Yeah, the two, for two doctors -- from recollection for
14 that, two doctors certs I think that had work related
15 stress. But all my work certificates at that period 10:57
16 were all work related stress, Judge.

17 70 Q. CHAIRMAN: Okay. So that report, including a reference
18 to a medical report talking about work related stress,
19 that went to Superintendent Patrick Murray?

20 A. From Chief Superintendent Wheatley. 10:57

21 71 Q. CHAIRMAN: Okay. So did he know what at that time that
22 you were being recorded as flu viral?

23 A. He had to have known.

24 72 Q. CHAIRMAN: Why?

25 A. Well, I mean, he's the superintendent, he's organising 10:57
26 the case file.

27 73 Q. CHAIRMAN: You told me it was nothing to do with --

28 A. But equally, Judge --

29 74 Q. CHAIRMAN: Are you understanding me?

1 A. Yeah.

2 75 Q. CHAIRMAN: I am trying be logical here, I am trying to
3 make sense of this?

4 A. If you go back to the very first time that I met
5 Superintendent Murray, where I was speaking to him 10:58
6 about stress and he said, you're under no stress.

7 76 Q. CHAIRMAN: Okay. Maybe he was right, maybe he was
8 wrong. Maybe you were right, maybe you were wrong.
9 But can we just focus on this point: The report from
10 Superintendent Alan Murray that went to Chief 10:58
11 Superintendent wheatley and back down to Superintendent
12 Patrick Murray -

13 A. Yes.

14 77 Q. CHAIRMAN: - contained information in two medical
15 certificates relating to work related stress? 10:58

16 A. From recollection, two. At least one but --

17 78 Q. CHAIRMAN: At least one?

18 A. Yes.

19 79 Q. CHAIRMAN: Maybe one, maybe two. But a certificate or
20 certificates relating to work related stress? 10:58

21 A. Yes.

22 80 Q. CHAIRMAN: Okay. So at that point he should have known
23 that there was a medical certificate relating to work
24 related stress?

25 A. Yes. 10:58

26 81 Q. CHAIRMAN: But that leaves us with the question, how
27 was he to know that you were being recorded as flu
28 viral. You say, well, he must have known. Okay, maybe
29 he did, maybe he didn't. So that depends on his

1 knowledge of what was then being recorded; is that
2 correct?

3 A. Yes, but, Judge --

4 82 Q. CHAIRMAN: Go on, tell me. I am not trying to catch
5 you out. I am trying to clarify? 10:59

6 A. No, no, I understand.

7 83 Q. CHAIRMAN: Let me tell you where I am.

8 A. Yes.

9 84 Q. CHAIRMAN: So far, I on the point that says: If
10 Superintendent Murray knew or ought to have known that 10:59
11 you were out from stress, work related stress and not
12 flu viral, okay, I can see your point, he should have
13 done something about this when he got this certificate.
14 That's your case, okay. But if he shouldn't have
15 known, if there was no reason for him to have known 10:59
16 about that, then that doesn't sound like a basis for
17 criticising him, under this heading. Do you see,
18 that's where I am at at the moment. I am trying to
19 reconcile those?

20 A. I understand. Judge, on the very first day I met 11:00
21 Superintendent Murray there was an issue --

22 85 Q. CHAIRMAN: Don't go on about that, I know about all
23 that. He said you're not under stress and you said you
24 were under stress. That's is not the point I'm asking
25 you. 11:00

26 A. But he should have checked it out, Judge, then.

27 86 Q. CHAIRMAN: He what?

28 A. He should have checked it out and he would have found
29 out then.

1 87 Q. CHAIRMAN: Okay. Si at the first point he's wrong.
2 Okay. I see what you are getting at, right. would you
3 like to help me on point of logic that I am trying to
4 put to you? If he should have known, if he knew or
5 should have known that you were being recorded as flu 11:00
6 viral and not work related stress, then I can see your
7 point. If there was no basis for him to know it, then
8 I can't see your point. Do you understand what I am
9 getting at?
10 A. I understand. 11:00
11 88 Q. CHAIRMAN: Now, you can say more generally, well, okay,
12 let's go back to the very beginning. But that's not
13 really the complaint that we have here. The complaint
14 that we have here is misrecording of you being out
15 sick. 11:01
16 A. Yeah.
17 89 Q. CHAIRMAN: what I am looking at is Superintendent
18 Murray's role in that. That's what I'm looking at?
19 A. Judge, I can't, I can't go any further. Garda Kelly
20 has stated her case and I can't, I can only guess 11:01
21 behind the scenes, I can't give any evidence on behind
22 the scenes.
23 90 Q. CHAIRMAN: Okay. Anyway, you can see what I am trying
24 to do here.
25 A. Yes. 11:01
26 CHAIRMAN: Okay.
27 91 Q. MR. MURPHY: Just can we pause there for a moment,
28 Garda Keogh, please, because Chief Superintendent
29 Murray will say that this was nothing to do with him

1 but it's brought to his attention that there's a
2 difficulty and he communicates with Chief
3 Superintendent Wheatley. But just before we move on to
4 that, can I ask you please to be given volume 11, page
5 3096, please? You see there is a question and answer 11:01
6 session between yourself and the Tribunal. Just
7 pausing for a moment, Garda Keogh. The document I
8 referred to earlier, the letter to the Minister -- I
9 beg your pardon, it's Superintendent Murray's
10 interview. But there is a reference, a quotation from 11:02
11 your interview in it. When we looked at the Minister's
12 letter, the letter you wrote to the Minister, it was in
13 2016. That's the complaint you were saying it was
14 Superintendent Pat Murray, it was deliberate, it was
15 recording. If you please have a look at line 1342. 11:02
16 This is you speaking to the investigators. Could I ask
17 you just to read for a moment between 1342 down to
18 1346?

19 A. Yes, Judge.

20 92 Q. That is the question the Tribunal investigators were 11:03
21 asking you?

22 A. Yes.

23 93 Q. Which was basically, did you have any information or
24 evidence to support the accusation that you were
25 making? 11:03
26

27 Do you see your response underneath, you said, line
28 1347:
29

1 "I cannot say it was Superintendent Pat Murray recorded
2 me as being out sick with the flu as opposed to work
3 related stress. I can only state that it is my view
4 that Superintendent Murray may have been involved and
5 that is as far as I can go."

11:03

6
7 would you agree with me, that's a different statement
8 to what you made in 2016 to the Minister, where you
9 said it was deliberate, it was Pat Murray, it was they?

10 A. Well, when I wrote to the Minister, when we say they
11 and refer to they as the cabal, Judge, that's in
12 general terms. What I have said here in my statement
13 to the Tribunal investigators is just worded
14 differently to what I am just after saying to you,
15 Judge.

11:04

11:04

16 94 Q. Garda Keogh, words do matter. So, would you agree with
17 me that the words used in 2018 said something different
18 to what you said to the Minister in 2016. Because here
19 in 2018 you are saying, I can only state it's my view,
20 my belief; is that right?

11:04

21 A. That's right. That's right.

22 95 Q. You see, I have to suggest to you that your belief is
23 pure supposition and no evidence at all.

24 A. Em, you see, I dispute that, because after the incident
25 we've referred to, which I don't know, is there a point
26 even in going into it again.

11:04

27 96 Q. In terms of your standard of evidence that you have in
28 relation to this accusation, it's put to the Tribunal
29 investigators as being based on your view. "That is as

1 far as I can go". Is that your evidence to the
2 Chairman here today?

3 A. I have just said I can't say exactly what went on
4 behind the scenes, but there's a serious anomaly in
5 relation to my recording off sick. 11:05

6 97 Q. Garda Keogh, you're an experienced Garda investigator,
7 I have to suggest to you that you know perfectly well.
8 As your answers to the Tribunal investigators suggest,
9 that all -- you know perfectly well that what you are
10 basing this accusation on is a belief, not any evidence 11:05
11 at all?

12 A. Well, there's evidence that I have been misrecorded.

13 98 Q. There is no evidence that Superintendent Pat Murray
14 deliberately misrecorded the entries at all.

15 A. But there's evidence he knew about it. 11:05

16 99 Q. There's no evidence that he knew about it or that he
17 interfered with the process at all?

18 A. There is evidence he knew about it.

19 100 Q. Is there any evidence that he interfered with your sick
20 recording at all? 11:05

21 A. By interfering he should have changed it to the correct
22 -- or authorised it to be changed to the correct
23 category. He should also have informed the CMO.

24 101 Q. You see, in terms of the issues concerning that point,
25 I have to suggest to you that you are now beginning to 11:06
26 change your position. I am suggesting to you that in
27 fact the allegation you made to the Minister, the
28 allegation you made to this Tribunal was a deliberate
29 misrecording, a deliberate intentional interference

1 with your sick record by Superintendent Murray, and
2 that's false, isn't it?

3 A. No. Somebody, somebody was -- somebody is deliberately
4 involved in that.

5 102 Q. You see, even from your perspective, and I don't agree 11:06
6 with your perspective, as I put it to you formally,
7 even on that perspective, what you have just said
8 indicates that Superintendent Pat Murray had nothing to
9 do with that at all?

10 A. He's the superintendent in the station where I am being 11:06
11 recorded with the flu and I am clearly out with work
12 related stress on all the certs that are sent in to
13 that same station.

14 103 Q. Now, can I ask you to be shown a document at page 3795.
15 I am not sure what volume this is in. 11:07

16 A. 3795?

17 104 Q. 3795, please, yes.

18 A. Yeah.

19 105 Q. These are notes of the CMO. I think you have seen
20 these before, haven't you? 11:08

21 A. Yes.

22 106 Q. Yes. They are dated 19/5/2016.

23 A. Judge, on the next page there's a couple of dates
24 there, 7/6/16, 12/7/16, 26/12/15. 19/5, that's the
25 date that I met the doctor. That's my writing, Judge. 11:08

26 107 Q. Just in terms of the first paragraph there, you see:
27
28 "Review of clinical progress and fitness to perform
29 work. Situation has not improved for him personally

1 and at this time the background circumstances and
2 publicity about the whistleblower aspect is weighing
3 very heavily on the member."
4

5 So this is what you said I think to the CMO, in that
6 note. 11:09

7 A. This is the CMO's writing, this isn't what I wrote,
8 so...

9 108 Q. Yes. That kind of details information that you gave to
10 the CMO, is that right? 11:09

11 A. That's correct, because that's at the meeting where he
12 no idea that I was out with work related stress.

13 109 Q. Yes.

14 A. He thought it was the flu.

15 110 Q. In terms of the approach, in terms of the approach -- 11:09

16 A. Just on another note, Judge, Mr. Murphy said there last
17 week or the week before that I was stood down on a
18 previous date, I just see here on the CMO's notes here:

19
20 "If currently absent, date absence commenced,
21 26/12/2015." 11:10

22
23 That's the date I said last week that I went sick.

24 Mr. Murphy said, oh no, you were stood down the week
25 before, the week I met him, which is the 19/5. I had 11:10
26 said I didn't know anything about that because the
27 doctor certainly didn't say it. That conversation was
28 merely just about -- he was trying to find out about
29 work related stress and the sick certs and all that.

1 111 Q. Yes. I will come back to that, Garda Keogh, in a
2 moment. But in terms of the CMO, had you seen the CMO
3 in 2015? For example, in May of 2015?
4 A. I could have. I just can't -- I can check my diary,
5 like. Sorry May, what year? 11:10
6 112 Q. '15.
7 A. Just the date, please. Sorry, the 19th.
8 113 Q. 19th?
9 A. Yeah.
10 114 Q. So in the summer 2015, for example. Can I ask you to 11:11
11 be shown page 2220, please? Do you see here this is a
12 note prepared by Superintendent Murray, it's dated
13 14/7/2015. Do you see this?
14 A. Yes.
15 115 Q. I think we've touched on this previously. But at the 11:12
16 end of the interview, do you see where he recorded that
17 you told him that you would continue to go sick at will
18 and that he told you that he was going to request a
19 case conference on you and was considering discipline
20 for AWOL and would seek an explanation in writing? Do 11:12
21 you see that?
22 A. I'm sure, I -- yeah, I see that.
23 116 Q. Okay. There was ultimately a case conference, was
24 there not, in December?
25 A. Yes. 11:12
26 117 Q. I think we have seen that document before. 3791,
27 please. Do you see that?
28 A. Yes.
29 118 Q. This is the CMO's note in relation to different issues.

1 You will see, for example, that in the second line it
2 says:
3
4 "Since last seen further periods of short-term illness,
5 some concern highlighted, 4 - 7 July had forgotten he 11:13
6 was. . . "
7
8 Sorry:
9
10 "He had forgotten he was in service after calling in 11:13
11 off sick on 10/7/2015. Attributes this to drinking
12 while off and taking Xanax with alcohol on 9/7/2015."
13
14 Do you see that?
15 A. Yeah. 11:14
16 119 Q. Now, insofar as that's concerned, I think that reflects
17 detail that would you have given to the CMO; is that
18 right?
19 A. Yes.
20 120 Q. Okay. Now, you had been speaking to the CMO earlier in 11:14
21 the year, isn't that right?
22 A. I could have been.
23 121 Q. Could you go back then to page 3790, please? Do you
24 have that note?
25 A. Yeah. 11:14
26 122 Q. This is dated 19th May 2015. So this refers to a
27 meeting between yourself and the CMO at that time, is
28 that right?
29 A. Yes.

1 123 Q. Just pausing for a moment. Would you agree with me
2 that at that time Chief Superintendent Murray did not
3 know you were seeing the CMO?
4 A. No.
5 124 Q. In May of 2015, I have to suggest to you that 11:15
6 Superintendent Murray did not know that you had been
7 reviewed by the CMO in May of 2015.
8 A. Oh, just one moment. I don't know if he -- maybe.
9 125 Q. That's what he will say. So here we have a meeting
10 that's taking place in May 2015 between you and the 11:15
11 CMO.
12 A. Okay.
13 126 Q. At the outset it says that you were referred originally
14 on account of concerns about high level of short
15 absences, 48 days in 12 months from January 2014, with 11:15
16 half coinciding with early hours. And records those
17 details as well. Do you see that?
18 A. Yeah.
19 127 Q. You can see the note further down in relation to
20 background, but would you agree with me that the focus 11:16
21 of that particular discussion was alcohol?
22 A. Yes. Having said that, the note I have for this on the
23 19th May was, 1pm, he pointed out I ran out of annual
24 leave and then went sick, stress. That although I
25 would be under some stress it was not enough to keep me 11:16
26 out of work.
27
28 That's where I first brought up to him about the work
29 related stress and that. But he doesn't actually know

1 it's on my sick certs. I presume he knows it's on my
2 sick certs. But he doesn't actually find out or know
3 it's on my sick certs until December of '15

4 128 Q. You see, you say in the middle of the page that you
5 told him that you had no alcohol since April, though 11:16
6 you would have drunk excessively over the St. Patrick's
7 weekend and between January and February and then goes
8 on to say:
9

10 "Usually involving 12 pint binges." 11:17
11

12 Do you see that?

13 A. I see that.

14 129 Q. The GP is referred for new support interventions, do
15 you see that? 11:17
16

16 A. Yes.

17 130 Q. Then there is a reference to OHB, implications of
18 continued misuse of alcohol on your expected
19 effectiveness, do you understand?

20 A. Yeah. 11:17

21 131 Q. At the end he said that he agreed that you were fit to
22 attend --:
23

24 "At present fit for duties, to be assigned, but the
25 matter is to be kept under review and liaison with the 11:17
26 GP support."
27

28 A. Yeah.

29 132 Q. So, just taking that as an example of a meeting that

1 took place with the CMO, all those details recorded. I
2 have suggest to you that that was a meeting that was
3 between you and the CMO and of which Superintendent Pat
4 Murray had no knowledge, either of the meeting or the
5 content of the meeting? 11:17

6 A. I don't know if he had knowledge or not, so I can't
7 agree with you on that.

8 133 Q. Yes. In terms of the position vis-à-vis 2015, again I
9 have to suggest to you that from the point of view of
10 the process, here you have the CMO will all of this 11:18
11 information, but there is no change in the recording of
12 your sick certificates during that time, isn't that
13 right?

14 A. Sorry?

15 134 Q. There is no change in the recording of your sick 11:18
16 certificates during that time, isn't that correct?

17 A. Correct. Yeah.

18 135 Q. What I have to put to you now is just details in
19 relation to the system that exists. First of all, can
20 I ask you to be shown volume 11, page 3219? Garda 11:18
21 Keogh, do you see this is a management sickness absence
22 policy, it's issued in 2010. First of all I want to
23 put to you that this is the general system that applied
24 to An Garda Síochána in 2014, '15 and '16. Are you
25 familiar with this? 11:19

26 A. I am not familiar with it but...

27 136 Q. Again, to assist the Tribunal and you to understand the
28 position, can I ask you just to look first of all at
29 page 3219? At page 3219 there is a heading entitled:

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"The roles of the chief medical officer."

Do you see that?

A. Yeah.

11:20

137 Q. It says:

"The CMO advises the Garda Commissioner on member's medical fitness for policing duties. In forming a medical opinion, the CMO takes into account all medical information available at the time. When the CMO advises that a member is fit for full/light/restricted police duties, the member will resume duty immediately on being notified of the same by the member's district officer/superintendent."

11:20

11:20

First of all, I would like to confirm, would you agree with me that the decision of the CMO as to whether you have fit for duties is an important function reserved to him?

11:20

A. Yes, but also, just something here, Judge.

"In forming a medical opinion, the CMO takes into account all medical information available at the time."

11:20

138 Q. Yes.

A. That should include medical certificates.

139 Q. Yes. In fact, we know, and we will come to this later on, that the CMO in fact contacted your GP; isn't that

1 right?

2 A. That's correct, yeah.

3 140 Q. Yes. Insofar as the next page is concerned, page 3220,
4 by way of example:
5
6 "Where the CMO considers that a member is fit for duty
7 and the member fails to return to work on the basis of
8 a medical certificate, contradicting the CMO's advice,
9 it is incumbent on the member to forward an updated
10 medical report within seven days to the assistant
11 commissioner human resources management HRM. This will
12 set out the details. Until the CMO reviews the updated
13 medical report, the last advices of the CMO will stand
14 and remain in force."
15
16 Do you see that?
17 A. Yes.

18 141 Q. Would you agree with me that that demonstrates when it
19 comes to certifying when a person is fit for duty, the
20 CMO's decision is paramount?
21 A. I understand that.

22 142 Q. And ultimately it is based on his assessment of all the
23 material information that's made available to him; is
24 that right?
25 A. All the information?
26 143 Q. That's made available to him.
27 A. As in work related stress being on sick certs?
28 144 Q. Not just on his own, there's a connection here with
29 HRM, Human Resources Management, isn't that right?

1 A. Again, I don't fully -- I have an awareness of them but
2 I don't know anything about the workings of HRM.

3 145 Q. Then would you just turn forward, please, to page 3222?
4 Do you see under the heading "contact/visits":

5
6 "When a member is absent because of sickness for a
7 continuous 7 day period, he/she will be contacted.
8 Contact in this instance can be made by a visit to the
9 member by prior arrangement" 11:22

10
11 It goes on to say: 11:22

12
13 "The member shall be advised of all the services
14 available (employee assistance service, external
15 specialists)." 11:22

16
17 And so on. Do you see that?

18 A. Yes.

19 146 Q. In terms of referrals to the CMO, could I ask you to
20 turn to page 3223? Do you see here that in the course 11:22
21 of meetings on referral to the CMO, it says:

22
23 "District officers and superintendents will ensure they
24 meet each member who is referred to the CMO for review
25 and discuss the reason that the member is being 11:23
26 referred to the CMO and is to determine their medical
27 fitness...and advise the member to forward all relevant
28 cases notes or details from treating doctors and test
29 results to the Garda occupational health service. The

1 member should be assured that these reports will be
2 treated in the strictest of confidence by the CMO, who
3 should consult with the member's treating certifying
4 doctors. "

11:23

5
6 So, would you agree with me, that shows that the CMO is
7 part of a system where he liaises with your doctor, he
8 looks at the medical reports, he interacts with local
9 management before he makes any decision that affects
10 whether you are fit to work or not?

11:23

11 A. Yes, but again, once again, I mean the CMO was
12 completely kept in the dark that work related stress
13 was on the certs.

14 147 Q. You see, I have to suggest to you that there is a
15 factor here, which we will come to, which demonstrates
16 that your assessment of this is incorrect. Can I ask
17 you to be shown volume 20, please, page 6144? Here you
18 have Alan Mulligan, the director of HR, on 7th May
19 2015. Your absence in work between 20th April and 25th
20 April have been noted. And also, do you notice there,
21 that in the sick certificate there is a reference to
22 the fact that this is stress related. Do you see that?

11:24

11:24

23 A. Yes.

24 148 Q. Then Mr. Mulligan says:

25
26 "You should now interview this member in order to
27 establish the source of the member's stress and if it
28 is suggested as being work related, a full
29 investigation should be carried out. "

11:25

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Do you see that?

A. Yeah.

149 Q.

"This branch requires a full report, referral form and medical certificates in accordance with Code 11.34, relating to the above named member's absence." 11:25

Do you see that?

A. Yeah. 11:25

150 Q.

"Please ensure that the member is advised of the welfare service and any other support that is deemed necessary." 11:25

Do you see that?

A. Yes.

151 Q.

So, I have to suggest to you that the system we're talking about kicked into action in May of 2015, but critical to the operation of the system what to identify what's referred to in the second line, "the source of the member's stress" do you see that? 11:25

A. Yes.

152 Q.

Turning then, please, to page 6145, volume 20. 6145.

A. Yeah. 11:26

153 Q.

You will see there is a letter there from Chief Superintendent wheatley. It's dated the 26th May. It is effectively forwarding a report from Superintendent Murray dated the 20th May. Do you see that?

1 A. Yeah.

2 154 Q. Could I ask you, just before we finish with this
3 document, to move to the next document, which is 6146.
4 This is the report that is sent to Chief Superintendent
5 wheatley by Superintendent Murray. Can I draw your 11:26
6 attention to the middle of the page, five lines down,
7 and this will be Superintendent Murray's evidence. He
8 says:

9

10 "When I met the member..." 11:26

11

12 That's you

13

14 "...on 26th March 2015, I discussed his work absences,
15 including the fact that his medical certificates were 11:26
16 indicating that he was suffering from work related

17 stress. The member was quick to point out that he was
18 a confidential reporter and had certain protections in
19 that role. He indicated that assistant commissioner
20 western region was investigating reports and 11:26

21 allegations he has made to the confidential recipient.
22 Outside of disclosing that the member was reticent to
23 discuss the work related stress he indicates he is
24 suffering from, relying instead on the protections he
25 has in the confidential reporting legislation." 11:27

26

27 Then he will say that he reported up the line but in
28 those circumstances he could not further explore the
29 situation with the member. He said:

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"I am aware anecdotally that a full investigation is being carried out into the member's claims of corruption and malpractice. I have no further information in relation to that investigation. I understand that the member is engaging with the welfare service by way of the investigation he is involved in. I did, however, advise him of its benefit to him."

11:27

Then he attaches to the letter, over the page, 6147, correspondence from Chief Superintendent Wheatley, correspondence from HRM, the referral form to the CMO of 2nd April 2015, and the member's medical certificates.

11:27

So, just in terms of that particular report, that suggests that when Superintendent Murray went to you and said, I need to enquire what's the cause of this, that your reply was that you couldn't talk to him because of the confidential reporter process. Is that true?

11:27

11:28

A. In relation to that, but equally, I mean, reading this report, what jumps out at me is there is not a mention about the fact that I'm working alongside Garda A at this period.

11:28

155 Q. Garda Keogh --

A. This is somewhere in the 18-month period.

156 Q. Garda Keogh --

A. This is very important. This is very important and

1 it's not here.

2 157 Q. Just listen to the question, please. In terms of this
3 report, do you agree with me that you didn't tell him
4 anything about your condition because you told him that
5 you were a confidential reporter and you were 11:28
6 effectively protected under that role and this was
7 being dealt with by the assistant commissioner western
8 region. Isn't that what you told him?

9 A. Yes, I did say that, yeah.

10 158 Q. So, that being the case, that being what you told him, 11:28
11 he then reports up the line. If you would turn back,
12 please, to page 6145. Chief Superintendent wheatley,
13 in the second paragraph, summarises matters and she
14 says:

15 11:29
16 "The district officer in Athlone advises he cannot
17 further explore the reasons for the member's alleged
18 stress as the member is not willing to further discuss
19 the issue, which he states arises out of his
20 involvement and protections under the confidential 11:29
21 reporting legislation."

22
23 I have to suggest to you that that's a fair summary of
24 the position as of that date?

25 A. It also implies, Judge, that both Superintendent Murray 11:29
26 and Chief Superintendent wheatley haven't a clue what's
27 going on and they don't know anything about -- I mean
28 the investigation and Garda A working in the same
29 station and tours on the same shifts as me. That goes

1 on for 18 months and they appear to be oblivious to
2 this.

3 159 Q. You see, in terms of the approach towards this issue, I
4 have to suggest to you that in fact a very important
5 part of the overall system couldn't work because you 11:30
6 wouldn't cooperate with it, isn't that right?

7 A. Equally, the other part of it is, it's local management
8 that are also putting me under work related stress.
9 So, I am then to report to the likes of Superintendent
10 Murray, you know, stuff where he himself is involved. 11:30
11 Actually, there's a document which appeared in volume
12 53, I can't -- Judge, if I can have a quick look at
13 volume 53, I can get the document.

14 160 Q. Perhaps you might do that at the next break, but I
15 would like to put a couple of questions to you on the 11:30
16 documents you do have before you. Just, for example,
17 on this point, just a moment ago you mentioned Garda A,
18 could I ask you to be shown document 3790 again,
19 please?

20 A. What volume, please? 11:31

21 161 Q. I think it's number 13. It's a document we looked at a
22 few minutes ago, which is the CMO's report on 19th May
23 2015. Just take a moment to read this. But I think
24 you will agree when you have read it, that there is no
25 reference in this document, May 2015, to you telling 11:31
26 the CMO anything about Garda A. Just take a moment to
27 confirm that, please.

28 A. I didn't, I didn't tell him.

29 162 Q. You didn't tell him. Very good.

1 A. No, no. I didn't.

2 163 Q. So --

3 A. I told -- this is, which, 19th May. No, I had assumed
4 that the doctor had seen my medical certs and knew it
5 was work related stress. It wasn't until December that 11:31
6 we actually established he didn't know anything about
7 work related stress.

8 164 Q. But you understand now, Garda Keogh, that if you told
9 Superintendent Murray everything that was concerning
10 you at the time, he would have reported that to Chief 11:32
11 Superintendent Wheatley, who would then have reported
12 it to HRM and a full view of your position would have
13 been made known?

14 A. You see, there's a number of factors in relation to
15 work related stress. Garda A is not the main -- he's 11:32
16 one of the sources, but it's Garda management --

17 165 Q. Garda Keogh, here we have a situation where Garda
18 management, in accordance with the Code, are asking you
19 to tell them what you believe to be the problem and you
20 are saying, no thank you, I am talking to the assistant 11:32
21 commissioner in the western region, I am a confidential
22 reporter.

23 A. I mean, it cropped up last week where I did ask
24 Superintendent Mulcahy to speak to Superintendent
25 Murray, you know, but he just said he couldn't get 11:32
26 involved in that, which is fair enough. But there is
27 that document, it's at the end. It'll only take me a
28 minute to find it, Judge.

29 166 Q. Again, Garda Keogh, just in terms of these documents,

1 can I ask you to look at volume 20, page --
2 CHAIRMAN: Is it okay if we let Mr. Murphy finish his.
3 WITNESS: Yes.
4 CHAIRMAN: Then you can refer us to the other. That's
5 a convenient way to do it. 11:33
6 WITNESS: Of course.
7 CHAIRMAN: Okay.
8 MR. MURPHY: Chairman, subject to the chair's view, if
9 I can proceed for another five minutes.
10 CHAIRMAN: Very good. 11:33
11 167 Q. MR. MURPHY: So, volume 20, page 6118, please.
12 A. Sorry?
13 168 Q. 6118. Just look, please, if you would, at line 651.
14 Chief Superintendent Wheatley will say in her evidence
15 that when you raised the issue of work related stress 11:34
16 with Superintendent Murray in 2015, that you told him
17 that you couldn't disclose the nature of the work
18 related stress because you were engaged in the
19 protected disclosure process and as a result of that
20 she will say that she could not advance the matter any 11:34
21 further and that she also communicated this problem to
22 HRM.
23 A. That's what -- I can't comment --
24 169 Q. I appreciate that you may not have understood at the
25 time, but do you understand now that by not giving the 11:34
26 information at the time all that local management could
27 do would be to report back to HRM that you would not
28 cooperate?
29 A. Judge, there's a reason I couldn't cooperate with local

1 management. That's something I -- in the next --

2 170 Q. You see, I have to suggest to you that evidence will be
3 that there was a system in place that was there for
4 your welfare and your support. Here there is evidence,
5 there will be evidence from these officers indicating 11:34
6 they tried to, as they were ordered to, implement the
7 system in your favour and you closed the door.

8 A. Judge, I have the answer in the point, I will come back
9 to this.

10 171 Q. CHAIRMAN: I understand that. As far as it goes, that 11:35
11 appears to be the position, that you weren't willing to
12 discuss it with Superintendent Murray.

13 A. Yes.

14 172 Q. CHAIRMAN: He reported that condition to Chief 11:35
15 Superintendent Wheatley, so as far as it goes that is
16 the evidence and you don't quarrel with that evidence?

17 A. No.

18 173 Q. CHAIRMAN: Okay. But there's another point, you say,
19 is that local management were themselves putting you
20 under stress? 11:35

21 A. Yes.

22 174 Q. CHAIRMAN: That is what you say. Presumably it's
23 something of that kind that you're going to be
24 referring to?

25 A. Yes. 11:35

26 CHAIRMAN: Okay, thank you very much.

27 175 Q. MR. MURPHY: Do you see at line 654, she will say in
28 her evidence:
29

1 "Any decisions are a matter for HRM. They are the only
2 people authorised to issue instructions to Killarney
3 regarding pay."
4
5 Do you understand that now to be the case? would you 11:35
6 agree that that's true?
7 A. Sorry, just --
8 176 Q.
9 "Pay decisions are a matter for HRM."
10 11:36
11 Do you agree with that?
12 A. Yeah, they're a matter for HRM, but I mean, HRM just
13 can't out of nowhere decide what's happening. There's
14 a process of --
15 177 Q. Precisely, and they depend upon your cooperation. I 11:36
16 have to suggest to you that in this case you decided
17 for the reasons you outlined not to cooperate. would
18 you agree with the proposition that HRM are the only
19 people authorised to issue instructions to Killarney
20 regarding pay? 11:36
21 A. I would accept that. As I said, I didn't -- I don't --
22 I didn't fully know anything about workings.
23 178 Q. Just before we break, would you look, please, at top at
24 paragraph 646. Chief Superintendent wheatley will say
25 in relation to the general recording of items in SAMS, 11:36
26 that the system was limited and the only place you
27 could record work related stress was under mental
28 health and that there was a reluctance to use that
29 category?

1 A. I don't -- I can't fully agree with that because
2 there's a number of tabs in relation to the SAMS system
3 and there is -- I can't think of them off hand, Judge,
4 but there is other options other than mental health
5 that would have -- 11:37

6 179 Q. Garda Kelly will address that, as I said to you earlier
7 on.

8 A. Yes.

9 180 Q. And you don't disagree with her bona fides in relation
10 to how she worked. Finally just on this point, can I 11:37
11 ask you to look at line 649, where Chief Superintendent
12 wheatley will say that you appeared to be of the belief
13 that work related stress automatically entitles you to
14 full pay but you're mistaken in that belief. Do you
15 now realise that that is incorrect. That even if work 11:37
16 related stress was something that was certified, this
17 would not change your pay. You know this from your
18 experience, do you not?

19 A. No, that's to do with -- it's to do with if it's
20 investigated and it's found there is work related 11:37
21 stress, whereby it's to do with -- it is work related,
22 yes.

23 181 Q. CHAIRMAN: It would have to go further than simply a
24 certificate saying work related stress?

25 A. Yes. 11:37

26 182 Q. CHAIRMAN: But if it's flu viral you're cut off after
27 190 days and so on?

28 A. Yes.

29 183 Q. CHAIRMAN: The possibility, you say, exists. Okay.

1 Thank you. Anything else, Mr. Murphy?

2 184 Q. MR. MURPHY: Yes, Judge, just two quick points. Just
3 turning back, please, to page 6117, we can deal with
4 this quickly, because it's territory trodden by
5 Mr. McGuinness in part. You will see that the evidence 11:38
6 of Chief Superintendent Wheatley, 630, would indicate
7 that there are two categories of absence: Injury on
8 duty and ordinary illness and where a member is injured
9 on duty he remains on full pay during his absence. In
10 the case of ordinary illness, where a member reaches a 11:38
11 threshold number of days, this changes. I think we
12 have had this through other evidence. And that
13 ultimately you only had access to sick pay within those
14 new limits, resulting in your being paid effected in
15 2014. I think we have dealt with all this evidence in 11:38
16 Mr. McGuinness's examination but just can I ask you, at
17 line 638, she will say that when she visited you in May
18 2015 on a welfare visit, you brought it to her
19 attention that you were aware that you were being
20 recorded on the system as flu viral and not work 11:38
21 related stress as stated on the medical certificates.
22 You also mentioned that your pay had been reduced and
23 she said she would look into what was recorded on the
24 system.

25 A. That's correct. 11:39

26 185 Q. She will also say in relation to the point made by you,
27 that you didn't discuss work related stress, that you
28 raised the issue with her in that context. Would it be
29 fair to say that's the first time you have raised the

1 question of work related stress with Chief
2 Superintendent wheatley directly?

3 A. That would have been the first time I directly would
4 have raised it. But Chief Superintendent wheatley
5 already is aware and in the know, because she was 11:39
6 involved in the disciplinary matter which relates to
7 the -- which has the certificates of work related
8 stress, which is prior to this.

9 186 Q. I have to suggest to you that throughout the evidence,
10 the evidence has been that ultimately at these points 11:39
11 of reference you were offered a chance to cooperate
12 with the system but for your own reason chose not to do
13 so and that blocked any further investigation at that
14 time?

15 A. Look, it's very hard for me to turn around and say, 11:39
16 report it to the people, some of the parties who are
17 putting me under work related stress, and say, by the
18 way, you're doing it. In fact, ironically, I actually
19 did write on one document in relation to I think the
20 robbery from persons, to Superintendent Pat Murray, 11:40
21 where I said this is nothing short of a form of
22 harassment. So, I mean, it was -- and that was 2015 as
23 well.

24 187 Q. Garda Keogh, I have to suggest to you that none of
25 these people were putting you under work related stress 11:40
26 at all. And I have to put it to you that there is a
27 profound disagreement between us on that part.

28 A. We disagree on that.

29 MR. MURPHY: Chairman, I'm not sure if this would be an

1 appropriate time.

2 CHAIRMAN: Okay, you are finished on this issue?

3 MR. MURPHY: I have perhaps a few more questions but
4 the witness wants to look at a document to do with the
5 issue.

11:40

6 CHAIRMAN: well, why don't you finish your questions,
7 Mr. Murphy. I thought you had two more questions and
8 you had more questions. We have actually covered that
9 ground, I thought. So, I am sorry.

10 188 Q. MR. MURPHY: Very good. Can I ask you please to see
11 volume 20, page 6169. This again is a document of 8th
12 June 2016. It's a letter from Chief Superintendent
13 wheatley. Do you see that?

11:41

14 A. Yes.

15 189 Q. This is a letter to the human resources and people
16 development manager. In the first page she deals with
17 what we covered already, in 2015, in relation to the
18 reports. Could I ask you to turn over, please, to the
19 next page, at 6170. At the second last paragraph she
20 will say that during a recent meeting with you, that
21 when she enquired if you were anxious to return to
22 work, you advised her on that occasion that you
23 attributed your current absence due to work related
24 stress to the development of investigations being
25 progressed outside the westmeath division. You said
26 that you would not be returning to work until these
27 matters had been concluded, as these matters were
28 exacerbating your condition.

11:41

11:41

11:42

29 A. Yeah.

1 190 Q. Is that what you told her?
2 A. I'm not sure about the first part but the second part
3 is correct, Judge.
4 191 Q. CHAIRMAN: Tell me more, just explain that.
5 A. When Chief Superintendent Wheatley asked me about going 11:42
6 back to work, I told her I'm not going back until
7 everything is finished with.
8 192 Q. CHAIRMAN: All this is going on.
9 A. Yes.
10 193 Q. CHAIRMAN: The investigations are proceeding. 11:42
11 A. Yeah.
12 194 Q. CHAIRMAN: It's a stressful situation. Is that
13 something like you --
14 A. Yes, Judge.
15 195 Q. CHAIRMAN: So that would seem to be what she is 11:42
16 recording, is that more or less right?
17 A. Yes. Because there's the criminal investigation, then
18 it's to go into disciplinary investigation and this --
19 196 Q. CHAIRMAN: That is all the Ó Cualáin, Detective
20 Superintendent Mulcahy? 11:43
21 A. Yes.
22 197 Q. CHAIRMAN: Detective Inspector Coppinger?
23 A. Yes.
24 CHAIRMAN: That's what we are talking about here?
25 A. Yes. 11:43
26 CHAIRMAN: Thank you very much.
27 198 Q. MR. MURPHY: The next paragraph, she will say that
28 despite a number of enquiries with you to establish the
29 source of your alleged work related stress, that you

1 continually correlated your involvement as a
2 confidential reporter to your absence to alleged work
3 related stress. She was also conscious that your
4 continued absence was the subject of a case conference
5 in December of 2015. She will say that at that time 11:43
6 that it was apparent to her that while you cited work
7 related stress as the reason for your continued
8 absence, that addiction treatment was also required by
9 you if a successful return to the workplace was to be
10 accomplished. Was that made clear to you in December 11:43
11 of 2015?

12 A. Em...

13 CHAIRMAN: I thought we had been over that with the
14 CMO, and the CMO had said -- I know this is going
15 forwards and backwards a bit, but I thought we had 11:43
16 explored that, Mr. Murphy.

17 MR. MURPHY: Very good, Judge.

18 CHAIRMAN: This is in the CMO's report.

19 MR. MURPHY: Yes.

20 CHAIRMAN: Am I recalling that Mr. McGuinness -- yes. 11:44
21 Okay.

22 199 Q. MR. MURPHY: If I just make one further point about
23 this to you, which is that I think the note we will see
24 in the inset, in the middle of the paragraph:

25 11:44
26 "The CMO reviewed the issue and determined that you
27 were unfit to attend for work for regular policing
28 duties at present."
29

1 Then she makes reference to a further review in May of
2 2016.

3 A. Sorry, just what date was that?

4 200 Q. That is December of 2015.

5 A. Yeah. I don't -- I think we have seen a document 11:44
6 earlier on there which --

7 201 Q. Whatever about the dates, can I come back to the dates
8 at a later stage?

9 A. Okay.

10 202 Q. But in terms of the actual conclusion, you do accept, 11:44
11 do you not, that it was the CMO who decide in December
12 2015 that you were unfit to work at that time?

13 A. I can't accept that because he didn't say it to me.

14 203 Q. I see.

15 A. I went into work on the 21st December, no one said I 11:44
16 shouldn't have been there. And, as I said, I would
17 have given anything not to have gone in, I would have
18 been delighted in the CMO said, no, you can't go in.
19 It was on the 26th December that I couldn't take any
20 more and I just went sick. 11:45

21 204 Q. Here we are in this letter, on 8th June 2016, in the
22 middle of that page, 6171, would you agree with me that
23 Chief Superintendent Wheatley's record at that stage
24 was she said she had contacted the CMO on that date in
25 May of 2016, and was advised that the previous advice 11:45
26 was to remain the same, that the CMO also will say that
27 outlined that if were deemed fit to return to policing
28 duties by your own medical practitioner, any return to
29 work would only be permitted following a review at the

1 occupational health services. So these matters were
2 May 2016?

3 A. Yes.

4 CHAIRMAN: Okay.

5 A. I do agree with that part. 11:45

6 CHAIRMAN: Okay.

7 205 Q. MR. MURPHY: Therefore, again, even in 2016, I have to
8 suggest to you that in the final paragraph of that
9 letter Chief Superintendent wheatley is again
10 indicating, as she will say in her evidence, that it 11:45
11 still wasn't possible to conduct a full investigation
12 into your absence through alleged work related stress
13 because she could not secure any further information
14 from you on that point.

15 CHAIRMAN: Okay. 11:46

16 A. Judge, it will only take me one --

17 CHAIRMAN: I know that. Don't worry, I am not
18 forgetting it, I am looking forward to hearing what you
19 have to say. Have you finished, Mr. Murphy?

20 MR. MURPHY: No, I have a few more questions, but I 11:46
21 will perhaps stop at this stage to allow the witness a
22 break.

23 CHAIRMAN: I would prefer if you finish, Mr. Murphy.

24 MR. MURPHY: Very good.

25 206 Q. Moving ahead please in terms of documentation, can I 11:46
26 suggest to you that once again all of this had to be
27 considered by people other than Superintendent Murray.
28 So if we turn please to Volume 34, page 9693.

29 CHAIRMAN: would you prefer to have this element

1 finished before you take a break?

2 WITNESS: Yes.

3 CHAIRMAN: I think it's probably more sensible to be
4 frank and you would be more comfortable and you would
5 be able to face into the next phase. All right. 11:47

6 WITNESS: Judge, if I can root through the pages while
7 he's asking me the questions.

8 CHAIRMAN: Sorry, Mr. Murphy, I was going to say, if
9 there is a document that you want to refer to, I don't
10 want if you can put your finger instantly on it, well 11:47
11 and good, if you can't put your finger on it, you can
12 return to it after the break. Don't be under any
13 pressure about that. It'll be a matter entirely for
14 yourself. Okay. Now 9693 we're on, okay. This is
15 June '16. Okay. 11:47

16 MR. MURPHY: So first of all 9693?

17 CHAIRMAN: Yes.

18 207 Q. MR. MURPHY: Volume 34. Now, Ms. Carr is a civilian,
19 she is a civil servant and she is the head or the
20 director of HMR. SHE will give evidence that 11:47
21 ultimately your case was being assessed. But she makes
22 the point in the middle of the paragraph that:

23
24 "Not all work related stress absences can be attributed
25 to An Garda Síochána. A lot of the time it's down to 11:48
26 the individual's perception of events."

27
28 She will say that that was her experience of many of
29 these certificates. Do you see that?

1 A. I see, yeah.

2 208 Q. She will also say in her evidence that insofar as the
3 dialogue assessing your case, in the next paragraph she
4 says she:

5
6 "...urged caution in accepting this absences as
7 occupational injury because this was potentially
8 exposing An Garda Síochána to possible litigation in
9 circumstances where a member's own actions or indeed
10 inaction has precipitated the instigation of a
11 disciplinary investigation." 11:48

12
13 Do you see that?

14 A. I see.

15 209 Q. Now, she will also acknowledge in her evidence that at 11:48
16 that time she said perhaps it's necessary to look at
17 absences as a result of work related stress where a
18 member has brought a protected disclosure. She
19 accepted this was more difficult due to the
20 confidential nature of the disclosure. Do you see 11:48
21 that?

22 A. Yes.

23 210 Q. Then in the final paragraph, she will say her view at
24 that time was that An Garda Síochána should continue to
25 implement the current sick leave regulations where sick 11:48
26 absences following appropriate investigations is
27 determined to be either duty on injury or an
28 occupational injury once the amended Code had been
29 approved. This would also be important, she felt, in

1 the management of the force. So, what I suggest to you
2 is, she will say at that time her view was that the
3 system should be applied to your position strictly and
4 that ultimately the fact that there were certificates
5 being sent in by you wasn't the end of the matter. 11:49
6 There had to be an investigation to find the cause of
7 the work related stress.
8 CHAIRMAN: Mr. Murphy, is it fair? I mean, what can
9 Garda Keogh respond to that question? Suppose he says,
10 you know, I don't agree about work related stress, I 11:49
11 think that's all wrong. Or, suppose he says, gosh,
12 that's absolutely right. Does it matter what he thinks
13 of that letter? That's a fact, there's a fact.
14 MR. MURPHY: No, I am simply putting to him evidence
15 that the witness will give, Chairman. I can shorten it 11:49
16 in this way --
17 CHAIRMAN: But does it matter. I mean, if that's what
18 the witness says, he makes a case, my sickness was
19 wrongly recorded. That's what he says.
20 MR. MURPHY: Yes. 11:50
21 CHAIRMAN: I was doing this. Now, this analysis, which
22 may be perfectly correct, I am just wondering, what can
23 he reasonably respond to that? I mean, what is point,
24 if I may, respectfully suggest --
25 MR. MURPHY: Chairman, the point is this, I am putting 11:50
26 to the witness that not just the Gardaí but also the
27 civilian managers in the process required an
28 investigation to take place, and it couldn't be
29 progressed because the witness --

1 CHAIRMAN: But we have been over that. You say the
2 system is, and he says, yes, I agree, I didn't explain
3 my work related stress to Superintendent Murray, I
4 didn't explain that, he says, and I did explain what
5 Chief Superintendent Wheatley says I explained, namely 11:50
6 that there was a big investigation going on, and he
7 said, rightly or wrongly, that the local management
8 i.e. Superintendent Murray, was putting him under
9 stress, and he didn't feel comfortable in saying -- he
10 didn't say I didn't comfortable saying that, he said, 11:51
11 they were part of the problem, not part of the
12 solution. That's what he says.

13 MR. MURPHY: But also I'm putting to the witness that
14 in fact the communications that he was being asked for
15 were going to go through an entire system, not just 11:51
16 those people but ultimately to people at a complete
17 remove from his position and removed from his
18 situation.

19 CHAIRMAN: Okay.

20 MR. KELLY: Judge, I just point out at that point, in 11:51
21 the penultimate paragraph of that e-mail, what Monica
22 Carr might well be pointing to is a systemic failure,
23 which may be what we are talking about.

24 CHAIRMAN: That's an issue, Mr. Kelly.

25 MR. KELLY: It is. 11:51

26 CHAIRMAN: You may well refer to that and Mr. Murphy
27 may respond to that and anybody else may comment on
28 this. My point is: It's a bit much to be asking Garda
29 Keogh to be analysing the letter, agreeing with it or

1 not agreeing with it. It's a fact, that's what she
2 said.

3 MR. KELLY: For what it's worth, Judge, I agree with
4 you.

5 CHAIRMAN: Thank you very much, Mr. Kelly. Okay. 11:51

6 MR. MURPHY: Actually, Chairman, Mr. Kelly's statement
7 to you clarifies another point, which is that the
8 materiality of what we are asking goes towards the
9 suggestion that is being made to Garda Keogh, that
10 somehow the process was vindictive towards him, I am 11:52
11 saying it wasn't.

12 CHAIRMAN: Absolutely.

13 211 Q. MR. MURPHY: So if I could clarify that point. Can I
14 put it to you, Garda Keogh, that ultimately what's
15 happening here is the system is being put in place, you 11:52
16 are not being targeted or treated unfairly, this is the
17 same system that would apply to any other guard in your
18 position?

19 A. Judge, the system, fair enough, there's obviously clear
20 problems with the system. But there is still issues 11:52
21 where the CMO had been left in the dark in relation to
22 work related stress, because when I met the CMO --

23 212 Q. CHAIRMAN: You say they knew or should have known what
24 was really wrong with me because that was stated on my
25 medical certificates and they should have put that 11:52
26 right?

27 A. Yes.

28 CHAIRMAN: That's what it comes down to.

29 213 Q. MR. MURPHY: I suggest to you the CMO knew everything

1 you wanted him to know because you met him and you
2 talked to him. So it is preposterous to suggest he
3 didn't know --

4 A. No, no, I dispute that. Is it May when I met the CMO?
5 I presumed he knew I was out on work related stress. 11:53
6 But it wasn't until December that we both established
7 that I was marked out with the flu.

8 CHAIRMAN: Okay.

9 A. And that's what, where --

10 CHAIRMAN: Very good. Thank you. 11:53

11 214 Q. MR. MURPHY: The final point, Chairman. Can I just put
12 it to you, Garda Keogh, accepting as you do that the
13 system was in place, and remembering the questions
14 Mr. McGuinness asked you last week about Chief
15 Superintendent McLoughlin, his intervention, I have to 11:53
16 suggest to you, led to a re-thinking in relation to
17 matters but ultimately anything that was done there was
18 not to target you or to treat you unfairly, but was
19 actually in your favour?

20 CHAIRMAN: Anything done by Chief Superintendent 11:53
21 McLoughlin.

22 MR. MURPHY: Yes.

23 CHAIRMAN: He completely accepts that.

24 A. Yeah.

25 215 Q. CHAIRMAN: You completely accept he was on your side? 11:53

26 A. Yes.

27 216 Q. CHAIRMAN: And delivered the very thing that you were
28 looking for, which was, you were back on full pay?

29 A. Yeah. And it wasn't that he was completely on my side,

1 it was just he was fair.

2 217 Q. CHAIRMAN: I am sorry.

3 A. He did his job fairly.

4 218 Q. CHAIRMAN: I am sorry, if I said that, no complaint
5 against -- very good. Thanks very much. Now. 11:54

6 219 Q. MR. MURPHY: Insofar that was dealt with, I have to
7 suggest to you that in fact An Garda Síochána in its
8 general treatment of you did not seek to target you or
9 to treat you unfairly and, in fact, you may recall that
10 in 2016, did you require further rehabilitation 11:54
11 treatment?

12 A. Yes.

13 220 Q. And did you receive financial assistance for that?

14 A. Yes. As I said, there was an undertaking to give a
15 full amount, but they gave -- they did give two-thirds 11:54
16 of the amount.

17 221 Q. Again, I suggest to you that the evidence will
18 demonstrate that this was a decision agreed with by all
19 of the management responsible for making that decision
20 as well as the HRM authorities at the time? 11:54

21 A. I understand.

22 222 Q. Perhaps the very last document, just to help you. Can
23 you be shown page 2519. I am going to finish on this
24 point, Chairman.

25 CHAIRMAN: Thanks, Mr. Murphy. 11:54

26 223 Q. MR. MURPHY: This is a meeting, reference to a meeting
27 on 12/7/2016, so you're out of work at the time, and
28 that there's a conference. This is a note taken by
29 Superintendent Pat Murray, so he was also present. So

1 it was Superintendent Pat Murray, the CMO, Chief
2 Superintendent wheatley, Chief Superintendent
3 McLoughlin, Mick Quinn from the welfare section. It
4 says:

5
6 "Doctor to link with GP re clinical management."
7

8 It goes on to say that Mr. M Quinn said that you were
9 going for assessment for 28 days in-treatment, that
10 there is with a financial shortfall in the region of 11:56
11 €6,000 and there was a reference to Chief
12 Superintendent McLoughlin to contacted medical aid.
13

14 And then it says this, and this will be the evidence:
15

16 "All in agreement."
17

18 That's to say Superintendent Murray, Chief
19 Superintendent wheatley and the others.
20

21 "A without prejudice gesture of support should be made.
22 Lack of finance should not be an option to prevent
23 treatment..."
24

25 Providing that you were committed to the same.
26

27 So, I have to suggest to you that that indicates, as
28 will the other evidence, that in fact there were
29 constant attempts to assist you in relation to your

1 issues, both before and after you went off duty, and
2 there was no targeting or no harassment or no attempt
3 to single you out for ill treatment at all.

4 A. I dispute that. I'm not making an issue on the
5 shortfall. They did say 6,000, I think it was 4,000 11:56
6 was given. They did renege on the last two, but that
7 is not the issue. In this document where does it say
8 work related stress? Here on page 2519.

9 224 Q. Well, you see, what it says at the end --
10 A. It goes into a case conference here and there's not a 11:56
11 mention of work related stress anywhere in it.

12 225 Q. Well, there is a reference, if you go further down, to
13 the fact that there are contacts and it says:
14
15 "Doctor is of the view that he is not fit for work 11:57
16 now."
17
18 Do you see that?

19 A. Just where is that? Yeah.

20 226 Q. There is simply no question but that the medical 11:57
21 assessment in December 2015 --

22 A. This is to do with a case conference, there's not a
23 mention of work related stress anywhere in this note.

24 227 Q. You see, Garda Keogh, again I have to suggest to you
25 that the person who is dealing with this from a medical 11:57
26 point of view, the CMO, knows everything you wanted him
27 to know. You can't be heard to complain about his
28 decision when he gave you every chance to tell him?

29 CHAIRMAN: Now, we have been over that, Mr. Murphy. I

1 think we have been more or less over that several
2 times. Thank you very much. Thanks, Mr. Murphy. Now,
3 do you have at hand the relevant document you want to
4 refer to, or would you prefer to come back to it?
5 WITNESS: I can get it done in one second, Judge. 11:58
6 CHAIRMAN: If you can get it done in one second well
7 and good, if you can't get it done in one second we
8 will take a break. Do you understand, if you just
9 can't put your finger on it, we will come back to it
10 after a short break. Assuming you would like a short 11:58
11 break.
12 WITNESS: I would.
13 CHAIRMAN: Very good.
14 WITNESS: Judge, page 14915.
15 CHAIRMAN: Yes. Thank you. 11:58
16 WITNESS: Judge, this is on 10th June 2016. It's an
17 e-mail. I will just make sure it's the right one.
18 Yeah.
19
20 "I have read the attached and it is a very good 11:58
21 document. My only concern relates to having to consult
22 with management regarding the pay."
23
24 CHAIRMAN: what am I looking at here?
25 A. Sorry, Judge, the bottom, it's the bottom part, the 11:58
26 bottom document.
27 228 Q. CHAIRMAN: 14915?
28 A. 14915.
29 229 Q. CHAIRMAN: A series of things. This is "hi Monica"?

1 A. Yes.

2 230 Q. CHAIRMAN: From Margaret Nugent?

3 A. Yes.

4 231 Q. CHAIRMAN: It is to Monica Carr, who is, as we have
5 heard, the person in HR? 11:59

6 A. Yes.

7

8 "I have read the attached and it is a very good
9 document. My only concern relates to having to consult
10 with local management regarding the pay. That may pose 11:59
11 problems, particularly where local management/local
12 management practices may be the source of the complaint
13 relevant to the disclosure. Furthermore, the
14 disclosure has to be kept confidential. Can an
15 arrangement be made whereby pay issues are sorted out 11:59
16 in Navan, including administrative leave, based on a
17 communication with the protected disclosure manager."
18

19 232 Q. CHAIRMAN: Now, I can read that and I understand it,
20 but what significance, particular significance do you 11:59
21 want to draw attention to?

22 A. They're in HR aware that there is problems between me
23 and local management. I also note that that is cc'd to
24 Donal Ó Cualáin, who is the -- is he the deputy
25 commissioner? No, he's deputy commissioner at the 12:00
26 time.

27 233 Q. CHAIRMAN: You say that's an acknowledgment of
28 difficulties between you and local management?

29 A. Yes.

1 CHAIRMAN: Okay. It seems to me, Mr. Murphy, that in
2 normal circumstances I might come back to you and ask
3 you do you want to ask any questions out of that?
4 MR. MURPHY: Yes.
5 CHAIRMAN: But if that's a matter of interpretation and 12:00
6 Garda Keogh has given his interpretation of it, you may
7 offer an alternative interpretation of that.
8 MR. MURPHY: I can simply say, perhaps it can be dealt
9 with by way of submissions, but I can say, to save
10 time, there is a bundle of documents which are part of 12:01
11 a sequence of which this is one.
12 CHAIRMAN: Yes.
13 MR. MURPHY: They are in volume 53.
14 CHAIRMAN: Yes.
15 MR. MURPHY: what I can do is arrange is for the page 12:01
16 references to be given to you so that you assess those.
17 But I think what you will see in summary form is that
18 there is a correspondence trail.
19 CHAIRMAN: This is a trail of emails.
20 MR. MURPHY: Yes, it's a high level discussion by 12:01
21 management.
22 CHAIRMAN: where do you say we should start with this?
23 MR. MURPHY: I can give you the details. The reference
24 is 4th June 2016, and that is at page 14895.
25 CHAIRMAN: 14895. 12:01
26 MR. MURPHY: This is same volume.
27 CHAIRMAN: It continues until 14915.
28 MR. MURPHY: To letter 14900 and ultimately all the way
29 through to 14913. So the letter that is being referred

1 to by the witness is I think the last in a series.
2 CHAIRMAN: You say, to understand it properly, one
3 should look at the whole context.
4 MR. MURPHY: Yes.
5 CHAIRMAN: But the particular part that Garda Keogh 12:01
6 wanted to draw attention to was a specific sentence or
7 two sentences. Have I got that right?
8 WITNESS: Yes.
9 CHAIRMAN: That's what you wanted. Whatever it says in
10 the others, you're not quarreling with or you're not 12:02
11 referencing, you're simply saying here is something
12 that I think is relevant.
13 WITNESS: Yes, Judge.
14 CHAIRMAN: Okay, thank you very much.
15 MR. MURPHY: Chairman, what ultimately this will show 12:02
16 is a detailed assessment, pros and cons of policy
17 change, they're not matters which are exclusively
18 referring to the facts of this case but they are
19 demonstrating how the system might adapt to deal with a
20 protected disclosure, a new form. 12:02
21 CHAIRMAN: Leave that to me, Mr. Murphy, to understand
22 or try to understand with the assistance of my team.
23 Now, thank you very much, we will take a break at that
24 point and we will come back. What time is it? If I
25 said 10 minutes, 15 minutes, we will do the best we 12:02
26 can. Okay, as close to 12:10 as we all can. If I can
27 get stuff neatly here. Thanks very much.
28
29

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

3
4 MR. MURPHY: Chairman, I propose to deal next with
5 issue number 17, that is complaints made by Garda Keogh 12:15
6 in relation to the criminal investigation carried out
7 by Commissioner Ó Cualáin.

8 CHAIRMAN: Thank you.

9 MR. MURPHY: Again, this may be slightly shortened by
10 virtue of Mr. McGuinness' examination, so, with your 12:15
11 leave, Chairman, I propose to try and focus on the
12 issue which I believe are extant in this issue.

13 CHAIRMAN: Thank you very much.

14 234 Q. MR. MURPHY: Garda Keogh, just to summarise at the
15 outset, I think you have accepted in your evidence to 12:16
16 date that the investigation conducted by Detective
17 Superintendent Mulcahy and Detective Inspector
18 Coppinger was a good investigation and that you
19 believed they were tenacious investigators?

20 A. Two of them and their team. 12:16

21 235 Q. And their team, yes.

22 A. Yeah.

23 236 Q. And, as you are aware, Assistant Commissioner Ó Cualáin
24 was the head of that team?

25 A. Yes. 12:16

26 237 Q. As I understood the position last time you spoke to
27 Mr. McGuinness on the record in relation to this, your
28 complaint in relation to issue 17 had narrowed down to
29 a complaint that Assistant Commissioner Ó Cualáin had

1 somehow sabotaged or tried to sabotage his own
2 investigation, is that right?

3 A. Yes.

4 238 Q. At the outset, can I suggest to you that there is no
5 evidence that support that acquisition at all? 12:16

6 A. I dispute that.

7 239 Q. Can I put to you just a number of issues. First of
8 all, can I ask you to be shown page 3960, volume 38?
9 This is an extract from acting Assistant Commissioner Ó
10 Cualáin's statement? 12:17

11 A. Just one moment, please.

12 CHAIRMAN: 3960, isn't that right?

13 MR. MURPHY: Yes, Judge.

14 CHAIRMAN: 3960.

15 MR. MURPHY: Yes. 12:17

16 240 Q. So, this deals with the position in August 2014.
17 Acting Assistant Commissioner Ó Cualáin will say that
18 on that date he met with Detective Superintendent
19 Mulcahy at his office to discuss progress in the
20 investigation and he was told that Detective 12:17
21 Superintendent Mulcahy was getting a lot of calls from
22 you regarding the case and that he advised you to put
23 your concerns in writing and that you had done so and
24 that you raised issues about a number of different
25 points. First, a potential witness going to GSOC. 12:18
26 Then questions about Garda A. Assistant Commissioner Ó
27 Cualáin will say that he said to Detective
28 Superintendent Mulcahy that he will have to meet with
29 you in early course to discuss your concerns and that

1 he telephoned you later that day. Is that all true?

2 A. I think that's correct.

3 241 Q. Yes. In terms of meeting on 13th August 2014, I think
4 you met with acting Commissioner Ó Cualáin and
5 Detective Superintendent Mulcahy at Portumna Garda 12:18
6 station?

7 A. That's correct, that's the second meeting we've had.

8 242 Q. I think that they went through your letter with you and
9 they discussed with you the matters that you raised
10 which are of concern? 12:19

11 A. Yes.

12 243 Q. I think you mentioned the question of the suspension of
13 Garda A?

14 A. Yes.

15 244 Q. You also mentioned the fact that you were uncomfortable 12:19
16 with enquiries being conducted by the investigation
17 team in Athlone Garda Station?

18 A. Yes. That was a major, major thing, while Garda A was
19 on duty.

20 245 Q. I will come back to that. I think you also told them 12:19
21 that the suspension of Garda A was a matter -- sorry,
22 you were also told that the suspension of Garda A was a
23 matter for the assistant commissioner HRM?

24 A. That, Judge, is something that I'm -- that was never
25 explained properly to me, Judge. I don't know if 12:19
26 perhaps they presumed I knew that it had to go to HR or
27 that, because when I was sending in the letters to
28 Detective Superintendent Mulcahy about the suspension
29 and all the rest, I never got a letter back to say, we

1 have already told you, we cannot suspend Garda A unless
2 your statement goes to HR, or anything like that. So
3 there is a dispute in relation to that, that part of
4 it.

5 246 Q. Well again, he will say that that was the case. 12:20

6 A. Just for clarification, Detective Superintendent
7 Mulcahy did ask me about giving my statement to HR,
8 there's no issue there.

9 247 Q. Yes.

10 A. It's just on the explanation that there couldn't be a 12:20
11 suspension, that part, that was never explained to me.

12 248 Q. And who was the assistant commissioner of HRM at that
13 time?

14 A. I think it was Fintan fanning, I think.

15 249 Q. Yes. Now just in terms of the discussion, I think the 12:20
16 position is that Assistant Commissioner Ó Cualáin
17 addressed the different points that you raised and in
18 relation to the enquiries being conducted in Athlone
19 Garda Station, he indicated to you that Athlone Garda
20 Station would no longer be used as a base for enquiries 12:20
21 into the matters raised by you.

22 A. Judge, the damage was done, because they had taken all
23 the witness statements from the guards in Athlone and
24 once a guard has made a statement under the declaration
25 where they state in it anything which they know to be 12:21
26 false or do not believe to be true, they are liable to
27 prosecution. Judge, a guard cannot change their
28 statement once they made their actual statement. So
29 the damage was done there.

1 250 Q. Again, I have to suggest to you that that's incorrect.
2 Insofar as the position is concerned, he will say that
3 he gave an instruction verbally to Detective
4 Superintendent Mulcahy, who was present with you at
5 that meeting, and he did so at the conclusion of the 12:21
6 meeting?

7 A. I don't remember him giving an instruction to Detective
8 Superintendent Mulcahy in front of me, if that's what
9 you are trying to say. Maybe I took it up wrong.

10 251 Q. I'm not saying in front of you but that's the direction 12:21
11 he gave?

12 A. Right.

13 252 Q. Can I ask you to be shown, just briefly please,
14 document number 3946, which is at Volume 13. This is a
15 note taken by Detective Superintendent Mulcahy in 12:22
16 relation to the meeting. You'll see in the first
17 paragraph there's background information and in the
18 second paragraph there's issues raised, and we have
19 dealt with each one of those?

20 A. Sorry, which is it? 12:22

21 253 Q. 3946, please. Do you see the document?

22 A. Yeah.

23 254 Q. If I can ask you to go down to the heading "Issues
24 Raised" and it says:
25
26 "1. Nobody will talk unless he is suspended."
27
28 That is you speaking, I take it?

29 A. Yes.

1 255 Q. "Garda or public re Garda A hanging around during the
2 investigation. Concerned about this."
3
4
5 That was you speaking, was it? 12:23
6 A. Yes.
7 256 Q.
8 "AC..."
9
10 That's AC Ó Cualáin: 12:23
11
12 "...stated, we will try to do our interviews in another
13 station if we can - take the focus of the investigation
14 away from where he works."
15 12:23
16 Do you remember him saying that?
17 A. I mean, it didn't have to be in another station, they
18 could have met them in a hotel or they could have met
19 them at their homes or anything. They had the contact
20 details of all the members there, you know. As I said, 12:23
21 the damage was done at that point.
22 257 Q. And again I have to disagree you on their behalf in
23 that regard. But in the next point it says:
24
25 "AC to write to HRM regarding suspension - high bar." 12:23
26
27 Does that reflect what you were told at the time?
28 A. Yes, he did say a high bar, I recall that part of it,
29 yes.

1 258 Q. And "AC to write to HRM", that's the note that
2 Detective Superintendent Mulcahy took at the time?
3 A. Okay.

4 259 Q. So I have to suggest to you that that was said?
5 A. Oh yeah, yeah, I recall Assistant Commissioner Ó 12:24
6 Cualáin said high bar. Now, Judge, there's a lot of
7 evidence handed in and I'm aware of other guards that
8 get suspended on things where there's not such a high
9 bar, but anyway...

10 260 Q. I think that you then said, it's noted that you had one 12:24
11 major concern:
12
13 "Do our investigation when he is not around."
14
15 Do you see that? He noted that you expressed a major 12:24
16 concern to do the investigation when you were not
17 around, rest days etcetera.

18 A. No, no, that's when he is not around. When he is not
19 around.

20 261 Q. When he is not around, I see. 12:24
21 A. That's a big word now to make a mistake on.

22 262 Q. In terms of the next line, does that suggest that
23 Assistant Commissioner Ó Cualáin explained that he,
24 that's Garda A:
25 12:25
26 "...was entitled to be there but we will try to move
27 the focus of the investigation."
28
29 A. I mean, Judge, even if they did it in the station, as

1 mad as it would be, when he wasn't working it would
2 still be mad, but to actually do it when he's on duty
3 and hanging around the station is -- and I am aware of
4 an incident where a guard had made a statement and
5 something cropped up where he couldn't remember in his 12:25
6 statement and then something else cropped up, and he
7 was in the difficulty where he had to seek legal advice
8 because he had made a statement saying he couldn't
9 remember anything. So there were issues in relation to
10 that. 12:25

11 263 Q. I think the position is that, further down the
12 statement, he noted that you were happy with the
13 investigation, no leaks, etcetera, was that you
14 speaking?

15 A. Yeah. 12:25

16 264 Q. So, I think Assistant Commissioner Ó Cualáin has noted
17 in the next paragraph to explain that matter was being
18 investigated, as a confidential reporter went into a
19 public forum. What was all that about? The next line:

20 12:26
21 "AC explains the matters is being investigated."
22

23 A.

24 "AC explains the matter being investigated as
25 confidential reporter and went to public forum and know 12:26
26 who you are for that reason."
27

28 265 Q. Does that refer to you allowing your name being put
29 forward in the Dáil?

1 A. It could be. I'm not sure. I'm not sure.

2 266 Q. That's fine. So, just to summarise it, you're happy
3 with the investigation, that there were no leaks. And
4 just at that time, could you also confirm to the
5 Chairman that Garda A and you were working in two 12:26
6 separate buildings in Athlone Garda Station?

7 A. Yes. But, Judge, for clarification: The main building
8 is the main Garda station. So there's three buildings
9 in Athlone. Out the back there's community policing,
10 let's say, on a separate building is the detective unit 12:27
11 and the drugs unit and in the main station it's the
12 main bulk of the actual Garda station. But they're all
13 within the same curtilage. So, to say that we were
14 working in completely different buildings is not the
15 case. Anyone that was working in any part of the 12:27
16 station would have been in the main station at certain
17 periods.

18 267 Q. So I think your concern was that you had seen
19 situations where you believed it was obvious or could
20 be obvious to people that interviews were taking place 12:27
21 at the station and that was of concern to you?

22 A. Yes.

23 268 Q. I think if you could be shown please, on the
24 transcript, Day 103, page 143, please, in particular at
25 line 16. Mr. McGuinness was asking you questions about 12:28
26 this issue and he says:
27
28 "...and are you saying to your knowledge and in your
29 sight that stopped and changed at some particular

1 point?
2 A. It did."
3
4 A. Yeah.
5 269 Q. From your point of view, whether you were off duty or 12:28
6 whether you were off duty, as far as you can see that
7 process has come to an end?
8 A. Yeah, after I brought it up.
9 270 Q. That in fact it transpires that there were some
10 interviews that did take place after that date but you 12:28
11 weren't aware of them?
12 A. Okay.
13 271 Q. In Athlone Garda Station?
14 A. Right.
15 272 Q. Insofar as that evidence will be concerned, Detective 12:28
16 Superintendent Mulcahy will say that there were a
17 number of statements which were taken after that time,
18 and Inspector Coppinger will agree that that also
19 occurred, and that the reason was to facilitate members
20 who wished to be interviewed during their work tours, 12:28
21 and then secondly, that it was necessary in some cases
22 to obtain records that were in the station that would
23 require to be copied for handing over to the
24 investigators?
25 A. Okay. 12:29
26 273 Q. But I think it's fair to say that from your own
27 evidence, you weren't aware of that, so whatever was
28 done was done was done discreetly, that it was not
29 obvious?

1 A. Yeah.

2 274 Q. Again, I think the evidence will be that there were
3 other interviews then conducted with members away from
4 the station. I don't need to trouble you with those
5 details now, but it will be their evidence, that's to 12:29
6 say Detective Inspector Coppinger and Superintendent
7 Mulcahy, although it wasn't a perfect separation and
8 that there were a number of extra interviews that took
9 place in the station.

10 A. As I have already said, the damage was done with the 12:29
11 initial statements. Once a guard makes a statement --

12 275 Q. Again, it will be matter for submission later on, but
13 that's a matter on which we disagree. Thereafter I
14 think you have accepted that the investigation through
15 that time and after that point was a very good 12:29
16 investigation, that they continually came back to you
17 and spoke to you?

18 A. Yeah.

19 276 Q. So, if we move on then in terms of the --

20 A. Just one other thing, on that. Judge, a letter came 12:30
21 into the -- on this matter, a letter was sent on the
22 29th, just of October, with a list of all the
23 statements, redacted the names of the guards and then
24 there was all the witness statements as well. Do you
25 know the way? It hasn't been exhibited and there's no 12:30
26 page number on it. It came from the Tribunal. But
27 what's interesting is, the witness statements in that
28 whole -- in that document, they're not in there even in
29 redacted form. Judge, the whole -- there's a huge

1 chunk of that Ó Cualáin file is not in -- it's not
2 here. There's bits and pieces of it here. There's
3 parts in relation to the suspension, there's parts on
4 the DPP. But the whole entire Ó Cualáin file, Judge,
5 is not in these documents. 12:31

6 CHAIRMAN: Yes. I think that's correct. Am I right
7 about that?

8 MR. MURPHY: I think the position is, Chairman, my
9 understanding is that all material was discovered to
10 the Tribunal, the Tribunal has put into the books those 12:31
11 part of the documents it considers to be relevant to
12 the hearings.

13 CHAIRMAN: Is that right, Mr. McGuinness, that's my
14 understanding of the situation.

15 MR. MCGUINNESS: Yes, Chairman. We provided a complete 12:31
16 copy of the investigation report submitted by Assistant
17 Commissioner Ó Cualáin. A decision was made as to the
18 irrelevance of the actual contents of the statement.

19 CHAIRMAN: So that's correct.

20 WITNESS: Okay. 12:31

21 CHAIRMAN: All the statements are not in it, no.

22 WITNESS: That's fine. Judge, I know I brought this up
23 in the first week.

24 CHAIRMAN: That's no problem.

25 WITNESS: About a report that is missing, a further 12:31
26 report in relation to matters that is also not there.

27 CHAIRMAN: well, the best way to deal with this is for
28 Mr. Kelly to mention it to counsel and if necessary
29 your solicitor can follow it up with a formal letter.

1 WITNESS: we have done all that, Judge.
2 CHAIRMAN: Very good.
3 MR. MURPHY: with no result, Chairman. It's not clear
4 what is the subject-matter of the request.
5 CHAIRMAN: Oh, I'm sorry, this was the subject of 12:32
6 correspondence?
7 WITNESS: Yes.
8 CHAIRMAN: well, then that's it. Then that's what we
9 thought and that's what we think. So that's what we
10 say. 12:32
11 MR. MURPHY: Chairman, just in terms of the material
12 information that's --
13 CHAIRMAN: Sorry, a report?
14 WITNESS: Yes, Judge.
15 CHAIRMAN: That Ó Cualáin was dealing with? 12:32
16 A. Yes. There should be another report in relation to all
17 the phone contacts and things, like there was four
18 phones seized from Garda A in -- one phone, for
19 example, had contact between Garda A and Ms. B and over
20 a three-month period there was I think 1,672 12:32
21 communications.
22 277 Q. CHAIRMAN: Don't tell me something -- I mean I know
23 what's in the Ó Cualáin report. Let's just all be
24 clear where we are going. If this was the subject, as
25 I think it was, of correspondence between Mr. Cullen 12:32
26 and the Tribunal, then the Tribunal made a decision on
27 it and that's the position. So, the material we were
28 furnished, we were satisfied was all the relevant
29 material and in abundance and for the sake of being in

1 any doubt, anything that was dealt doubtful we
2 submitted. Anything that we were satisfied was not
3 material to the thing, we didn't. So, it's not a
4 matter to be discussed at this stage, okay. Thanks
5 very much. I don't resent the fact that you say it, 12:33
6 but I'm going to tell you that that matter is closed
7 off, rightly or wrongly, that's the decision we made.
8 WITNESS: I was just curious in case the report hadn't
9 gone to the Tribunal, Judge.
10 CHAIRMAN: I don't know whether a report has or hasn't 12:33
11 gone to the Tribunal. All I am telling you is that
12 that matter was dealt with. As I understand it, that
13 matter was dealt with in correspondence and closed.
14 Okay.
15 278 Q. MR. MURPHY: Just three further points then, if I can. 12:34
16 Garda Keogh, could I ask you to be shown volume 13,
17 page 3902, please? It's a document which we dealt
18 which I think on the first day of your
19 cross-examination. I think we can deal with this
20 briefly. You've seen the statement, Garda Keogh, and I 12:34
21 think you indicated previously you've no problems with
22 the investigation conducted by Detective Superintendent
23 Mulcahy and Inspector Coppinger. But in essence, they
24 say in their evidence that they went to all the lengths
25 they could to follow the leads which you gave them and 12:34
26 to follow things up, and you agree with that?
27 A. Yes.
28 279 Q. Again, I can shorten this, at this page 3902 they tried
29 to deal with a witness who you and they believed to be

1 an important witness and they detailed the attempt to
2 speak to that person, to go back to him several times.
3 If you turn, please, to 3903, you will see that they
4 spoke to that person on 12/12/2014. And that he stood
5 over what he had told you but he said he did not wish 12:35
6 to make a statement?

7 A. I understand, yeah.

8 280 Q. This is a situation which in your own working life you
9 have come across before as well?

10 A. Yes. 12:35

11 281 Q. But where ultimately, despite all those meetings with
12 witnesses, declined to participate in the process.
13 They also detail all the exhibits that they seized.
14 Can I ask you to turn then, please, to Volume 39 at
15 page 1142 [sic]. It's at page 11142, please. So this 12:35
16 is the final section of the report sent by Assistant
17 Commissioner Ó Cualáin, which ultimately would have
18 gone to the DPP. I think Mr. McGuinness asked you
19 about this as well. I think, subject to correction, I
20 believe he may have looked at the file a number of 12:36
21 times but ultimately made a decision not to prosecute?

22 A. Yes.

23 282 Q. The DPP took the decision that there wasn't sufficient
24 evidence to prosecute?

25 A. Yes. 12:37

26 283 Q. You will see in a report at paragraph 15.8.1, Assistant
27 Commissioner Ó Cualáin indicates that a key witness has
28 declined to cooperate with the investigation and that
29 has weakened the evidence to support the criminal

1 charge?

2 A. Yes.

3 284 Q. Then he goes on, having made comments about that
4 person, to conclusions. At 16.1 he says:

5

12:37

6 "A number of the allegations made by the reporter are
7 plausible and have substance."

8

9 Do you see that?

10 A. Yes.

12:37

11 285 Q. This is Assistant Commissioner Ó Cualáin communicating
12 up the line to the DPP. At 16.2 he says:

13

14 "While the investigation uncovered suspicions of
15 criminal behaviour surrounding the destruction of
16 evidence, the circumstantial evidence may fall short of
17 what is required to bring a criminal prosecution."

12:37

18

19 He then goes on at paragraph 16.5 to say:

20

12:37

21 "The concerns raised by the reporter with the
22 confidential recipient and referred to the then interim
23 Garda Commissioner have been examined and set out in
24 the investigation file."

25

12:38

26 In paragraph 16, do you see over the page, he makes
27 reference to further information, search warrants being
28 executed and other details of that kind.

29

1 So fundamentally in terms of the process, I have to
2 suggest to you that Assistant Commissioner Ó Cualáin,
3 with his team, gathered what evidence they could, put
4 it before the DPP and that ultimately it was the DPP's
5 decision not to prosecute, not theirs.

12:38

6 A. That's fair enough. But, Judge, I have to elaborate,
7 if can I on this. If I may.

8 286 Q. CHAIRMAN: Yes.

9 A. Judge, out of this, let's say the information I had
10 given, let's say, Detective Superintendent Mulcahy and
11 Assistant Commissioner Ó Cualáin, Judge, other matters
12 come out of that investigation. For example, there's
13 the issue of these missing drugs, where there's clear
14 criminality there, there's a clear power of arrest.

12:38

15 Judge, they seem to be kept completely away from this.
16 They're investigated entirely separately. The same is
17 the issue with the phone, is it the second phone was
18 seized by Superintendent Murray, where Garda A is
19 trying to ascertain information about witnesses or
20 something. Judge, that is investigated again

12:38

21 separately. Equally, I don't know now what GSOC --
22 have they given either of those files to GSOC or what?
23 I don't know what they have given to GSOC. But those
24 two investigations should have been included in all
25 this, because it's all related, Judge. what they did
26 was, they divided it all up. They divided what was in
27 my affidavit up. This is what appears to me, Judge,
28 they divided my affidavit up with a collusion
29 investigation. Then there is the missing phone or the

12:39

12:39

1 seized phone is a separate investigation. Then there's
2 the missing drugs, where there was clear mens rea in
3 relation to altering -- Judge, this is where drugs went
4 missing in 2012, they did not go into the property
5 store, they disappeared for a number of years. I 12:40
6 understand someone in the investigation team spotted
7 this anomaly. But on the Pulse computer system, the
8 actual incident of the missing drugs was closed off
9 with a different incident number, which shows that
10 there was clear criminality, Judge, and premeditated 12:40
11 criminality.

12 287 Q. CHAIRMAN: Let me stop you a second.
13 A. Yes.

14 288 Q. CHAIRMAN: There has to be some limit to this. You
15 understand, as does I hope everybody in the room, what 12:40
16 this inquiry is about? What's it about? It's about
17 whether you were targeted or discredited?

18 A. Yes.

19 289 Q. CHAIRMAN: That's what it's about. You may say, well,
20 look, I would have done the Ó Cualáin differently. 12:41
21 Maybe I would have done it differently. Maybe any of
22 us would have done it differently. Maybe there were
23 things they should have done that they didn't do. I
24 don't know. But I am not reviewing and reinvestigating
25 the Ó Cualáin report. I understand where we are at the 12:41
26 moment is that the evidence as of now is that you said
27 Detective Superintendent Mulcahy and Detective
28 Inspector Coppinger carried out an excellent and
29 thorough report. Now, it went to the DPP under the

1 name of Assistant Commissioner Ó Cualáin and the
2 director. Didn't refer it back for further material or
3 investigation, as far as I know, but ultimately the
4 decision was made. So, the case you make is, this
5 represented -- you listed, as I understand it, I think 12:42
6 we said about 10 or 11 items, 10 specific items where
7 you said that represented targeting or discrediting of
8 you. Now, can you see my difficulty about this?
9 You say they shouldn't have treated other issues that
10 we have not investigated relating to missing drugs, and 12:42
11 it gives the impression that the Tribunal is trying to
12 close down things, that the Tribunal is not looking at
13 things it should be looking at and that's unfair.
14 That's unfair to me, it's unfair to the team I am
15 working for and it's a misunderstanding of the function 12:42
16 that I am exercising here and the only function I can
17 exercise here. I am limited by precisely what's said
18 in the resolution. That's it. If I go outside that, I
19 am in the wrong and I could be judicially reviewed.
20 But that's not the point, it's not that I could be 12:43
21 judicially reviewed, the fact is I am not doing my job.
22
23 So now, missing drugs in 2012, I am not concerned with,
24 all right?
25 A. Yes, Judge. 12:43
26 290 Q. CHAIRMAN: I am concerned with how you say that the
27 Ó Cualáin report represented targeting or discrediting.
28 That's fair enough, maybe you're right, maybe you're
29 wrong, but that's what I am investigating.

1 A. Judge, I may have been taken up wrong in relation to
2 the Tribunal.

3 291 Q. CHAIRMAN: Maybe I'm misunderstanding it but that is
4 the situation as I understand it?

5 A. Judge, what I was trying to say is, in this criminal 12:43
6 matter all of these should have been taken in under
7 this investigation and that it was discrediting to me
8 because they were all further pieces of relevant
9 evidence that they divided them all up. Judge, there
10 is -- I have -- there is a thing, Judge, in volume 40, 12:43
11 it will only take a second for me to find the page.

12 292 Q. CHAIRMAN: I'm not sure that this is included in your
13 catalogue of complaints against the Ó Cualáin report.
14 I am looking at it here and maybe I am wrong, and
15 somebody will tell me where this is included, because 12:44
16 we would have then had an opportunity to say, well,
17 that's excluded, I have ten points and then I have
18 other un-enumerated matters are subject of different
19 items of complaint. So, we're not concerned about the
20 ones that are the subject-matter of different items of 12:44
21 complaint. I have ten items. I will go through them
22 if necessary but they do not include missing drugs,
23 dividing it all up?

24 A. You're correct, Judge. I didn't know about any of this
25 until I read the documents. 12:44

26 293 Q. CHAIRMAN: Okay. well, we're not concerned with
27 missing drugs or dividing it all up, because they're
28 not included in your complaint and the thing I am
29 investigating are your complaints. Goodness knows,

1 Garda Keogh, you have not been slow to make complaints.
2 we have a full list of complaints and, in fairness,
3 that's not a criticism, you and your solicitor have,
4 provided an extensive list of many complaints over, I
5 don't know how many pages, but there is a succession of 12:45
6 documents. As I say, that's fair enough, but what we
7 have tried to do is to list them into specific items
8 and we have to attack them individually, subject to the
9 point that I mentioned to you at the very beginning,
10 that I could understand you saying look, even if you 12:45
11 held against me on every point, the fact that there
12 were so many. I understand that. So here we're doing
13 this one.

14
15 Now, Mr. McGuinness, if I am understanding, this is not 12:45
16 one of the complaints?

17 MR. MCGUINNESS: No, it's not.

18 CHAIRMAN: Okay, it's not one of the complaints, end of
19 story. So that's not one of the complaints whereby
20 we're going to say the Ó Cualáin investigation went 12:46
21 wrong. All right. Very good.

22 294 Q. MR. MURPHY: Garda Keogh, in the course of your
23 evidence on Day 103, if it could be placed on the
24 screen, at page 108, please. Just by way of example.
25 Day 103, please, of the transcript. Garda Keogh, we 12:46
26 asked you several questions in relation to perception
27 and knowledge and just one example, on that date, at
28 page 108, you gave evidence --

29 A. Sorry, 108?

1 295 Q. 108, please. Day 103, page 108, line 25. You may
2 recall you gave evidence on that date saying that you
3 believed that a telephone belonging to Garda A may have
4 been wiped by a machine in Mullingar. If you turn down
5 to the next line, then over the page? 12:47

6 A. I don't think I said it was wiped by the machine in
7 Mullingar, I made a point there was a machine in
8 Mullingar that could have wiped it.

9 296 Q. You're quite right.

10 A. But there would be a machine in every division -- in 12:47
11 every Garda divisional HQ for reading phones, would be
12 the purpose of it.

13 297 Q. Garda Keogh, can I refer to you, you also said over the
14 next page, at line 4, when you were asked:
15
16 "Q. Did that person wipe it? 12:48
17 A. I don't know, I don't know."
18

19 So, just to pause there for a moment, what you are
20 suggesting is that there is a machine and you have 12:48
21 insinuated that somebody has wiped it. But then and
22 when you're asked did you know anything about it, you
23 say you don't know. Do you see the danger of leaving
24 suppositions hanging in the air without any evidence to
25 support the insinuation or accusation contained in 12:48
26 that?

27 A. Judge...

28 298 Q. By way of example, can I just put it to you this way:
29 This is something you said and left longing in the air.

1 I have to put it to you that Detective Superintendent
2 Mulcahy will say in his evidence that ultimately this
3 was -- these machines were not wiped and that, in fact,
4 considerable data was recovered from the phone in the
5 course of the investigation. So you have a perception 12:48
6 that there may have been something in relation to the
7 telephone but the reality is completely different. Do
8 you understand?

9 A. Judge, there's four phone seized.

10 299 Q. CHAIRMAN: Four phones? 12:49

11 A. So, my understanding is that there was information on
12 two or potentially two, three or four, but not on one.
13 To further confuse matters, there was previous
14 information from the first phone which related to 2010,
15 because a similar matter that I had reported had been 12:49
16 reported a couple of years prior and that's how they
17 had phone records for 2010. That's where the figure of
18 the 1,670 something communications in three months
19 between Garda A and Ms. B come from. But when that
20 phone was seized in 2014, Superintendent Mulcahy told 12:49
21 me that it had been wiped. Now, that would not cause a
22 major problem in that servers would still hold
23 information from that phone.

24
25 Now, in relation to -- I don't know if Mr. Murphy is 12:49
26 referring to phones two, three and four that were
27 seized here, I don't know.

28 300 Q. On my instructions, considerable data was recovered
29 from the phones, that will be his evidence.

1 A. I can only give you -- what Detective Superintendent
2 Mulcahy told me was that phone number one when it was
3 seized was wiped.

4 301 Q. Again I have to suggest to you that that's incorrect.
5 So, can I conclude on this basis, that your fundamental 12:50
6 allegation against the Ó Cualáin investigation, as made
7 in your evidence directly to the Tribunal last week,
8 was that Assistant Commissioner Ó Cualáin had attempted
9 to sabotage his own investigation. I have to suggest
10 to you that that's wrong and, in fact, there is no 12:50
11 evidence to support that allegation?

12 A. I dispute that, because there is no way -- because,
13 just what I have stated as well there, where it had
14 already previously been reported a number of years
15 prior, a similar allegation, Judge, they knew there was 12:50
16 a problem and they still went down to take the
17 statements in the station while Garda A was present.
18 That is outrageous. It is no mistake. There's no
19 mistake in that. That was, I would argue, to prevent
20 guards were being honest in their statements. 12:51

21 302 Q. You see, Garda Keogh, I have to suggest to you that
22 what's outrageous is that you have suggested that
23 Assistant Commissioner Ó Cualáin did that deliberately,
24 did that with the intention of subverting his own
25 investigation, a point on which there is no evidence 12:51
26 whatsoever. This is yet another example, and there
27 have been several, where you put forward complaints
28 without any evidence to support them whatsoever?

29 A. The alternative is that he did it out of stupidity and

1 I don't believe that.

2 303 Q. In terms of speculation, supposition and conjecture,
3 all of this is supported by those elements and not by
4 any evidence. I have to suggest to you that what you
5 are saying is wrong and that are you effectively 12:51
6 speculating and inviting the Tribunal to consider your
7 belief, your suspicions and putting pieces together as
8 you see them when in fact there is no evidence to
9 support what you are saying at all.

10 A. Judge, there is evidence, because the evidence is there 12:52
11 that they did take the statements at Athlone Garda
12 Station. The evidence is that Garda A was there when
13 they were taking the statements. And without going
14 into any other investigation or matters which we've
15 just discussed, there were other matters which they -- 12:52
16 other strands of vital evidence which were just not
17 encompassed into the main investigation to weaken the
18 strand of the investigation.

19 304 Q. Again, on behalf of the gardaí we represent, we have to
20 put it to you that that's completely incorrect? 12:52

21 A. Okay. We're on disagreement there.

22 305 Q. Chairman, that concludes my questioning on this issue?
23 CHAIRMAN: Thank you very much. What time is it? Very
24 good. So we will be moving on to another topic.
25 MR. MURPHY: Yes. 12:52
26 CHAIRMAN: Which one is next?
27 MR. MURPHY: The next one will be relating to item
28 number 18, Chairman, in relation to the complaints made
29 by Assistant Commissioner Finn.

1 CHAIRMAN: Thank you very much. Well then that is a
2 convenient time, we will break and we will resume at
3 two o'clock.

4
5 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS
6 FOLLOWS:

12:53

7
8 MR. MURPHY: This afternoon, Chairman, the next area to
9 be dealt with is issue number 18.

10 CHAIRMAN: Yes.

14:01

11 MR. MURPHY: Complaints by Garda Keogh in relation to
12 bullying and harassment, investigation conducted by
13 Assistant Commissioner Michael Finn.

14 306 Q. Garda Keogh, I think the position is that you didn't
15 make a complaint of bullying and harassment in 2015, is
16 that right? 14:01

17 A. I think that's correct, yes.

18 307 Q. Yes. And I think that you were talking at various
19 stages in 2016 to Chief Superintendent Tony McLoughlin
20 in relation to a variety of issues. I think he raised
21 with you the question of were you or were you not
22 making a complaint under the policy? 14:02

23 A. That's correct.

24 308 Q. I think he explained to you what the policy was?

25 A. Yes.

14:02

26 309 Q. Just again for the record, that's a document within An
27 Garda Síochána which indicates procedures to be
28 followed by members who wishes to make a complaint of
29 bullying and harassment against another colleague.

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Again, covering the territory that Mr. McGuinness dealt with you, I think that on the 24th October, Chief Superintendent McLoughlin received a letter from you indicating that you wished to proceed with the complaint of bullying and harassment?

14:02

A. Yes.

310 Q. That seemed to set the ball in motion at that time. Now, insofar as that period is concerned, that was your choice, but I think in the month that followed there was more correspondence, nothing in specific turns on this, but I think you went to your solicitor, Mr. Cullen, and I think that in December 2016 matters progressed to a more formal stage of making a complaint. I wonder if you could be shown volume 35, 9898, please. I think it is fair to say briefly that this is the first formal invocation by you of the harassment and bullying policy?

14:02

14:02

A. I think so, yeah.

311 Q. So it's at the end of 2016. So I think --

14:03

A. Just for clarification, the law has changed in relation to the protected disclosures, whereby you can go to GSOC at this period. I discussed the matters with GSOC and GSOC said that I had to invoke the Garda policy first. So, I didn't take it at the time, but yes is the answer.

14:04

312 Q. But again, I think there is no question of you being targeted in relation to Chief Superintendent McLoughlin's communications; he was trying to find out

1 what approach you were seeking to adopt?

2 A. Yeah.

3 313 Q. In fact, I think we will come to this later on, some
4 people who were the subject-matter of the complaint
5 ultimately were concerned about how long it was taking 14:04
6 for this matter to progress as well. So, if we move
7 then into 2016/17, you were aware of the fact that
8 issues arise in relation to you making a statement
9 about this. And that seemed to take quite some time as
10 well? 14:04

11 A. Yeah.

12 314 Q. Could I ask you to be shown volume 22, 6451, please,
13 which is the statement of Assistant Commissioner Fintan
14 Fanning. Again for ease of reference, I can perhaps
15 shorten this by saying that Assistant Commissioner 14:05
16 Fanning shows on this page, correspondence that he
17 became aware of in March of 2017, seeking to confirm
18 when your statement would be completed. And do you see
19 in the middle of the page, he says it was confirmed to
20 him that you would attend Portlaoise Garda station on 14:05
21 the 22nd March with a prepared statement, is that
22 right?

23 A. One second. Yeah.

24 315 Q. You will see then, perhaps four lines later down, he
25 will say that he received correspondence from the chief 14:05
26 superintendent in Portlaoise containing a 17-page
27 statement on 27th March 2017. That was signed by
28 yourself, by Chief Superintendent Scanlan and Detective
29 Inspector Dunne at Portlaoise Garda station?

1 A. Yeah, I see that. I don't think any of the appendices
2 -- there's a question here about the appendices that
3 were with that statement, there was a large amount of
4 appendices, documents which were obviously submitted
5 for the Tribunal but they were attached to that 14:06
6 statement.

7 316 Q. I think the position is that you were aware from your
8 evidence earlier on that evidence has been given or
9 will be given by Inspector McCarthy about what happened
10 the documentation when it went into the system, are you 14:06
11 aware of that?

12 A. Can you -- I'm not -- I don't -- I'm just not with you
13 on this.

14 317 Q. I will return to this in a moment. You're aware of the
15 fact that you furnished your statement in that way, is 14:06
16 that correct?

17 A. Yes.

18 318 Q. I think thereafter the document was considered and
19 assessed within An Garda Síochána. I think if I could
20 ask you to be shown volume 37, page 10478, a document 14:07
21 you were shown by Mr. McGuinness. You're familiar with
22 this document, Mr. McGuinness showed it to you last
23 week. Just take a moment but I understood you to
24 accept that that was the explanation given by Inspector
25 McCarthy, who you know, and who worked with Assistant 14:07
26 Commissioner Fanning?

27 A. Sorry, I worked with?

28 319 Q. Could you just turn forward to page 10481? If you turn
29 forward four pages. You will see this is a letter from

1 inspector James McCarthy on behalf of the Assistant
2 Commissioner Fintan Fanning?

3 A. Yes.

4 320 Q. This is a document that you saw about two weeks, which
5 was shown to you by Mr. McGuinness. Just to shorten 14:08
6 matters, did I understand you to agree that that sets
7 out -- you accept that that's what Inspector McCarthy
8 will say, you are not cavilling with that, you don't
9 disagree with that?

10 A. I don't think so. I don't remember reading anything in 14:08
11 this that...

12 321 Q. But insofar as you are making any complaints in
13 relation to delay, this document sets out what was
14 taking place internally in An Garda Síochána at the
15 time? 14:08

16 A. Yes, but --

17 322 Q. And the person who had the file under his control, to
18 begin with at least, was Assistant Commissioner
19 Fanning; is that right?

20 A. I've seen that in the thing. 14:08

21 323 Q. Yes.

22 A. But as I said, the appendices don't appear to have been
23 forwarded to him. But there's other problems I think
24 in communications or whatever is going in, I think two
25 persons then, two chief superintendents were appointed 14:09
26 to take a statement, from my recollection, and just
27 there seemed to be communication problems there, I
28 don't know what --

29 324 Q. Again, perhaps it won't be a problem, we see the

1 timeline. Could I ask you then to turn back, also in
2 volume 37, to page 10476, please. Okay? What this
3 deals with, this is an e-mail trail, you will see,
4 starting at the bottom of the page, on 30th March 2018
5 from Assistant Commissioner Finn and it's addressed to 14:09
6 Assistant Commissioner Fanning. Do you see at the
7 bottom? Perhaps I can just point out to you what I'm
8 referring to, it reads as follows:

9
10 "Fintan, just assist me finish off the Nicky Keogh 14:09
11 investigation. He makes reference to the delay in
12 investigating his original complaint made to John
13 Scanlon. I took a statement from John Scanlon, he
14 confirms he took a statement last March and sent it on
15 to you. Can you give me something in relation to the 14:10
16 route that it took from Scanlan until I was appointed
17 last November."

18
19 So here is Assistant Commissioner Finn trying to
20 address your complaint about delay in the early part. 14:10
21 Then, if you look please up at the top of the page, as
22 I understand this is the evidence Assistant
23 Commissioner Fanning will give, there may be no need,
24 if you agree with him. I think the position is, at
25 least he says: 14:10

26
27 "On the specifics, my memory is that Garda Keogh made
28 an original complaint to someone in HRPD. This
29 appeared to have been some months before the file came

1 to me. There may have been some considerable activity
2 prior to my involvement and I sense it's probably best
3 to approach HRPD regarding that.
4

5 Once the file was received here, I gave the matter very 14:10
6 careful consideration. I sought clarification from HR
7 as I interpreted that it was neither clear the nature
8 of the complaint nor the identity of the persons
9 complained of. This was very important as it would
10 determine which policy was to be used." 14:11
11

12 If I can just pause there for a moment. You do know
13 now, do you not, that the policy did require any
14 investigator to identify exactly who were the people
15 who were being complained of? 14:11

16 A. Yes.

17 325 Q. This is Assistant Commissioner Fanning who is saying
18 that this was very important because it would determine
19 which policy would be used. Moving on then in terms of
20 his approach, I think you would agree that that was a 14:11
21 responsible approach by Assistant Commissioner Fanning
22 at that time?

23 A. Yeah.

24 326 Q. That wasn't discrediting you or targeting you?

25 A. No, no. 14:11

26 327 Q. Then I think he says in the e-mail:

27
28 "I outlined an approach which involved Chief
29 Superintendent Scanlan and this was approved."

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Then he says:

"I commenced a process. This process led to your appointment."

14:11

That's the appointment of Assistant Commissioner Finn. So, I think you will agree with me that the person who effectively started the process and led to the appointment of Assistant Commissioner Finn, was Assistant Commissioner Fanning?

14:12

A. Yes.

328 Q. In terms of the next paragraph, he said:

"As the process is ongoing and I have to consider (a) your report and (b) consider any potential reviews, I am not inclined to get involved as I need to approach the matter with a 'clean hand' and only consider whatever you may put in your file and that of any application for review."

14:12

14:12

So, can we take it from that, the position was that Assistant Commissioner Fanning was starting the process, was not going to get involved in the process, but ultimately he saw that he would be the person to whom the final report would be delivered?

14:12

A. Yes.

329 Q. Did you know that at that time?

A. I did. Oh, I'm not sure, I just can't remember because

1 firstly there was -- it was Assistant Commissioner
2 Fanning I think had said Chief Superintendent Scanlan
3 was to take the statement and then I had something else
4 from somewhere else, that Chief Superintendent Roche
5 was to do the same thing. So I don't know. I don't
6 know what was going on there. 14:13

7 330 Q. Sure. I think it's fair, would you agree with me, that
8 Assistant Commissioner Fanning's letter doesn't
9 indicate any admission by him that there was any
10 problem; he is simply describing how the matter
11 required careful consideration? 14:13

12 A. Yeah.

13 331 Q. There were issues there about him having clean hands
14 and not being directly involved that made the whole
15 process slightly slow. But he is also explaining that
16 he felt, in the paragraph: 14:13

17
18 "Correspondence after my involvement, post my
19 involvement, the correspondence should in the main be
20 with the 'process owner', the executive director HRPD. 14:13
21 I wish to point out, I was summonsed to a meeting with
22 the CAO and there may or may not have been a subsequent
23 meeting I was not invited to. I have written to the
24 acting commissioner on the file too."

25
26 Again, I have to suggest what indicates is that there
27 was administrative consideration of your very detailed
28 complaint and careful consideration about how the
29 process could be directed and who should be appointed, 14:14

1 would you agree with that?

2 A. Yeah.

3 332 Q. Then finally, Assistant Commissioner Fanning says:

4
5 "You can feel free to contact Inspector McCarthy at my 14:14
6 office to clarify any admin issue, etcetera. If you do
7 so, can you please advise Garda Keogh that your
8 investigation includes the enquiry at regional office
9 but not of me, so there is no potential
10 misunderstandings by him." 14:14

11
12 So ultimately, this is an explanation that was given
13 and read in conjunction with the last document we saw,
14 that's to say Inspector McCarthy's chronology, I have
15 to suggest to you that what that shows, that's the 14:14
16 chronology at page 14078 onwards, what that shows is
17 that a lot of detailed consideration was taking place
18 and there were complicated matters that required to be
19 attended to, but during that period of time you're not
20 accusing Assistant Commissioner Fanning of targeting 14:14
21 you in any way?

22 A. No.

23 333 Q. I have to suggest to you that that delay, such as it
24 was, is not something that could be regarded as
25 targeting you in any way? 14:15

26 A. Judge, just to clarify, again it's similar only on the
27 opposite side of things to what -- I only, again from
28 reading the volumes, can understand about the delay.
29 At the time I didn't know.

1 334 Q. Sure. Is it fair to say, Garda Keogh, that this is one
2 example that with the benefit of hindsight you can see
3 that there was good reason why things took time?

4 A. Yes. The same as with the break, it was on the other
5 side of the coin but, yeah.

14:15

6 335 Q. Again, Mr. McGuinness has dealt with a lot of what has
7 occurred in the intervening period. But can we move
8 forward to the first meeting that you had with
9 Assistant Commissioner Finn. I think all the dates,
10 Chairman, I don't propose to go into for ease of
11 reference but counsel for the Tribunal has opened those
12 details to date.

14:15

13
14 So, can I ask you please to be shown volume 14, page
15 4220 please. In fact, sorry, for completeness could I
16 ask you and the Chairman to look at 4219, I beg your
17 pardon. 4219. I think this is a minute of a meeting
18 which took place on 1st December 2017 at Mullingar Park
19 Hotel. You're familiar with this meeting?

14:15

20 A. Yes.

14:17

21 336 Q. And this document I think as well?

22 A. Well, just in relation to the document, Judge, my
23 recollection is the document was written in longhand,
24 it was never read out. I never got a chance to sign
25 it, from recollection. As a result of that meeting,
26 Judge, when Assistant Commissioner Finn was trying to
27 organise a second meeting, we asked for the second
28 meeting to be recorded, so that there would be no
29 disputes over what was said or anything like that.

14:17

1 That was declined and there was no second meeting,
2 Judge.

3 337 Q. Now, just in terms of the minutes concerned, I think
4 that you will confirm that Assistant Commissioner Finn
5 told you that he had been appointed by Assistant 14:17
6 Commissioner Fanning to investigate the complaint?
7 A. Yes.

8 338 Q. He also indicated that he had no prior knowledge of the
9 background to the circumstances of your complaint?
10 A. Yes. 14:17

11 339 Q. He said to you and he explained to you, just to put it
12 to you --
13 A. Sorry, just one moment, he had Inspector Kennedy,
14 Judge, and when she first contacted me, I did tell her,
15 I asked her to get a copy of my complaint, to read it, 14:18
16 to have an idea of what it's about, instead of just
17 going in and me starting off from the whole thing. So
18 that she would have -- they would have a copy of the
19 complaint. So that part, he some knowledge in relation
20 to -- 14:18

21 340 Q. But insofar as the meeting was concerned, I think you
22 will agree that he was confirming his appointment,
23 number one?
24 A. Sorry?

25 341 Q. I think you will agree that he was confirming his 14:18
26 appoint?
27 A. Oh yes.

28 342 Q. He was telling you that he wanted to speak to you about
29 the scope of the complaint you had made?

1 A. Yes.

2 343 Q. I think you agree with me that he asked you did you
3 want mediation and you said you did not?

4 A. Correct.

5 344 Q. I think you will agree with me that he asked you were 14:19
6 you aware of welfare services and you said you were?

7 A. Yeah.

8 345 Q. Then you were asked, who do you send this report to,
9 was a question that you raised? Do you see that, at
10 the end of the page, that you asked him who do you send 14:19
11 the report to?

12 A. Okay.

13 346 Q. He told you that it would be sent to Assistant
14 Commissioner Fanning because he appointed Assistant
15 Commissioner Finn? 14:19

16 A. Right.

17 347 Q. He gave you his contact details at that stage. Would
18 you just turn over to the following page, please. This
19 is Mr. Cullen I think speaking, he suggested that the
20 complaint was originally lost, made in March of 2017. 14:19
21 He says it appears odd that things happened and went
22 missing. Then he was asked the question, who was the
23 complaint made to and he was told it was to John
24 Scanlan. So at that stage it's established that the
25 statement is being made, it's being submitted. 14:19
26 Assistant Commissioner Fanning asked you, just at the
27 top of page 4220, did you accept that he was neutral
28 and Mr. Cullen said he accepted the assistant
29 commissioner's bona fides. Do you see that? The top

1 one-third of the page.

2 A. Okay.

3 348 Q. Yes. It's at this point that Assistant Commissioner
4 Finn then asked you who are you making the complaints
5 against, do you remember that? 14:20

6 A. He did ask me on numerous occasions, yes.

7 349 Q. We know from Assistant Commissioner Fanning's note,
8 which we saw a few minutes ago, that that was an
9 integral part of the policy, isn't that right? We now
10 know that? 14:20

11 A. Oh yeah.

12 350 Q. Yes.

13 A. Bear in mind, they have the complaint there, so the
14 complaint is obviously in writing, so it's very clear
15 who I'm making the complaint against. 14:20

16 351 Q. I have to suggest to you that it wasn't, because you
17 have both Assistant Commissioner Fanning and Assistant
18 Commissioner Finn saying we need to be absolutely
19 clear. Let's come back to that in a moment?

20 A. Okay. 14:21

21 352 Q. There is another factor I will show you that may help
22 you understand what I am asking. You see you answered:
23
24 "Pat Murray, superintendent and two chiefs in
25 Mullingar, Mark Curran and Lorraine Wheatley. There 14:21
26 was a sergeant in the chief's office who may have been
27 pulling their strings, I'm not sure but your
28 investigation will show this."
29

1 Is that what you said?

2 A. Certainly the issue with the sergeant in the chief's
3 office.

4 353 Q. Yes.

5 A. It was could be, could be. That was the thing to 14:21
6 investigate, to see if there was --

7 354 Q. Would you agree with me that you had named a lot of
8 people in your correspondence, in your complaint?
9 There were many names.

10 A. Many names but they weren't all complained about. 14:21

11 355 Q. Assistant Commissioner Finn will say that he needed to
12 know exactly who the complaints were made against.
13 When he asked that question, he will say that
14 Mr. Cullen interjected and said:
15
16 "Yes. He gets on with most people. There may be 14:21
17 others but some are more central."
18

19 Do you remember Mr. Cullen saying that?

20 A. I don't actually recall but I see it's written here. 14:21

21 356 Q. So at that point, again Assistant Commissioner Finn
22 will say, once that was raised he had to proceed to
23 clarify exactly who was the complaint made against.
24 You will see how that would have been a reasonable
25 query for him in the light of what Mr. Cullen said. 14:22
26 Would you agree, that it was reasonable to respond to
27 Mr. Cullen's statement by saying, can you just be
28 precise about who exactly you are making the complaints
29 against?

1 A. okay.

2 357 Q. okay. And then you respond:

3

4 "Pat Murray, that's crystal clear. Mark Curran, yes."

5

14:22

6 And then you said:

7

8 "I'm not making a complaint against Noreen McBrien and
9 Lorraine Wheatley."

10

14:22

11 Do you remember saying that?

12 A. I mean, I know I had to complain about Lorraine
13 wheatley in that she was linked with the Pat Murray
14 stuff.

15 358 Q. Also, I think you said in your evidence earlier that
16 you thought that Chief Superintendent wheatley was, in
17 your words, lucky, she was somebody you got on well in
18 the past?

14:22

19 A. No, I didn't say -- I never said that, no. I think
20 you're getting mixed up.

14:23

21 359 Q. CHAIRMAN: Superintendent McBrien.

22 A. Yeah.

23 360 Q. MR. MURPHY: Very good. In terms of the complaints,
24 you then said:

25

14:23

26 "I am not making a complaint, I have an issue with John
27 Scanlan because the complaint went messing."

28

29 So Assistant Commissioner Finn says:

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"So against Pat Murray and Mark Curran?"

And then you reply:

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

14:23
14:23

Do you recall saying that?

A. Yeah. Excuse me, yes. That part rings a bell. All my problems, Judge, in the 2014 period and a lot -- especially the 2014 period, seemed to all emanate from the chief's office in Mullingar. I said there's obviously the chief there, but I did point out there is a sergeant there and I said, that sergeant is friends with Garda A on Facebook and as part of the investigation can we see, you know, maybe it's not the chief, maybe it's someone else pulling the strings here on that. So that part, yes, is correct. I understand, I don't think it was ever investigated, by the way, but...

14:23
14:24

361 Q. Just to be clear from the Chairman's point of view, is it the case then that the basis on which you were making a complaint against Mark Curran was you thought he should be complained against because he was friends with Aidan Glacken?

14:24

A. No, no. No, no, no, no. There was an awful lot of

1 going back to the Olivia O'Neill, the Liam McHugh. All
2 that stuff was emanating from the chief's office. All
3 the stuff from 2014 appeared to emanate from the
4 chief's office in Mullingar.

5 362 Q. In terms of the position concerning Chief 14:24
6 Superintendent Curran, can I take it then that you had
7 no evidence against Chief Superintendent Curran, apart
8 from your supposition that he was friends with Aidan
9 Glacken and this must be coming from the chief's
10 office? Is that a fair summary of the evidential 14:25
11 strength of your case at that time?

12 A. Well, I mean, that would probably be a factor. But
13 also there's the evidence, the appendices, where I have
14 all this documentation coming from the chief's office
15 in Mullingar, so... 14:25

16 363 Q. Well, did you have any evidence that the chief
17 superintendent was targeting you deliberately with an
18 attempt to do you damage?

19 A. You see, I suppose that's why we're here. I mean,
20 there is a lot of stuff which is emanating from 14:25
21 Mullingar which we dealt with, and that's the purpose
22 of the investigation as well.

23 364 Q. Sure. Can I invite you to look at the last line on
24 that page:

25
26 "I'm not sure who is doing it." 14:25

27
28 So Assistant Commissioner Finn said at that stage you
29 were saying you weren't sure who was doing this but you

1 were going to throw out an allegation against --

2 A. No, no, that's not quite accurate. You see, as I said,

3 these notes are -- I can't -- I couldn't go so far as

4 to say everything in these notes are exactly as was

5 said. But I did make the point, look, there's somebody 14:26

6 in the chief's office that I think is involved in this

7 and I said, look, there's the chief, Chief

8 Superintendent Curran, I also pointed out that there is

9 a sergeant there that might be worth to have a look at

10 as well. 14:26

11 365 Q. So your position was just make a complaint against

12 Chief Superintendent Curran anyway?

13 A. He's the person in charge.

14 366 Q. I see.

15 A. It's under his watch. 14:26

16 367 Q. But you have no direct evidence of personal actions on

17 his part that were calculated to target you or damage

18 you or hurt you?

19 A. We've gone through some of the evidence over the last

20 two weeks in relation to a lot of the other matters. I 14:27

21 mean, if we look at the Liam McHugh thing, for example.

22 368 Q. Sorry, just to come back to the words that are used

23 here, you thought it was him? Is that the way you

24 framed it, just because you thought it was him, you

25 suspected it was him, that that was the position? 14:27

26 A. I had appendices to the documents, appendices which

27 obviously didn't arrive with the statement. I had a

28 lot of appendices, documentary evidence. So, I was in

29 a position to back up -- to at least point the finger,

1 you know, at the --

2 369 Q. would you agree with me, at this point in this meeting
3 you're waddling backwards and forwards, you're not sure
4 of exactly who you are making the accusation against,
5 is that right? 14:27

6 A. No, because I already had made the statement and
7 Assistant Commissioner Finn just over and over again
8 kept asking me who I was making complaints against.
9 And in the end I just remember going, look,
10 Superintendent Pat Murray, Chief Superintendent 14:28
11 Lorraine wheatley and Chief Superintendent Mark Curran,
12 and that was it in the end. But he kept going on and
13 going about who I was making a complaint -- he already
14 had it in writing in front of him.

15 370 Q. You see, I have to suggest to you that you were very 14:28
16 unclear about what you were doing at this stage. Even
17 by using the words "my mind is open to Mark Curran".
18 Can I suggest to you that that it's clear that all of
19 the other people at the meeting from their assessment
20 were entitled to consider that you were unclear about 14:28
21 who you were accusing?

22 A. I mean, look, as I said, the record that we have of the
23 meeting is -- after that meeting we looked for the next
24 meeting to be recorded on tape. I can't stand by these
25 notes. 14:28

26 371 Q. Let's just stick with this meeting, Garda Keogh, if we
27 can please. Just in response to that, would you turn
28 over the page. Mr. Cullen is recorded as saying that
29 you were complaining about adverse treatment but that

1 you can't always pinpoint who was doing it. It's a
2 matter for the investigation. It's up to you.
3
4 was that your view at the time; that you couldn't
5 always pinpoint who was doing what you considered to be 14:29
6 adverse treatment?
7 A. Like that would be the purpose of the investigation, to
8 actually find out where the problem -- where the
9 problems are. You know, I have just pointed the
10 finger, look, here, the chief's office in Mullingar is 14:29
11 one place to start.
12 372 Q. Well, you got a bit further than that, you're heading
13 towards making an accusation of a very serious kind
14 against Chief Superintendent Curran and it's not clear
15 that you really think he did it? 14:29
16 A. No, no, no, no.
17 373 Q. You're not sure, is that right?
18 A. That's not true. Because it's in the original
19 statement that I have already made, and it's more than
20 a might. Like I have actually -- I can't remember what 14:29
21 I put into that statement, but it's fairly clear when
22 we go down through --
23 374 Q. In fact, on the contrary, it seems that Mr. Cullen
24 wasn't very clear about exactly what you were doing,
25 because he is saying you can't always pinpoint who is 14:30
26 doing it?
27 A. I can't answer that question.
28 375 Q. Is it possible that you're mistaken, for example, as
29 you were mistaken a few moments ago in relation to your

1 description of Chief Superintendent wheatley?
2 A. It was you that was mistaken.
3 376 Q. Can I just ask then, perhaps if you can be shown the
4 transcript please for Day 103, page 27, line 21. would
5 you mind reading into the record your answer to the 14:30
6 question at line 21?
7 A.
8 "A. And she is accurate in what she says."
9
10 377 Q. Yes, just read on please? 14:31
11 A.
12 "Just for clarification as well, from my meeting with
13 Chief Superintendent Wheatley, she's a lovely person,
14 and anything I ever heard about her, and these are even
15 in my circles, were very positive." 14:31
16
17 378 Q. I think you will agree with me that what you said a few
18 moments ago was wrong, is that right?
19 A. Just one second, I see it's written down here.
20 379 Q. CHAIRMAN: why don't you read the next sentence. 14:31
21 A.
22 "But unfortunately just on this, in relation to this
23 she seems to have pitched her wagon to Superintendent
24 Murray. I suppose that's why, apparently why she's
25 here." 14:31
26
27 380 Q. MR. MURPHY: You said this now two weeks ago, not in
28 2018 or 2016. So I have to suggest to you that
29 recollection can be faulty but you do seem to have

1 difficulties in remembering things, isn't that correct?

2 A. I mean, if we're going back, like --

3 381 Q. That is going back two weeks?

4 A. This is very easy, Judge, for a question to be posed on
5 a particular instant. As I said, I have to remember 14:32
6 stuff going back as far as 2008 on numerous
7 investigations. But just on this, we'll keep going on
8 this anyway.

9 382 Q. Yes, we will, Garda Keogh, yes. But insofar as this is
10 concerned, the interview then proceeds, where Assistant 14:32
11 Commissioner Finn told you that he wasn't here to
12 investigate criminal complaints but that the policy he
13 had to investigate was limited. He described those
14 procedures to you. Do you remember that?

15 A. The thing with the criminal complaint, he did, I 14:32
16 recollect that. And what was the other one?

17 383 Q. That he also talked about that he had to go to the
18 people under the procedures in chapter 8, do you
19 remember him talking about chapter 8?

20 A. He could have, I don't know. 14:32

21 384 Q. Then you said that you wanted to read from your
22 statement, the statement that you had given to Chief
23 Superintendent Scanlan. Can you recall reading an
24 extract from that?

25 A. What page are you on? 14:33

26 385 Q. Just the middle of 4221?

27 A. Okay. I see that's in there but...

28 386 Q. Can you remember doing that? Can you actually remember
29 reading out part of your statement?

1 A. I don't recall. I mean, I can't say -- when I say --
2 I'm not disputing whether I did or I didn't, I just
3 don't remember it, that's all.

4 387 Q. That's another thing you can't remember. If we move on
5 then, please, further down, you see about three 14:33
6 paragraphs further on Assistant Commissioner Finn will
7 say that he said to you:
8
9 "I need to be clear about what I am doing. I am
10 investigating bullying and harassment against persons. 14:33
11 Going on the definition..."
12
13 And by this he means the definition in the regulation.
14
15 " -- I need to know who your complaint is being made 14:34
16 against."
17
18 Do you remember him saying that?
19

20 A. He did ask me over and over again who -- 14:34

21 388 Q. I think you agreed with me earlier, that's the same
22 type of question that asked or referred to by Assistant
23 Commissioner Fanning as being a necessary question?

24 A. This was already in writing. The complaint was made,
25 it was in writing and it was clear. 14:34

26 389 Q. Well, do you see what Mr. Cullen says next on your
27 behalf, he says:
28
29 "There's a lot of documents and it's in there."

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Do you recall Mr. Cullen saying that?

A. I don't recall but I see it here.

390 Q. Can you appreciate, therefore, if that was said, that Assistant Commissioner Finn needed to ask the next question "I need to know the people" that was a reasonable question?

14:34

A. Yeah, but you're asking me to recite every word in a conversation here. When I say I can't remember, you're going oh. Like there's no way I can remember every word that was said in a meeting back in, when is this, 2017.

14:34

391 Q. But you can recall, I have to put it to you, Garda Keogh, whether you were accusing particular people or not?

14:35

A. I was.

392 Q. Yes.

A. Well, that was the purpose, that was the purpose of the meeting.

393 Q. Let's just see the sequence again. I have to suggest to you Assistant Commissioner Finn will say he needed to establish exactly who the complaints were made against and when he asked you "I need to know the people" he will say that you said:

14:35

"Superintendent Pat Murray is one. I'm not sure about Mark Curran but my mind is open."

14:35

A. Look...

1 394 Q. Would you agree with me that's not a ringing certainty
2 in terms of its expression of identifying a person
3 against whom a complaint is to be made?
4 A. Look, if towards the end, if these are in any way
5 accurate, I'm sure it's ironed out somewhere along the 14:35
6 line. I see here on page 4223, I have named the three
7 names, Pat Murray, Mark Curran --
8 395 Q. Sorry, Garda Keogh, you are trying to evade the
9 question. We're on page 4221, you know that. I have
10 just asked you a question about what you said, that you 14:35
11 weren't sure about Mark Curran. You are saying this in
12 the presence of your solicitor, in the presence of
13 Assistant Commissioner Finn, in the presence of two
14 other gardaí, it's an important meeting. I have to
15 suggest to you, that indicates that you knew at that 14:36
16 stage you hadn't got any clear evidence against Chief
17 Superintendent Curran at all?
18 A. Not that's not accurate because I had Chief
19 Superintendent Curran already in the statement.
20 396 Q. Well then what do you think was meant by the words "my 14:36
21 mind is open"?
22 A. I don't know what... that's if it was said.
23 397 Q. Yes.
24 A. We have no recording of this meeting, unfortunately.
25 398 Q. Assistant Commissioner Finn will say that is what you 14:36
26 said, I am putting that to you, and that's precisely
27 why he had to keep on asking these questions.
28 A. Can he remember everything word-for-word?
29 399 Q. He took a note at the time, which it seems you didn't.

1 A. Sorry, he didn't take a note, Inspector Kennedy took
2 the note.

3 400 Q. Very good. Well then inspector Kennedy will also
4 support that. Then you said after having said your
5 mind is open: 14:36
6
7 "When he left..."
8
9 That's when Mark Curran left:
10 14:37
11 "...Lorraine Wheatley came and she is sound."
12

13 A. I've already said, I think was it last week, that I
14 have heard nothing bad at all about Lorraine wheatley,
15 that she's a lady, you know. I have said that's what 14:37
16 she is in this because I obviously have a certain
17 amount of evidence here. That's the way it is.

18 401 Q. You see, Garda Keogh, I have to suggest to you that you
19 didn't have any evidence to support this complaint.
20 You went on to say: 14:37
21
22 "She's sound. The sergeant all the time and he's
23 friends on Facebook with Garda A."
24

25 A. Yes. 14:37

26 402 Q. So you did say that?

27 A. Oh yeah, yeah. That part -- well, it mightn't have
28 been said, I don't know, word-for-word, but that
29 definitely was an issue.

1 403 Q. Assistant Commissioner Finn then said:
2
3 "If it's the sergeant but if I don't get a complaint
4 against him then I won't be putting in a complaint
5 against him." 14:37
6
7 A. I have no evidence against the sergeant, I had evidence
8 against the two chiefs.
9 404 Q. Then again I have to put it to you that you didn't have
10 such evidence. But you went on to say: 14:38
11
12 "I'm not sure who is responsible for the Mullingar
13 thing. If you go to Mark and Lorraine and say they
14 were busy and just sign the document."
15 14:38
16 what did you mean by that?
17 A. Sorry. "If you go to Mark and Lorraine and..."
18
19 I have no idea what that's about.
20 405 Q. well, in terms of: 14:38
21
22 "I'm not sure who is responsible for the Mullingar
23 thing."
24
25 what was the Mullingar thing? Can I assist you? Isn't 14:38
26 that where the chief's office was?
27 A. Yes, yes.
28 406 Q. Yes. And there you are saying to Assistant
29 Commissioner Finn that you weren't sure who was

1 responsible for the chief's office issue, isn't that
2 correct?

3 A. My thing was that where a lot of this stuff is
4 emanating from the chief's office in Mullingar, the
5 chief superintendent is in charge. I did throw out the 14:38
6 possibility, if it wasn't the chief's, there is this
7 other guy you can look at, he is friends with Garda A
8 on Facebook, if you want to look at that. That was it
9 but that's for them in the investigation to carry out.
10 And they didn't do that. 14:39

11 407 Q. You see, Garda Keogh, you have had a lot of time to
12 think about this. We are now at a point in 2017 when
13 you have had months and months and months to think
14 about this, to brood about this, to look at documents,
15 to assemble appendices, to talk to your solicitor. I 14:39
16 have to suggest to you that at this stage you're not in
17 a position to identify who is responsible for the
18 Mullingar thing?

19 A. That's not the case. That was the whole purpose of
20 making the -- I mean making the -- and the other thing 14:39
21 that you said there, like months and months, you know,
22 to think about, what? This one particular document in
23 amongst, how many, 15,000 pages of stuff, that's not
24 quite fair.

25 408 Q. We know you didn't make a complaint in 2015, isn't that 14:39
26 right? In the whole of 2015 you didn't invoke a
27 bullying policy?

28 A. No.

29 409 Q. Isn't that correct?

1 A. That's correct.

2 410 Q. And in the vast majority of 2016 you didn't do so
3 either, isn't that correct?

4 A. As I have already stated, I did speak to GSOC about how
5 to go about it and it had to be done under the Garda 14:40
6 policy first.

7 411 Q. This meeting is now taking place 12 months later, and
8 you're not clear about who you wish to make a complaint
9 about?

10 A. No, I mean, it is very clear. I mean it is clear who I 14:40
11 have made the complaint about because it's in writing
12 in my statement and it's in this thing.

13 412 Q. You see, I have to suggest to you that when Assistant
14 Commissioner Finn asked you yet again, this is page
15 4222, the second line: 14:40
16
17 "I need to find out who you are saying is responsible
18 so I can put it to the people."
19
20 Then Mr. Cullen is recorded as responding: 14:40
21
22 "It's in the documents."
23
24 And further down, you said:
25 14:40
26 "Pat Murray and Mark Curran but my mind is left open on
27 him."
28
29 Do you see that?

1 A. I see it here, yes.

2 413 Q. So again there is extensive dialogue taking place and
3 not for the first time it comes to Mark Curran, you're
4 hesitating and saying my mind is left open on him, and
5 then you say: 14:41
6
7 "It is Pat Murray and Mark Curran."
8
9 Do you recall saying that?

10 A. Again, I can't recall word-for-word what was said in 14:41
11 that meeting.

12 414 Q. Then when you're asked about the sergeant, you say:
13
14 "No, I don't have enough evidence."
15 14:41

16 A. That's true, I didn't have enough evidence. That was
17 the point where I said there is a sergeant, he is
18 friends with Garda A on Facebook, might be worth having
19 a look here to see, you know, is there something else
20 here. But I had no evidence -- I had no evidence to do 14:41
21 with the sergeant, it related to the chiefs.

22 415 Q. But you did know, Garda Keogh, that you had to have
23 evidence to place a valid complaint?

24 A. I had evidence in relation to the two chiefs and the
25 superintendent. 14:42

26 416 Q. And your mind was open, as you said, in relation to
27 Chief Superintendent Curran?

28 A. I've already explained this, I said there is a
29 possibility, more or less, if it's not Chief

1 Superintendent Curran that there is somebody else in
2 the chief's office. That was it. But I had no
3 evidence against that person, so I couldn't bring it
4 any further.

5 417 Q. Then there's reference to the complaint about a delay, 14:42
6 with a delay in the investigation?

7 A. Yeah.

8 418 Q. Mr. Cullen is recorded as saying:

9
10 "It appears the complaint was lost. We're not sure who 14:42
11 or where this happened."

12
13 And you said:

14
15 "No, it's all of bullying. The whole way in 14:42
16 everything, it's me that has to push things."

17
18 So, is it the case that you were saying to Assistant
19 Commissioner Finn that all of this was a valid bullying
20 complaint? 14:42

21 A. In relation to me having to push things, Judge. And at
22 first, when I tried to invoke the Garda policy, I think
23 it was Tony McLoughlin I was in communication with in
24 relation to invoking it, but we had to send solicitors
25 letters then to actually get -- to get the statement -- 14:43
26 to get someone -- to get it started basically.

27 419 Q. You see, Assistant Commissioner Finn will say that such
28 was the level of uncertainty here that he then asked
29 again:

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"I need to be clear, who do I need to approach and investigate."

And you replied:

14:43

"Right now the complaint is against Pat Murray and Mark Curran."

Do you recall saying that?

14:43

A. I mean, it's all here and it's the same -- I mean...

420 Q. Then Assistant Commissioner Finn will say that he said to you -- sorry, that you said to him:

"Mark Curran says it was someone else."

14:43

He then asks you:

"Then I will come back to you and we will take it from there."

14:43

Do you remember him saying that?

A. Again, I don't remember him saying that but that would have been in relation to the sergeant in the chief's office. So I would accept that that part of it is accurate.

14:44

421 Q. And then the next thing he will say that you said was:

"Throw in Lorraine Wheatley so."

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Did you say that?

A. I mean, I can't remember saying that.

422 Q. Again, he will say that that's what you said. I have to suggest to you that that indicates a very reckless approach on your part, because you knew you had no evidence against Lorraine wheatley?

14:44

A. I have -- there is evidence against Lorraine --

423 Q. At that time you knew you had no evidence against Lorraine wheatley?

14:44

A. No.

424 Q. And you knew that you needed evidence?

A. No, no, I had evidence against -- I have already said I had evidence against the two chiefs and the super. I didn't have any evidence in relation to the sergeant.

14:44

425 Q. why did you just throw in Lorraine wheatley so? Did you understand this was a serious thing, to make an allegation of this kind against one of your superior officers?

A. You see, again as I said, this document was written in longhand, it wasn't read over to me. So I don't know what -- I mean, I am looking at what in general it appears to be, it appears to be accurate in general over all, but again, it just takes one or two lines not to be accurate and I can't remember word-for-word what was said.

14:44

14:45

426 Q. You see, I have to suggest to you, Garda Keogh, that what Assistant Commissioner Finn will say in his evidence indicates that you were chopping and changing

1 throughout the course of the interview, and only then
2 towards the end you use this throw away phrase "throw
3 in Lorraine Wheatley so", is that the basis on which
4 you would ordinarily investigate a criminal offence or
5 any internal investigation you were involved in? 14:45

6 A. No, Assistant Commissioner Finn was asking me over and
7 over again about who I was making complaints and all
8 the rest, so I mean, I don't know if it was him, if I
9 got confused at any stage it was merely to do with the
10 way he was asking me over and over again. 14:45

11 427 Q. So do you think you were confused about Chief
12 Superintendent wheatley?

13 A. No, I wasn't confused, because it was in the statement
14 that I had already made in March.

15 428 Q. Can you explain why you hadn't identified her in detail 14:46
16 up to that point as a definite suspect?

17 A. Just for clarification, was she in the statement in
18 March? I actually can't remember. If she was in the
19 statement in March, then I mean...

20 429 Q. Again it's a matter for the Chairman but I have to 14:46
21 suggest to you that that indicates a very reckless
22 approach towards making complaints against your
23 colleagues, on your part?

24 A. Judge, I made the same complaint here to the Tribunal.
25 It's the same, I mean... so... 14:46

26 430 Q. Do you see the next question, where Assistant
27 Commissioner Finn asked you:
28
29 "You are happy with this? Do you want some time out?"

1

2 Do you see that?

3 A. Just what page is this?

4 431 Q. The same page, 4222. The second last line?

5 A. Yeah, I see it.

14:47

6 432 Q. After "throw in Lorraine Wheatley so"?

7 A. I see where you're on about. "You are happy with
8 this..."

9 433 Q. Again, Assistant Commissioner Finn will say at this
10 time you appeared to be going backwards and forwards?

14:47

11 A. I'd be saying the same about him.

12 434 Q. Again, I have to suggest to you that isn't correct.
13 But if you look at the next entry, his evidence will be
14 Mr. Cullen said:

15

14:47

16 "I am happy that under a bullying and harassment
17 complaint these three people but it may be elsewhere."

18

19 So again I have to suggest to you, this indicates that
20 there is a degree of confusion on your side as to
21 exactly who are the people the subject of your
22 complaint?

14:47

23 A. No.

24 435 Q. If I ask you to turn over to page 4223, there's a
25 discussion that took place about bullying and
26 harassment being different agreements. You mentioned
27 Chief Superintendent Scanlan. Do you see that?

14:48

28 A. Yeah.

29 436 Q. Then, having gone through the different issues, you

1 say, towards the middle of the page:

2

3 "I've named three names, Pat Murray, Mark Curran and
4 Lorraine Wheatley."

5

14:48

6 Do you see that?

7 A. Yeah.

8 437 Q. Assistant Commissioner Finn again will say that he once
9 more said:

10

14:48

11 "If you need to think about this...."

12

13 That he will send you another document about grievance
14 procedures for clarity, because they are different
15 things under the Garda Code. Do you see that?

14:48

16 A. Yeah, I see it here but I mean -- what's coming back to
17 me is, and I don't see it here, he asked me on numerous
18 occasions was this a corporate complaint or some other
19 -- I just don't happen to see it in here. But he asked
20 me a couple of times about a corporate complaint or...
21 and I didn't really know what he was on about, a
22 corporate complaint, but anyway.

14:49

23 438 Q. So effectively in relation to that meeting, the parts
24 that you can remember from the meeting I have to
25 suggest to you indicates a confused picture, where

14:49

26 you're approach towards, in particular, Chief
27 Superintendent Curran and Chief Superintendent Wheatley
28 was very off hand and you seemed unclear as to whether
29 you really were going to make an allegation against

1 them. I have to suggest to you that's because you knew
2 that you had no basis to make an allegation against him
3 at all?

4 A. That's false. Because I already had named in the
5 statement. This has just come back to me now, which 14:49
6 isn't in the notes or I haven't seen them here.
7 Because on numerous occasions he's on about corporate,
8 is this a corporate complaint or is it some other
9 complaint. This sort of stuff was going on as well and
10 that doesn't seem to be in here. So... 14:49

11 439 Q. But you understand, Garda Keogh, this is an important
12 meeting with your solicitor present, with an assistant
13 commissioner of An Garda Síochána, something that you
14 delayed for period of two years making, you had time to
15 consider it, you had written a statement. Assistant 14:50
16 Commissioner Finn will say that these were your
17 responses to the questions that you were asked?

18 A. A lot, a lot of it is fair enough, but there's stuff
19 here that is -- it's not -- it's just not verbatim or
20 accurate. 14:50

21 440 Q. You see, I have to suggest, Garda Keogh, that it's a
22 lot more accurate than your recollection as outlined in
23 your evidence today.

24
25 But let's move from that. That concluded that meeting 14:50
26 and again, Mr. McGuinness has taken you through
27 documentation concerning the investigation conducted by
28 Assistant Commissioner Finn. I don't propose,
29 Chairman, to put each and every sequence detail to this

1 witness because he would not be aware apart from the
2 written word. But if I can move forward to the end of
3 the report and to the conclusion itself that Assistant
4 Commissioner Finn came to.

14:51

5
6 Presumably when you received his report, that you read
7 it?

8 A. What page?

9 441 Q. When you received Assistant Commissioner Finn's report,
10 you read it?

14:51

11 A. Which is what page?

12 442 Q. But did you read the report?

13 A. I would have read, I would have read any report that I
14 got.

15 443 Q. Before you made complaints against him, did you read
16 his report?

14:51

17 MR. KELLY: Chairman, it would be helpful to the
18 witness if Mr. Murphy actually identified the document
19 which he is asking the witness whether he has read or
20 not.

14:51

21 MR. MURPHY: Certainly, Chairman.

22 CHAIRMAN: That might be helpful, Mr. Murphy, thank
23 you. It's the Finn report, but Mr. Murphy is going to
24 identify it exactly, so you will be able to refresh
25 your memory.

14:52

26 MR. MCGUINNESS: volume 18, appendix 65.

27 CHAIRMAN: volume 18, appendix 65. Thanks very much.

28 MR. MURPHY: If the witness could be shown volume 25,
29 please.

1 CHAIRMAN: well, Mr. McGuinness says it is Volume 18,
2 appendix 65.

3 MR. MURPHY: It appears in several places, Chairman.

4 CHAIRMAN: very good. If you're happy that that's the
5 right one. 14:52

6 MR. KELLY: 5521.

7 CHAIRMAN: 5521, Mr. McGuinness, is that all right?
8 Just for the moment at least.

9 MR. MURPHY: Yes, I am looking at 7469, so I will use
10 the internal page references of the report for ease of 14:52
11 reference.

12 CHAIRMAN: Mr. Murphy, we won't do it that way. You
13 want to refer to page what?

14 MR. MURPHY: 7469, please.

15 CHAIRMAN: Thank you very much. Thanks very much Orla. 14:53
16 7469, so we are all looking at the same thing. would
17 you take back so. would you give that back. 7469.
18 Thanks very much. That is more satisfactory,
19 Mr. Murphy that everyone is looking at the same thing.

20 MR. MURPHY: Chairman, thank you. 14:53

21 CHAIRMAN: If you need a moment to familiarise yourself
22 with that, just let me know, that's not a problem.
23 Well maybe, Mr. Murphy, ask a question but bear in
24 mind, Garda Keogh, in relation to any question that
25 Mr. Murphy asks you, if you need just to get yourself 14:53
26 up to speed about the report, just let me know. Okay.

27 WITNESS: Thank you, Judge.

28 CHAIRMAN: Proceed, Mr. Murphy, and if Garda Keogh has
29 a reason why he wants to have a look at it, or even if

1 he doesn't have a good reason, if he feels that he
2 would like to do that, then that won't be problem.

3 444 Q. MR. MURPHY: If the witness could please turn to page
4 7507, which is the summary at the end of the report.
5 CHAIRMAN: 7507, thank you very much. 14:54

6 445 Q. MR. MURPHY: Garda Keogh, do you want to take a moment
7 to read that summary?

8 A. Please.

9 CHAIRMAN: Are you going to go on, Mr. Murphy, and deal
10 with more specific questions arising out of that 14:55
11 general summary?

12 MR. MURPHY: Very few, because I think if I elicit the
13 answer I think will come, that should shorten matters.

14 CHAIRMAN: Thank you very much. Why don't you ask your
15 question, because I can see that Garda Keogh will 14:55
16 probably want to go back to the more specific areas.

17 MR. MURPHY: Yes.

18 CHAIRMAN: Do you understand?

19 WITNESS: Yes.

20 CHAIRMAN: Okay. 14:56

21 MR. MURPHY: I was going to deal with, Chairman, by
22 dealing with the appeal process.

23 CHAIRMAN: Certainly, absolutely, no problem
24 whatsoever.

25 MR. MURPHY: Thank you, Chairman. 14:56

26 446 Q. Just in summary, Garda Keogh, will you agree with me,
27 you disagreed with these conclusions and summary?

28 A. Sorry?

29 447 Q. You disagreed with the summary conclusions?

1 A. Oh yeah.

2 448 Q. Just to be clear, what Assistant Commissioner Finn
3 found was, he said that each of the officers who were
4 under investigation fulfilled their obligations,
5 conducted their duties to ensure accountable, 14:56
6 professional policing service was being delivered to
7 the public. He also found that their actions were
8 examples of a proactive management, that ensured
9 appropriate governance and supervision was maintained
10 to achieve their policing objectives and this could not 14:56
11 be construed as either bullying or harassment. Next,
12 he also found that their interaction with you was both
13 legitimate and proportionate. He felt, from his
14 conclusions, he was satisfied that they were cognisant
15 of the personal stress and issues which you were 14:56
16 encountering and that each of them had ensured that
17 appropriate supports were in place for you on an
18 ongoing basis. He finally concluded:

19
20 "For example, each of the issues raised, I'm of the 14:57
21 opinion that Superintendent Murray, Chief
22 Superintendent Curran and Chief Superintendent Wheatley
23 acted legitimately within their respective roles and
24 responsibilities to manage the issues and policing
25 demands in their areas of responsibility and in 14:57
26 particular their interactions with Garda Keogh."

27
28 So, those were his conclusions. Do I understand your
29 complaint to be that you disagree with the result?

1 A. I disagree with the whole, the whole thing. Just even
2 what we touched on earlier, where I said about there
3 could be a sergeant in there, never even looked at
4 that. That was never examined. There's a whole lot of
5 stuff. In relation to the Liam McHugh incident, which 14:57
6 was dealt with in relation to Mark Curran's involvement
7 there, like, in relation to Aidan Lyons' statement,
8 sergeant Aidan Lyons' statement that he has made to the
9 Tribunal, I think he has said that he had no further --
10 he wrote this report in relation to the meeting with 14:58
11 Liam McHugh, I am pretty certain it says that no one
12 came back to him, no one came back to him in relation
13 to this, to the map, that he didn't know what happened.
14 As a result of the Assistant Commissioner Finn
15 investigation, it's then obviously appealed and goes on 14:58
16 and into the de Bruir -- but the findings actually
17 appear to go further than -- basically, it's my hand
18 that appears to go into Mr. McHugh's pocket, where
19 there's no additional evidence of any sort. So this
20 whole thing, Judge, I reject this whole investigation. 14:58
21 449 Q. Garda Keogh, do I then understand that because he
22 disagreed with you, it's your case that Assistant
23 Commissioner Finn was targeting you, is that your case?
24 A. It's not that he --
25 CHAIRMAN: If I am understanding correctly, you're 14:59
26 going to be more specific, you've said I disagree with
27 the conclusions and you were about to go on in more
28 specific terms about it. That's obviously somewhere
29 that you're going to be exploring, Mr. Murphy, as to

1 the more specific elements. We have a general
2 conclusion.

3 MR. MURPHY: Yes.

4 CHAIRMAN: And Garda Keogh says, yeah, I reject the
5 whole thing, disagree with the whole thing. I know 14:59
6 where you're going. So we will stop there, we will
7 take a short break and we will come back to that in the
8 more specific. You can take a break and, you know, you
9 don't have to be reading this when you're taking a
10 break, when we come back, if you find something 14:59
11 specific that you need to sort of look at or just
12 refresh your memory about, just mention it. There's a
13 lot of material we're covering, you know, I quite
14 understand that. Okay.

15 WITNESS: Thank you, Judge. 15:00

16 CHAIRMAN: Thanks very much.

17

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

20

15:12

21 CHAIRMAN: Very good. Thanks. Now, Mr. Murphy.

22 MR. MURPHY: Chairman, thank you. Chairman, can I
23 mention one point out of sequence that I ought to have
24 mentioned before the break?

25 CHAIRMAN: Of course, you take your own course. 15:12

26 MR. MURPHY: Just before we move onto the issue of the
27 objections to the final report.

28 450 Q. Can I ask you please to be shown volume 12, page 3635
29 please? So, Garda Keogh, do you have that document?

1 A. I see it here on the screen.

2 451 Q. Thank you. Just the top left-hand side, this is a note
3 taken of a meeting on Friday, 15th December 2017, at
4 the Killeshin Hotel in Portlaoise. You met I think
5 with Chief Superintendent Anthony McLoughlin and John 15:13
6 Barrett, do you remember that meeting?

7 A. Yes. Can you give the date again please?

8 452 Q. Sure, it's 15th December 2017. Will you see there is a
9 date in the top left-hand corner, it's small writing I
10 appreciate? 15:13

11 A. I recall that.

12 453 Q. Just to be clear, I think you've indicated at every
13 stage in your evidence that Chief Superintendent
14 McLoughlin was somebody who was very clear to you, is
15 that right? 15:13

16 A. Yeah, I always found him to be.

17 454 Q. He's not somebody who was ever targeting you or
18 pursuing in any negative way?

19 A. I didn't perceive anything there.

20 455 Q. Mr. Barrett was a civilian and he was the new head of 15:14
21 HR at that stage; is that right?

22 A. Yeah.

23 456 Q. I think he's also a person whom you described in your
24 diary as somebody who was an ally, isn't that right?

25 A. Sorry. 15:14

26 457 Q. He's somebody you describe in your diary on 1st January
27 2018 as an ally?

28 A. Yeah, I understand he exposed the fraud and the
29 embezzlement in Templemore, the mass fraud embezzlement

1 thing in Templemore, is my understanding.

2 458 Q. I have to suggest to you that that's nothing to do with
3 the question I asked you?

4 A. Oh right.

5 459 Q. And that you just said that to get away from the
6 question I asked you.

7 A. Okay.

8 460 Q. Nothing to do with this case at all. In your diary of
9 1st January 2018, had you marked him down:
10
11 "Mr. Barrett is an ally."
12

13 A. As I stated in the answer when that was first put to
14 me, your enemy's enemy is your friend.

15 461 Q. So the answer to the question I think is, yes, you did 15:15
16 consider him to be an ally. So you're at a meeting
17 with Chief Superintendent McLoughlin and Mr. Barrett,
18 both of whom you say are not targeting you. If I can
19 ask you to turn over to the next page please, to page
20 3636. I think this is Chief Superintendent 15:15
21 McLoughlin's note. Do you see the middle of the page,
22 the fourth bullet point, he will say that you said to
23 him on that occasion that you had no issue with Mark
24 Curran, it was the chief's office. Do you remember
25 saying that to him that day? 15:15

26 A. I don't recall saying that. But I've already said
27 previously there, I mean the issue was with -- I had an
28 issue with the chief's office and I said, look, there's
29 the chief and there is this sergeant here and that was

1 the purpose to investigate. I previously said, I had
2 no evidence against the sergeant there but I had
3 evidence against the chief. It was for Assistant
4 Commissioner Finn to investigate in relation to that
5 part of it. 15:16

6 462 Q. Sorry, this is several weeks after the meeting we
7 talked about before the break, isn't it?

8 A. This here? This meeting?

9 463 Q. It could have been?

10 A. Okay. 15:16

11 464 Q. It was, wasn't it? It was on the 15th December, we
12 agree on that?

13 A. Right.

14 465 Q. So, two weeks after you set in motion the bullying and
15 harassment complaint against Chief Superintendent 15:16
16 Curran, you're telling two people, Mr. Barrett and
17 Chief Superintendent McLoughlin, that you had no issue
18 with Mark Curran. And at the same time you have set in
19 train a bullying and harassment complaint which is
20 going to take years to complete against him? 15:16

21 A. Yeah, I have named him in my statement, so there was an
22 issue.

23 466 Q. How is it possible for you to say with a straight face
24 that you had no issue with Mark Curran when you spoke
25 to Chief Superintendent McLoughlin and Mr. Barrett? 15:17

26 A. I cannot explain this. This is -

27 467 Q. Do you understand?

28 A. - Chief Superintendent McLoughlin 's note and I --

29 468 Q. Do you understand, Garda Keogh?

1 A. I understand.

2 469 Q. It can't be both. Chief Superintendent Curran can't be
3 the accused and at the same time the person against
4 whom you have an issue; isn't that correct?

5 A. I understand exactly where you're coming from. But 15:17
6 also, I made the statement in, is it in March, where I
7 had named Chief Superintendent Curran in the statement,
8 which predates both the Mick Finn meeting and this
9 meeting.

10 470 Q. Just to be clear, so the Chairman understands your 15:17
11 position, it's your evidence that it's all right to
12 make an allegation of bullying and harassment against a
13 superior officer and in the same breath to say you have
14 no issue?

15 A. No, you see, it's not as fair -- I've already explained 15:17
16 that there was somebody in the chief's office that
17 seemed to be involved in certainly targeting me, is
18 what I believed and I had evidence there, documents
19 from Mark Curran and the chief, and that was as far as
20 I could go. 15:18

21 471 Q. Garda Keogh, is this a bit like Chief Superintendent
22 Wheatley, it's just a question of throwing in Mark
23 Curran as well?

24 A. No.

25 472 Q. You had no evidence against him, but you were throwing 15:18
26 him into the mix?

27 A. I had nothing against her but I had evidence.

28 473 Q. Again, I have suggest to you, this is a further
29 indication of an extraordinary approach to making

1 complaints made by you?

2 A. I made a statement in March, it was all dealt with, a
3 sworn statement.

4 474 Q. Again, I have suggest to you, Garda Keogh, the
5 unfairness here is making allegations against superior 15:18
6 officers or any colleagues when you don't have the
7 evidence, and that's what's been occurring here?

8 A. I dispute that, I had the evidence. Judge, I made a
9 sworn statement and these are notes that are being
10 referred to. At the end of the day, I think my 15:19
11 argument would be that my sworn statement should be --
12 is more legally binding than unsigned notes.

13 475 Q. So is it the case then that you think that your
14 discussions with Assistant Commissioner Finn were not
15 legally binding on you or him, is that what you are 15:19
16 saying?

17 A. No, the sworn statement I had given is legally binding.
18 The notes that he has, there's stuff in those notes, as
19 I said just a moment ago, that are not in there. Not
20 everything is accurate in those notes, to do with 15:19
21 corporate complaints and all the rest. So, I can't say
22 those notes are fully accurate.

23 476 Q. You see, Garda Keogh, I have to suggest to you that in
24 substance they are and I have to put it to you that
25 what you are done here is grossly irresponsible, which 15:19
26 is to make an allegation against Chief Superintendent
27 Curran and in your own words you have nothing against
28 him?

29 A. Judge, if the notes which are previously referred to in

1 relation to Assistant Commissioner Finn is as they
2 were, when he went looking for a second meeting, we
3 asked that the second meeting be recorded, because
4 there was obviously issues with what was being said at
5 that meeting and twists and whatever. 15:20

6 477 Q. CHAIRMAN: How do you mean issues?
7 A. well, in general, with this corporate -- is it a
8 corporate complaint? who are you making complaints
9 about? And all this. we asked for the second meeting
10 to be recorded. 15:20

11 478 Q. CHAIRMAN: Yes, I understand.
12 A. They reneged on the second meeting. Some of the stuff
13 of in -- there's stuff in those notes that I just
14 can't --

15 479 Q. CHAIRMAN: You think they're wrong? 15:20
16 A. well, Judge, there's certainly the thing about
17 corporate complaint jumps out at me because he asked me
18 a number of times about that and that doesn't appear to
19 be in those notes. Just at a glance now, just glancing
20 at it. 15:20

21 480 Q. CHAIRMAN: It strikes me, Garda Keogh, your solicitor
22 was present at this meeting?
23 A. Yes.

24 481 Q. CHAIRMAN: He must have made notes. He must have a
25 record of the meeting. 15:21
26 A. I don't know, Judge.

27 482 Q. CHAIRMAN: well, I mean, why else was he there?
28 A. I know he wrote the letter looking for a further
29 meeting to be recorded, to be audio recorded.

1 483 Q. CHAIRMAN: Do you know what I mean? I mean, here we
2 have a meeting between you, assistant commissioner,
3 other people taking notes and your solicitor?
4 A. There was Chief Superintendent Myers and there was an
5 Inspector Kennedy. 15:21
6 484 Q. CHAIRMAN: She was taking notes?
7 A. She took the notes, yes, Judge.
8 485 Q. CHAIRMAN: So there was going to be a note of this
9 meeting?
10 A. Yes. 15:21
11 486 Q. CHAIRMAN: That was a fact?
12 A. Yes. One note. But I don't think it was even read out
13 or anything.
14 487 Q. CHAIRMAN: No, I appreciate about that, you didn't have
15 an opportunity to reflect on it, comment on it and 15:21
16 consider it. But there was somebody else there on your
17 behalf?
18 A. Yes.
19 CHAIRMAN: Okay.
20 MR. KELLY: Chairman, I think you might find it a 15:21
21 little help to look at volume 36.
22 CHAIRMAN: In relation to this point?
23 MR. KELLY: Yes.
24 CHAIRMAN: Thank you very much.
25 MR. KELLY: 10307. 15:22
26 CHAIRMAN: Say again, Mr. Kelly.
27 MR. KELLY: 36, page 10307.
28 CHAIRMAN: 10307, thank you very much. Thank you very
29 much. Yes. Can you scroll that down? Thanks, Peter.

1 Oh, I remember this one. Yes. Fragmentation. Yes.
2 which particular part of this, Mr. Kelly, do you think
3 is relevant to the question of --
4 MR. KELLY: Forgive me one moment.
5 CHAIRMAN: That's all right. Mr. Cullen's note of the 15:23
6 meeting --
7 MR. MURPHY: I have no objection if Mr. Kelly wishes
8 to --
9 CHAIRMAN: Absolutely.
10 MR. KELLY: Judge, my understanding is that my 15:23
11 solicitor did take some notes of it, he doesn't have
12 the entire file with him, but this letter arose or was
13 done virtually very soon after the meeting, setting out
14 the concerns that we had about it.
15 CHAIRMAN: Yes. Could you refer me to the particular 15:23
16 part that you think is relevant? I mean, look, you can
17 see my situation.
18 MR. KELLY: Yes, Chairman.
19 CHAIRMAN: Garda Keogh says, and I understand he says,
20 look, I am not sure this is an accurate record of the 15:23
21 meeting. That I understand. He mentions particularly
22 corporate and the references to corporate, the issue of
23 corporate responsibility. That, I understand and how
24 it would come into a bullying and harassment question.
25 Obviously we await information on that. But in 15:24
26 relation to this, I am just wondering, and I know
27 Mr. Cullen wrote a lengthy letter, not the simplest
28 letter, it has to be said, but a lengthy letter,
29 complaining about the methodology, as I understand it,

1 of Assistant Commissioner Finn. Mr. Kelly, may I take
2 it like this: Look, I asked the question, you say and
3 Mr. Cullen says, look, this has relevance or
4 materiality to this question, I will take that into
5 account. I will put that there. Obviously this matter 15:25
6 can be expanded upon as you see fit and in relation to
7 any other evidence. Is that a satisfactory way of
8 leaving that?
9 MR. KELLY: It is, yes.
10 CHAIRMAN: Okay, thanks very much. 15:25
11 488 Q. MR. MURPHY: Garda Keogh, if we can then move forward
12 to --
13 CHAIRMAN: Do you understand, Mr. Murphy?
14 MR. MURPHY: Yes.
15 CHAIRMAN: I am saying, okay, that's a letter that has 15:25
16 relevance to this question. It's not immediate, there
17 isn't a line in it that says, by the way, I don't like
18 the way you're writing down the note, but there is a
19 thrust in the letter that is complaining about the
20 methodology. 15:25
21 MR. MURPHY: Yes. It is the one which features the
22 procrustean bed.
23 CHAIRMAN: Is this procrustean, it was procedural
24 fragmentation, which sounds a bit procrustean to me
25 when we get to it. 15:25
26 MR. MURPHY: Conceptual fragmentation as well.
27 CHAIRMAN: Thank you. So we know the letter you are
28 referring to.
29 MR. MURPHY: If I can move forward, Chairman, in ease

1 of reference.

2 CHAIRMAN: Thank you very much.

3 489 Q. MR. MURPHY: I wonder if you could be shown please
4 volume 25, at page 7469, where we were just before the
5 break.

15:26

6 CHAIRMAN: Yes. The summary conclusions.

7 MR. MURPHY: Yes.

8 490 Q. Just before we go to the main part of the report, just
9 to pick up on a point you mentioned a moment ago, can I
10 ask you to go to page 7506 please? Do you have that,
11 Garda Keogh?

15:26

12 A. Yes.

13 491 Q. Do you see, please, the heading at the bottom of the
14 page "corporate bul l y i n g"?

15 A. Yes.

15:26

16 492 Q. This is one of the chapters in the report. You will
17 see that Assistant Commissioner Finn said that the
18 allegations made by you and quotes you as saying:

19

20 "It became evident that senior management would use any
21 excuse to hypercriticise me, they were trying to
22 actively demean me, damage, harass, demean me and treat
23 me like a Dickensian school boy."

15:27

24

25 So there is a reference to, as it were, the structure
26 of An Garda Síochána, the corporate structure, which he
27 picked up from your complaint. Can I suggest to you
28 that is probably what was being referred to in the
29 course of your meeting?

15:27

1 A. No, no, no. I recall him, he asked me on a number
2 occasions at the actual meeting about, is this a
3 corporate complaint or is it some other -- I can't
4 remember -- I remember the word corporate.

5 493 Q. Very good. Insofar as he did, he seems to have taken 15:27
6 it into consideration at the end. Can I just say to
7 you, if you look over at page 7507, and this is common
8 throughout the report:

9
10 "On examination of the complaints and issues raised by 15:27
11 Garda Keogh in a statement of complaint, I found no
12 evidence to support the allegation that any bullying
13 and/or harassment has occurred against Garda Keogh. "

14
15 A. That was his findings. No evidence. 15:27

16 494 Q. Again just to shorten matters, throughout the whole
17 report, that was the approach he adopted. He analysed
18 the evidence, he expressed a view, he indicated why he
19 expressed that view and you disagreed with his view?

20 A. There's a lot evidence. 15:28

21 495 Q. Insofar as your criticisms of him are concerned, he
22 will say that he carried out investigation in
23 accordance with the Terms of Reference and carefully
24 considered all the available evidence, he came to his
25 conclusion which he believes was reasonable. But let's 15:28
26 not just stop there for a moment. Could I ask you to
27 turn to page 7446 in the same volume, please. This is
28 Mr. Cullen's letter written on your behalf on 19th
29 March 2019. So a couple of points here. First of all,

1 I think you will agree that this is the letter written
2 on your instructions to complain about the Finn report.
3 Did you ever see this letter?

4 A. I would have, I am sure I have seen it.

5 496 Q. I am sure you would have then looked at all the 15:29
6 criticisms to make sure that they were accurate before
7 you instructed your solicitor to write them. Have you
8 seen this document before or can you remember, Garda
9 Keogh?

10 A. I can't recall actually. There's a lot of pages in it. 15:29

11 497 Q. This is from your point of view an important one, Garda
12 Keogh, because this is your informal complaint against
13 Assistant Commissioner Finn, isn't it?

14 A. It would be, yes, for the appeal.

15 498 Q. Is there any doubt about that? 15:29

16 A. No, no, it's for the appeal.

17 499 Q. So, can I ask you just to look at page 7447? I think
18 your first complaint was that Assistant Commissioner
19 Finn's investigation was a desultory investigation,
20 paragraph one: 15:30
21

22 "... a desultory investigation which has now resulted in
23 this intellectually outré whitewash. "

24

25 First of all, can I suggest to you that those aren't 15:30
26 your words?

27 A. Correct, yes.

28 500 Q. Again, you appreciate that I have to put this to you,
29 that Assistant Commissioner Finn will say his

1 investigation wasn't desultory and wasn't in any way a
2 whitewash, that he went about his job as thoroughly as
3 he possibly could in all the circumstances?
4 A. I don't agree with that.
5 501 Q. In the second paragraph, do you see there is reference 15:30
6 there is to:
7
8 "Superintendent Pat Murray has been promoted in the
9 interim, while this complaint was either lost or in
10 transit and is now lost in the labyrinthine digressions 15:30
11 and mists of this report."
12
13 Did you see some connection between the promotion of
14 Superintendent Murray and this report?
15 A. And this report? This here report? 15:30
16 502 Q. Well, what has Superintendent Murray's promotion to do
17 with this report or this complaint?
18 A. No, I had made a complaint to Assistant Commissioner
19 Finn.
20 503 Q. Yes. 15:31
21 A. Superintendent Murray was one of the three persons I
22 complained about and then he got promoted.
23 504 Q. So, did you make it in relation to bullying and
24 harassment in the hope that this might stop
25 Superintendent Murray from -- 15:31
26 A. No, no, because I had reported back in 2016 to Chief
27 Superintendent McLoughlin, issues in relation to
28 Superintendent Murray.
29 505 Q. You were also making complaints to a lot of other

1 people in 2016 hadn't you, to Deputy Finn, Deputy
2 Wallace, Deputy Flanagan?

3 A. No, not Deputy Flanagan, he was gone.

4 506 Q. I see. We will be dealing with that in the next issue.
5 But you're well experienced in making complaints at 15:31
6 this stage. You make the point about Superintendent
7 Murray, he has been promoted. And again, you go on to
8 say in the third paragraph:

9
10 "This was an irrational report, an opaque report, 15:32
11 wanting in neutrality. Disguised as the elephant in
12 the room inadequacy in the (still unconcluded)
13 investigation into police drug peddling in Athlone."

14
15 It goes on to say: 15:32

16
17 "It's full of logical fallacies, platitudinous, evasive
18 and partial."

19
20 And anecdotal evidence. Again I have to suggest to 15:32
21 you, all of these comments are very high criticisms,
22 but in fact Assistant Commissioner Finn's report is
23 structured, factual and based on the evidence.

24 A. I dispute that. The other aspect of this is, Judge, 15:32
25 Assistant Commissioner Finn is the person investigating
26 my bullying and harassment complaint and Superintendent
27 Murray is one of the three persons I complain about.
28 Assistant Commissioner Finn, ironically, is the person
29 that then signs off the clearance form to the Policing

1 Authority for the promotion, to say that there is no
2 allegation or anything against Superintendent Murray.
3 Judge, he's the person who is investigating the same.
4 507 Q. Did you ever object to him investigating the case
5 throughout the course of 2017? 15:33
6 A. Assistant Commissioner Finn?
7 508 Q. Yes.
8 A. I don't think so.
9 509 Q. No, you didn't. So the position is that you were aware
10 that Superintendent Murray was promoted, weren't you? 15:33
11 A. Yeah.
12 510 Q. Yes. That's publicly available information?
13 A. Sorry?
14 511 Q. That's publicly available information?
15 A. Yes. 15:33
16 512 Q. You were aware of that?
17 A. Yes.
18 513 Q. This investigation I think took nearly 12 months?
19 A. Yeah.
20 514 Q. So at the end of this, with no objection being taken by 15:33
21 you, I suggest that what is contained in this letter is
22 just a lot of repetitive attacks which have one thing
23 in common, which is you're just not happy with the
24 outcome. Because he disagreed with you, you're
25 attacking his report? 15:33
26 A. I disagree with the whole --
27 515 Q. Yeah.
28 A. There was a load of evidence in those appendices,
29 whereby for every one of them to not stand is just...

1 516 Q. You see, I have to suggest to you this attack, your
2 attack on Assistant Commissioner Finn's report is
3 completely unbalanced and unfounded. For example, if
4 you look at page 7455, it says, in the third line:

5
6 "The camera-like focus of the discourse again
7 capriciously switches fondly to what was described
8 earlier as Garda Keogh's vulnerabilities. The camera
9 now pans dotingly on the favoured focus of what's now
10 described as a long standing and established clinical
11 condition." 15:34

12
13 Is it not the case that Assistant Commissioner Finn was
14 aware of the fact that you had an established medical
15 condition and a problem with alcohol? 15:34

16 A. Yes.

17 517 Q. Yes.

18 A. But as I have said, I mean I was drinking a lot.

19 518 Q. Yes.

20 A. Because I was under so much stress. And I did turn to
21 drink, I said it at the very start, I used drink as a
22 crutch and that... 15:34

23 519 Q. You see, the drinking a lot, Garda Keogh, has a lot to
24 do with this case, I have to suggest to you, because
25 it's clear if one looks at the factual background, each
26 of these complaints seems to suggest that Assistant
27 Commissioner Finn didn't look at the facts and I have
28 to put it to you that he did look at the facts? 15:35

29 A. No, I can't agree with you on that.

1 520 Q. You will see that you take on each of the headings by
2 way of chapter numbers 1 through 17. Again, what I
3 have to suggest to you is that there is no substance to
4 this objection at all, it's just based on the fact that
5 you disagree with the result? 15:35

6 A. Well, the whole -- I mean as I said, I just gave the
7 example earlier on in relation to the one particular
8 thing, the Liam McHugh matter, where no further
9 evidence seems to come to light, but yet, as a result
10 of this investigation, there seems to be -- it seems to 15:35
11 sway in an angle very much against me in the absence of
12 any new evidence. This whole -- the whole
13 investigation, where -- and any of the evidence I
14 supplied, where there was good documentary evidence,
15 just seemed to have been either downplayed or ignored. 15:36

16 521 Q. Garda Keogh, I have to suggest to you that's incorrect.
17 would you agree with me that you seem by this stage, in
18 2017 and '18, to have adopted the view that if somebody
19 disagreed with you, that they were somehow targeting
20 you? 15:36

21 A. That's -- I mean, there's plenty of people disagree
22 with me and --

23 522 Q. Can I put it this way: Did you believe as confidential
24 recipient number 1, that you had a right or an
25 entitlement to have your complaints upheld as being 15:36
26 correct?

27 A. We're dealing with something in 2017. We established,
28 was it last week, that I only found out that I was CR 1
29 in 2018, and at that I wasn't even sure, I was

1 surmising I was CR 1 because somebody else was CR 2.
2 So that question doesn't even come into play on this.

3 523 Q. I think by this stage you considered that you were a
4 very important person, you were the first
5 whistleblower, on your own account, you had been 15:37
6 interviewed by assistant commissioners of An Garda
7 Síochána, you had been visited by TDs, you've made
8 complaints but TD throughout the whole of 2016. I have
9 to suggest to you that at this stage it could appear to
10 a reasonable observer that you were taking the view 15:37
11 that anyone who disagreed with you was failing to
12 uphold your rights?

13 A. No, that's not true. Judge, even the first question
14 where you referred -- and you mentioned it last week,
15 about CR 1 and was I important and all the rest. AS I 15:37
16 stated, it wasn't until 2018 that I actually found out
17 anything about CR 1. I didn't know -- I don't think I
18 even knew what it meant at the time but it obviously
19 means confidential reporter 1.

20 524 Q. You see, I have to suggest to you, and again it's a 15:38
21 matter for the Chairman, if one looks at the tone of
22 the complaints that have been made on your behalf, that
23 these are all framed on the same basis. Just to give
24 you one example, to perhaps help you with the question,
25 could I ask you, please, to be shown volume 20, page 15:38
26 5969.

27 CHAIRMAN: Sorry, have you finished with this document,
28 Mr. Murphy?

29 MR. MURPHY: I will be coming back to this document.

1 CHAIRMAN: That's all right.

2 MR. MURPHY: Just as the witness was raising issues.

3 CHAIRMAN: No, no, that's okay, I just wanted to be
4 clear. You're referring now to?

5 MR. MURPHY: I'm referring to volume 20, page 5969, 15:38
6 please, Chairman.

7 CHAIRMAN: Thank you. Okay.

8 525 Q. MR. MURPHY: This is a statement of yours dated 23rd
9 April 2019, do you remember writing this statement?
10 Does it look familiar? 15:38

11 A. Just one moment, 5969?

12 526 Q. Please. It should be the first tab of the volume
13 please.

14 A. 5969. Okay.

15 527 Q. Do you have it? Is this statement one with which you 15:39
16 are familiar?

17 A. Can I just read it?

18 528 Q. Sure. You did sign it.

19 A. Okay.

20 529 Q. So, I think you do remember writing this statement on 15:40
21 23rd April 2019?

22 A. I don't remember writing, but I'm not disputing its...

23 530 Q. Are you sure you don't remember it?

24 A. Well, I don't remember actually writing the statement,
25 but I'm not -- 15:40

26 531 Q. Do you remember signing it?

27 A. I'm sorry?

28 532 Q. Do you remember signing it?

29 A. What I have here is not signed. I'm not disputing that

1 I made the statement, I just -- I mean, I have made a
2 lot of statements.

3 533 Q. Sure. Do you see where it says:

4
5 "I hereby declare the statement is true to the best of 15:40
6 my knowledge and belief. With reference to item number
7 18 on the list of items for consideration by the
8 Tribunal entitled complaints by Garda Nicholas Keogh in
9 relation to the bullying and harassment investigation
10 carried out by Assistant Commissioner Michael Finn, I 15:40
11 believe the outcome of this investigation as comprised
12 by Assistant Commissioner Finbar O'Brien constitutes a
13 failure to uphold my rights and entitlements as a Garda
14 officer in that there is no acknowledgment whatsoever
15 of the correctness of my complaints." 15:41

16
17 Do you see that?

18 A. I see it.

19 534 Q. Can you see that to an objective observer, and not
20 through the concept of objectivity, but to an objective 15:41
21 observer looking at this, what you are saying there is
22 that the Assistant Commissioner Finn investigation and
23 Assistant Commissioner O'Brien's investigation are a
24 failure, are invalid, because they did not uphold the
25 correctness of your complaint? 15:41

26 A. Judge, I never met Commissioner O'Brien. The only --
27 the only -- like the only basis he would have for his
28 investigation would be based on the Assistant
29 Commissioner Finn investigation, which I've always said

1 from day one was -- I can't remember what way I worded
2 it had before but it wasn't great.

3 535 Q. Garda Keogh, can you see what you are saying to the
4 world in this statement, your statement, you are saying
5 to the world and to this Tribunal and to me and to 15:42
6 everybody else who has come to this controversy late in
7 the day, that you, Garda Nicholas Keogh, have a right
8 and entitlement as a Garda officer to have your
9 complaints upheld as correct. I have to suggest to you
10 that is bizarre. Can you see now how outside persons 15:42
11 looking at this would appreciate that you got into a
12 stage, for whatever reason, that you believed that
13 anyone who disagreed with you was trampling on your
14 right to be upheld as correct?

15 A. No, I accept, Judge, it could have been worded a little 15:42
16 bit differently all right in that part.

17 536 Q. But it wasn't, Garda Keogh, was it, because in truth
18 this is the central problem that confronts your
19 approach towards these issues, which is that if
20 somebody disagrees with you, you immediately consider 15:43
21 that they have trampled on your right to be upheld, to
22 be vindicated?

23 A. No.

24 537 Q. That you must be believed?

25 A. No. That's not -- I mean, there was a load of evidence 15:43
26 with the Finn investigation. There was a lot of
27 problems with that. I've only outlined the one jump
28 out problem that really annoys me to do with that Liam
29 McHugh thing. But...

1 538 Q. Can we continue, Garda Keogh, for a moment. I just
2 want again to ask you to help the Chairman to
3 understand perspective and reality. Okay? The reality
4 is you don't have a right in law to be upheld every
5 time you make a complaint? 15:43

6 A. I accept that. Obviously I accept that part.

7 539 Q. And in truth, the reason that you don't have such a
8 right, it has to be tested by somebody who is a
9 decision-maker, isn't that right?

10 A. I understand that, yes. 15:43

11 540 Q. If that person decides against you, then sometimes you
12 might have an appeal, isn't that right?

13 A. Yes.

14 541 Q. And if the person who hears the appeal decides against
15 you, that's the end of the process, isn't that right? 15:44

16 A. That is generally the end, yes.

17 542 Q. Well, I have to suggest to you, it's always the end of
18 the process, Garda Keogh, because --

19 CHAIRMAN: well you can always get leave to go to the
20 Supreme Court. 15:44

21 MR. MURPHY: Yes. But even if the Supreme Court are
22 willing to hear the case --

23 CHAIRMAN: You say sooner or later you come to the end
24 and that's the end. As the Supreme Court said, they're
25 not final because they're infallible, they're 15:44
26 infallible because they're final. Somewhere it has to
27 come to the end. That's Mr. Murphy's point.

28 A. I was going to say, Judge, the Tribunal. But just to
29 go back a bit, where I had consulted with GSOC in

1 relation to this and they said I had to go through the
2 Garda policy. So it actually wouldn't have been the
3 end in the normal circumstances. I would have -- if
4 this Tribunal was not --

5 543 Q. CHAIRMAN: well, sorry, let me ask you, I wanted to ask 15:44
6 you about that?

7 A. Yes, Judge.

8 544 Q. CHAIRMAN: I understand your point in relation to the
9 Ó Cualáin investigation?

10 A. Yeah. 15:45

11 545 Q. CHAIRMAN: Okay. I can see that you could go to GSOC
12 about that. But you had in mind that you could also go
13 to GSOC under a bullying and harassment?

14 A. Yes.

15 546 Q. CHAIRMAN: Okay, I see what you mean, if that didn't 15:45
16 succeed?

17 A. But, Judge, they --

18 547 Q. CHAIRMAN: Yes, they said you have to exhaust domestic
19 remedies first.

20 A. Yes. 15:45

21 548 Q. CHAIRMAN: You have to do the internal stuff and come
22 to an end. Okay, I have that.

23 A. Yes.

24 549 Q. MR. MURPHY: So I have to suggest to you, Garda Keogh,
25 that what's happening here is, going through all the 15:45
26 processes, Assistant Commissioner Finn, the review, the
27 final decision, that's the system that you have engaged
28 with?

29 A. Yes.

1 550 Q. It's held against you. And I have to suggest there is
2 nothing wrong about that, there is nothing targeting
3 about that, there's nothing bullying about that,
4 there's nothing designed to hurt you about that. That
5 is the fair outcome of the process, I have to suggest. 15:45

6 A. Look, the findings that Assistant Commissioner Finn
7 has, Judge, I did appeal them and I would have appealed
8 them to GSOC or followed through with GSOC, this
9 Tribunal obviously has occurred and I have made an
10 issue of it here to the Tribunal. 15:46

11 551 Q. Garda Keogh, it gets a bit more complicated again. If
12 we just go to the end of the statement for a moment,
13 because there's one further feature I would like to
14 draw your attention to. Do you see at the end you say:

15
16 "I have been confirmed in my opinion that the O'Brien
17 report and the investigation conducted by Assistant
18 Commissioner Finn amounted to a conscious and
19 deliberate failure to protect me from harassment and
20 bullying within the force by reason of the conclusions 15:46
21 reached by Assistant Commissioner Finn."

22
23 Just pause for a moment. You're saying not only do you
24 have a right to have your complaints upheld, and I
25 think you acknowledged that was a bridge too far, 15:46
26 you're saying that that not having taken place, in your
27 opinion both Mr. O'Brien and Assistant Commissioner
28 Finn were guilty of a deliberate failure to protect you
29 from harassment. Can you see how bizarre that

1 statement is now with the benefit of hindsight?

2 A. Judge, the only issue there I would have is that
3 Mr. O'Brien -- look, he just based his findings on Finn
4 investigation. So, I mean -- so I don't, I
5 shouldn't --

15:47

6 552 Q. Garda Keogh, this is April 2019, this Tribunal is
7 gearing up, getting ready to take part in its
8 processes, but you're solemnly saying in a statement of
9 this kind that my client, Assistant Commissioner Finn,
10 is guilty of a conscious and deliberate failure to
11 protect you because he disagrees with your complaint.
12 I have to suggest to you that's completely irrational
13 on your part?

15:47

14 MR. KELLY: Judge, I hesitate to interrupt.

15 CHAIRMAN: Yes.

15:48

16 MR. KELLY: That particular question is just simply
17 construed as no more than an argument. The Courts are
18 well accustomed to situations where parties believe
19 irrationally in a particular decision that has been
20 made, sometimes years, sometimes generations later,
21 courts come back and make a different point. I really
22 am at a loss to understand where this line of hammering
23 away, you're irrational because you think you were
24 right, no I'm not, is actually taken up. It seems to
25 me as no more as having a go and it's a deeply
26 unattractive.

15:48

15:48

27 MR. MURPHY: My Friend's objection, I think it's more
28 in the nature of a submission, which, in our respectful
29 submission could be dealt with at a later stage. What

1 I am seeking to do with this witness is put to him that
2 the accusations he has made against my client are
3 rational, that the accusations made against my client
4 Assistant Commissioner Finn have no basis.

5 CHAIRMAN: I understand.

15:48

6 MR. MURPHY: And that the accusation made is based on a
7 particular premise, which I say is ludicrous and
8 unsustainable.

9 CHAIRMAN: Mr. Murphy, isn't it clear that Garda Keogh
10 is dismissing the Finn investigation as being wholly
11 unsatisfactory?

15:49

12 MR. MURPHY: Yes.

13 CHAIRMAN: Not only that, but manifestly incompetent,
14 so to speak, or inept. Why is that? He says, well, I
15 reject each and everything, everything in the
16 conclusions. He says, it says there was no evidence.
17 He says, yes, I provided evidence. The implication
18 being that the Finn tribunal irrationally dismissed or
19 trivialised or overlooked the materials in his
20 appendices. That's what he said, that's his evidence.

15:49

21 When you were going through the Notice of Appeal
22 against the findings, I think any of us would recognise
23 that the language was not the language of a client, let
24 me put it that way, although it's expressed on his
25 behalf. And it is in the nature of general objections.
26 Of course, when we see conscious and deliberate,
27 immediately we appreciate the origins of that phrase
28 and I suppose it occurs to people the extravagance of
29 language is not always to be -- and I think here's

15:50

1 where I agree with Mr. Kelly's observation, that one
2 can really get into an argument by demanding that the
3 client acknowledge -- I mean, he's in a difficulty
4 because -- here's what is being said on his behalf.
5 Essentially what he is saying is, the whole thing is 15:51
6 rubbish. But he also said, first of all, I provided
7 some evidence, I provided evidence in the appendices
8 and another thing, the Liam McHugh episode as dealt
9 with by -- which I was waiting for some specific --
10 where is the specific challenge, he says, the facts in 15:51
11 the appendices no doubt to be explored, or not as you
12 judge, but he says Liam McHugh. So that's a specific
13 thing he says is wrong.

14
15 Now, I am listening to complaints in general terms and 15:51
16 this is a complaint in general terms. I note and did
17 note previously the language as used and I noticed and
18 I did think, for what it's worth, Mr. Murphy, at this
19 point it appears to me that your interpretation is a
20 correct one, that the statement in the letter says, I 15:52
21 reject it because it doesn't agree with me.

22 MR. MURPHY: Yes.

23 CHAIRMAN: That's what I think that letter says. But
24 he actually says he has more specific things.

25 MR. MURPHY: Yes. In relation to that distinction, I 15:52
26 am very grateful for that direction.

27 CHAIRMAN: Yes.

28 MR. MURPHY: Insofar as the letter by way of appeal is
29 concerned, I fully accept, Chairman, that that's within

1 the language of -- but I do urge the Tribunal to
2 consider that this statement is not a submission, it's
3 a statement.

4 CHAIRMAN: Absolutely.

5 MR. MURPHY: Therefore, it's status is different, it 15:52
6 reflects the thinking of the person who made it.

7 CHAIRMAN: Sorry, it's also fair, I think Mr. Kelly is
8 also -- let's face it, from our own experience, the
9 fact that somebody continues to believe he is right
10 would scarcely make him a unique client. 15:52

11 MR. MURPHY: No.

12 CHAIRMAN: Not withstanding the judgment of the Court
13 of Appeal even.

14 MR. MURPHY: My question, Judge, is directed towards
15 the witness to help him to acknowledge that the problem 15:53
16 is not that he has that view, it's how he characterises
17 those who disagree with him.

18 CHAIRMAN: That's right. You say that whenever
19 somebody disagrees, he rejected it as being --

20 MR. MURPHY: Deliberate. 15:53

21 CHAIRMAN: An example --

22 MR. MURPHY: A deliberate or negligent failure to
23 effectively protect his rights, as opposed to a
24 legitimate third party issue.

25 CHAIRMAN: You say that goes further than simply a 15:53
26 protest about the finding.

27 MR. MURPHY: Yes.

28 CHAIRMAN: It is an accusation and you say an
29 unwarranted or unfounded, evidentially unfounded

1 serious allegation against a police officer.

2 MR. MURPHY: Yes.

3 CHAIRMAN: Okay.

4 MR. MURPHY: Chairman, I make the case that ultimately
5 this is something which flows through this witness's 15:53
6 view of all the areas.

7 CHAIRMAN: I understand that.

8 553 Q. MR. MURPHY: I will perhaps return to that in
9 submissions itself. So, insofar as this is concerned,
10 we know that this appeal document was filed, but you 15:53
11 know that this issue was also reviewed by Mr. de Bruir,
12 Mr. McGuinness has asked you about that?

13 A. Yes.

14 554 Q. Again, I think you will accept Mr. de Bruir is not a
15 member of An Garda Síochána? 15:54

16 A. Correct, yeah.

17 555 Q. He is an independent expert outsider?

18 A. Yes.

19 556 Q. Qualified in law. You have seen, and again I don't
20 propose to take you through it in detail, you will have 15:54
21 seen what he has said and that he has taken a view that
22 the investigation of Assistant Commissioner Finn was
23 not flawed in the way in which you have suggested?

24 A. You see, unfortunately again, the de Bruir
25 investigation is based on Assistant Commissioner Finn's 15:54
26 investigation. I never got to meet Mr. de Bruir,
27 Judge, and the part of the Liam McHugh thing there,
28 where --

29 557 Q. CHAIRMAN: No, just on the de Bruir thing, I know you

1 are pointing -- that was a paper review.

2 A. Yes.

3 558 Q. CHAIRMAN: On the documents?

4 A. Yes.

5 559 Q. CHAIRMAN: Isn't that right? 15:54

6 A. Yeah.

7 560 Q. CHAIRMAN: Okay.

8 A. But, Judge, even in the de Bruir report it has -- it

9 appears that it was me that was involved in theft of

10 money from Liam MCHugh. If you were to go back to the 15:54

11 original whole thing with the Liam MCHugh scenario,

12 that it was me that allegedly -- it's alleged there was

13 a theft but it was alleged then, what was investigated

14 by the Guards was that I asked Mr. MCHugh to report it

15 and I'll back you up. But it's gone from -- as I said, 15:55

16 in Garda Lyons' statement, he's not -- nobody goes to

17 him or he doesn't know what happened with it

18 afterwards, but it seems to go then, it seems to

19 actually grow arms and legs from the Finn investigation

20 that to actually put my hand almost in MCHugh's pocket. 15:55

21 561 Q. MR. MURPHY: So you disagree with Assistant

22 Commissioner Finn's findings on the MCHugh element of

23 the complaint?

24 A. Oh, that was just the one -- that was the one that

25 obviously really got to me. 15:55

26 562 Q. At this stage, Garda Keogh, as we sit here today, we

27 know the position is that Assistant Commissioner Finn

28 made his decision, Mr. de Bruir made his decision, that

29 decision is then reviewed at a later stage and case has

1 there's issues over the appendices that I originally
2 submitted at the very start making my bullying and
3 harassment complaint. I don't know what exactly was in
4 there. But we sent Mr. de Bruir the whole lot then.

5 569 Q. CHAIRMAN: Okay. 15:57

6 A. In the end. But de Bruir investigation, of course, was
7 like a house, it could be fine, look fine, everything
8 could have been perfect, but it was built on the Mick
9 Finn investigation, which I would say is like
10 quicksand. So no matter how well the de Bruir thing 15:57
11 would appear to be, it was based on the Mick Finn
12 investigation.

13 570 Q. MR. MURPHY: But you see, Garda Keogh, I have to
14 suggest to you that this is a counsel of despair on
15 your part because you did make appeal and you did make 15:57
16 submissions. I wonder if you could be shown, please,
17 volume 47, page 13162. This is part of the de Bruir
18 audit report, Chairman, which refers to the MCHugh
19 complaints. So, do you have that there, please?

20 A. 13162? 15:58

21 571 Q. At page 13162, please.

22 A. Yes.

23 572 Q. You will see at paragraph 8.11 he refers to the
24 investigation that took place at local level. The
25 first point is that, you see at paragraph 8.11: 15:58

26
27 "It is known that no complaint of bullying or
28 harassment was made against Inspector Farrell or
29 Detective Sergeant Curley."

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we know that's correct?

A. Yeah.

573 Q. Then he says, 8.12:

"There was no submission in the appeal that Garda Lyons was incorrect or inaccurate in his recording of what was said to him by Liam McHugh and Olivia O'Neill on 31st May 2014."

15:58

Just pausing there for a moment, this is Mr. de Bruir saying, well, there isn't any submission that Lyons' was incorrect. At 8.13:

15:59

"There is no complaint against Garda Lyons, there is no suggestion he is instructed by any superior officer to fabricate the account he reported of the conversation with Liam McHugh. Garda Lyons' integrity or the accuracy of his report has not been challenged."

15:59

Then, if we move down to paragraph 8.16:

15:59

"Observation: The fact that the names of the other two guards were not given to Garda Keogh would appear to be because Liam McHugh didn't give a name to Garda Lyons and/or of the discussion between Garda Keogh, if the discussion between Garda Keogh and Liam McHugh did take place, which denied. In the appeal submission it appears that the names of the two gardaí were not given

15:59

1 to Liam McHugh. Liam McHugh in response to Garda Lyons
2 question if the incident had actually happened, he
3 said, no, not at all, I'm not going to bring trouble on
4 myself."

15:59

5
6 Turning over to the following page --

7 A. Judge, sorry, there is one big issue here, and that is:
8 I didn't make a complaint against Garda Lyons. I
9 didn't find out that Garda Lyons was the author of the
10 report I think until, was it last year, at some stage. 16:00
11 Like, so I couldn't have made a complaint against Garda
12 Lyons when I didn't know he was the person who was the
13 author of the report.

14 574 Q. But, you see, what happens here, I am going to suggest
15 to you, without going through every single line of 16:00
16 this, some of which has been dealt with by
17 Mr. McGuinness, if you just go forward to 8.21. This
18 is Mr. de Bruir, who has no axe to grind, he's an
19 independent person and he says this:

16:00

20
21 "A comprehensive investigation was carried out in
22 relation to this matter and that the findings of AC
23 Finn leading to the decision of AC O'Brien arose from a
24 fair and impartial investigation."

16:00

25
26 That is the view that was adopted by -- I appreciate
27 you disagree with it but I have to suggest to you that
28 there is nothing to demonstrate this was, in the words
29 from your previous statement, a deliberate or negligent

1 effort to damage your rights?

2 A. Judge, even on this, this part here, I mean Mr. de
3 Bruir is obviously under the impression that I know
4 that it's Garda Lyons involved in that. Like, I didn't
5 know Garda Lyons was involved in that. But Mr. de 16:01
6 Bruir is under -- seems to be under the impression that
7 I knew that and I didn't make a complaint about it. I
8 always from day one, Judge, said that I didn't have --
9 not alone did I have anything to do with it, that I
10 knew nothing about it, but I went as far as to say the 16:01
11 whole thing was false. That was right back in May
12 2014, when it first started to pop its head up.

13 575 Q. Garda Keogh, again I have to suggest to you that it's a
14 further example of you attempting to re-running
15 investigations which have already completed. would you 16:01
16 into the agree with me that Mr. de Bruir, looking at
17 the methodology used by Assistant Commissioner Finn,
18 said that it was fair?

19 A. That assistant commissioner --

20 576 Q. Does he identify any flaw in the procedures adopted by 16:01
21 Assistant Commissioner Finn?

22 A. We're just after identifying a massive one here just a
23 moment ago.

24 577 Q. Sorry, Mr. de Bruir. I am asking about Mr. de Bruir's
25 report? 16:02

26 A. No, no, Mr. de Bruir's report, Judge --

27 578 Q. would you agree with me, just for a moment just listen?

28 A. Yes.

29 579 Q. would you agree with me that Mr. de Bruir upheld the

1 findings of Assistant Commissioner Finn and he
2 concluded that this was in his view fair and impartial
3 as an investigation?

4 A. That's -- I mean that's -- he just -- I mean --

5 580 Q. CHAIRMAN: You think he rubber stamps Assistant 16:02
6 Commissioner Finn's report. That's your point?

7 A. Essentially. But equally, Judge, on the face of it, if
8 you didn't know anything about what went on, Assistant
9 Commissioner Finn's report might look fine, you know,
10 and that. But the likes of this stuff here, the Garda 16:02
11 Lyons things and I didn't make a complaint against him
12 and all that, like Mr. de Bruir, of course, is not to
13 know, because in all the reports, in the Finn
14 investigation on this part, they have Garda Lyons
15 received this information in good faith, in virtually 16:03
16 every one of them, and there's not one mention in any
17 of the reports anywhere that Garda Lyons was Garda A's
18 partner or that from day one I always disputed that
19 whole allegation. It's just not there. That's not
20 Mr. de Bruir's fault, like he's only basing his -- 16:03
21 making his findings on the Finn investigation.

22 581 Q. You see, I have to suggest to you that the Finn
23 investigation, as this appeal reveals, was fair and
24 thorough and did take into account all relevant
25 situations and was rational as well? 16:03

26 A. No, I don't agree with that.

27 CHAIRMAN: Okay. I am proposing to break there,
28 Mr. Murphy, unless there's a question or two that you
29 are dying to ask and that won't wait until tomorrow.

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If there are we will do that but otherwise we will wait until tomorrow.

MR. MURPHY: Chairman, I think this would be an appropriate moment to break.

CHAIRMAN: Thank you very much. Okay. We will break until tomorrow. Thank you very much. 16:04

THE HEARING THEN ADJOURNED UNTIL TUESDAY, 5TH NOVEMBER 2019 AT 10:30AM

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