

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

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1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HELD IN DUBLIN CASTLE
ON THURSDAY, 14TH NOVEMBER 2019 - DAY 117

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

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I N D E X

W I T N E S S

P A G E

C H I E F S U P E R I N T E N D E N T M A R K C U R R A N

D I R E C T L Y E X A M I N E D B Y M S . M C G R A T H 8

1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 14TH
2 NOVEMBER 2019:

3
4 MS. MCGRATH: Good morning, Chairman. I think
5 Chairman, we are going to start this morning with Chief 10:36
6 Superintendent Mark Curran.

7 CHAIRMAN: Thank you very much. Thanks, Ms. McGrath.
8 Yes. Thanks, chief superintendent, if you come around
9 here.

10 MR. KELLY: Chairman, I am just a little confused, I 10:36
11 thought we were starting with Olivia O'Neill.

12 CHAIRMAN: Hold on a second. Sit down there for one
13 second, chief superintendent. Just at this time down
14 in the witness box for the moment, we will get you
15 sworn in a second. Yes, Mr. Kelly. 10:36

16 MR. KELLY: I thought we were starting this morning
17 with Olivia O'Neill.

18 CHAIRMAN: We were supposed to be starting not only
19 this morning but yesterday morning with Olivia O'Neill.
20 We understood she was coming but she didn't. Then we 10:36
21 made arrangements for this morning and we were assured
22 that all would be well and she didn't show up either.
23 So, we are proceeding in that case without Ms. O'Neill.
24 What we will do at the end of the day, I don't know.
25 What conclusions can be drawn if she does turn up, if 10:36
26 she doesn't turn up, who knows, but we're not holding
27 up the whole inquiry while we wait to see what's
28 happening. We understood that everything was all
29 right. Who is representing Ms. O'Neill? She has

1 counsel and solicitor.

2 MR. CONNELLAN: Yes, Chairman, I appear for
3 Ms. O'Neill.

4 CHAIRMAN: She has counsel and solicitor. They did
5 their best. We have done our best, they did their 10:37
6 best. What can we do? It may be at some point that
7 there is some question of saying -- I'm not a believer,
8 I have to confess, in bringing people under compulsion.
9 The Tribunal has those powers. My experience is that
10 they don't usually work if people are dragged in under 10:37
11 compulsion. But there it is, we will have to look at
12 all those things in due course.

13 MS. McGRATH: I think, Chairman, in fairness to counsel
14 for Ms. O'Neill, Mr. Connellan said they are keeping an
15 eye on the matter during the day and they will keep us 10:37
16 posted.

17 CHAIRMAN: Absolutely. What can they do any more than
18 what we can do, Ms. McGrath? Somebody shows up.
19 Somebody doesn't show up. The other point is: There
20 may be good reasons. Who knows. We all know, things 10:38
21 happen, people get sick, people have accidents.
22 whatever happens. Who knows what the explanation is.
23 But there it is. All will be revealed in due course.
24 In the meantime, Mr. Kelly, if we proceed.

25 MR. KELLY: Certainly. It would have been nice to have 10:38
26 been told this in advance.

27 MS. McGRATH: I'm sorry, I --

28 MR. KELLY: Can I have ten minutes for us to readjust
29 where we are at. We applied in a particular way.

1 CHAIRMAN: Mr. Kelly, could I ask you this? Could you
2 not re adjust while we're doing the evidence, if you
3 need to time, if you need time before any question
4 arises in cross-examination, I will be very sympathetic
5 to that. At this point I am keen to get started. I 10:38
6 know that Chief Superintendent Curran is leaving the
7 country and, therefore, the reason he is here today is
8 to take his evidence and to complete his evidence, so
9 that he can go. So his evidence is going to be
10 completed between today and tomorrow come what may. 10:39

11
12 We have estimated as best we can all the possible
13 combinations and that seems to us to be reasonable. So
14 it's all the more important to get going. If you need
15 it when it arises, I will be sympathetic to any 10:39
16 question of that kind. But meantime, I propose that we
17 will proceed. Okay.

18 MS. McGRATH: Thank you, Chairman.

19
20 CHIEF SUPERINTENDENT MARK CURRAN, HAVING BEEN SWORN, 10:39
21 WAS DIRECTLY EXAMINED BY MS. McGRATH, AS FOLLOWS:

22
23 CHAIRMAN: Thanks very much. Sit down there, please,
24 chief superintendent. Thank you very much.

25 1 Q. MS. McGRATH: Good morning, chief superintendent. My 10:39
26 name is Sinéad McGrath and I am going to be asking you
27 questions on behalf of the Tribunal this morning. I
28 think just to outline at the outset, at the moment I
29 think you're currently attached to Ballymun Garda

1 station, is that right?

2 A. That's correct.

3 2 Q. I think you have been at Ballymun since August 2017, is
4 that correct?

5 A. Yes, Judge. 10:40

6 3 Q. As we have heard, you're at the rank of chief
7 superintendent, isn't that correct?

8 A. That's correct.

9 4 Q. You were the divisional officer in the westmeath
10 division for just over three years. Just for the 10:40
11 record, just those dates were I think 21st February
12 2012 to 9th May 2015, is that right?

13 A. That's correct, Chairman.

14 5 Q. Okay. I think when you left that position you were
15 replaced by Chief Superintendent Lorraine Wheatley? 10:40

16 A. That's correct.

17 6 Q. I think you outline in some detail the workings of the
18 division and the responsibilities of the divisional
19 officer in your statement to the Tribunal, isn't that
20 right? 10:40

21 A. Yes.

22 7 Q. You explain that the division in westmeath had two
23 districts, Athlone and Mullingar, isn't that right?

24 A. That's correct.

25 8 Q. You say that in the Athlone district during your time 10:41
26 there were around a hundred members, is that right?

27 A. Circa a hundred, yes.

28 9 Q. Okay. Now, just looking at your role as a divisional
29 officer, you say in your statement and you describe

1 your role as being a pivotal leadership role, is that
2 right?

3 A. That's correct.

4 10 Q. Okay. You also outline your management and leadership
5 responsibilities and your day-to-day duties, isn't that 10:41
6 correct?

7 A. That's correct.

8 11 Q. Now, I won't go through them all, but I think you list
9 a large number of duties as divisional officer. One of
10 them in respect of yourself was CHIS controller, is 10:41
11 that right?

12 A. No. A CHIS controller was a role I had previously,
13 when I was in Dublin for a period. I was a controller
14 for six years.

15 12 Q. Okay. 10:41

16 A. So the function of a controller is normally
17 superintendent rank or slightly below.

18 13 Q. Okay.

19 A. It may be inspector now. But as a chief in the
20 Westmeath division, I wouldn't have a role of control. 10:41
21 The chief has a very specific role. The controllers
22 answer to the assistant commissioner, but the chief has
23 responsibility to manage --

24 14 Q. The controllers, would that be right?

25 A. No, no. The controller is done through a regional 10:42
26 unit. So you might see RSU, so it's a regional
27 resource management unit.

28 15 Q. Okay.

29 A. But the chief superintendent has the role of managing

1 the sources within that division.

2 16 Q. Okay.

3 A. And the controller actively manages it for the chief.

4 17 Q. Okay. So, in your role as divisional officer,
5 vis-à-vis CHIS, again just to make it very clear, 10:42
6 crystal clear, how did you see your role vis-à-vis
7 CHIS?

8 A. Well, the responsibility is very clearly set out in the
9 code of practice. A chief superintendent has
10 responsibility for the implementation of the CHIS code 10:42
11 of practice.

12 18 Q. In that division?

13 A. In that division, yes. And that volumes the management
14 of sources, it involves the assessment of sources, the
15 assessment of risk, etcetera. That's done in 10:42
16 conjunction with the regional source management team.

17 19 Q. You outline a multiplicity of roles as divisional
18 officer, including that particular function you've just
19 mentioned. You speak about maintaining discipline
20 within the force, within the division, isn't that 10:43
21 right?

22 A. Yes.

23 20 Q. You also put some emphasis on your role in respect of
24 human resources and employee welfare, is that right?

25 A. Yes. 10:43

26 21 Q. In that regard then you would have a certain knowledge
27 in relation to the issue that's at hand at this
28 Tribunal, namely the reporting regulations, the charter
29 in respect of the reporting of malpractice, etcetera,

1 Sorry, correct, you say before May 2014

2 A. Yes, Chairman.

3 27 Q. Okay. And you think it might have been in the previous
4 year; is that right?

5 A. I have a very vague recollection of having a brief 10:44
6 conversation with him, you know, a pleasant enough
7 conversation with him.

8 28 Q. Okay. You go on to say in that, whilst that paragraph
9 is up on the screen, you say:
10
11 "Any interaction I had with Garda Keogh was in the form
12 of initial correspondence in which certain
13 clarifications were sought to progress matters within
14 the division and ensure my obligations from the
15 management and leadership perspective were met to all 10:45
16 personnel serving in the Westmeath division."
17
18 Isn't that right?

19 A. That's correct.

20 29 Q. Now, when you talk about official correspondence and 10:45
21 clarifications, are we talking about before or after
22 May 2014?

23 A. In that particular piece I'm talking after May '14.

24 30 Q. Okay. So, as we know from the evidence, Garda Keogh
25 made his protected disclosure on 8th May 2014. So, are 10:45
26 you saying that this correspondence and clarification
27 was after this date?

28 A. I may have had interaction with him, but it would have
29 been nothing of note, came of note after '14, when I

1 became aware that he availed of the mechanism, as
2 having been reported as such in the Dáil. So that's
3 really what I'm talking about there.

4 31 Q. Okay. Now, I think you were asked by the Tribunal
5 investigators had Garda Keogh come to your attention in 10:46
6 relation to, as was put, performance related work
7 issues before 8th May 2014 or after May 2014, and you
8 said no, is that right?

9 A. No.

10 32 Q. Okay. So no performance related work issues were ever 10:46
11 brought to your attention?

12 A. No.

13 33 Q. During your over three years as divisional officer, is
14 that right?

15 A. There was no performance issues raised in relation to 10:46
16 Garda Keogh, no.

17 34 Q. Okay. Can I ask you then, just moving to the 8th May
18 itself, in 2014. I just wanted to address how you
19 became aware of the protected disclosure that was made
20 by Garda Keogh. I think in your statement you say that 10:46
21 you became aware of it through broadcast media, is that
22 right?

23 A. I think so, yes.

24 35 Q. Now, you go on to say that you may have received some
25 contact from HRM but you're not sure? 10:47

26 A. I can't remember specifically. I think there was
27 probably a bit of fluster around it at the time. If I
28 recall the period, there was some news reporting of
29 someone having gone to GSOC who was in the company of

1 politicians and there was meant to be an attempt to
2 make a complaint there. So that had been out and the
3 subject, I suppose, of some speculation. It was a
4 surprise then it was Garda Keogh's name came out, he
5 was in my division. So I had no idea it was Garda 10:47
6 Keogh prior to that.

7 36 Q. But you say you may have received some contact from
8 HRM, but you're not sure, is that your position?

9 A. I can't remember. It wouldn't be unusual for someone
10 in a way to just make me aware in an informal way, to 10:47
11 make sure that I was aware as the chief. But I can't
12 remember. It was probably broadcast media, to be
13 honest.

14 37 Q. Okay. So I mean, I think you're just saying there that
15 the media publicity was a considerable scale that day, 10:47
16 on 8th May 2014, is that right?

17 A. Yes, yes.

18 38 Q. I think this was your under watch, so to speak. So, I
19 think that you wrote straightaway to the superintendent
20 in Athlone, is that right? 10:48

21 A. Yes, yes.

22 39 Q. In fact, I think we have seen that letter already,
23 where you write to Inspector Farrell as the acting
24 district officer and you mention both the Dáil
25 statement and you mention the malpractice regulation, 10:48
26 isn't that right?

27 A. Yes. I don't have -- I think it's volume 7, page 1980.

28 40 Q. That's right.

29 A. There is a particular letter there I wrote out, where I

1 was ensuring that he be supported in the workplace and
2 that An Garda Síochána values individuality in the
3 workplace. At the time, I suppose, to put it in
4 contact, Commissioner O'Sullivan I think had been
5 appointed the interim Commissioner in around March and 10:48
6 she had been speaking about the whole concept of
7 whistleblowers in the workplace and that they would be
8 supported. So that letter really would have been in
9 keeping with that message.

10 41 Q. Can I ask you, if there had been no Dáil statement on 10:49
11 that day, would you have known that this had happened?

12 A. I don't think so, unless there was some request for
13 information and, you know, reported back from Athlone
14 that there was documentation required. But, no,
15 generally -- and there would be no appetite, to be 10:49
16 honest with you, from my point of view anyway, other
17 than to facilitate those who were actually
18 investigating any matter.

19 42 Q. But would you say that was a positive call out from the
20 publicity, that you knew and were able to act 10:49
21 straightaway?

22 A. No, if I was to think back to the time when I heard
23 that, I would have said, is this the right way, is this
24 a good idea, for this person to be identified in the
25 media? Is it good for his welfare? That's the first 10:49
26 thing that occurred to me.

27 43 Q. So you say that you asked Inspector Farrell to meet
28 with him and that was on the 8th May. I think we know
29 from the papers that he didn't meet with him on the 8th

1 May but it was on the 9th May, the following night,
2 2014, do you accept that?

3 A. The following night, yes, he had a meeting with him,
4 yeah.

5 44 Q. After meeting with him, he reported to you, and again 10:50
6 that has been opened before the Chairperson, he
7 reported to you, that night of the 9th May, and it's at
8 volume 3, page 648, if might go up on the screen there.
9 Inspector Farrell writes a record of that meeting. I
10 think, would you agree, it wasn't a very positive 10:50
11 meeting with Garda Keogh?

12 A. Em, my memory is that I think he was probably slightly
13 distrusting of Inspector Farrell at the time. But I
14 think over all I think there was probably slight
15 tension in it. My understanding from Inspector Farrell 10:50
16 is that it could have been better. There was whatever
17 personal issue Garda Keogh had with Inspector Farrell
18 at the time, it had probably got in the way to some
19 extent. But I also was conscious that Garda Keogh --
20 this would have been a difficult time for Garda Keogh. 10:50

21 45 Q. But I think you see there it's recorded that Garda
22 Keogh referenced:

23
24 "Say what you have to say. Tick all the boxes."

25
26 And on the last line: 10:51

27
28 "I asked him had he any questions. He said no, and
29 walked out. I thanked him for meeting with me."

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Was this a cause of concern for you, when you saw this report, that it hadn't been a particularly positive meeting with Inspector Farrell?

A. To some extent, yes, but I think if I was to really rationalise it, there was anti-management things going for him, you know, at that time. 10:51

46 Q. Now I think you contacted Superintendent Noreen McBrien by phone on the 9th May, and you discuss Garda Keogh, is that right? 10:51

A. Yes.

47 Q. She deals with this telephone conversation in her statement. I think it was agreed that she would contact Garda Keogh and check on his wellbeing, is that right? 10:51

A. Yes.

48 Q. She says she made that phone call to him on the 11th May, do you accept that?

A. Yes, sure.

49 Q. Now, you called her again I think on the 12th May and she updated you in respect of that. Again she deals with this in her statement. She says it was a welfare concern. That's what she was discussing with Garda Keogh, is that right? 10:52

A. That's correct. 10:52

50 Q. I think she was telling you that. Now, one of the things I just wanted to ask you about is that she ought lines in her statement that when she spoke to him on the 12th May, she told Garda Keogh that you would be

1 happy to meet him?

2 A. Yes.

3 51 Q. He replied that he was happy to meet you if it had to
4 do with welfare concerns?

5 A. Yes, Chairman. 10:52

6 52 Q. Okay. So I think you accept that Garda Keogh was happy
7 to sit down with you at that point?

8 A. Yes.

9 53 Q. As divisional officer?

10 A. Yes. 10:52

11 54 Q. Now, I don't think you ever did meet him, is that
12 right?

13 A. No, Chairman.

14 55 Q. Do you know why this proposal fell away and why in your
15 capacity you didn't meet him? 10:52

16 A. I think in around -- I don't know if I was away for a
17 certain period of time around that in June, but then we
18 had a very serious incident in Athlone and I was over
19 in Athlone a good bit. Took a lot of my attention, it
20 was a complex investigation. So I think by the time it 10:53
21 got to the end of June, I got a call off Detective
22 Superintendent Mulcahy and he had said to me that there
23 was some assertion that I'd moved a DVD and/or, I'm not
24 sure if he said drugs at the time from a storeroom. I
25 totally rejected that, it was not true. But that put 10:53
26 me on -- it had me my concerned. Mulcahy was part of
27 the ó Cualáin team and investigating matters relating
28 to the confidential recipient report. So at that stage
29 I'm not sure am I under investigation and is this the

1 only matter or are there other matters. So I proceeded
2 with caution in respect of Garda Keogh from that point
3 on. Also, there's correspondence then channelling
4 through and from and I didn't want to make it more
5 difficult, considering he had made a complaint about me 10:54
6 and I was asking questions of him.

7 56 Q. Can I ask you, Detective Superintendent Mulcahy places
8 this call to you as the 26th June 2014.

9 A. Yes.

10 57 Q. I think he discusses this with you. Was that where 10:54
11 that ended?

12 A. That's where it ended. Well, he didn't discuss it; he
13 was asking was it true.

14 58 Q. You mention there in your evidence and you also say in 10:54
15 your investigator interview that you had to proceed
16 with caution with Garda Keogh?

17 A. Mm-hmm.

18 59 Q. What did you mean by that? What was your thinking
19 behind that?

20 A. Well, I have rights as well and I have to be careful 10:54
21 that I'm not compromising my rights when I'm dealing
22 with someone who is making an allegation against me,
23 especially someone within the work force. I had no
24 sight of this allegation, I am just getting a phone
25 call where I am asked is it true or not. So I am 10:54
26 taking the position that I am just going to be careful
27 in how we interact with him. Me dealing with someone
28 making a complaint against me can also impact on Garda
29 Keogh as well. So, it might spoil the relationship

1 that I may have, would possibly should have had, had
2 this not been made, if that makes sense.

3 60 Q. A relationship that should have happened? Can you
4 expand on that for the Chairman?

5 A. What I am saying is, in normal -- if there hadn't been 10:55
6 an allegation made against me, I would have no problem
7 and would be quite happy to sit down with Garda Keogh,
8 but this made it difficult for me. Difficult for me.
9 At that stage a number of correspondence were
10 channelling between the superintendent and Garda Keogh 10:55
11 in respect of the intelligence and I just didn't want
12 to make it more complicated. That's another part of
13 it.

14 61 Q. Did you think maybe it might have been a situation then
15 that you might have just removed yourself out of the 10:55
16 equation or not, or asked the assistant commissioner of
17 the Eastern Region to deal with all matters. Did you
18 consider that?

19 A. No, I didn't, because the obligation in relation to the
20 CHIS matter rested with me and no one else. So I 10:55
21 didn't consider doing that, because a phone call, I had
22 received nothing in terms of writing or no formal
23 correspondence. But I was -- I can't say I was in fear
24 but I did feel that there was a possibility that
25 something may come down in writing, there may be a more 10:56
26 expanded version of an allegation or other allegations.
27 So they hadn't arrived, and until that arrived I was
28 just going to be cautious.

29 62 Q. Do you think then that it affected the manner or

1 approach you took to Garda Keogh over all?
2 A. No, it didn't trouble me greatly because I knew there
3 was no basis to it whatsoever, but I just wanted to be
4 careful and it was important to be professional and not
5 to muddy the waters. 10:56
6 63 Q. If I can just move on from that and just address two
7 issues, again arising really out of your interview with
8 the investigators, where you were asked about what you
9 knew about Garda Keogh being a confidential reporter or
10 how you knew about it effectively. If I can just 10:56
11 repeat something that you said to the investigators.
12 You say you never received any written official
13 confirmation that he was a confidential reporter, is
14 that right?
15 A. Okay, and I suppose just to go back and maybe clarify a 10:57
16 point. If I got a phone call from someone, it would
17 have been someone that listened to the media as opposed
18 to someone that was getting any back channel
19 correspondence, you know. So it was sharing media
20 commentary as opposed to anything formal. 10:57
21 64 Q. But I think, am I right or wrong, you yourself had
22 heard it on the media, it wasn't somebody who told you
23 from the media?
24 A. No, I did, I heard the media as well. It was very
25 widely covered at the time. 10:57
26 65 Q. Okay. But again, can I just ask you about the use of
27 the word "official", you never received any written
28 official confirmation that he was a confidential
29 reporter?

1 A. Oh not at all.

2 66 Q. Then you go on to say:

3

4 "Officially I was never informed who the confidential

5 reporter was. I didn't know what allegations had been 10:57

6 made. Nor did I know against whom they had been made."

7

8 A. No. The only thing that type of -- at one stage AC,

9 Assistant Commissioner Ó Cualáin rang me and he wanted

10 to arrange a meeting or he wanted a package delivered 10:58

11 to Garda Keogh. That was the only time.

12 67 Q. Can I just clarify that. I just understood from

13 Superintendent Noreen McBrien's statement that the

14 phone call from Assistant Commissioner Ó Cualáin was

15 made to her in respect of delivering that particular 10:58

16 letter, I think it was 15th May 2014?

17 A. In around that time. I can't be sure if it was a

18 package, I got a call off Assistant Commissioner Ó

19 Cualáin, I thought it was a package, I can't remember.

20 68 Q. So was it you who got the call or Superintendent 10:58

21 McBrien?

22 A. I got a call from Assistant Commissioner Ó Cualáin, I

23 can't remember exactly what it was about but it was a

24 very businesslike call. It might -- actually it might

25 have been looking for a phone number for Garda Keogh or 10:58

26 something like that, you know, or was he working.

27 69 Q. Again, I think we will hear Superintendent McBrien's

28 own evidence, but, as I say, in her statement she

29 places herself as getting that call from Assistant

1 Commissioner Ó Cualáin, but you're saying it was you
2 who got the call, is that right?

3 A. I got a call, it may be the package, it was a very
4 simple, functional call, looking for a piece of
5 information. I didn't get the package. It might have 10:59
6 been looking for Noreen McBrien's number, looking for
7 to deliver a package. It was nothing that involved
8 further action from me.

9 70 Q. Okay. Now, we're still, if you don't mind, chief
10 superintendent, I am still looking at the timeframe of 10:59
11 the 8th and the 9th, where you are saying that you were
12 never officially informed about the position. Can I
13 ask you, what was your unofficial knowledge or what was
14 your awareness of who the confidential reporter was or
15 what the allegations might have concerned? 10:59

16 A. My general knowledge?

17 71 Q. Your awareness, if I can put it like that?

18 A. I had no idea what the allegations were about.

19 72 Q. Okay. I think Superintendent Noreen McBrien, who is
20 your super in the station, I think she says there was 10:59
21 an awareness in the station that Garda
22 Keogh allegations concerned Garda A --

23 MR. MÍCHEÁL O' HIGGINS: Chairman, could I ask, if
24 particular comments, either of the witness or others
25 are being put to the witness, I wonder would it be 11:00
26 possible for the particular document to be identified
27 so the witness has an opportunity to see it in context,
28 in the same manner that has been occurring to date.
29 Excuse me for interrupting, I don't ordinarily. Just

1 if that facility, if a particular document --
2 CHAIRMAN: That doesn't seem unreasonable, Ms. McGrath
3 does it?
4 73 Q. MS. McGRATH: Not at all. I think Noreen McBrien's
5 statement that I am talking about, volume 21, at page 11:00
6 6219. It can be opened if you like there, but I just
7 read the extract there of awareness in the station. If
8 you see there, it's at the very end:
9
10 "There was an awareness that the allegations made by 11:00
11 Garda Keogh involved Garda A and this awareness was
12 around the station before Assistant Commissioner Ó
13 Cualáin was appointed to investigate -- "
14
15 If we just go to the next page. 11:01
16
17 " -- Garda Keogh's confidential report."
18
19 As I say, that is Superintendent Noreen McBrien's
20 statement. Do you have anything to add to that, or 11:01
21 would that have...
22 A. I know I didn't know what the allegations were. There
23 might be local speculation. That's about it. If we
24 just move on down that statement to page 6221. Is that
25 6621? I said 6221, sorry, Mr. Kavanagh. 11:01
26 CHAIRMAN: Yes, what are you referring to there,
27 Ms. McGrath.
28 74 Q. MS. McGRATH: If you can just go down that page,
29 please, Mr. Kavanagh. She talks about an atmosphere in

1 the station due to the disclosure, at 263. would you
2 also have been aware of that?

3 A. Only in the normal course, like you'd expect. You
4 know, probably aware that somebody had gone and made a
5 complaint. 11:02

6 75 Q. Now, can I ask you then, you say there, just earlier,
7 you had received a call from Assistant Commissioner Ó
8 Cualáin. I think again you were asked by the
9 investigators when you first became aware of the
10 Ó Cualáin investigation. In your interview at volume 11:03
11 7, 1935, you say:

12
13 "I can't recall when I first became aware of the
14 Ó Cualáin investigation." 11:03

15
16 And you say:

17
18 "There was a communication from Chief Superintendent
19 Tony McLoughlin in Internal Affairs at one stage." 11:03

20
21 So that's 1935, it will come up on the screen there.
22 Can I just ask you about that? Was your phone call
23 from Assistant Commissioner Ó Cualáin that you say you
24 received your first knowledge that he had been
25 appointed? 11:03

26 A. No, it would have been in the media.

27 76 Q. You referred to a communication from Chief
28 Superintendent Tony McLoughlin at one stage. Do you
29 have any detail about that?

1 A. Can I refer to a page on that?

2 77 Q. 1935.

3 A. Yeah, that was later on, I think, possibly prompted by

4 the intelligence section.

5 78 Q. So that was a contact from him. Can you place it at 11:04

6 any particular time, a month or two?

7 A. I'd say in a month, I'd say sometime mid-June. I might

8 have it here. I think I had written on this as an

9 issue for me. I see one, I notice a piece of

10 correspondence here on the 25th July, I see Tony 11:04

11 McLoughlin's name. I'm not sure if that's the piece

12 I'm talking about. He's also writing on the 7th

13 August. At that stage there was an issue around who

14 was going to investigate the criminal intelligence. I

15 don't know if you want to address that now. 11:04

16 79 Q. No. If you just bear with me for a moment.

17 A. Yeah.

18 80 Q. So I think you're placing that communication a number

19 of months later, is that right?

20 A. With McLoughlin, I think so. 11:05

21 81 Q. Okay.

22 A. It's all in writing, you know, so whatever came in, in

23 terms of correspondence.

24 82 Q. If you stay on that page, if you look at line 212.

25 Staying on the page, when you're asked about the scope 11:05

26 of the investigation, you say:

27

28 "I never knew anything about it. Just to confirm, I

29 was never officially informed about the scope of the

1 investigation, who the central parties were and I never
2 made any enquiries in that regard."

3

4 A. No, Chairman.

5 83 Q. That's 212 there to 213, do you see that?

11:05

6 A. Yes, that's true.

7 84 Q. You say, officially, you use the word officially there:

8

9 "I was never officially informed about the scope of the
10 investigation."

11:05

11

12 But taking away the word "officially" there for a
13 moment, I think you're very clear in your evidence that
14 there was no official contact made with you about Garda
15 Keogh or the investigation, but taking away the word
16 "officially" then, at that stage did you have any
17 knowledge of the scope of the investigation?

11:05

18 A. I had no idea, no, none whatsoever. To be honest with
19 you, I was even particularly interested, because that's
20 something that they have to look after, you know, I'm
21 only interested in the impact on the people on the
22 ground.

11:06

23 85 Q. Now, I just want to move on, chief superintendent. I
24 think you have seen the documents that Garda Keogh has
25 put before the Tribunal. He has outlined to the
26 Tribunal what he considers to be targeting or
27 discrediting conduct. I know you will have seen this,
28 that he describes you as the driving force in his
29 investigatory interview, isn't that right?

11:06

1 A. Yes, Chairman.

2 86 Q. I think that's Garda Keogh's position in his material.

3 A. And if I can just say, I reject that outright.

4 87 Q. Okay. I think what I would like to do now is just take
5 you through the first four issues that are on the 11:06
6 Chairman's list, issues 1 to 4. While doing that, I
7 will also be referencing some evidence from Garda Keogh
8 since the 14th October, but before we start, can I just
9 ask you something very, very practical: You swore an
10 additional statement there not too long ago, clarifying 11:07
11 errors in your correspondence, isn't that right?

12 A. Well errors in the correspondence I signed, yes, the
13 date, date errors.

14 88 Q. I think you swore that to clarify certain dates, but I
15 don't think there is actually an explanation outlined 11:07
16 as to how -- this was a pervasive error in many
17 respects, it was on a large number of letters.

18 A. Yes.

19 89 Q. I think the 19th May 2014 featured a lot, isn't that
20 right? 11:07

21 A. Yes.

22 90 Q. I'm not sure if there is any explanation for the error
23 in your additional statement but can you explain how
24 that error came about?

25 A. My understanding is, the clerk was using the same 11:07
26 template all the time and I didn't spot the date.

27 91 Q. Sorry, can you just say that again?

28 A. The clerk was using the same template and the date was
29 pre-loaded, so I didn't spot the date when I signed it.

1 Normally -- it's only that set, it only seems to be
2 that set of correspondence, on the intelligence. It
3 doesn't relate to the other ones.

4 92 Q. Can I ask you, was it your recently is the first time
5 it was picked up? 11:08

6 A. No, when I was going through the documents a long time
7 ago. So I can't remember, I made that statement
8 probably about three months ago now, so I would have
9 realised it sometime before. But going through the
10 documentation, I found how confusing it was for me, to 11:08
11 be honest with you, to try and make sense of it. So my
12 problem was, I'm doing this in Ballymun, I have left
13 Mullingar. So I have to get on to Mullingar, they had
14 to go out and do diligence on it and cross-referencing
15 with other offices to make sure the dates were right. 11:08
16 They supplied me with dates. And on the basis of that
17 I made the statement.

18 93 Q. Okay. Now I just want to start with issue 1, and
19 that's the intelligence entry on 18th May 2019, chief
20 superintendent. Now, we have seen a large amount of 11:08
21 documentation. Garda Keogh took a position. For
22 example, at Volume 1, in his interview with the
23 Tribunal, page 97, he said you were one the persons,
24 which he used the phrase "behind the CHIS matter". So
25 you would have seen this, is that right? 11:09

26 A. Well, I am one of the people behind the CHIS matter. I
27 don't know what he means by that specifically. But I
28 take it it's about the questioning of him in relation
29 to CHIS, yes.

1 94 Q. Now, just generally before we just go into the nuts and
2 bolts of it, that was the -- he also took the position
3 in his documentation file that the enquiries made of
4 him were an inappropriate interference by senior garda
5 management, he called them a mini investigations, you 11:09
6 would have seen that, is that right?

7 A. Yes.

8 95 Q. That's at volume 1, page 122 and 123. Now, I think
9 your position when you were interviewed was that you
10 made only enquiries to the extent that were necessary? 11:09

11 A. Yes.

12 96 Q. Isn't that right? That's at page 1795 of your
13 interview. Also in relation to whether or not
14 Superintendent McBrien was put under pressure, I think
15 you denied that and I think Superintendent McBrien, is 11:10
16 that right?

17 A. That never happened, Chairman.

18 97 Q. Okay. Garda Keogh has spent a number of days in the
19 witness box and he spent some time on this particular
20 issue. I think on Day 99, at 139 of his 11:10
21 direct-evidence, he was asked about these requests over
22 the couple of months that were made to him and I think
23 his position as it stands or certainly stood on Day 99,
24 was that he accepted that it was not bullying but that
25 it was harassment. That seems to be his position 11:10
26 before the Chairman.

27 A. The questioning in relation to it, is it?

28 98 Q. That's Day 99 of the transcript, at page 139.

29 A. What line are you talking about? Oh I see it here. So

1 it's question 369. I don't know if there is any
2 reference really in the bigger scheme of things. I was
3 asking questions because I had to ask them.

4 99 Q. Yes.

5 A. I had responsibilities under the code of practice. 11:10

6 100 Q. Mr. Kavanagh, it's at line 27. So, just your answer
7 there, chief superintendent, that's, it seems, the
8 position as of the moment?

9 A. So I am rejecting that it's harassment.

10 101 Q. Okay. 11:11

11 102 Q. CHAIRMAN: I take it you also wouldn't agree that it
12 was targeting or discrediting, which is actually what
13 I'm looking at.

14 A. It wasn't, Chairman, no.

15 103 Q. CHAIRMAN: I think we can sort of assume until somebody 11:11
16 points out to the contrary, that if somebody says
17 bullying and harassment, they include targeting and
18 discrediting, I think we will generally assume that
19 that's -- you reject that?

20 A. I reject that, Chairman. 11:11

21 CHAIRMAN: Okay.

22 104 Q. MS. McGRATH: Chief superintendent, what I just want to
23 do, I think you will know this yourself from the file,
24 that there is an extensive amount of correspondence on
25 this intelligence issue? 11:11

26 A. Yes.

27 105 Q. Just what I am going to do is try and separate out what
28 was happening at local management level, when I talk
29 about that.

1 A. Yes.

2 106 Q. I mean your correspondence either down to Inspector
3 Farrell or Superintendent McBrien?

4 A. Yes, Chairman.

5 107 Q. And then I also want to look at what was happening at I 11:12
6 am calling the senior management level, which is you
7 and your relationship with your AC of the Eastern
8 Region etcetera?

9 A. Yes.

10 108 Q. Okay. I will try and move along in sequence and in 11:12
11 date order.

12 A. Sure.

13 109 Q. But just stop me if you want to double-check anything.

14 A. I will.

15 110 Q. Okay. So we know that the Pulse entry was made on the 11:12
16 18th May 2014, I am sure you have seen it many times.

17 A. Yes.

18 111 Q. It's at page 1802 of the papers.

19 A. Yes.

20 112 Q. We know that you were told about it on the 19th May at 11:12
21 10:23. That came up from the acting district officer
22 at the time, Inspector Nicholas Farrell?

23 A. Yes.

24 113 Q. A report came up to you, isn't that right. That's at
25 page 8278. 11:12

26 A. Okay.

27 114 Q. He outlines what the entry is. And then he says:
28
29 "Some of the contents of this intelligence report is

1 not appropriate for recording in this manner."
2
3 So I think, would you agree or disagree with me, chief
4 superintendent, that what he was pointing out was
5 really a Pulse issue at that stage? 11:13
6 A. Em...
7 115 Q. I mean, you are free to say what you felt he was
8 reporting to you.
9 A. What do you mean, just a Pulse entry? Are you talking
10 about Pulse compliance and rules? 11:13
11 116 Q. Pulse compliance, and he's talking about recording
12 there.
13 A. For recording this matter, yeah. I think what I would
14 take is that he's actually putting, you know, very
15 sensitive information and that could be, you know, seen 11:13
16 by anybody. There was concerns that that might --
17 117 Q. So it was a Pulse issue?
18 A. Yes.
19 118 Q. Would you agree that's how he saw it that day?
20 A. Some of the contents of the intelligence report are not 11:13
21 appropriate for recording. So I would say it's not
22 just Pulse, it whistleblowers around the operational
23 impact of releasing information like that.
24 119 Q. Okay. Now, we know that you replied. This is at page
25 646. So you replied on the same day, isn't that right, 11:14
26 19th May 2014?
27 A. Yes.
28 120 Q. And you say:
29

1 "In the light of the specific content of the
2 intelligence created by Garda Keogh, you should now
3 meet with Garda Keogh and discuss the contents of the
4 intelligence created."

11:14

5
6 You go on to say:

7
8 "You should enquire if he has information from a
9 specific source which gives rise to the assertion of
10 fact in respect of the intelligence created. If Garda
11 Keogh has obtained information from a source, he should
12 be immediately advised of the contents of HQ Directive
13 126/10 in relation to the management and use of covert
14 human intelligence sources and revised code of practice
15 for the same."

11:14

11:14

16
17 Is that right?

18 A. That's correct, Judge. Or Chairman, sorry.

19 121 Q. Can I ask you, did you anticipate that Inspector
20 Farrell would sit down with Garda Keogh and tell him
21 about Directive 126/10, the use of CHIS, the revised
22 code of practice?

11:14

23 A. Well, I expected the CHIS matter would be addressed,
24 yes.

25 122 Q. But as in explained to him or take him through it or
26 not, or just simply note it to him?

11:15

27 A. Well, it's not unusual, most members have an idea of
28 what 126/10 is. It's common enough, especially when
29 you're dealing with criminals and especially if you're

1 going to put stuff on an intelligence entry that has,
2 say, for instance that a source is involved and there
3 is an evaluation of the source and the information
4 itself.

5 123 Q. We know Garda Keogh's position is that whilst it was 11:15
6 mentioned to him, it was never, shall we say, addressed
7 with him in any detail or opened to him or explained to
8 him. That's his position to the Chairman.

9 A. That 126 wasn't explained to him?

10 124 Q. No, not 126 but the code of practice in relation to it. 11:15

11 A. 126/10 has to be accessed by all members, that's the
12 instruction on it, it's very strict in it
13 interpretation, theirs is wriggle room for me in it.
14 It talks about knowing all the interpretations. It has
15 too be very strictly adhered to. And 126/10 itself, 11:16
16 that was mentioned in further correspondence, said that
17 all members should access it on the portal.

18 125 Q. So whilst Inspector Farrell reported it up to you as a
19 Pulse or recording issue, when you came back to him you
20 were seeing it as a CHIS issue, is that right? 11:16

21 A. Well, I took we were talking -- we're in the same
22 frequency, because the contents are sort of in their
23 own way, you could say, sensational. You're putting
24 information out there that maybe is derived from a
25 source. I say that because it's an evaluation of the 11:16
26 source here, in the way that there's a tried -- there's
27 been some previously evaluations that are relied on
28 here to get to the point where it's true without
29 reservation. In terms of the intelligence, there is

1 sensitive information there potentially, particularly
2 the amount of 2,500. So when I look at that, that's
3 one of the first things that hits me, as someone who
4 looks at these things a lot, is where is that
5 information coming from and how alive is it? And how 11:17
6 can you say that without being -- because it's very
7 hard to say someone makes that amount of money unless
8 you are inside in the business of it.

9 126 Q. But if we can put it into plain language, what you were
10 saying is that he has a source, that source has to be 11:17
11 referred, is that what you're saying?

12 A. That's what I am saying, yes.

13 127 Q. Okay. In the second last paragraph you say:
14
15 "In addition, you should seek to establish what is the 11:17
16 basis that Garda Keogh has entered the additional
17 information relating to Garda colleagues and his
18 assertion to the fact that there is collusion between
19 members of An Garda Síochána and the individual for
20 which Garda Keogh created the above intelligence." 11:17
21

22 Isn't that right?

23 A. Yes, Chairman.

24 128 Q. Now, that was your instruction back to Inspector
25 Farrell, but on the same day you wrote to the assistant 11:17
26 commissioner of the Eastern Region. So this was your
27 first report up I think, 8275, if we just look at that.

28 A. Okay.

29 129 Q. This is on the 19th May. So immediately you were

1 informing the assistant commissioner of the eastern
2 region. You say:

3
4 "I have directed that the district officer, Athlone,
5 meet with Garda Keogh to establish some further facts 11:18
6 in relation to the content of the intelligence
7 created."

8
9 A. Yes. Chairman.

10 130 Q. Now I think we will see that this word "content" comes 11:18
11 up again and again when we go through correspondence
12 and what you meant by content. Can you just tell the
13 Chairman what you meant. You are telling the assistant
14 commissioner that you want facts in relation to the
15 content? 11:18

16 A. Yes, Chairman, I think the difficulty for me, is that
17 this appears in the formal setting. I am -- I have to
18 react to something that is quite formal to me. What
19 can be conflated here is there is an understanding
20 maybe that it's within the CR process. I don't have 11:18
21 any sight of the CR process. So this is a new
22 allegation that has to be investigated from within,
23 from within my division or it has to go up through my
24 division and I have to arrange with someone else
25 outside to investigate it. So the contents suggested 11:19
26 there is Garda corruption here. That's what is the
27 greatest concern, and does that lie with me to
28 investigate?

29 131 Q. But are they the same things, what you were telling

1 Inspector Farrell to ask and what you are telling the
2 assistant commissioner? You see, I think the previous
3 letter is talking about CHIS and sources and this
4 letter is talking the content of the intelligence?

5 A. To me, looking at the -- I suppose what can happen here 11:19
6 is, you can get lost in the detail of it. When I look
7 at the intelligence on the Pulse, I am looking at
8 something that suggests there is a source there. Then
9 we have got the content of the information, which would
10 trigger an investigation into criminality approach. So 11:19
11 they're related. The source is saying something.

12 132 Q. They're related but not the same, is that right?
13 A. Well, the source is suggesting -- there is a source
14 here and there is a suggestion that there's Garda
15 corruption as well. So, we don't know if the source 11:20
16 has provided information or where is it coming from, or
17 is it a number of sources. Because when I say that,
18 because when I heard Garda Keogh initially, the
19 suggestion is that the person he was talking about was
20 actually completing the jigsaw. So where was the first 11:20
21 part of the jigsaw coming from?

22 133 Q. We will come to it all step-by-step. I think the
23 language is important because the words of content does
24 come up again?

25 A. Sure. 11:20

26 134 Q. That's just why, chief superintendent, I'm drawing your
27 attention to it there. I think what happens next is
28 that Inspector Farrell reports back to you the
29 following day, on the 28th May, and that's at 1806. He

1 tells you, at 1806 -- I won't read it all out, the
2 Chairman has seen it a number of times. If you just go
3 midway down the first paragraph, about the fourth last
4 line:

5
6 "He stated he was due to meet Assistant Commissioner Ó
7 Cualáin, that he could not discuss this entry with me.
8 He stated he was advised by the confidential recipient
9 that he did not need to talk to anyone else except
10 Assistant Commissioner Ó Cualáin. "

11:21

11:21

11
12 He was informed that he if he had an informant then he
13 would have to be registered with the CHIS.

14
15 The next paragraph, again it's similar in a way, when
16 he's asked about the entry in relation to Ms. B:

11:21

17
18 "He again stated that he could not talk to me about
19 this as I was friendly with persons who were friendly
20 with persons involved. "

11:21

21
22 So, would you accept that at the very outset he is
23 taking the position that this is a matter that you need
24 to talk to Assistant Commissioner Ó Cualáin about?

25 A. Yeah, I suppose. I don't know if he is suggesting that
26 I should talk to Assistant Commissioner Ó Cualáin
27 straightaway, but he's saying that he's talking to him
28 and he's told by the judge. So that leaves me in a
29 dilemma, that I have criminality alleged on the Pulse

11:21

1 system and there is a source potentially dealing with
2 Garda Keogh, potentially. If that's the case then
3 there's a risk here. The biggest risk in preparing to
4 investigate is that the source could still be
5 interacting with Garda Keogh. That was a serious 11:22
6 concern of mine at the time. The criminality, I had to
7 -- I wrote in relation to that afterwards, and you
8 probably come to that, but they were dilemmas that I
9 had. They were quite perplexing, because there is no
10 mechanism there for me to -- for those two pieces or 11:22
11 dilemmas to interface and be managed properly. I know
12 we have an e-mail going out, but even at that, I'm not
13 sure that that situation would still properly be
14 addressed under the proper system, which is review, I
15 understand. 11:22

16 135 Q. In any event, he was highlighting that he was dealing
17 with the confidential recipient in respect of this. I
18 think Inspector Farrell is telling you that.

19 A. Yes.

20 136 Q. Okay. Now, in his cross-examination by Mr. Murphy, 11:22
21 Garda Keogh was asked about this. We will talk about
22 this maybe as being the initial request and the initial
23 response. He is asked about this and he says that the
24 initial inquiry was okay and that he had problems with
25 the later one. So that's on Day 106, at page 23, just 11:23
26 for my Friends' record. So that's how he sees it.
27 Again, it was put to him on Day 105, page 155, was it
28 not reasonable for a senior officer to ask questions
29 when they saw the entry?

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And he says:

"Yeah, up to a certain point."

A. Yeah.

11:23

137 Q. So, that's his position to the Tribunal.

A. Yeah. I should say, if you don't mind, I don't think Garda Keogh fully understood the dilemma, the management dilemma that was there with this. I know the intel was wrong for his own reasons, but that triggered all these responses that he couldn't have -- I don't think he had any understanding. He thought maybe, perhaps, and I would just say it's probably worth saying this, that I was sitting there, talking to the super in Athlone, or Inspector Farrell, trying to maybe trip him up or something like that. It wasn't like that at all. This was very perplexing for me and the managers, to try and get to the bottom of it, to try and navigate through the policies to see how we could resolve this. So I know will you come to it, but I wrote on that afterwards to try and get some direction.

11:23

11:24

11:24

138 Q. Absolutely, and we will come along to it in a moment. But I think with regard to Garda Keogh's understanding of your difficulty, I think it was put to him at Day 106, at page 20, that you couldn't simply accept his assurances and that you were obliged to enquire. I think Mr. Murphy put it to him on page 20 and his answer was:

11:24

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"That's fair enough, but he could have equally written to the commissioner if was not aware that Donal Ó Cualáin was the appointed officer."

A. You see, I did write afterwards in relation to this. Unfortunately for Garda Keogh, putting that on the system -- just to deal with this particular dilemma. Putting that on the system suggested there was a source. In the management of CHIS, there must be intrusive management. You can go through it there, there is very clear, digestible messages within that CHIS code of practice, that nobody -- unregulated source should be tasked, for example. Garda Keogh is not equipped with the skills, except from training, or he's not -- more importantly, the source is not belonging to one person, if it is the source, it's belonging to the organisation, it has to be managed. So protection of Garda Keogh is central to that. Because CHIS, these people, sources can have very devious motives that compromise the integrity of an individual garda.

139 Q. In relation to what you say there, chief superintendent, I'm absolutely not suggesting anything, but you are talking about the complexities, the difficulties, the unusual situation that it was, I think Garda Keogh was saying to the Chairman that no one ever explained, sat him down with HQ Directive 136 or nobody ever sat him down with the CHIS code and that

1 he had asked -- we will come to that in a moment, but
2 that he had asked for specific attention or
3 highlighting to be made to him. I trigger that thought
4 in relation to what you were just saying about the
5 complexity and the difficulties. 11:26

6 A. The complexity was more to do with the management
7 dilemma as opposed to a situation where a source was to
8 be imported by Garda Keogh or not. So the word
9 potential source was there. All I wanted was
10 compliance. Then, even at that, I would probably need 11:26
11 some qualification as to how that assurance would be
12 given. But in terms of complexity, most of the
13 complexity rested with me and how we would navigate
14 through the management side of it. In terms of 126/10,
15 Garda Keogh in his evidence said that he had referred 11:26
16 to CHIS previously. And also, there is an instruction,
17 I believe it's in 126/10, that distributed compliance
18 with that circular and that all members should access
19 the code of practice, which is a very digestible
20 document that's on the portal. It's very simple. 11:27

21 140 Q. Now, I think just staying in May, as we know you have
22 made a request, you have got a response, you have been
23 told by Inspector Farrell what his response is. You
24 write back to the assistant commissioner of the Eastern
25 Region on that day, the 20th May, this is at 8276. And 11:27
26 I think in fairness to you, you're outlining your
27 dilemma there in respect of how to proceed. Now, can I
28 just say, if you go to the top of that page?

29 A. Yes.

1 141 Q. Mr. Kavanagh, there, just to the date. It has the 19th
2 May, but I think this is one of the ones you
3 subsequently corrected to be the 20th May, isn't that
4 right?

5 A. I think it's the 20th May is the correct date on CHIS. 11:27
6 I know it's received in -- I think I checked it,
7 received in assistant commissioner's office it says on
8 the 9th, believe it or not, but actually I think it's
9 20th or 19th. It doesn't really matter much.

10 142 Q. I think just in the fourth paragraph there, you say 11:28
11 you're mindful of the your obligations to ensure that
12 all acts of criminality are disclosed or investigated
13 thoroughly. You say you are conscious of the
14 requirements as set out in the Garda code, that's
15 chapter 30, 2.12, relating to the Data Protection Act 11:28
16 1988-2003, and chapter 32.15, relating to maintaining
17 accurate data, isn't that right?

18 A. Yes.

19 143 Q. I think you also say, though, you were seeking
20 clarification, in the next paragraph: 11:28
21
22 "...as to how I could progress these matters with Garda
23 Keogh to obtain additional information to investigate
24 the allegation."
25
26 You outline there: 11:28
27
28 "I am also conscious of Garda Keogh's right to report
29 such matters to the confidential recipient and have

1 them acted upon through that mechanism."

2

3 You go on to say:

4

5 "I must advise that this office is not aware as to
6 whether or not the allegation that is now set out on
7 the above created intelligence is the subject of the
8 referral to the confidential recipient."

11:28

9

10 was that the nub of the problem?

11:29

11 A. That was the nub of the problem.

12 144 Q. You say you didn't know?

13 A. I can't assume that what Garda Keogh has put on the
14 system is what's being reported. So I don't know who
15 is investigating the item on the Pulse record, on the
16 Pulse entry. That became -- that was the central
17 issue. So do I investigate it, or is it a CR team
18 investigating it? And I am not getting any
19 confirmation as to who does it or I am not getting,
20 say, some immunity.

11:29

11:29

21 145 Q. You're not getting, sorry?

22 A. I'm not getting -- sorry, the wrong word. I'm not
23 getting a direction to say, you don't have to
24 investigate it. Otherwise it lies with me. So in a
25 year's time someone comes along and says, what did you
26 do with that corruption, then I'm in a dilemma. So I'm
27 anticipating that and I'm trying to get some direction
28 on it.

11:29

29 146 Q. You go on to say:

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"I am duty bound to ensure it is investigated fully and that the result of any investigation either substantiate the allegation as set out in the intelligence created or inaccuracies in data created to be removed from the system." 11:29

So in this regard you seek the views of internal affairs and you seek the views of crime policy and administration in respect of the legal considerations of progressing the investigation, isn't that right? 11:30

A. Legal and procedural, yeah.

147 Q. Okay. Now, we know from the correspondence that this triggers an extensive number of emails. I can just give the page numbers, we will be here all day if we open every single one of them, I just want to open maybe one or two. It went to Internal Affairs and to crime policy and administration. That's at page 8296. You accept that? 11:30

A. Yes, there was a lot of correspondence. 11:30

148 Q. It went to commissioner for operations, at 8295. Now, it went to the Garda Commissioner's office, at 8294. I would ask if Mr. Kavanagh could put up 8293 and 8294. Starting with 8294 maybe. So would you agree that there is very early escalation of this matter all the way up to the Commissioner's office? 11:30

A. Oh yes, yes.

149 Q. At 8294, just at the very bottom of that page. So, from the Commissioner of Operations on the 27th May at

1 15:13, it goes to the Commissioner. This is basically
2 your correspondence, that letter we looked at, on the
3 20th?

4 A. Yes.

5 150 Q. So it's escalated up to the Commissioner's office. 11:31
6 what I want to look at is the Commissioner's response,
7 which, if you just maybe look at 8293. It's just at
8 the bottom there. I just want to see that. So, the
9 Commissioner then, on the 27th May, replies back to the
10 Commissioner of Operations and copies AC Donal 11:31
11 Ó Cualáin, who was the investigating officer, do you
12 see that?

13 A. Sorry, what page are you on here?

14 151 Q. This is 8293.

15 A. Yes, I see it. You're going to the heading, sorry. 11:32

16 152 Q. Yes, I'm just looking at the heading there.

17 A. Fair enough, yes.

18 153 Q. So your correspondence is escalated to a number of ACs
19 and also to the Commissioner's office and when the
20 Commissioner replies, the Commissioner's office copies 11:32
21 the main investigator on criminal investigation, isn't
22 that right?

23 A. Yes.

24 154 Q. If you just go down into the content of it. Sorry, if
25 you move down, you will see the rest of that e-mail on 11:32
26 8294, it says:
27
28 "Deputy Commi ssi oner of operati ons. "
29

1 This is from superintendent Frank Walsh, private
2 secretary to the Commissioner:

3
4 "I'm directed by the Commissioner to refer to the
5 attached e-mail correspondence, the content of which 11:32
6 has been noted.

7
8 Please report further on the requested clarifications
9 sought from the chief superintendent Internal Affairs
10 and superintendent crime policy and administration as 11:32
11 to how the chief superintendent in Mullingar can
12 progress these matters with Garda Keogh to obtain
13 additional information to investigate the allegation.

14
15 This report has been copied to the assistant 11:32
16 commissioner of the Western Region for information."

17 A. Yes.

18 155 Q. Okay. So, you identified to me earlier what the nub of
19 the problem was, the nub of the problem being what was
20 or was not under investigation by Assistant 11:33
21 Commissioner Ó Cualáin, isn't that right?

22 A. Well, plus the source issue, the CHIS compliance issue.

23 156 Q. But in fairness, chief superintendent, a moment ago I
24 said was that the nub of the issue and you said that
25 was the nub of the issue, I didn't know what was under 11:33
26 investigation?

27 A. Well, that was the nub of the issue in the content of
28 the question. Yes, that's my understanding, sorry.
29 There are two issues, there's the CHIS piece and it's

1 also who is investigating the crime. So the first
2 piece that went up there was really talking about the
3 crime and who is actually investigating that.

4 157 Q. Okay. Well, we will come back to that in a moment, but
5 in any event, where we are now, on the 27th May, it's 11:33
6 gone to the Commissioner's office and it has gone to
7 the investigation, isn't that right?

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

9 158 Q. One of the other things I just wanted to look at was,
10 it seems that at page 8286, just staying in May for a 11:33
11 moment, a couple of days earlier. So at page 8286,
12 this is Patrick Clavin?

13 A. Yes, Chairman.

14 159 Q. He is a chief superintendent attached to GBSU, is that
15 right? 11:34

16 A. At that time he was.

17 160 Q. At that time he was. One of the things I just wanted
18 to ask you about is in the second paragraph there. He
19 says:
20 11:34

21 "In light of the recent allegations made by Garda
22 Keogh, I respectfully recommend that the information
23 recorded in the attached Pulse printout be forwarded
24 for information to the AC Eastern Region for
25 investigation." 11:34

26

27 Can you just explain what was being forwarded for
28 investigation there?

29 A. Well, it's not my correspondence, so this --

1 161 Q. what do you understand? was there an investigation by
2 the AC Eastern Region?

3 A. To be honest with you, there was probably some -- I
4 don't know if distance is the right word, but they were
5 working on the basis that something -- they weren't 11:34
6 touching base with me outside of paperwork. So my
7 concern was, and I may be jumping the gun here a little
8 bit, but apart from the fact that Garda Keogh was being
9 told by the judge not to talk to anybody and to deal
10 exclusively with Assistant Commissioner Ó Cualáin, the 11:35
11 investigation wasn't so easy, was going to be with me,
12 to proceed with and I was shutdown in those avenues,
13 Garda Keogh had been instructed by a Judge.

14 162 Q. You accept that at this stage the Commissioner's office
15 knows, AC Ó Cualáin knows and now it's being referred 11:35
16 to for an investigation by the AC of the Eastern
17 Region, is that right? This is what would appear from
18 the correspondence?

19 A. I think there was a previous piece of correspondence
20 where he actually sends it three ways. He's talking 11:35
21 about the Pulse, to some extent Pulse data.

22 CHAIRMAN: Chief superintendent Clavin is recommending.
23 MS. McGRATH: Is recommending that it's forwarded
24 for --

25 CHAIRMAN: That's what he's recommending? 11:36
26 MS. McGRATH: That's right. That's right, Chairman.
27 CHAIRMAN: That's what that letter says.
28 MS. McGRATH: Yes.
29 CHAIRMAN: It doesn't say that's what is happening,

1 he's recommending it. As I understand. We're all
2 reading the same letter.

3 MS. McGRATH: Yes.

4 163 Q. CHAIRMAN: Did you get this letter?
5 A. I have a letter there from Chief Clavin, he talks about 11:36
6 it going three ways.

7 CHAIRMAN: Okay.

8 MS. McGRATH: Okay.

9 A. So he is reporting back to, I think, Tony McLoughlin,
10 Chief McLoughlin, that's where you might see him 11:36
11 starting to feature. He at some stage comes along and
12 says, can enquiry be made with AC Ó Cualáin. And I
13 take the position I'm not doing it.

14 164 Q. Okay. So, you think that this recommendation is for
15 investigation in respect of the Pulse? 11:36

16 A. You see he's chief. At that time I think he's in
17 Professional Standards.

18 165 Q. That's right.

19 A. Yeah. So, in a way, I don't see him as having a role
20 in telling me what to do. Maybe theirs is a discussion 11:37
21 around it. But all I'm looking for is a direction, you
22 know.

23 166 Q. Okay. So do you know this at the time?

24 A. No, I only get whatever comes to me in paper. There's
25 no discussions outside of this. 11:37

26 167 Q. Okay. If we can come back to you then, because you
27 come back into the picture on the 28th May. There's a
28 letter from you on the 28th May and it's at 8303?

29 A. Yes.

- 1 168 Q. This is you writing to the assistant commissioner of
2 the Eastern Region. You're referring to your previous
3 correspondence, which we would have opened an open ago.
4 In paragraph two you're talking about the intelligence
5 item. Paragraph three you're talking about data 11:37
6 protection matters relating to the Pulse entry. You
7 know they have been referred at this stage? You say
8 you know.
- 9 A. I've been referred, sorry?
- 10 169 Q. That the data protection matters relating to Pulse has 11:37
11 already been referred to the assistant commissioner.
- 12 A. Yes, yes. That's why I think there's a three-way,
13 there's a piece with Chief Clavin there talking about a
14 three-way split, which is sending it off to ABSB and
15 AC HRM. HRM, by the way, I suppose to explain, at the 11:38
16 time Internal Affairs were attached to them, so I think
17 HRM is probably went the wrong way of, you know,
18 looking at it.
- 19 170 Q. Okay. I think that's where is it Superintendent Matt
20 Nyland, he was attached to Internal Affairs at that 11:38
21 time?
- 22 A. He was actually, yes, you're right.
- 23 171 Q. Okay. In the next paragraph, again you're mentioning
24 that he has been named publicly in the Dáil and he's
25 due to meet Assistant Commissioner Ó Cualáin. When he 11:38
26 was spoken to by Inspector Farrell, he said he couldn't
27 discuss the matters with anyone other than the
28 assistant commissioner, isn't that right?
- 29 A. That's right.

1 172 Q. Can I just at the last paragraph? You say:
2
3 "Owing to the fact that Garda Keogh has now stated that
4 this current allegation is the subject of referral to
5 the confidential recipient, I am not in a position to 11:38
6 determine whether it is appropriate for a local
7 investigation to proceed. This cross-referencing is an
8 issue that can only be addressed by the Garda
9 Commissioner."
10
11 So you see yourself -- can you just say how you see
12 yourself, your position there, at that point, on the
13 28th May? 11:39
14 A. Well, I go back to the original point here, the
15 judge -- I think Garda Keogh was saying only one 11:39
16 investigation can actually happen here. So, do I
17 actually put resources into that investigation prompted
18 by the Pulse entry, or is it a matter for the
19 confidential recipient team to do it. So the only
20 person who had oversight of the entire process was the 11:39
21 Garda Commissioner.
22 173 Q. You're saying:
23
24 "I am not in a position to determine whether it is
25 appropriate for a local investigation to proceed." 11:39
26 A. Yes.
27 174 Q. You're looking for a direction from the Garda
28 Commissioner, is that right?
29 A. Yes, that's correct.

1 175 Q. You continue:
2
3 "The advice of Superintendent Nyland, Crime Policy and
4 Administration, is to the effect that the Matter should
5 be addressed solely by the Garda Commissioner, to 11:39
6 remove any conflict of interest or intrusion on the
7 investigation reported through the confidential
8 recipient. "
9 A. That's correct. That was my -- I didn't want to
10 interfere in any way whatsoever with that process that 11:40
11 was being pursued by Assistant Commissioner Ó Cualáin.
12 And by the way, just a correction there, I see that
13 Superintendent Nyland was actually with Crime Policy
14 and Administration at the time. I know in his career
15 he has been in Internal Affairs, but at that time it 11:40
16 was Crime Policy and Administration, so it's slightly
17 different.
18 176 Q. So you have advice from Crime Policy and
19 Administration. I think that's what that says, isn't
20 that right? 11:40
21 A. Yes.
22 177 Q. You are saying that you need the advice of the Garda
23 Commissioner, is that what you're saying?
24 A. Yes.
25 178 Q. Did that ever materialise? 11:40
26 A. No, I never got anything in writing. But I did get a
27 phone call on I think the 29th May.
28 179 Q. That's the following day I think, is that right?
29 A. Yeah, the 29th May.

1 180 Q. Before we move on to that phone call, bearing in mind
2 that you're talking about cross-referencing advice is
3 what you need. So, can we go to the last line in that
4 letter:
5
6 "Accordingly, subject to your approval I do not propose
7 to take any further action unless otherwise directed."
8
9 Is that right?
10 A. That's correct, Judge. 11:40
11 181 Q. So as of the 28th May --
12 CHAIRMAN: Sorry, which paragraph? where are you
13 referring to?
14 MS. McGRATH: It should be on the top of the next page,
15 8304, it's the second page of the letter. 11:41
16 CHAIRMAN: Just scroll down, please. You just have to
17 scroll down a tiny bit. Thanks very much. Next page.
18 Yes, thank you.
19 182 Q. MS. McGRATH: Okay. Now, I think, as you said, that's
20 where it was on the 28th May, and you got a phone call 11:41
21 the following day, is that right?
22 A. That's correct, Chairman.
23 183 Q. Okay. Can we just look at that phone call? I think if
24 you go to -- you talk about it in your interview at
25 volume 7, page 1934. I think it might be at the bottom 11:41
26 of the page. Line 194, if you see it, chief
27 superintendent?
28 A. Yes.
29 184 Q. Sorry, if you just stay there. Mr. Kavanagh, go back

1 up to the last line, please. 194:

2

3 "I can confirm that on 29th May 2014, Superintendent
4 Frank Walsh --"

5

11:42

6 And we have already seen that he was a private
7 secretary to the Commissioner, is that right?

8 A. That's right, he was private secretary.

9 185 Q. So if we just keep going down:

10

11:42

11 " -- from the Garda Commissioner's office contacted me
12 by telephone and made me aware that a complaint had
13 been made to the confidential recipient, Judge
14 McMahon. "

15

11:42

16 who did you understand had made that complaint?

17 A. I have gone through that in my head. I didn't take
18 notes of that call at the time, because the net import
19 of the call was that I was not to talk to Garda Keogh
20 about the intelligence itself.

11:42

21 186 Q. So this complaint related to queries. Now, bear in
22 mind, the previous day you had stated that you were
23 looking for cross-referencing advice from the
24 Commissioner's office and you accepted that just a
25 moment ago, isn't that right?

11:43

26 A. Yes.

27 187 Q. This is what you are told, you are saying:

28

29 "This complaint related to queries I had made of Keogh

1 in respect of the intelligence entry that appeared on
2 the Pulse system dated 18th May 2014."

3

4 If I just ask you to look at the next line:

5

11:43

6 "I decided then not to pursue any further enquiries in
7 respect of the content of the intelligence entry on
8 Pulse."

9

10 There we see the reference to content again?

11:43

11 A. Yes.

12 188 Q. What exactly were you deciding or told or directed?

13 Can you just maybe take us through that. What was the
14 conversation, and give us as much detail as you can in
15 relation to that conversation.

11:43

16 A. My understanding was, of that conversation was,
17 pursuing any questions of Garda Keogh in relation to
18 the intelligence itself wasn't to happen. That to some
19 extent, I suppose it didn't resolve the CHIS issue, but
20 it meant I couldn't ask him about the intelligence
21 entry any more.

11:44

22 189 Q. Okay.

23 A. Okay. But it didn't mean that I was exempt
24 responsibility for investigation, in theory.

25 190 Q. In theory. I am not sure I quite understand that,
26 chief superintendent. If we just see the next line,
27 you say:

11:44

28

29 "Just to clarify, Superintendent Frank Walsh did not

1 give me any direction but my memory is I indicated to
2 him I wouldn't be asking Garda Keogh about the
3 intelligence entry itself."

4 A. Yes.

5 191 Q. "However I did conduct enquiries in respect of
6 compliance HQ directive 126/10."

11:44

7
8 So, is it your position that you intended to proceed to
9 require the source to be referred, is that right?

10 A. That's my position. You see, the only person with
11 responsibility in the system for the management of a
12 source in then my division was me. The potential was
13 there and it's up to me to make sure that the Code of
14 Practice is being implemented and there is compliance
15 with it. So, despite the fact that there might be

11:44

16 criminality alleged, the actual fact that there's a
17 potential source here is a concern to me and it doesn't
18 go away. My concern is for Garda Keogh, for the
19 organisation, that there's protections put in place.
20 So, it's not something that I can -- all I wanted was
21 an assurance that there is no concerns. So, the fact
22 of not pursuing the intelligence didn't remove the
23 obligation on me in terms of CHIS.

11:45

11:45

24 192 Q. Can I ask you, chief superintendent, so is it your
25 evidence that you saw clear blue water between the
26 content of the intelligence entry, what was actually on
27 the Pulse record, and the CHIS issue?

11:45

28 A. Not immediately, to be honest with you. I mean, if you
29 look at it, the next time I ask him is probably a month

1 or sometime afterwards and we're very distracted with
2 some of the serious stuff in Athlone in June. So I
3 think my next query of him is in July. But in the
4 meantime, I am hoping that I am going to get a
5 communication from the Ó Cualáin team that there
6 compliance with CHIS or you don't have to worry about
7 it. But I don't have that. It only falls to me.

11:46

8
9 So the real dilemma in terms of the CHIS issue is that
10 it's only me. So even if the Ó Cualáin team come in,
11 they don't have the obligations in terms of managing an
12 informant within the division. All they're dealing
13 with is the individual garda and whatever he is saying
14 to them. I'm not sure what he is saying to them. So
15 it doesn't relieve me of responsibility.

11:46

11:46

16
17 I would also say to you, it's not an academic exercise
18 for me, I have been in this game for a long time and I
19 have seen the dangers. There are very serious dangers
20 around this and can result in -- some of the worst
21 things can happen through information not being managed
22 properly. So, it's very present in my life, that type
23 of information not being treated and for a source to be
24 outside, managed outside the system.

11:46

25 193 Q. Can I ask you this: Can they be separated out, like
26 oil and water? The content of the intelligence record
27 and the CHIS issue. That is what you're intending to
28 do, is that right?

11:47

29 A. That's what I'm saying. The Code of Practice puts a

1 responsibility on me. So even though the intelligence
2 might be investigated by the Ó Cualáin team, I have the
3 management responsibility for the informant, if there
4 was one, right. I just say that, if there was one and
5 I have to assume that there is because I'm not getting 11:47
6 any assurance that there isn't. So I can't separate
7 it.

8 194 Q. But did you think that if you're being told by the
9 Commissioner's office that the intelligence entry is
10 under investigation with AC Ó Cualáin. 11:47

11 A. Yeah.

12 195 Q. Did you make the next step, that the source was also
13 something with them?

14 A. That's what I wrote later on to Ó Cualáin, can you get
15 me out of this dilemma? At some stage I write up to 11:48
16 him, I think actually on the 16th October. I am
17 jumping ahead here.

18 196 Q. We will come to everything in due course, chief
19 superintendent. But can I ask you then about just this
20 conversation in general terms? By this stage, we're 11:48
21 now looking at the 29th May, your understanding of
22 the -- I will rephrase that. Had your understanding of
23 what was at issue for the Ó Cualáin investigation
24 improved at that stage? Did you now know what was
25 under investigation? 11:48

26 A. I can't say I did. But I can infer that I didn't have
27 to -- I was looking for something in writing, to be
28 honest with you, rather than a phone call, that
29 involved what I understood was a complaint of the

1 judge. If I think back on it, it could have been put
2 to me that the judge would have a complaint. But the
3 question of me asking about the intelligence entry was
4 being -- I have been asked not to do that.

5 197 Q. Is it your evidence that this phone call was that 11:49
6 niche, that it just related to the Pulse issue and
7 nothing else?

8 A. Yes, yes. It just related to asking about the
9 intelligence, yeah.

10 198 Q. Okay. Now we've come to the end of May. Can I ask you 11:49
11 then to move on a little bit to the June and to the
12 local response, what was happening on the ground again,
13 just after this. You've gotten to this particular
14 point, you'd had your phone call with the
15 Commissioner's office. We go back then to the local 11:49
16 management response and Superintendent Noreen McBrien,
17 isn't that right?

18 A. Yes, Judge, yeah.

19 199 Q. Now, would you have been aware -- Superintendent 11:49
20 McBrien says that she met Garda Keogh on the 9th June
21 and in her statement, and again I will just give the
22 reference, at 824, here statement at 824, and at page
23 830 she records that Garda Keogh told her that he was
24 no longer in contact with criminals and would pass
25 everything to AC Ó Cualáin. That's what she outlines 11:50
26 in her statement at page 830. Would you have known
27 that?

28 A. No.

29 200 Q. Then she meets him again on the 16th July 2014 -- no,

1 sorry, she doesn't meet him, she has a telephone
2 conversation with him on the 16th July. Again, I might
3 ask actually Mr. Kavanagh to open this extract from her
4 statement, it's at page 835. If you can stop there for
5 a moment. If you see there in that paragraph: 11:50

6
7 "I asked Garda Keogh if his information came from a
8 specific source which gave rise to his assertions made
9 in the intelligence entry. He responded that this was
10 being fully investigated by the assistant 11:50
11 commissioner's investigation team."

12
13 So, would you accept or reject this is a consistent
14 position he is taking all along?

15 A. Yeah. 11:51

16 201 Q. Okay.

17 A. Yeah, no, I accept that he takes a consistent position
18 on it.

19 202 Q. Okay. She says: 11:51

20
21 "I advised him of HQ 126/10, management of CHIS advised
22 code of practice, and he said that this was an
23 exceptional circumstance and not sure if it came under
24 CHIS. He said it was being investigated by Detective
25 Superintendent Mulcahy and that the intelligence was 11:51
26 being investigated by him and that he may have a
27 different opinion. Garda Keogh said that his opinion
28 was that it would be backed up. I asked him on what
29 basis he entered the additional information relating to

1 Garda colleagues and the assertion that there was
2 collusion between members of An Garda Síochána and an
3 individual. His response was as above, that he was not
4 well placed to answer and that he referred to Detective
5 Superintendent Mulcahy. " 11:51

6
7 So, she reports this up to you effectively. I will ask
8 also if that can be opened, at page 1893. So, on the
9 same day she provides a report to you. Now, it deals
10 with a number of matters but we're are just going -- I 11:51
11 am doing it issue by issue separately, so we will just
12 look at the first paragraph. It says:

13
14 "Further to your correspondence of the 19th May."

15 11:52
16 And this is a letter to yourself.

17
18 "Inspector Nicholas Farrell, acting superintendent,
19 spoke with Garda Nicholas Keogh regarding this
20 intelligence entry. His report dated the 20th May 11:52
21 refers to this tab A.

22
23 On this date I had a telephone conversation with Garda
24 Nicholas Keogh as he was unable to meet with me. I
25 again addressed the concerns as outlined in your report 11:52
26 of 19th May 2014 and questioned him accordingly. Garda
27 Keogh said he has discussed this matter with the
28 confidential recipient and that Detective
29 Superintendent Mulcahy was investigating the matter. "

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So I think in fairness, that's consistent with what you know from speaking with Superintendent Frank Walsh effectively, is that right?

A. Yeah, well, that the investigation was being conducted with Detective Superintendent Mulcahy as part of the Ó Cualáin team, yes. 11:52

203 Q. Okay. Can I just, can we go to the very end of that letter, at 1895. In the recommendation, this is from Superintendent McBrien, she says: 11:53

"I am of the opinion that the above incidents warrant further investigation. However, I am mindful that investigation, Labour Law and Garda policies could impact on any decision made in this regard. Garda Keogh is engaging with a confidential recipient and is subject of the benefits of Protected Disclosures Act 2014. I believe that the view of Legal Affairs and human resource management should be sought to ensure that a decision is not made in isolation." 11:53

So that is her recommendation, to go to Legal Affairs and Human Resource Management, to you, did that happen?

A. No, but you can't isolate that intel from the other items in that. 11:53

204 Q. Okay. And we will come back to the other items as well?

A. Yeah. But intelligence -- no, it didn't happen. I didn't see the need for it, to be honest with you,

1 because I think those people weren't necessarily going
2 to give me advice on this.

3 205 Q. I think when you were asked about this in your
4 interview, at page 1954, you said this would not have
5 assisted with the operational dilemmas that you faced. 11:53
6 Is that right?

7 A. Yes.

8 206 Q. I do think, we will come to it again, by December there
9 was another recommendation to go to Legal Affairs; is
10 that right 11:54

11 A. A recommendation to get legal advice following the --

12 207 Q. The case conference?

13 A. Yes, following the case conference on the 18th
14 December, yes.

15 208 Q. Now, you come back to Superintendent McBrien on the 11:54
16 21st, isn't that right?

17 A. Yes, Chairman.

18 209 Q. I think that's at 1886. Again, I am separating out the
19 issues a little bit, but this does involve the
20 intelligence and there's one paragraph that's -- if you 11:54
21 look at the second paragraph, you say:

22

23 "I am now requesting that the following matters be
24 attended to...."

25 11:54

26 I wonder actually, could be taken off the screen maybe,
27 because I just see there is a redaction issue. If you
28 could look at the hard version of that, at 1886.
29 Sorry, 1886, volume 7.

1 A. Yes, Chairman.

2 210 Q. In the second paragraph it says:

3

4 "I am now requesting that the following matters be
5 attended to in advance of forwarding these matters for 11:55
6 review by an independent chief superintendent."

7 A. Yes.

8 211 Q. So what was your thinking at that stage, reference to
9 that?

10 A. I think the correct wording was, I should have put into 11:55
11 it, before considering sending it to an external chief
12 superintendent. Where I was coming from in relation to
13 that was, that I was conscious that this complaint had
14 been made about me, that could potentially be
15 investigated by the confidential recipient team. I was 11:55
16 conflicted so some extent. Obviously I just wanted to
17 make sure, I'm putting a marker here that what I was
18 doing here, I was conscious that -- I was trying to be
19 fair and there may be some scrutiny of the level of
20 fairness at some stage in the future. So that's what I 11:56
21 was putting that in there for.

22 212 Q. Is it your position that you feel that you're no closer
23 to a resolution of this matter and that an independent
24 chief superintendent is required?

25 A. No. No. I mean these are simple questions. 11:56

26 213 Q. Okay.

27 A. I'm asking the superintendent for clarity on this.

28 214 Q. Okay. You say in that first -- the first bullet there
29 is on this issue, it says:

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"In the initial report of Inspector Farrell dated 20th May 2014, Garda Keogh nodded when he was advised that any informant he had should be registered with CHIS. Has this informant been registered with CHIS in accordance with HQ directive 126/10 in the interim, as considerable time has now passed to allow for a referral of this informant to the Eastern Region source management unit."

11:56

Isn't that right? That's what your letter is asking.

11:56

A. That's it, Chairman, yes.

215 Q. What happens is, he replies to you and this is at page 163 of the book?

A. 163?

11:57

216 Q. 163. We can bring that up on the screen here, we will go back to the screen. At page 163, you have it forwarded on by Noreen McBrien, she says to Garda Keogh on the 23rd July:

"I require a report from you indicating whether the informant had been registered with CHIS in accordance with HQ Directive 126/10."

11:57

He comes back on the 27th and says:

11:57

"This is not a CHIS matter. The information is in the care of Assistant Commissioner Donal Ó Cualáin."

1 And again, would you agree he is maintaining his
2 consistency of his stance basically; is that right?

3 A. He has been consistent in his stance all the way
4 through. It doesn't assure me, no, that there is
5 compliance with 126/10. 11:58

6 217 Q. I think that what happens then is, you're referring
7 there to the Eastern Region -- sorry, in your previous
8 letter you talked about the Eastern Region source
9 management unit; is that right?

10 A. That's correct Chairman. 11:58

11 218 Q. So you were also consistent in your stance, isn't that
12 right; you're looking for the referral of the source?

13 A. I'm not necessarily looking for a referral of the
14 source, I need to know is it a source that should be
15 referred. I am of the impression that there is a 11:58
16 source but I need to be satisfied there isn't one way
17 or the other, so that there's compliance. So in
18 writing to him, I am just looking to satisfy
19 compliance. That's all I'm looking for. This is only
20 the second time I have written to him really on it. 11:58

21 219 Q. Can I just ask you just generally at this stage, it was
22 put to Garda Keogh, I think by his own team, in
23 relation to the operation of CHIS and whether every
24 item of intelligence would go through CHIS and he said
25 no, is that correct? 11:59

26 A. No, it's only specific. Remember, go back to the Pulse
27 entry, he has now giving an evaluation of the source,
28 in that, true, the information is true and the source
29 is reliable. That's how you look at sources,

1 generally. There's a mention of a monetary amount,
2 that suggests that somebody has access to live
3 information about someone's drug operation.

4 220 Q. I think we will come to this in due course, but in
5 relation to the CHIS document itself, I think it has a 11:59
6 very specific definition of what a source is, isn't
7 that right?

8 A. Yes.

9 221 Q. When he is replying to you, he was saying this is not a
10 CHIS matter? 11:59

11 A. Yes, okay. So, I suppose to put it -- just maybe to
12 clarify, it's not for an individual garda, the CHIS
13 Code of Practice talks about it, the source is not the
14 ownership of an individual garda, it's a corporate
15 issue. And the risks involving handling sources and 11:59
16 sometimes people handling sources are not equipped to
17 deal with it and there must be a whole series of
18 safeguards put in to make sure there is protections for
19 the individual member and the organisation.

20 12:00

21 So in this case, to me it looks like there's
22 information coming live to the garda. I need to be
23 intrusive in terms of management. And I am not overly
24 intrusive here, I am just asking questions. That's all
25 I'm doing. 12:00

26 222 Q. Well, can I ask you, is he telling you it's not a CHIS
27 matter?

28 A. Yes.

29 223 Q. Or is he telling you it's not a CHIS matter, the

1 information is in the care of the criminal
2 investigation?

3 A. Okay. So I go back to, he's saying it's not a CHIS
4 matter, it's not really for him to decide that.
5 Because he may or may not know it's a CHIS matter. 12:00
6 There's issues around tasking he may not be aware of.
7 So when you move into that, you're moving into the
8 complications of the CHIS world. I note from his
9 evidence that he mentioned that information came back
10 to him afterwards, he didn't say he passed it or 12:01
11 anything like that. But I'm just wondering, my dilemma
12 at the time is, if he's engaging with a source, the
13 risk is that sources are used in guards, this is what
14 we know about sources, so all the safeguards have to be
15 put in place. So if it isn't a CHIS, which is 12:01
16 potentially what he's saying, right, then there's no
17 issue for me, if it's clean and there is no tasking, no
18 issue whatsoever, I'm happy with that. I just need
19 some qualified assurance.

20 224 Q. Just to take that answer there just a little step 12:01
21 further, he's not simply saying this is not a CHIS
22 matter, he is saying that this information is with the
23 criminal investigation. So, in fairness to Garda
24 Keogh, I think it's a two-pronged response, is that
25 right? 12:01

26 A. It is. And I go back to my original point: AC
27 Ó Cualáin doesn't have the responsibility for managing
28 the CHIS, I do, as the chief in Westmeath at the time.
29 The AC comes in, manages and investigates the set of

1 investigation that he has to investigate, but the
2 management of CHIS is not Assistant Commissioner Ó
3 Cualáin, it rests with my assistant commissioner and
4 me. So, my concern around all of this is that they are
5 -- they may believe that the informant is being handled 12:02
6 or there is compliance with 126/10. I'm not sure. But
7 I don't have those conversations with him. So I'm left
8 with that dilemma. So responsibility for the CHIS is
9 me. AC Ó Cualáin has a criminal investigation. So
10 it's a slightly -- where it's slightly lost there. It 12:02
11 doesn't answer my problem with compliance with 126/10.
12 225 Q. But can I ask you, chief superintendent, who was to
13 answer your problem? Was it Garda Keogh or was it
14 senior management?
15 A. Well, the dilemma is, I'm being told I can't ask, push 12:02
16 too much with Garda Keogh. So I am asking the question
17 as to compliance. Even at that, there's no mechanism
18 to deal with this, this was the dilemma for me. So
19 whose problem is it? It's the organisation's problem
20 but there was no prescribed mechanism for me to do 12:03
21 this.
22 226 Q. But we do know that you went back again to Garda Keogh
23 in August. We'll come back to that in a moment?
24 A. Yeah.
25 227 Q. I don't want to go out of sequence because, in 12:03
26 fairness, the sequencing of the correspondence can be a
27 bit confusing.
28 A. Yeah.
29 228 Q. At this stage now, just to go back to where we are

1 dates wise, we're at the end of July, he's telling you,
2 that letter there, it's not a CHIS matter and the
3 information is in the care of Assistant Commissioner Ó
4 Cualáin. Can I just go back to you, moving on to June
5 and July, we're now going into mid summer, the issue is 12:03
6 still, I think, in words used over the last couple of
7 days, bubbling along, and in June and July -- on the
8 6th June, can I ask you to look at a document, 4579.
9 If you just go up to the top so we see where it's
10 coming from. So it's coming from the detective chief 12:04
11 superintendent's office, Security and Intelligence, and
12 it's going to AC Crime and Security?
13 A. Yes.
14 229 Q. Okay?
15 A. Yes, yes. 12:04
16 230 Q. This is something, and really it's something I am
17 asking you to help clarify, is that you have Crime and
18 Security involved, now Crime and Security are involved
19 in intelligence issues, isn't that right?
20 A. Yes. 12:04
21 231 Q. Okay. So it's the intelligence aspect of things that
22 they would be involved in. Can we just see who the
23 wrote the letter there? It's D/Chief Superintendent
24 Peter Kirwan. He is coming back and he -- sorry, he is
25 saying: 12:04
26
27 "With reference to the above, please see attached
28 report from D/Sergeant Smith, National CIO, detailing
29 the current practices with regard to Pulse data

1 quality, accuracy control. The report confirmed that
2 local CIOs are empowered to redact inappropriate
3 commentary as appropriate.
4

5 As this matter is currently the subject of an 12:05
6 investigation by AC Eastern Region, it would be
7 inappropriate for this office to provide opinion on the
8 contents of the intelligence entry in question."
9

10 This again is a reference to an investigation by AC 12:05
11 Eastern Region. I think your evidence earlier is that
12 that had nothing to do with intelligence aspect, that
13 was a Pulse recording issue?

14 A. Yes.

15 232 Q. But here it certainly seems to refer to the AC Eastern 12:05
16 Region carrying out an investigation into it?

17 A. Yeah, I don't know where they're getting -- they're
18 giving the impression that -- I don't know why they got
19 that impression.

20 233 Q. Okay. 12:05

21 A. Also, when you look at intelligence entry, there's a
22 number of different strands. You can look at the
23 criminal, the CHIS, the Pulse data compliance issue on
24 it, potentially other issues as well. So he's looking
25 at Pulse data and the investigation, to some extent 12:05
26 there's confusion later on about what investigation is
27 going on. Is it Pulse data entry itself and the
28 compliance with that, or is it a criminality? So I
29 think that became an issue that I start to understand

1 later on in November/December, as to their
2 understanding and approach. They're laterally removed
3 and they don't understand, in my view. The then Pulse
4 data is there but the criminality is done by Ó Cualáin,
5 but I don't know how they got -- I think the confusion 12:06
6 arose, when they heard the investigation was going on,
7 that this would be part of it.

8 234 Q. Well, I think if you go on to the next page. If we
9 just keep going down there. That's the report they're
10 talking about, isn't that right? This is a report of 12:06
11 Smith, I think if you go down to the end, Paul Smith,
12 National CIO for detective inspector. And again
13 they're looking at the intelligence entry, they're not
14 going to give advice. They understand again it's the:

15
16 "... subject of investigation by the AC Eastern Region
17 and I do not propose to issue any advice to CIO
18 Mullingar. In the interim, this intelligence remains
19 visible to all members in the Pulse system albeit with
20 the status of review required." 12:06

21
22 I think that's the way it is as of today; is that
23 correct?

24 A. Yes. I think that was an instruction given by AC
25 O'Mahony back on June, and the understanding maybe 12:07
26 that it was investigated by Eastern Region.

27 235 Q. Okay. But to your knowledge that's how it is at the
28 moment. Okay. So, you're not the only person looking
29 at this, there are multiple aspects of the organisation

1 looking at this, is that right?

2 A. Yes.

3 236 Q. Okay. I think, if I could ask for another letter, as I
4 say, we're still in -- well that is around the July
5 time, that's what happened in July. If you look at the 12:07
6 28th July 2014, towards the end of the month, 8329.
7 That's 82, so it's 8329. So at that time Tony
8 McLoughlin was the chief superintendent in respect of
9 Internal Affairs, I think, is that right?

10 A. Yes. 12:08

11 237 Q. He is writing to the AC of the Eastern Region in
12 relation to this Pulse entry. He asked the question,
13 now this is the end of July:
14
15 "Has confirmation..." 12:08
16
17 In the third paragraph there:
18
19 "Has confirmation been sought confidentially with
20 Assistant Commissioner Ó Cualáin to establish if, as 12:08
21 alleged by the member, matters reported by him are
22 subject of inquiry by the assistant commissioner?"
23
24 Do you see that?

25 A. Yes, Chairman. 12:08

26 238 Q. "Irrespective, any matters requiring investigation
27 coming together attention of Garda management should be
28 the subject of investigation, whether criminal or
29 pursuant to the Garda Síochána (disciplinary)

1 regulation 2007 as amended. I am to enquire if an
2 audit of Pulse has been conducted."

3

4 Isn't that right?

5 A. That's right, Chairman.

12:08

6 239 Q. Just to clarify, is that an audit of the -- when he's
7 talking about an audit of Pulse, what is he talking
8 about there, do you know?

9 A. I can't be sure. I know what was done in the end was
10 to look to see if there was any other similar type of
11 entries.

12:09

12 240 Q. By Garda Keogh?

13 A. By Garda Keogh, yeah. I think in January.

14 241 Q. So would it be fair to say that the question is still
15 floating around as to what Assistant Commissioner Ó
16 Cualáin's position is? It would seem to be the case
17 from that letter, is that right?

12:09

18 A. Em, I think it's clear he's investigating but they're
19 asking me to make discrete enquiries. Just for the
20 record here, I didn't do that or I wouldn't.

12:09

21 242 Q. Okay. Well, I think this sent to you. One of the
22 reasons I'm asking you about this letter, it's attached
23 to you on 8th August 2014.

24 A. Yes.

25 243 Q. That's at 8337. And it says:

12:09

26

27 "I refer to the attached correspondence from chief
28 superintendent, Internal Affairs, dated the 28th July."

29

1 This is to you from Kieran Kenny, the assistant
2 commissioner of the Eastern Region. He says:
3
4 "Has confirmation been sought confidentially from
5 Assistant Commissioner Ó Cualáin to establish if, as 12:10
6 alleged by the member, matters reported by him are the
7 subject of inquiry by the assistant commissioner?"
8
9 And also asks:
10 12:10
11 "Has an audit of Pulse been conducted?"
12
13 A. Yes.
14 244 Q. So you're now being asked directly this question?
15 A. Yes. 12:10
16 245 Q. What is your position in relation to that?
17 A. As I said, I didn't report up that an allegation had
18 been made in respect of me. So I wasn't going to do
19 that. And secondly, the principle of checking
20 discretely with AC Ó Cualáin didn't rest well with me 12:10
21 anyway, I wasn't going to do that. So I didn't do it
22 in the end. I was never going to do it and I think I
23 say that in correspondence afterwards. In terms of the
24 audit of Pulse, that went down the line to
25 superintendent in Athlone. 12:10
26 246 Q. You see, chief superintendent, I have to ask you, you
27 say you were never going to do that?
28 A. No.
29 247 Q. Can you tell the Chairman why?

1 A. In principle I wouldn't agree with it, to be honest
2 with you. I think it's a separate entity and I'm
3 not -- I don't think it's right for me to do it, to be
4 honest with you, that way, a discrete inquiry. I will
5 do it in paper but I won't do it that way. And 12:11
6 remember, I'm saying that there's an allegation against
7 me here in the background, that I haven't seen and
8 hasn't been expanded and there's potential conflict of
9 interest if I do that.

10 248 Q. Well, I think in fairness, let's just deal with the 12:11
11 letter as it says. You're being asked has information
12 being sought confidentially. Your answer is no; is
13 that correct

14 A. As I say, in some correspondence down the road I say
15 that. 12:11

16 249 Q. Well, we will move on a couple of months before, in
17 fact, we come back, well, we float around this again at
18 the end of the year. But can we stay with 8th August
19 2014. You said you didn't do it and you were never
20 going to do it, is that your answer to the Chairman? 12:11

21 A. Yes, yes.

22 250 Q. Okay. Now, in this regard, can I ask you, though,
23 we're now at 8th August 2014, that's what you have been
24 asked. You have given your answer to the Chairman as
25 to why you are not going to do it. Can I ask: Is this 12:12
26 linked with the position that you took in your
27 interview with the investigators, where you described
28 yourself as remote from the criminal investigation?
29 You use the words it was sacrosanct, sterile and remote

1 from you.

2 A. Yes.

3 251 Q. Those are words you used.

4 A. Yes.

5 252 Q. So, that was the position you took when you met with 12:12
6 our investigators, and is that the position you're
7 taking when you receive this letter?

8 A. That's the point, yes.

9 253 Q. But we do know that you had in fact spoken with
10 Detective Superintendent Mulcahy during July at some 12:12
11 stage?

12 A. In June?

13 254 Q. No, in July 2014?

14 A. July, yes.

15 255 Q. Now, he is the main investigator in the criminal 12:12
16 investigation?

17 A. Yes.

18 256 Q. And had you a telephone conversation with him, is that
19 right?

20 A. Yes. 12:12

21 257 Q. Just again for the records for your counsel, it's is
22 volume 7, 1936 in the interview, where you say that you
23 spoke with Detective Superintendent Mulcahy during the
24 month of July, isn't that right?

25 A. Yes. 12:13

26 258 Q. You can bring that up if you wish, 1936. I am just
27 going to find -- if you can just -- at line 215 there
28 you say:
29

1 "To the best of my knowledge, I did have contact with
2 him in July 2014 which touched on the Pulse entry
3 (409). However, I can confirm that none of this
4 interaction related to former Assistant Commissioner Ó
5 Cualáin's investigation. " 12:13
6
7 okay?
8 A. That's correct.
9
10 259 Q. "My memory is that Detective Superintendent Declan 12:14
11 Mulcahy said he was not dealing with the internal
12 related issues or governance related issues relating to
13 the Pulse entry."
14
15 A. That's correct. 12:14
16 260 Q. You're going to have to deconstruct that just a little
17 bit for us, chief superintendent. So you had a
18 conversation with the main investigating officer, is
19 that right?
20 A. Yes, he rang me I think. 12:14
21 261 Q. Okay.
22 A. Definitely he rang me, yeah.
23 262 Q. Was this again a niche conversation just in relation to
24 the Pulse entry or not?
25 A. It was a niche conversation because there was some 12:14
26 controversy around the -- I got the impression there
27 was somebody, I don't know if the super in Athlone or
28 people in Athlone, I can't remember now off the top of
29 my head, that they were asking questions about the

1 Pulse intelligence entry. Because, you know, I think
2 we were trying to get them to take it for investigation
3 and to deal with that matter because --

4 263 Q. Sorry, can you just say that again?
5 A. So, the Pulse, the governance side, the issues around 12:15
6 the Pulse data quality and, say, all the governance
7 issues, he was saying were not taken down. So just in
8 case there's any confusion around that. It applies to
9 doing the criminality, but he didn't say that. So all
10 it is, we're just not taking the issue around the Pulse 12:15
11 data.

12 264 Q. Okay. So he told you what he was not doing?
13 A. Yes.

14 265 Q. He was not dealing with internal related issues or
15 governance related issues? 12:15
16 A. Yes.

17 266 Q. Did he tell you what he was doing?
18 A. No.

19 267 Q. Because, you see, if we can look at page 8366. This is
20 a report of 24th August 2014, where he is reporting up 12:15
21 to Assistant Commissioner Ó Cualáin. If you look at
22 the third paragraph there, he says:
23
24 "The allegations contained in the intelligence report
25 have been again alluded to in his statement to the 12:16
26 investigation team."
27
28 Now he's talking about Garda Keogh.
29

1 "But to date they have been unsubstantiated. The
2 creation of the intelligence report is not a matter I
3 believe that the investigation team can directly
4 investigate. I feel this is a matter perhaps for both
5 the divisional officer and the district officer to deal 12:16
6 with in whose division Garda Keogh is currently
7 serving. I have spoken to both the divisional officer
8 and the district officer in respect of this matter."
9

10 A. Yes. 12:16

11 268 Q. So he talks about the creation of the intelligence is
12 not a matter that they're going to look into?

13 A. No, I suppose, there was controversy in terms of the
14 appropriateness of putting that on the system was an
15 issue that need to be looked at. My problem around 12:16
16 that is, Garda Keogh is saying that he can't answer any
17 questions. So this became, I suppose, an issue that he
18 would have learned about and that he is saying to me,
19 I'm not dealing with that, we're just dealing with
20 criminality, nothing else. 12:17

21 269 Q. But I think, chief superintendent, just from what we
22 have seen so far, you weren't asking Garda Keogh
23 anything about the creation issue. There doesn't seem
24 to have been any correspondence with him about
25 discipline or breach of Pulse data or Data Protection 12:17
26 Act. It is simply CHIS that is going back and forth,
27 isn't that right, and the source issue?

28 A. That's all that is going back and forth on paper. But
29 there was issues there. I know there was

1 dissatisfaction with certain members in Athlone around
2 it at the time. Even though nothing came to me in
3 writing before Garda A wrote up a report, that was
4 floating around. I think that maybe caught the
5 attention of Detective Superintendent Mulcahy at some 12:17
6 stage and then he came along, I take it from an
7 engaging with the people in Athlone he came along and
8 said, look, we're not dealing with the other issues,
9 just in case you assume that we are, we're not.

10 270 Q. So you're saying that he made it clear in the negative 12:18
11 really, what he wasn't doing.

12 A. Yes.

13 271 Q. But he didn't tell you what he was doing, is that
14 right?

15 A. That's correct. 12:18

16 272 Q. So at this stage in July, can you place the call in
17 July, start, middle or end, can you assist as to when
18 it might have been?

19 A. I would say mid July. You know, I can't put a date on
20 it off the top of my head. 12:18

21 273 Q. Okay. Just in relation to the middle of July, I'm just
22 reminded of Detective Superintendent Mulcahy in his
23 statement, at page 3911. If you see there, you see the
24 paragraph starting 16/7/2014?

25 A. Yes. 12:18

26 274 Q. "I received a text from a reporter asking if I could
27 make contact. I rang him at 16:52. He spoke to me
28 regarding his superintendent asking him about the
29 intelligence he had put on Pulse and asking if he had

1 an informant. I advised him that we were not
2 investigating the Pulse incident. He advised me where
3 the intelligence had come from and I explained to him
4 that his supervisor had an obligation to ensure that
5 any intelligence placed on the system was correct." 12:19
6
7 The rest is not relevant to the issue. So at that
8 stage the main investigating officer knows the source,
9 is that right?
10 12:19
11 "He advised me where the intelligence had come from."
12 A. Well from reading that, yes.
13 275 Q. And you're saying that you spoke to Detective
14 Superintendent Mulcahy --
15 A. Yeah. 12:19
16 276 Q. -- in the middle of the month?
17 A. Yeah.
18 277 Q. In around the time?
19 A. Yeah.
20 278 Q. I'm not saying, it could have been before, it could 12:19
21 have been after, but none of this was mentioned to you,
22 is that right?
23 A. No, nothing. Nothing.
24 279 Q. So is it your position, now we're in late July, is it
25 your position that you still know nothing about what's 12:19
26 being substantially investigated by the investigation
27 team?
28 A. No, Chairman, I have no idea.
29 280 Q. Okay.

1 A. Even in my conversation with Detective Superintendent
2 Mulcahy, it's not his responsibility in terms of
3 compliance with 126/10. That's the point.

4 281 Q. Okay. Can I just go back, so leaving July behind, can
5 I just go to August then? Now, we had looked at August 12:20
6 there briefly a moment ago, the 8th August, and that's
7 where you got a letter, as we saw a moment ago, from
8 the assistant commissioner of the Eastern Region,
9 asking had you contacted the investigation
10 confidentially to find out what the story was. You 12:20
11 dealt with that in your evidence.

12 A. Yes.

13 282 Q. If we can stay in early August just for a moment. It's
14 this month where again you revert on the issue to
15 Noreen McBrien. I think she comes back first of all 12:20
16 with a report to you on 5th August 2014. That's at
17 1989. So at 1989. Again it deals with a number of
18 matters, we're going to just concern ourselves with the
19 first two paragraphs. At this stage she is attaching
20 that response from Garda Keogh, if you remember, it's 12:21
21 not a CHIS the matter, the information is in the care
22 of Assistant Commissioner Ó Cualáin?

23 A. Yes, yes.

24 283 Q. Okay. So she is attaching that response and it says:
25
26 "In response to my query as to whether the informant
27 has been registered with CHIS in accordance with HQ
28 directive 126/10, he states that this is not a CHIS
29 matter, the information is in the care of Assistant

1 Commi ssi oner Ó Cual áin.
2
3 In additi on, I attach correspondence dated the 30th
4 July received from Garda A. "
5
6 we know that this is Garda A's complaint. 12:21
7
8 She says:
9
10 "This is the first time he has informed me of his upset 12:21
11 regarding the matter."
12
13 So this is when you become aware that Garda A has
14 complained about it intelligence entry, is that right?
15 A. Yes. 12:21
16 284 Q. Okay. Now, what happens next is that you go back to
17 her on the 22nd August. I think that's at 1991. And
18 at 1991 you say, in the second paragraph:
19
20 "I have noted Garda Keogh's suggestion that the matter 12:22
21 was not a CHIS matter as it has been referred to..."
22
23 Sorry. Actually, can I just correct -- that's one of
24 the dates you corrected I think, chief superintendent,
25 and it's the 22nd August in your supplemental 12:22
26 statement?
27 A. Yes, incorrectly dated the 11th July.
28 285 Q. Okay.
29 A. Yes.

1 286 Q. So it's 22nd August 2014?

2 A. Yes.

3 287 Q. The paragraph I was just about to read, the second one
4 there:

5

12:22

6 "I have noted Garda Keogh's suggestion that the matter
7 is not a CHIS matter, he says it has been referred to
8 Assistant Commissioner Ó Cualáin. I am not satisfied
9 that this negates our responsibilities as outlined in
10 HQ directive 126/10 and have request that the source be 12:23
11 referred --"

12

13 I think that might be that -- there seems to be an
14 error.

15

12:23

16 "-- and have requested that the source be referred in
17 line with Garda policy."

18 A. Yes.

19 288 Q. Isn't that right?

20 A. That's correct, Chairman.

12:23

21 289 Q. Now, of course, we have seen just from Detective
22 Superintendent Mulcahy statement that the source had
23 been given to their investigation, is that right, at
24 that stage?

25 A. Well, he was dealing with some, may have been a source 12:23
26 or not, yes.

27 290 Q. Okay. Now what happens then is that on page 164 you
28 have Superintendent Noreen McBrien asking Sergeant
29 Haran to go back to Garda Keogh. That is on the 18th

1 September 2014?

2 A. Yes.

3 291 Q. You say:

4

5 "Chief Superintendent Curran is not satisfied that this 12:24
6 negates our responsibilities as outlined in HQ
7 Directive 126/10 and has requested that the source be
8 referred in line with Garda policy.

9

10 Garda Keogh should comply with this request and report 12:24
11 by return."

12 A. Yes.

13 292 Q. Now, what happens then is we move out of August and we
14 know that he writes a letter -- sorry, no, we move out
15 of August and we go into September. That's your 12:24
16 correspondence we've just looked at. That's the 18th
17 September. And Garda Keogh, we know, writes a letter,
18 at page 165, to the superintendent in Athlone on the
19 26th September 2014. He says, and we have seen this
20 letter before, midway down the page he says: 12:25

21

22 "In relation to HQ directive 126/10, this does not
23 appear to cover this particular situation. Perhaps
24 Chief Superintendent Curran could furnish to me the
25 exact wording that he refers to be outlined in HQ 12:25
26 directive 126/10."

27

28 Do you see that? That he is asking again for the
29 explanation as to the application of the directive, is

1 that right?

2 A. Yes.

3 293 Q. Okay.

4

5 "I wish to add that I have been advised by Judge 12:25
6 McMahon not to speak with any member of An Garda
7 Síochána about any part of this investigation with the
8 exception of the investigation team under Assistant
9 Commissioner Ó Cualáin. Therefore, I request that any
10 dealings between myself and Chief Superintendent 12:25
11 Curran, divisional officer in Westmeath division,
12 should not be informal. I intend to be compliant once
13 the investigation has been concluded."

14

15 Now, we know that in his evidence Garda Keogh made much 12:26
16 of that last sentence, saying that he was not
17 disrespectful of the CHIS code, he said:

18

19 "I intend to be compliant with it once the
20 investigation is concluded." 12:26

21

22 I think this makes its way up to you on the 29th
23 September, is that right?

24 A. Yes.

25 294 Q. At page 1992. 12:26

26 A. Yes.

27 295 Q. In fact, if you look at that letter, how she phrases
28 this, she says:

29

1 "He is reluctant to supply the source of the
2 information, citing an investigation presently being
3 carried out by Assistant Commissioner Ó Cualáin and the
4 advice he, Garda Keogh, has received from Judge Patrick
5 McMahon. "

12:26

6
7 Isn't that right?

8 A. That's correct, Chairman.

9 296 Q. In fact, what I didn't -- sorry, I just want -- oh yes,
10 what I didn't -- in page 165 of that letter that Garda
11 Keogh writes, if you just go back to it, sorry, I
12 didn't highlight this. He is saying, if you look right
13 in front of us in the middle of that screen, he says
14 409 is directly linked to the investigation; is that
15 right? This is what comes back to you, isn't that
16 correct?

12:27

12:27

17 CHAIRMAN: what is the question?

18 297 Q. MS. McGRATH: "Directly linked", do you see where he
19 said that.

20 CHAIRMAN: No.

12:27

21 A. Yes.

22 298 Q. So you become aware of that when the letter is sent to
23 you, that that's his position, is that right?

24 A. Well, I suppose I'm aware from the source -- the Pulse
25 entry, that that's -- I understand -- you see, it
26 doesn't really matter if it's linked or not, I need to
27 know is he handling a source or not. That's all I'm
28 interesting in.

12:27

29 299 Q. Okay. And, as you say, we know that you have been

1 asked to contact the Ó Cualáin investigation in that
2 regard, is that right?

3 CHAIRMAN: Sorry, say that again, please, by whom?

4 300 Q. MS. McGRATH: The assistant commissioner of the Eastern 12:28
5 Region had asked you to contact the Ó Cualáin
6 investigation but you didn't wish to do so, is that
7 right.

8 CHAIRMAN: He asked him to do so informally, to check
9 something informally.

10 MS. McGRATH: Confidentially, I think. 12:28

11 CHAIRMAN: The chief superintendent said he wasn't
12 comfortable with that.

13 301 Q. MS. McGRATH: That's your position?
14 A. That's my position.

15 302 Q. So when this comes back to you then on the 26th 12:28
16 September, this is the position that Garda Keogh takes
17 on the matter and that's the last contact I think you
18 have, or that he has in relation to this; isn't that
19 right?

20 A. Yes. It's not the last action from me on it, though. 12:28

21 303 Q. All right.
22 A. I would say, it's worthwhile saying this, and you've
23 mentioned here that I'm not resolving my problem with
24 compliance of 126/10 with him. But at this stage, what
25 gives me some comfort is that Detective Superintendent 12:28
26 Mulcahy is and was at that time a controller himself.
27 And my comfort comes from his knowledge of the risks
28 that come with persons that are sources. So, even
29 though I'm not satisfying myself on 126/10, it becomes

1 -- there's some, I suppose, relaxing in my mind of the
2 urgency around it but it doesn't resolve my 126/10
3 dilemma. If that makes sense to you.

4 304 Q. It does, it does. But can I clarify, is this relaxing
5 that you talk about emanating from the conversation in 12:29
6 July that we looked at, which Detective Superintendent
7 Mulcahy?

8 A. No. No.

9 305 Q. No?

10 A. No. This is inferred by me. There's nothing expressed 12:29
11 to me. Because he is now saying he is dealing with the
12 Ó Cualáin, he's dealing with Mulcahy. And I think I'm
13 getting that from Superintendent McBrien as well. So
14 at this stage I know that he is aware of the risks that
15 go with that and he may have obligations or if he saw 12:29
16 something that was very risky, he may report it to me.
17 But I am not getting anything in terms of shutting it
18 down in terms of 126/10. So then at a later stage I
19 write, putting this dilemma to Assistant Commissioner Ó
20 Cualáin. 12:30

21 306 Q. Okay. But can we just stay on sequence, because this
22 is now the end of September. One of the things I just
23 wanted to ask you about, was that on 23rd September
24 2014 you meet the Ó Cualáin team, isn't that right? I
25 think you meet them in Dublin? 12:30

26 A. That's correct. For again a very niche discussion
27 around -- their consultation with us around suspension
28 of Garda A.

29 307 Q. I think Detective Superintendent Mulcahy deals with

1 this in his statement at page 6901. There is no need
2 to open it. He just says that you were part of the
3 group that met --

4 A. Myself and Superintendent McBrien met Assistant
5 Commissioner Ó Cualáin and Detective Superintendent 12:30
6 Mulcahy.

7 308 Q. That's right. I think you were asked about this by the
8 investigators at page 1963 of your interview. I think
9 your position, you say, was clear, that suspension was
10 the only context in which Garda Keogh was discussed, is 12:30
11 that right, at this meeting?

12 A. It was Garda A, yes. So Garda Keogh's concerns I think
13 there was --

14 309 Q. Sorry, that's right.

15 A. Yes, fed into the conversation. 12:31

16 310 Q. I think, as you say, you say this was again a niche
17 issue and there was no --

18 A. Nothing else discussed other than that, yes.

19 311 Q. Okay. So by the time we get to the end of September,
20 Garda Keogh is no longer contacted in relation to the 12:31
21 issue, isn't that right?

22 A. No.

23 312 Q. He accepted that in his evidence at Day 99, page 134,
24 that that was the last contact he had?

25 A. He had, yeah. 12:31

26 313 Q. Okay. Now, as you said yourself in your evidence,
27 things didn't stop there in respect of yourself.
28 Because we move on. During September there's some
29 correspondence. Again, I think now at this stage we're

1 all into the senior management issue in relation to
2 this. Can I ask you to look at a letter of 10th
3 September 2014 and it's at page 8280. 8280. This is a
4 letter you write to the assistant commissioner of the
5 Eastern Region. 12:32

6 A. Yes. I know the date is wrong on it. Is that the 10th
7 September?

8 314 Q. Yes. In your affidavit I think you corrected this date
9 to 10th September 2014?

10 A. Yes. 12:32

11 315 Q. Now, this is your response. You remember you said that
12 you responded to the assistant commissioner's letter of
13 the 8th August?

14 A. Yes.

15 316 Q. Which was asking about contact with the Ó Cualáin 12:32
16 investigation?

17 A. Mm-hmm.

18 317 Q. This is your response. You say:
19
20 "I can confirm that an enquiry was made by the district 12:32
21 officer to establish if the matters as outlined in the
22 intelligence report had been referred to Assistant
23 Commissioner Ó Cualáin and confirmation was received
24 that this had been included."

25 A. Yeah. My understanding is, I'm not sure that that 12:32
26 comment -- I was reading it the other day. My
27 understanding around that is that Garda Keogh and
28 Superintendent McBrien were in discussion and I think
29 she may have got the impression off him. I don't know

1 where she got that from. But anyway.

2 318 Q. Can we just be clear there, chief superintendent. You
3 write, you say that confirmation was received that this
4 had been included, that's 10/9. That's what is there
5 in any event?

12:33

6 A. Yes.

7 319 Q. Okay. And you say:

8

9 "I have corresponded with your office previously in
10 respect of further action to be taken on the matter.

12:33

11 Owing to the fact that the matter has been referred to
12 Assistant Commissioner Ó Cualáin, I have advised that
13 it is my intention to take no further action in this
14 matter at this time, in the absence of additional
15 information which could only be obtained through
16 interference with investigation of the matter reported
17 under the confidential reporting mechanism."

12:33

18

19 A. Yeah, that's the criminal matter specifically there.

20 320 Q. Can you just be clear, you're saying that's the
21 criminal matter. What do you mean by that, chief
22 superintendent?

12:33

23 A. Yeah. If you look there, I think I have written
24 previously and I mention that word, additional
25 information. So, if the criminal matter was mine, so
26 the criminal matter as suggested in the intelligence is
27 corruption, so the additional information that's
28 required to substantiate that. How is that going to be
29 negotiated if Garda Keogh has been told by the judge

12:34

1 not to talk?

2 321 Q. Okay. So you're happy enough now at this stage that
3 there is a match between what is on the intelligence
4 report and what is happening at the Ó Cualáin level?

5 A. Well, I am inferring from -- but I'm never getting 12:34
6 confirmation, categorical information from anybody on
7 high, from Ó Cualáin etcetera.

8 322 Q. You continue, you say:

9

10 "I have sought clarifications on a number of matters 12:34
11 from the district officer Athlone. I am currently
12 awaiting a response to ensure that the source of the
13 information who provided the substance of the
14 intelligence contained within the above mentioned
15 intelligence report is referred to the Eastern Region 12:34
16 source management unit."

17

18 You continue, you repeat what you had said in the
19 previous letter and say:

20

21 "I am not satisfied that this negates our 12:34
22 responsibilities as outlined in HQ directive 126/10 and
23 requested that the source be referred in line with
24 Garda policy."

25 A. Yes. 12:35

26 323 Q. You continue, you say:

27

28 "I am not aware as to the nature of any Pulse audit to
29 be conducted."

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If you remember, that was the question you had been asked?

A. Yes.

324 Q. "However, all other matters in respect of the disclosures made to gardaí locally are being progressed."

12:35

Now, I don't want to do any cross issues here, but all other matters, I think you might be referring there to the other matters involving Liam McHugh or Olivia O'Neill, or maybe not?

12:35

A. No, I think that's what it is, yeah.

325 Q. Okay. Now, what I want to ask you about then is: You write on the same day to the assistant commissioner of the Organisational Development and Strategic Planning?

12:35

A. Yes.

326 Q. That's at page 8342. Again, this is 19th May but you have corrected this to 10th September 2014?

A. Yeah.

12:35

327 Q. Can you just explain to the Chairman, organisational development and strategic planning, what's the remit of that section?

A. Good question. It's very wide. I think it's to deal with strategic matters and they have data. I think that particular section had responsibility for data generally within the organisation. Again, the niche area of the criminal and Pulse would have been managed. I think the responsibility was with Crime and Security.

12:36

1 But his responsibility, purely I think it was a
2 nominated person by the Commissioner to deal with data
3 protection etcetera and data concerns, in the context
4 of this issue here.

5 328 Q. Okay. So you're saying there's a data focus here for 12:36
6 that particular...

7 A. Yeah, I think this has been prompted by Garda A's
8 correspondence over his concerns.

9 329 Q. That's right. You refer to that in the third 12:36
10 paragraph.

11 A. Yes.

12 330 Q. You refer to his complaint, that is causing him upset.
13 You outline the nature of the complaint. The Chairman
14 has seen that letter that he wrote. You say:

15 12:36
16 "This is set against the backdrop of an inquiry being
17 conducted by Assistant Commissioner Ó Cualáin into
18 certain allegations made by Garda Keogh through the
19 confidential recipient."

20 12:37

21 You say:

22
23 "Garda Keogh was named publically in the Dáil and as a
24 result most members attached to Athlone are aware of
25 that this investigation is ongoing in respect of 12:37
26 matters alleged by Garda Keogh against D/Garda A."

27
28 So, I mean, there's knowledge there of what is at issue
29 with regard to Ó Cualáin, isn't that right?

1 A. Garda A is saying it's him and there seems to be an
2 issue there. Obviously local talk is that it's Garda A
3 and he feels they're all talking about him. That's in
4 the content of his report he sends up.

5 331 Q. Okay. You say, having requested the district officer 12:37
6 of Athlone, Superintendent McBrien to examine aspects
7 of the intelligence item created:

8
9 "Garda A stated, would you be making this enquiry if it
10 was a Tesco worker to whom this intelligence related." 12:37
11

12 so this is going all the way back I think to the 19th
13 May; is that right?

14 A. That relates to the original report, yes.

15 332 Q. You say: 12:38
16

17 "A subsequent enquiry made by Superintendent McBrien
18 with Assistant Commissioner Ó Cualáin's investigation
19 team to establish if the matters referred to in the
20 intelligence created were the subject of investigation, 12:38
21 confirmed that the intelligence items is not the
22 subject of investigation."
23

24 A. Yeah, I think that's where some of the confusion came.
25 So, the unrelated, we'll say, the non-crime matters. 12:38

26 333 Q. But I think the sentences are exactly the same in both
27 letters, that the matters referred to in the
28 intelligence created were the subject of investigation
29 and confirm that the items were not. Whereas in the

1 previous letter the same sense just has the word "is"
2 is that right?

3 A. Well, I suppose I know from Mulcahy's conversation with
4 me, they're not dealing with all the -- like this is a
5 data type of query. So they're saying they're not 12:38
6 investigating the issues, non-crime related issues to
7 that intelligence entry. So that's what this is. In
8 the whole, that's what that means.

9 334 Q. But I think if you look at the sentences, they're
10 exactly the same, isn't that right, one says "is" and 12:39
11 one says "is not" is that right?

12 CHAIRMAN: Sorry, which is the other one?

13 MS. McGRATH: The other letter is 8280.

14 CHAIRMAN: Yes.

15 MS. McGRATH: If you see the second paragraph there? 12:39
16 CHAIRMAN: Yes.

17 335 Q. MS. McGRATH: "An inquiry was made by the district
18 officer to establish if the matters as outlined in the
19 intelligence report had been referred to Assistant
20 Commissioner Ó Cualáin and confirmation was received 12:39
21 that this had been included."
22

23 CHAIRMAN: Yes.

24 MS. McGRATH: And then if we look at the other --

25 CHAIRMAN: In other words, the allegations contained in 12:39
26 the report were the subject of the investigation.

27 MS. McGRATH: The matters outlined in the intelligence
28 report. And if you look again page --

29 CHAIRMAN: The matter complained of. In other words,

1 the allegation.

2 MS. McGRATH: That's right.

3 CHAIRMAN: My understanding is that that's not saying
4 something different.

5 336 Q. MS. McGRATH: If we look at 8342. It seems to be the 12:40
6 same, maybe there's one word like subsequent.

7 A. I think "item" is an important word there "intelligence
8 items".

9 337 Q.
10 "...to establish if the matters referred to in the 12:40
11 intelligence created were the subject of
12 investigation..."

13

14 CHAIRMAN: what does that mean? Ms. McGrath is
15 suggesting that this is a complete contradiction of the 12:40
16 previous one. I'm not seeing it that way, I have to
17 say.

18 A. The previous one, like this is very much re data. So
19 what's being said here is that the --

20 338 Q. CHAIRMAN: There's the investigation? 12:40

21 A. Yes.

22 339 Q. CHAIRMAN: And there's the focus on the Pulse entry?

23 A. Yeah.

24 340 Q. CHAIRMAN: Either as data or as CHIS?

25 A. Yes. So that's it. So Pulse data is not being 12:40
26 investigated by the Ó Cualáin group.

27 341 Q. CHAIRMAN: Pulse issue, whereas as CHIS or as data is
28 not being investigated by Ó Cualáin?

29 A. Exactly.

1 342 Q. CHAIRMAN: Okay.

2 A. And I would say probably not -- this one obviously
3 isn't talking about CHIS, it's just about the Pulse
4 data.

5 CHAIRMAN: I follow.

12:41

6 A. Yeah.

7 343 Q. MS. McGRATH: I'm sorry, chief superintendent, I would
8 have seen it as one says is included and one says is
9 not included, are you disagreeing with me? Are you
10 saying it's something else?

12:41

11 A. You see, one is the allegation of the criminality. I
12 think that's what I understand the other one to be.
13 And this one here is just strictly about the Pulse item
14 itself. Because Garda A has raised an issue here and
15 who is investigating that. And we are saying in this
16 report, we are saying that this report -- this focus
17 is -- sorry, the Ó Cualáin investigation is not dealing
18 with anything to do with the investigation around Pulse
19 data or the creation of intelligence entry. They're
20 not interested in that. They're only dealing
21 exclusively with criminality.

12:41

12:42

22 344 Q. Well, you see, I think that my confusion wasn't the
23 only confusion. I think Chief Superintendent Kirwan is
24 taken somewhat by surprise by the reference to "is not
25 included". Because I think it was his understanding
26 that the intelligence matters were included. If we can
27 go to --

12:42

28 A. That's now I think from the original correspondence
29 that was floating around, that you mentioned earlier

1 on, from Clavin and others. From Chief Clavin. In
2 early June they're dealing with correspondence. That's
3 where I think AC Nolan writes in the early part of June
4 to AC Crime and Security. At that stage there's
5 mention, because I think Paul Smith, the sergeant in 12:42
6 the CAO office, is saying that later on he took it from
7 AC Nolan's correspondence that the investigation is
8 being led by the assistant commissioner Eastern Region.
9 345 Q. Well, if I can ask you to look at 8344 to see if we can
10 get to the bottom of it. 8344. So it's the "is not" 12:43
11 letter we're talking about now, the 10th September.
12 Because the "is not" letter goes to organisational
13 development and strategic planning, right. And then on
14 8344, on the 12th September, that organisation,
15 organisation development strategy planning sends up 12:43
16 your letter to the assistant commissioner Crime and
17 Security, is that right?
18 A. Yeah. No, I accept that.
19 346 Q. Okay.
20 A. But there's a previous correspondence I think. If you 12:43
21 look at Paul Smith, in early June he's saying there's
22 something. So that's September. In June, earlier
23 on --
24 347 Q. Well, we actually do come to June then, because you
25 will see that Chief Superintendent Kirwan deals with 12:44
26 this in his statement?
27 A. Yes.
28 348 Q. I think it's his position in his statement, at
29 particularly volume 29, 8375, he takes the view that he

1 understood in the June period that the matter was under
2 investigation by Ó Cualáin, i.e. the intelligence
3 content?

4 A. Yes.

5 349 Q. And now he's saying in his statement that this has 12:44
6 taken -- when it comes up to him on the 12th September,
7 he is taken somewhat by surprise. If we could open up
8 his statement, it's at 8375.

9 CHAIRMAN: Yes.

10 350 Q. MS. McGRATH: Just give me a moment, sorry, I have the 12:44
11 wrong page number there. If you could look at 7623?

12 A. Okay.

13 351 Q. So that's, as I say, the statement of Peter Kirwan,
14 retired detective chief superintendent. He says at the
15 bottom of 7623, the second last bullet-point, he 12:45
16 says -- now he's referring to June or the June report
17 that you were talking about, okay? He says:

18
19 "Given that the matter was under investigation by the
20 assistant commissioner, D/Sergeant Smith did not 12:45
21 proposed to issue any advice to the CIO in Mullingar."
22

23 Do you see that?

24 A. Yes.

25 352 Q. "Consequently, the intelligence remained visible to all 12:45
26 Garda members with access to Pulse under the status of
27 review required."
28

29 Isn't that right?

1 A. Yes.

2 353 Q. Okay. So he moves on, in the next page, 7624, and now
3 he is talking about the letter that has come to him,
4 which I just opened a moment ago, 12th September 2014.
5 And the report, if you see he is referencing the 12th 12:46
6 September, he gets the letter, and what's attached to
7 it, he is mentioning that the date is wrong, and we
8 know the date is wrong, do you see that, he has
9 underline it?

10 A. Yes. 12:46

11 354 Q. He says:
12
13 "Report of Chief Superintendent Curran, report of 19th
14 May 2024."
15 12:46

16 Do you see that? We know that that's now is 10/9.

17 A. Yes.

18 355 Q. What he is querying now at this stage is -- now again,
19 I will accept this is all, it seems, a little bit
20 unclear, but he is saying on the next page -- 12:46
21 CHAIRMAN: would you like to get to the point that you
22 think is relevant, Ms. McGrath?

23 MS. McGRATH: He is saying on the next page, at the
24 top, 7625. He said --

25 CHAIRMAN: wait until we get 7625. 12:46

26 356 Q. MS. McGRATH: The second bullet point.
27
28 "Chief Superintendent Curran stated that the
29 intelligence item was not the subject of Assistant

1 Commi ssi oner Ó Cual áin i nvesti gati on. "

2

3 In the rest of his statement that is why then he
4 becomes more involved and you request a case
5 conference. we will hear from him in due course.

12:47

6 A. Yes.

7 357 Q. So, is there confusion at this stage as to whether --

8 A. Yes, yes.

9 358 Q. Okay. The two letters do somewhat to be a little
10 bit at odds, would you accept that?

12:47

11 A. The confusion arises because he thinks the matter is
12 being investigated and it is being investigated but
13 only the criminality. The local stuff is not being
14 investigated by the Ó Cualáin team. But former Chief
15 Kirwan is not aware of the restrictions that have been
16 put on me by the judge, so I can't investigate this.

12:47

17 359 Q. Okay. Can we just move on a little bit. I am
18 conscious of the time and I would like to see if we can
19 finish this issue?

20 CHAIRMAN: I think so, that's very important, because
21 I'm wondering about the programme of getting chief
22 superintendent out of the way by tomorrow.

12:47

23 MS. McGRATH: Absolutely.

24 CHAIRMAN: Because we have cross-examination to come
25 and at this pace we're not getting there, Ms. McGrath.

12:47

26 MS. McGRATH: Okay.

27 CHAIRMAN: I mean, I have to bear in mind that the
28 question is whether the questioning of Garda Keogh
29 constituted targeting or discrediting. I mean that is

1 the question that is at issue, it seems to me. In
2 fact, that is the question, because Garda Keogh's is
3 suggestion that these questions put to him and emanated
4 from Chief Superintendent Curran represented targeting
5 and discrediting. 12:48

6 MS. McGRATH: I will move along quite snappily now. If
7 I can ask you to go to 6610. Of course, we're moving
8 on now and, as I say, we're just at senior management
9 level. It's a letter of 16th October 2014.

10 CHAIRMAN: I mean, does it matter what happened 12:48
11 afterwards? I mean, does it matter what happened
12 afterwards. Let me put it this way, Ms. McGrath, with
13 respect, surely somebody else, Mr. Kelly or anybody
14 else may say, subsequent correspondence demonstrates
15 your motivation for the events that happened involving 12:48
16 Garda Keogh. And they may say, this shows that you had
17 hostility or whatever it is, malice forethought or
18 malice afterthought from which we can infer. Surely
19 that's the relevance. But who did what or said what or
20 thought was, does it matter specifically after the 12:49
21 engagement with Garda Keogh was completed?

22 MS. McGRATH: well, I think, Chairman, one thing I was
23 very conscious about in Garda Keogh's evidence was that
24 it was put to him by Mr. Murphy that Chief
25 Superintendent Curran was trying to lock the matter 12:49
26 down. In particular, the reference in that, Day 106,
27 page 25, seems to be to December 2014. Garda Keogh's
28 response was this should have been done a lot earlier.
29 This was the start. His evidence is to the effect that

1 he had been consistent in his position all along. Now,
2 I want to take the chief superintendent to December
3 2014.

4 CHAIRMAN: Okay.

5 MS. McGRATH: As I say, I will move along very quickly. 12:50

6 CHAIRMAN: Thanks very much.

7 360 Q. MS. McGRATH: I think with the letter up there, can I
8 ask you again, you are talking to the Eastern Region
9 again at this stage, in October 2014?

10 A. Yes. 12:50

11 361 Q. If we look at the second paragraph, the last line, you
12 are again saying it's your intention to refer a number
13 of matters to your office for consideration by an
14 external chief superintendent within the Eastern
15 Region, is that right? 12:50

16 A. Yes.

17 362 Q. Does that happen?

18 A. No.

19 363 Q. Okay. Now, can I bring you -- as I say, I'm conscious
20 of what the Chairman has said, can I bring you to 12:50
21 December.

22 A. Hm-hmm.

23 364 Q. Okay. You are contacted by the Eastern Region, at
24 8387. Just bearing in mind that letter we saw in
25 October. 8387. The Eastern Region is asking you have 12:50
26 you appointed a member to investigate this matter.
27 That's coming from assistant commissioner Fintan
28 Fanning in the Eastern Region, who is now the new
29 assistant commissioner there?

1 A. Yes.

2 365 Q. So, this issue was still floating around, it would
3 seem?

4 A. Yes. Correspondence has come down to him suggesting
5 there's talk about the investigation to be -- that's 12:51
6 arising out of the Garda A thing to ODSB back in
7 September. They're asking is there somebody appointed.
8 But that's coming from a response back in, I think it's
9 sometime in November from Kirwan. Bear with me. I
10 think there's -- so, 17th November 2014, volume 15, 12:51
11 pages 4605 and 06, Kirwan is talking about appointing
12 someone to investigate. He is looking for a meeting to
13 be convened at the earliest possible juncture. He is
14 mentioning who should be added. NCIO, that's Paul
15 Smith, NCIO, and legal section should be present. So 12:51
16 that meeting took place, and I am jumping ahead of you
17 to December here, that meeting took place and there was
18 a discussion around it and a full discussion around the
19 dilemmas that I faced on the ground in westmeath, in
20 particular the restrictions put on me in terms of 12:52
21 interacting with Garda Keogh. The decision arising out
22 of that meeting was to go and get legal advice.

23 366 Q. Okay, but I think you have jumped ahead.

24 A. Yes.

25 367 Q. Here we have you mentioning getting an external 12:52
26 investigator and now you're asked have you appointed
27 this person and are you saying no. On the 19th
28 October, that was the letter I opened, isn't that
29 right?

1 A. Do I say external investigator?
2 368 Q. An external chief superintendent to investigate the
3 matter, isn't that right?
4 A. No, I don't think so.
5 369 Q. On the 19th October? 12:52
6 A. Em...
7 370 Q. 6610.
8 A. Okay.
9 371 Q. That we just saw.
10 A. No, that's where I'm saying the external -- the mention 12:53
11 of the external chief superintendent, that's really for
12 a review consideration, not for investigation. Can I
13 just bring you back to one important -- it just seems
14 we skipped October, it's an important October.
15 372 Q. Yes. 12:53
16 A. It's the 16th October, Volume 29, page 8360.
17 373 Q. That's right.
18 A. It's an important document because I'm writing there
19 because of my dilemma. I have gotten a response back
20 from Garda Keogh at the end of September and I am 12:53
21 asking, if you look at the wording:
22
23 "There is a vacuum of information created as a result
24 of this investigation being conducted in accordance
25 with the CR mechanism." 12:53
26
27 And it goes down, at the end I say more or less I'm
28 looking for assistance in relation to the compliance
29 matter with 126/10.

1 374 Q. Absolutely. That is the letter that you wrote. I have
2 been anxious to skip ahead a little bit quickly.
3 Indeed. You do write that to the Eastern Region. In
4 fact, the response of the Eastern Region is at 8364,
5 where they write to Assistant Commissioner Ó Cualáin to 12:54
6 look for clarification in relation to the
7 investigation, isn't that right?
8 A. Yes.
9 375 Q. The response to that is the one we have already talked
10 about, which is that Detective Superintendent Mulcahy 12:54
11 on the 28th October comes back and he says the creation
12 of the intelligence report is not a matter for us. And
13 that is one we saw already at 8366?
14 A. Yes.
15 376 Q. That's is the sequence of that, isn't it? 12:54
16 A. Yes. But he doesn't talk about 126/10. So the dilemma
17 is still there.
18 377 Q. Can I ask you to move to the December correspondence
19 and in particular there's a letter of the 12th
20 December, 1879? 12:54
21 A. Yes.
22 378 Q. There are two letters of the 12th December; isn't that
23 right?
24 A. Yes.
25 379 Q. One is at 1879, we will come to the second one in a 12:54
26 moment. You say one was a draft that never issued?
27 A. Yes.
28 380 Q. I just want to look at the one you say in your
29 interview with the investigators did issue. This is to

1 the AC Eastern Region and this is you coming back and
2 saying there has been no appointment to investigate the
3 matter; isn't that right?

4 A. Yes.

5 381 Q. You say it remains unclear, so you still have an issue 12:55
6 with the source, isn't that right?

7 A. No, in a way --

8 382 Q. You say:
9
10 "To date it has not been possible to establish whether 12:55
11 or not the source has been provided, who has provided
12 the information set out in the intelligence piece
13 created by Garda Keogh."
14
15 Isn't that right? 12:55

16 A. Yeah, you see, what investigation is taking place
17 there? Is it because of Garda A's matter? Is it
18 because of Pulse data? Compliance issues? Is it
19 discipline? You know, so they're not telling me. So I
20 write -- we will come to it in a minute, but I'm 12:55
21 asking, I'm actually asking, it's unclear, so I'm
22 welcoming somebody to tell me what investigation.
23
24 "I believe this will be possible to establish the..."
25 12:56
26 Once that we have a meeting.

27 383 Q. Can I ask you to look at the next sentence. You say:
28
29 "He has on a number of occasions refused to confirm to

1 the district officer Athlone whether or not there is a
2 source for this intelligence."

3
4 Is that fair reflection of what Garda Keogh's position
5 was?

12:56

6 A. Probably "refused" might be -- he hasn't, rather, you
7 know.

8 384 Q. Okay. Can I move quickly just to the next letter of
9 the 12th, which you said to the investigators was a
10 draft, 1880?

12:56

11 A. Yes.

12 385 Q. It's somewhat similar, but the difference being that
13 there is a recommendation that there may be an
14 investigation, you have in brackets at the end:

15
16 "Civil criminal discipline."

12:56

17 A. Yes.

18 386 Q. Is there a disciplinary issue now in the ether in
19 respect of Garda Keogh for the matter?

20 A. Not for me, because I'm told I can't talk to him. And
21 I'm the only one really that can decide on the
22 discipline, so I'm not going down that road. And I
23 can't be told to do a discipline either, it's only me.

12:56

24 387 Q. Moving on to December, as you said, Chief
25 Superintendent Kirwan, who now is concerned that there
26 was no investigation of the matter, as said in the
27 statement, he recommends a meeting and I think there is
28 a meeting on the 18th December 2014, is that right?

12:57

29 A. Yes, yes.

1 388 Q. Now, there's an agenda for that meeting on 16th
2 December 2014 and it's at 8392?
3 A. Mm-hmm.
4 389 Q. Now, on that agenda, if you look at the various
5 bullet-points, on the fifth bullet-point you say: 12:57
6
7 "Garda Keogh has been requested to clarify if there is
8 a source for this intelligence and if the source has
9 been the subject of referral for CHIS."
10 12:57
11 You reflect there that he will not discuss it with the
12 division and only will discuss it with the assistant
13 commissioner, is that right?
14 A. Yes.
15 390 Q. You say: 12:57
16
17 "It is not possible to establish that there is a source
18 for this intelligence, other than establishing same
19 through Assistant Commissioner Ó Cualáin, which we are
20 precluded from doing." 12:57
21
22 A. That would make sense.
23 391 Q. SO is this your agenda that you drew up?
24 A. No.
25 392 Q. Okay. SO this isn't your document. Do you know whose 12:58
26 document it might be?
27 A. Probably Peter Kirwan.
28 393 Q. Okay. well, we can address that with Chief
29 Superintendent Kirwan?

1 A. Yes. 12:58

2 394 Q. Now, around this time in December I think you had it
3 confirmed to you by AC Jack Nolan, the data controller,
4 at volume 30, page 8526, that there were no breach of
5 Data Protection Act issues, is that right? 12:58

6 A. That's what he said to me, yes.

7 395 Q. So you knew that at that particular stage. Now, as you
8 say, you went to that conference, isn't that right, and
9 there's a letter of 23rd December 2014, at 1882?

10 A. Yes. 12:58

11 396 Q. Now, I just want to look at this letter a little bit
12 and, as I say, I'm conscious of the time, I will just
13 be another five or ten minutes, if that's okay,
14 Chairman?

15 A. Yeah. 12:58

16 397 Q. You say there:
17
18 "It is understood there is no breach of the Data
19 Protection Act."
20 12:58

21 I am sorry, you're writing to the AC Eastern Region;
22 isn't that right?

23 A. Yes.

24 398 Q. Now, you refer in the second paragraph, or the third
25 paragraph there to the complaint from Garda A. So you 12:59
26 are very conscious of that, isn't that right?

27 A. Yes.

28 399 Q. Now, you say at 1:
29

1 "It has not been possible to categorically establish
2 that the criminal matters alleged within the
3 intelligence have been investigated as part of
4 Assistant Commissioner Ó Cualáin's investigation."

12:59

6 Now this is December 2014; isn't that right?

7 A. That's right.

8 400 Q. You reiterate your obligations under CHIS at paragraph
9 2; isn't that right?

10 A. Yes.

12:59

11 401 Q. At 3 you say:

12

13 "The position regarding the criminal allegations
14 contained in the intelligence remain unconfirmed as it
15 appears that this is being investigated by AC Ó Cualáin
16 and his investigation has yet to be concluded."

12:59

17

18 Isn't that right?

19 A. Yes.

20 402 Q. You look for further directions and then you suggest
21 legal advice on the next page, 1883, is that right?

12:59

22 A. Yes.

23 403 Q. Now, when you were being interviewed by the
24 investigators you said that's where your paper trail
25 finished in respect of that?

12:59

26 A. Yes.

27 404 Q. Isn't that right?

28 A. Yes.

29 405 Q. However, do you refer to getting assurances from

1 Detective Superintendent Mulcahy in December 2014 in
2 relation to this matter, you called them assurances;
3 isn't that right?
4 A. Assurances, yes.
5 406 Q. At page 1786 of your interviewer, you tell the 13:00
6 investigators that when you got those assurances:
7
8 "My concerns regarding compliance with HQ 126/10 could
9 end."
10 13:00
11 Is that right?
12 MR. MÍCHEÁL O' HIGGINS: Sorry, Chairman, I wonder could
13 the document --
14 CHAIRMAN: I'm sorry.
15 MR. MÍCHEÁL O' HIGGINS: If the quotation is made again, 13:00
16 I am making the same point, if the quotation is being
17 put to the witness, if Ms. McGrath could perhaps wait
18 until to comes up on screen, so he has an opportunity
19 to deal with it.
20 CHAIRMAN: Yes. 13:00
21 MS. McGRATH: Sorry, Chairman, I'm probably racing a
22 little bit in the light of time. If we just keep going
23 on down there.
24 CHAIRMAN: This is 1786.
25 MS. McGRATH: It's at 1786. Here we are, that 13:00
26 paragraph. In and around December 2014, January 2015.
27 CHAIRMAN: Yes, thank you very much. Now we have it.
28 407 Q. MS. McGRATH: You say:
29

1 "As a result I believe a request emanated from the
2 regional office at Mullingar to contact then Detective
3 Superintendent Mulcahy western region, who was part of
4 Assistant Commissioner Ó Cualáin's investigation team.
5 I later through a telephone conversation received an 13:01
6 assurance from him about the matters of concern, namely
7 the criminal matters relating to the intelligence
8 entry, that were being pursued by Assistant
9 Commissioner Ó Cualáin in respect of the confidential
10 recipient complaint and that significantly my concerns 13:01
11 regarding compliance with HQ. . . ."
12

13 CHAIRMAN: I think there is a word missing there,
14 relieved or assuaged or reduced or whatever it was.

15 A. Reduced. 13:01

16 CHAIRMAN: Something of that kind, "my concerns".

17 408 Q. MS. McGRATH: Okay. So, you are saying, this is in
18 your interview, or sorry, that's your statement?

19 A. Yes.

20 409 Q. Now, in the Finn investigation, at page 1902, I can 13:01
21 open it for my Friend if he wants, but this is
22 described in your submission as a categorical
23 assurance, is that how you saw it?

24 A. It's a conversation on the phone. Categorical to me,
25 properly, is a written document for scrutiny later on. 13:01
26 But what it was, was to say that D/Super Mulcahy knew
27 who the source was, or the person was, we will say, and
28 he knew that Garda Keogh was no longer interacting with
29 them. So that was my concern, that there was an

1 ongoing interaction with a person that could be a
2 source.

3 410 Q. Can I ask you, did you make that contact or did he
4 contact you?

5 A. I was told to make a call I think. That's my memory of 13:02
6 it.

7 411 Q. Okay. So you made the contact?

8 A. Yes.

9 412 Q. You said your concerns could end, is that right?

10 A. Well, concerns, my concern is that dealing with 13:02
11 somebody outside of the 126/10, that doesn't mean it
12 was right beforehand, but at that time.

13 413 Q. Now, I think in relation to -- when all of this was put
14 to Garda Keogh in cross-examination on Day 106, that at
15 this stage it was effectively -- it looked like it was 13:02
16 over. I think Garda Keogh's position was it should
17 have been done earlier. What is your response to that,
18 chief superintendent?

19 A. Well, I suppose the answer to that is, there's no
20 system to it, I wasn't getting the direction, I sent 13:03
21 very promptly as soon as the intelligence record went
22 on, in terms of the criminal intelligence, and then in
23 relation to -- after only -- I think it was only three
24 questions put to him in relation to the CHIS matter, I
25 sent it off to Assistant Commissioner Ó Cualáin for 13:03
26 126/10 to be clarified. That wasn't clarified to me.
27 It's only in December/January that I get something in
28 terms of comfort in terms of 126/10. It doesn't
29 eliminate it because I don't get anything in a written

1 format.

2 414 Q. Just finally, I think you understood when you were
3 being interviewed that your paper trail in relation to
4 the matter or your involvement had ended in December
5 2014, but I think you went on to Internal Affairs; is 13:03
6 that right?

7 A. Later on, yes.

8 415 Q. I think you were in --

9 A. Not at that time, I went directly into traffic actually
10 for a year and then I was Internal Affairs and a 13:03
11 professional standards for six months or seven months.

12 416 Q. I think as we know, you said earlier you went from the
13 division the following May, 2015, isn't that right, you
14 left the division?

15 A. March '15. 13:03

16 417 Q. Sorry, March '15, that's right.

17 A. Yes.

18 418 Q. You were in Internal Affairs in January 2015. Can I
19 just ask you to look at -- this is the final document,
20 Chairman. If I can ask you to look at 8456. You're 13:04
21 chief superintendent Internal Affairs and you write to
22 the AC Eastern Region. This is again in relation to
23 the Pulse entry. You say:

24

25 "With reference to the above and previous 13:04
26 correspondence on this matter resting with the office
27 minute dated 25th August 2015.

28

29 I am to advise that this office has been notified that

1 directions have been received from the DPP in relation
2 to the criminal investigation conducted by Deputy
3 Commissioner Ó Cualáin. The DPP have stated that there
4 is no be no prosecution in respect of this
5 investigation. 13:04

6
7 It was previously noted that Chief Superintendent
8 Wheatley had previously examined this case and reported
9 that in light of the criminal investigation being
10 conducted by Ó Cualáin, it was not possible at that 13:04
11 time to consider a breach of the discipline in respect
12 of the creation of this intelligence on Pulse.

13
14 As a criminal investigation has concluded, I now seek
15 your views as Chief Superintendent of Westmeath in 13:05
16 respect of how to proceed with this matter."

17
18 Can you remember that final --

19 A. I can't remember, no.

20 419 Q. But it is concerned with discipline for the issue, is 13:05
21 that right?

22 A. I'd say it's probably because AC O'Mahony had said that
23 the reviewed required status should stay on the
24 incident until such time as the investigation was
25 concluded. 13:05

26 420 Q. So, was this then the last involvement that you think
27 you had in the matter?

28 A. I can't even remember that, to be honest with you,
29 so...

1 421 Q. Thank you, chief superintendent.

2 CHAIRMAN: Thanks very much. Very good. 2:05, thank
3 you.

4 MR. CONNELLAN: Chairman, if I might address you
5 momentarily, John Connellan BL, on behalf of Ms. Olivia 13:05
6 O'Neill. For the record, Ms. O'Neill arrived shortly
7 after this morning's session commenced this morning.
8 It's a matter for -- perhaps I will discuss with
9 Ms. McGrath, as to how she wishes to proceed after
10 lunch. I just go on the record to note that 13:05
11 Ms. O'Neill arrived.

12 CHAIRMAN: Thanks very much. Thanks Mr. Connellan.
13 That's very helpful. Well, I will consider that and I
14 will decide it after lunch. Okay. Thank you very
15 much. 13:06

16
17 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS
18 FOLLOWS:

19
20 CHAIRMAN: Just before we start, have we sorted out the 14:06
21 situation with Ms. O'Neill? That we are not going to
22 take Ms. O'Neill's evidence now, we will take it on?

23 MS. McGRATH: The morning of Tuesday, 26th November.

24 CHAIRMAN: Tuesday, 26th November. Okay. That's what
25 we will do. So we will proceed with Chief 14:06
26 Superintendent Curran's evidence. Again, just before
27 we start, Ms. McGrath, my apologies for being snappy
28 and irritable and impatient earlier. It was quite
29 unforgivable and I ask for your forgiveness.

1 MS. McGRATH: You're forgiven, Chairman.

2 CHAIRMAN: I'm sorry for snapping at you. I will say
3 no more about it for the moment anyway. Thank you very
4 much. Thank you, chief superintendent.

5 WITNESS: Chairman. 14:07

6 422 Q. MS. McGRATH: Now, chief superintendent, I just want to
7 move on to issue number 2 which is on the issues list
8 and that is the Pulse check that was carried out by
9 Garda Keogh on 18th May 2019?

10 A. Yes. 14:07

11 423 Q. Now, we know from the evidence that he said he carried
12 out this Pulse check very early in the morning, at
13 5:30. Now, I think in fairness to you, it was months
14 before you became aware of this, is that right?

15 A. I only heard about this a long time afterwards. 14:07

16 424 Q. Okay.

17 A. So I had no role in giving any direction in it. Where
18 I may have confused the matter, possibly, is when I
19 made a statement to the bullying allegation, I then
20 supported the concept that the super is entitled to ask 14:07
21 the question.

22 425 Q. That's right. Well, actually, what I want to ask you
23 about -- actually, I should say that in your statement,
24 at 1784, and in your interview at 1962, you do take the
25 position very clearly that you say this matter was 14:07
26 dealt with locally, is that right?

27 A. Yes, yes.

28 426 Q. Okay. Now, you also continued, it would have been your
29 interview, where you said you did not direct any

1 actions in respect of the Pulse check on Garda A?

2 A. No, I had nothing to do with that.

3 427 Q. Okay. So what I just want to ask you about really, and
4 I will be very brief on this issue, I want to ask you
5 about a letter that was sent to you by Superintendent 14:08
6 Noreen McBrien on 24th September 2014. That's at page
7 8617. Okay?

8 A. What date is that again?

9 428 Q. This is dated 24th September 2014.

10 A. Okay. 14:08

11 429 Q. Now, just to refresh your memory, the complaint by
12 Garda A in respect of the Pulse check was 24th
13 September 2014?

14 A. Okay.

15 430 Q. Okay. So just to put it in context. This is a letter 14:09
16 that's sent to you by Superintendent Noreen McBrien.
17 It's informing you, it says:
18
19 "A possible breach of the Data Protection Act."
20 14:09

21 Do you see that?

22 A. Yes.

23 431 Q. She attaches the correspondence from Garda A, which is
24 effectively the complaint in respect of the Pulse
25 check, isn't that right? 14:09

26 A. Okay.

27 432 Q. She outlines, she summarises in paragraph 2 what his
28 complaint is. Now, I just want to ask you, literally
29 it's just to see if you can assist us with this, she

1 says:
2
3 "It is known that in and around the time of these Pulse
4 checks, both Garda Keogh and [blank] supplied
5 information to the then Garda confidential recipient, 14:09
6 which it is suspected relate to Garda A and said checks
7 made in relation to same. However, in light of Garda
8 A's concerns, I am seeking views in relation to same."
9
10 She is asking for your views on the 24th on the Pulse 14:09
11 check issue?
12 A. Yes.
13 433 Q. Do you remember this?
14 A. I have no recollection of this, no.
15 434 Q. Okay. Can you just comment and clarify on the record 14:10
16 for the Chairman, did you provide any views, did you
17 ever reply to this report?
18 A. Em, I can't -- I actually can't recollect. The first
19 time I am conscious of understanding that this had
20 happened was sometime after this. I can't recollect 14:10
21 that piece of correspondence or being made aware of it
22 formally.
23 435 Q. Do you think you might have spoken to her on the phone
24 about this issue?
25 A. I don't think so. I think it was a local matter. She 14:10
26 may have mentioned it to me, I mean I had regular
27 conversations, but I certainly had no role. I saw it
28 as local matter and if there were any issues at all,
29 she may come up with a recommendation. This may be

1 that, I can't say I recognise this correspondence.

2 436 Q. This was the letter she sent to you in respect of it?

3 A. Yes.

4 437 Q. So when did you become -- and, I should say, you don't
5 recall the letter. When did you become aware that 14:10
6 Garda A had made a complaint? Now let's not confuse it
7 with the intelligence entry?

8 A. Yes.

9 438 Q. This is with the Pulse check. When did you become
10 aware of it and how? 14:11

11 A. Actually, to be honest with you, I think that the first
12 I heard about it was when I saw the bullying complaint.
13 That's my first memory of it.

14 439 Q. Okay. Now, we know that Superintendent McBrien writes
15 to Sergeant Haran, I think it is, yes, at page 8626. 14:11
16 This is where she is -- the last paragraph there:
17
18 "Garda Nicholas Keogh is to provide a report as to the
19 reasons why this enquiry was made in relation to the
20 personal data." 14:11
21

22 A. Mm.

23 440 Q. Now, can I just draw your attention to Garda Keogh's
24 evidence on Day 100, at page 33? He is referring to
25 this request of the 1st October. So if we just wait 14:11
26 for it to come up on the screen there. So it's Day 100
27 and it's at page 33. Do you see at the top of the page
28 there is a reference to the letter of the 1st October.
29

1 "She's got a protest from Garda A and she writes and
2 says: Why did you make the check? Was she entitled to
3 make that enquiry?"

4
5 This is an exchange between Garda Keogh and the
6 Chairman, okay. So he says in his answer:

14:12

7
8 "I would accept that she was, yeah."

9
10 Then if you continue down to the middle of the page,
11 line 14, previous to that he said she should have been
12 asking the investigation team. But at line 14 he says:

14:12

13
14 "It's not Superintendent McBrien, Judge, this is coming
15 from the chief's office in Mullingar and Superintendent
16 McBrien obviously had to write this letter but from the
17 chief's office in Mullingar, they should have just
18 wrote to Assistant Commissioner Ó Cualáin and said,
19 look, we have a couple of these things, they're all
20 into what you are investigating."

21
22 So, can you just comment on that? This is --

23 A. I had nothing to do with the direction to check it out.
24 Superintendent McBrien did that of her own accord. So
25 I had nothing to do with any targeting or discrediting
26 in respect of this.

14:13

27 441 Q. Okay. Now we know that Sergeant Haran was asked about
28 this in his interview and you see there he passes it
29 on. Sorry, just before we leave that page that's on

1 the screen, he says:
2
3 "Garda Keogh, for your attention."
4
5 Sorry, that's in 8626 that we were looking at there. 14:13
6 Now, in Sergeant Haran's interview with the
7 investigators he was asked did he ever get a reply to
8 this. This is at page 11765. He confirms that Garda
9 Keogh never replied. I will just get the page. At
10 page 11766 and line 265, he says: 14:14
11
12 "I have no recollection of getting a reply. I think
13 Garda Keogh may have said he was dealing with
14 Superintendent Mulcahy."
15 14:14
16 So, as you say, you didn't know anything about it. But
17 I think it appears from Sergeant Haran's evidence that
18 his response that he was dealing with the investigation
19 team was accepted in this regard?
20 A. It has nothing to do with me in a way. If it came up 14:14
21 to me as a breach or recommendation, then maybe, but it
22 didn't.
23 442 Q. Can I move on to issue 3, which is the issue concerning
24 -- in our issues list it's being referred to as the
25 issue concerning Ms. Olivia O'Neill. I also want to 14:15
26 do -- I hope I'm not confusing matters, but I want to
27 deal with issue 3 and 4 together, issue 4 concerning
28 Liam McHugh. Because I think, would you accept, chief
29 superintendent, that the correspondence merges at one

1 point, it moves on.

2 A. Yes. I think the word bundled was used at one stage,
3 yes.

4 443 Q. If we can just start with the sequencing of matters.
5 We know from your evidence earlier this morning, that 14:15
6 during May and by late May, the issue with the
7 intelligence entry was very much alive and
8 correspondence was being exchanged between yourself and
9 Superintendent McBrien and Garda Keogh was responding,
10 etcetera? 14:16

11 A. Yes. Only a small amount of correspondence in respect
12 of the intelligence.

13 444 Q. Okay. It was a live issue in May 2014?

14 A. Yes, it was.

15 445 Q. Okay. So we know that on the 28th May, from the 14:16
16 evidence, that Ms. O'Neill came into the public office.
17 I am sure you have heard the evidence over the last
18 number of days. We have heard about the taking of the
19 statement of her daughter Cheyanne, isn't that right?

20 A. That's correct, Chairman, yes. 14:16

21 446 Q. We know, it would appear from the evidence that on that
22 night both Garda Stephanie Treacy and Sergeant Sandra
23 Keane came and spoke to you that night?

24 A. No.

25 447 Q. Sorry, they came and spoke to Inspector Farrell, that's 14:16
26 right, sorry, my apologies.

27 A. Yes.

28 448 Q. He then corresponded to you. If you just look at 652,
29 please. Okay. Can I just ask you about 652? First of

1 all, the very first line, he says:

2

3 "Further to the above and recent telephone
4 conversati on. "

5

14:17

6 Can you comment on that, chief superintendent? Did he
7 speak to you that night? Sorry, this is dated the 29th
8 May, which is the following day. So, can you tell us
9 about that telephone conversation, please?

10 A. It was very brief, probably 40 seconds or so. What 14:17

11 Inspector Farrell said to me is more or less what he
12 said in the report here, a conversation he had had with
13 Stephanie Treacy and Sandra Keane, he had learned
14 that -- what he said was, advice had been given. There
15 was an impression that advice had been given by Garda 14:17
16 Keogh to Olivia O'Neill and that was then repeated in
17 an interview. That he had made a decision -- really he
18 was communicating to me about his decision, that he has
19 decided to separate the two. One should be a statement
20 from the injured party in respect of the criminality 14:18
21 and that another statement would be taken from Olivia
22 O'Neill in respect of the issues that arose in the
23 course of that conversation.

24 449 Q. Can I just ask you to go back to something you said
25 there, you said: 14:18

26

27 "Advice had been given. There was an impression that
28 advice had been given by Garda Keogh to Olivia
29 O'Neill. "

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what do you mean by that?

A. You're asking me to go back to a phone call four years ago. So there was a suggestion, in the report here it mentioned that there was inappropriate -- some type of inappropriate advice given. So to me there was an issue that criminality was being alleged by Olivia O'Neill in respect of her daughter. That had to be separated. So the advice that seemed to come from the conversation that Stephanie Treacy had inside in the station with Olivia O'Neill and then that was shared with Sandra Keane. So the advice, there was no real detail about the content other than I think it might have been something to do with Garda corruption. That was about it.

450 Q. Who mentioned the word impression, was that Inspector Farrell?

A. I don't know. Impression -- I don't know if the word impression was given. I think the words were, here is my dilemma. There were two pieces that had to be treated separately. I decided that there would be two separate statements taken. I agreed with that. That was the nub of it.

451 Q. Okay. So he then writes to you the following day, on the 29th May, this is his report that we can see on the screen.

A. Yes.

452 Q. And he continues:

1 "When Garda Treacy was about to record a statement from
2 Olivia O'Neill..."
3
4 Now, you may or not be aware of this, but it would
5 appear from the Tribunal's enquiries that the statement 14:20
6 that was being taken was from Cheyanne O'Neill?
7 A. Yes.
8 453 Q. Not Olivia O'Neill?
9 A. But I think she was a juvenile at the time in the
10 presence of her mother Olivia 14:20
11 454 Q. But the statement was taken from Cheyanne O'Neill,
12 isn't that right? There was no statement taken that
13 night from Olivia O'Neill, is that correct?
14 A. No, I don't think there was, no.
15 455 Q. Okay. You have a summary of what was said. We don't 14:20
16 need to go into it for the moment. If you keep ongoing
17 down. On the next page you have Inspector Farrell's
18 advice. He summarises what he said was the advice that
19 he gave to Sergeant Sandra Keane. Did he summarise
20 that advice on the phone to you? 14:21
21 A. I think that one, he said that inspector -- yeah, so he
22 would have said -- really what he said is what he had
23 instructed. He ran that by me and I endorsed it, I
24 said, I agree with you.
25 456 Q. But just to confirm, chief superintendent, this seems 14:21
26 to be something he did the night before. So he is
27 telling you after the event, is that right?
28 A. Yes, afterwards, yeah.
29 457 Q. Okay. What happens then is, if we stay on that report,

1 he continues on the second last line, he said:
2
3 "The advice allegedly given by Garda Nicholas Keogh was
4 not appropriate in the circumstances and projects the
5 image An Garda Síochána in an unfavourable light. 14:21
6
7 It also places Ms. B in a vulnerable position from
8 persons currently under investigation in the Athlone
9 area."
10 14:21
11 Is that right?
12 A. That's what he's saying, yes, Chairman.
13 458 Q. Okay. So this is what he tells you. You respond at
14 -- well, first of all, what do you say about those two
15 paragraphs? Do you have a view? 14:22
16 A. I just find it difficult, because -- which of these
17 last two --
18 459 Q. Start with that, the advice alleging?
19 A. Okay.
20 460 Q. Do you have a view on that paragraph? 14:22
21 A. "Is not appropriate in the circumstances". That's his
22 view.
23 461 Q. Do you have a view on it? Did you share that view?
24 A. I wait to be convinced. Like, I don't -- my view is,
25 this is something that looks like it needs to be 14:22
26 pursued further.
27 462 Q. Okay. In the second paragraph:
28
29 "It places Ms. B in a vulnerable position from persons

1 currently under investigation in the Athlone area."

2
3 Did you understand what he meant by that?

4 A. I suppose what I took from it, that there was an issue
5 about Ms. B being mentioned in respect of this 14:22
6 complaint and this complaint was also -- Ms. B had
7 featured in the confidential recipient -- sorry, the
8 source of the Pulse entry and was likely to be
9 associated with the CR complaint. That's what I took
10 from it. 14:23

11 463 Q. So you took that reference as being the Ó Cualáin
12 investigation, is that right?

13 A. That's what I would say. That's one of the
14 interpretations. Now, if you look -- if you ask me to
15 go back five years and say, when I see that, when I see 14:23
16 Ms. B being mentioned, I think that's what I would say,
17 it's the relationship that may be there between some of
18 those people.

19 464 Q. So you then reply to him at page 8683, on the 29th May,
20 which is the same day: 14:24

21
22 "Please ensure that a statement is obtained from
23 Ms. O'Neill and in relation to the information divulged
24 to Garda Treacy on 28th May 2014."

25
26 Can I ask you about this? You decide to ask for a
27 statement from Ms. O'Neill first, is that right?

28 A. Yes.

29 465 Q. Can I ask you, it's not until sometime later that you

1 ask for a statement from Garda Keogh. why? Can you
2 explain the thinking behind that?

3 A. Em, the suggestion seems to be that there was some
4 level of Garda corruption suggested by Ms. O'Neill in
5 her conversation with Garda Treacy, that guards were 14:24
6 named and guards were doing favours for Ms. B and there
7 was contact, inappropriate contact and she was
8 forewarned in the event of planned searches. So, for
9 me, that was the primary reason, that something needed
10 to be done on that. But also, in relation to the 14:25
11 report, when I am reading that report, I am looking at
12 -- there was a statement, she was asked to make a
13 statement, declined, Olivia O'Neill, in relation to the
14 advices received? Am I right? Can we go back to that
15 original page? 14:25

16 466 Q. Yes. Are you talking about the report of Garda
17 Stephanie Treacy?

18 A. Yes, Treacy and Farrell. If can I look at that again.

19 467 Q. If we can go back to that, 652 again?

20 A. Can I have a hard copy, would that be possible? It 14:25
21 might be easier.

22 468 Q. Sure.

23 CHAIRMAN: Certainly, yes. This is 652.

24 469 Q. MS. McGRATH: so it's volume 3, page 652. I think the
25 paragraph you are talking about is 653. 14:25

26 A. So Garda Treacy in her report mentions about what the
27 content of the conversation was with Olivia O'Neill..

28 470 Q. well, if we can keep them separately, chief
29 superintendent, just for a moment. Can we look at the

1 first paragraph there on that page and the third line.
2 It says:

3
4 "Inspector Farrell then instructed Ms. O'Neill should
5 be invited to make a statement outlining her 14:26
6 concerns..."

7
8 And it's:
9
10 "...relating to the advice given by Garda Keogh and 14:26
11 that she should also be made aware of the options
12 available to her in respect of maybe bringing her
13 concerns to the superintendent at Athlone and/or the
14 Garda Ombudsman Commission."

15 14:26

16 A. Yes.

17 471 Q. Can I ask you, do you read that as statement in respect
18 of what Garda Keogh said downstairs or a statement in
19 respect of, to use your own words, alleged Garda
20 corruption? 14:27

21 A. I think my impression was that it was a statement
22 requested as to what Garda Keogh had said. My
23 rationale in looking for that report and sending it
24 back was that no offer was made to her about the Garda
25 corruption itself could be investigated, she could make 14:27
26 a complaint to the local guards.

27 472 Q. Well --

28 A. Because primarily in my mind there is a suggestion here
29 of corruption. So what can she -- what information has

1 she got in relation to that?

2 473 Q. It continues in the next paragraph:

3

4 "Ms. O'Neill made a statement of complaint in respect
5 of her daughter but declined to make a statement of 14:27
6 formal complaint in respect of the advice received."
7

8 A. Yes.

9 474 Q. Can you comment on that? That's Ms. O'Neill declining
10 to make a formal complaint in respect of the advice 14:27
11 received. Can you tell me what you think that means?
12 A. Well, the suggestion that some advice had been given by
13 Garda Keogh and there was some interaction beforehand.
14 So after that, I didn't know exactly what went on in
15 terms of the advice received. Garda Keogh has one 14:28
16 version of it. I just needed to get to the bottom of
17 it.

18 475 Q. Well, I am just trying to get the bottom of your
19 understanding of what Inspector Farrell was
20 instructing. You see there, it's: 14:28
21

22 "Invited to make a statement outlining her concerns
23 relating to the advice given by Garda Keogh."
24

25 A. Yes. 14:28

26 476 Q. Now, if you were to read it, change the sentence,
27 outlining her concerns relating to alleged Garda
28 misconduct or corruption, are they different things?
29 A. They are totally different.

1 477 Q. Okay. So she was being asked to make a statement in
2 respect of what Garda Keogh had said to her, is that
3 correct? Is that what you understood?
4 A. I understand. Look, we had to get -- Ms. O'Neill
5 should be invited -- so, he asked her a question, he 14:29
6 wanted to pursue that advice because in advice was the
7 suggestion of criminality. Now, there's another aspect
8 here, was there coaching of the witness? But the
9 criminality is probably more important.

10 478 Q. But the request is not in relation to the criminality, 14:29
11 it's in relation to the advice given by Garda Keogh.
12 Is that correct or incorrect? How do you see it?
13 A. Well, that's his decision to do that. So like, I can't
14 say a hundred percent what was in his mind, but the
15 advice of Garda Keogh seems to encapsulate both the 14:29
16 criminality and there could be a suggestion of
17 coaching.

18 479 Q. Now, if you look at Garda Treacy's report on this, at
19 page 482. At 482, the very last line, couple of lines
20 on that page? 14:30
21 A. Yes.

22 480 Q. Actually it starts at the last paragraph:
23
24 "Garda Treacy informed Sergeant Sandra Keane of this
25 conversation and together they explained to Ms. O'Neill 14:30
26 that the correct procedure with an allegation such as
27 this is to go through the Ombudsman Commission."
28
29 A. Yes.

1 481 Q. Now, do you understand that to be referring to the
2 alleged Garda misconduct?
3 A. Yes.
4 482 Q. Or Garda Keogh?
5 A. No. I'd see that, personally I'd see that as an issue 14:30
6 for the corruption allegations.
7 483 Q. Okay.
8 A. Okay.
9 484 Q.
10 "It was further explained to Ms. O'Neill how to go 14:30
11 about doing this. Ms. O'Neill said she did not have a
12 complaint to make in relation to the gardaí and was
13 only going on the advice she had received at the
14 counter."
15
16 So that's what Garda Treacy has recorded. So that is 14:31
17 in reference to -- so there's a suggestion there that
18 it's in relation to the alleged Garda misconduct?
19 A. Yes.
20 485 Q. In that report. But then we go to Inspector Farrell's 14:31
21 report, it is phrased differently, would you agree?
22 A. Well, slightly different phrasing, yeah.
23 486 Q. We know he records there that she declined to make a
24 statement of formal complaint in respect of the advices
25 received? 14:31
26 A. Yes.
27 487 Q. And again, I'm sorry if I am just not getting it, but
28 you understood that to mean that she was refusing to
29 make a statement on what?

1 A. On the corruption. Actually, on the advice, on the
2 conversation she had with Garda Keogh. But the piece
3 that was missing was the information that she was
4 talking about Garda corruption, she hadn't been invited
5 to make statement to the Guards about corruption or at 14:31
6 least it wasn't clear to me that that was invited to
7 her, an invitation given to her. So that's why I am
8 sending it back, that's my primary concern here.

9 488 Q. Can I put it to you that -- I mean, we will deal with
10 Ms. O'Neill in due course, but there was no allegation 14:32
11 from her of Garda corruption. What she was telling the
12 gardaí she was dealing with was that she had gotten
13 advice downstairs.

14 A. Well, that's an interpretation. That's not clear when
15 you read the report, because inappropriate behaviour 14:32
16 suggests something wasn't done right by Garda Keogh.

17 489 Q. So let's go back to your response then to the
18 superintendent, at 8683, on 29th May 2014, which is
19 that day. Just to refer to your last couple of
20 sentences there, you said: 14:33
21
22 "Because Inspector Farrell's reference to inappropriate
23 behaviour suggests something wasn't done right by Garda
24 Keogh. "
25
26 So that's how you read it, is that right? 14:33

27 A. Something wasn't right, didn't add up, yeah.

28 490 Q. But you don't go to Garda Keogh, in your advice on the
29 29th May, you say to go back to Ms. O'Neill?

1 A. Oh no, like, of great concern here was the Garda
2 misconduct/corruption. The issue of coaching was
3 secondary. But in terms of the information divulged,
4 that was the most pressing matter; that somebody here
5 has potentially information about Garda corruption. 14:33

6 491 Q. I don't want to get sidetracked, but you mentioned the
7 issue of coaching, so is that how you saw it that day?

8 A. Well inappropriate behaviour would suggest that Garda
9 Keogh did something wrong, yes.

10 492 Q. But you yourself, you've used the word coaching, so is 14:33
11 that how you saw it?

12 A. Possibly. You know, that's probably what I did see as
13 being the likelihood, likely possibility, that Garda
14 Keogh would have been involved in that.

15 493 Q. And why is that? 14:34

16 A. Why would I get that impression?

17 494 Q. Yes.

18 A. Because of the words "inappropriate behaviour by Garda
19 Keogh".

20 495 Q. Okay. So then in your letter, you say: 14:34
21
22 "Please ensure that a statement is obtained from
23 Ms. O'Neill and in relation to the information divulged
24 to Garda Treacy on 28th May 2014."
25 14:34

26 A. Yes.

27 496 Q. What happens then is, you send that back to the
28 superintendent on the 29th May?

29 A. Yes.

1 497 Q. what were you hoping to learn from Ms. O'Neill
2 effectively?
3 A. All I was looking for was the facts, because I wasn't
4 clear what the facts were.

5 498 Q. But I suppose what I am trying to clarify with you, 14:34
6 chief superintendent, is whether you were looking to
7 clarify was there Garda misconduct in the sense of
8 coaching or was there Garda misconduct in respect of
9 Garda collusion? what were you hoping to clarify?

10 A. I think for all guards number one is crime. That takes 14:35
11 precedence over everything else. So that important
12 piece had to be resolved. If that was going to
13 inquired about, the conversation with Garda Keogh was
14 going to be secondary to that. What I would say is, if
15 Garda Keogh did nothing wrong, then that would not be 14:35
16 an issue. If it was just a conversation she had, he
17 would be a witness to something she said.

18 499 Q. You write to the assistant commissioner of the Eastern
19 Region on the same day, that's is at 8682 on 29th May
20 2014. I think this was something Garda Keogh -- it 14:35
21 mightn't have been this letter but I think he noticed
22 in the correspondence when he was giving his evidence,
23 that in the headings of the letters there's no
24 reference to the word "allegedly". It is:
25
26 "Information divulged by Olivia O'Neill to Garda
27 Stephanie Treacy."
28
29 A. Yes.

1 500 Q. That was in the heading, that's a heading that we see a
2 couple of times, is that right?

3 A. Yes.

4 501 Q. Okay. You tell the assistant commissioner of the
5 Eastern Region. You say:

14:36

6
7 "I have directed the district officer Athlone to ensure
8 that a member of An Garda Síochána meet with Ms. Olivia
9 O'Neill and take from her a statement in relation to
10 her interaction with Garda Keogh at the Athlone Garda
11 Station, to establish the specific message conveyed to
12 her by Garda Keogh."

14:36

13

14 Now, can you tell us about that and what you were
15 focused on at that point?

14:36

16 A. Em, well, you know, if she said whatever she said to
17 Garda Treacy, she also said what she said to Garda
18 Keogh and if there's corruption alleged here, there's
19 an obligation on me to enquire into that. I have no
20 choice.

14:37

21 502 Q. You want to establish the specific message conveyed to
22 her by Garda Keogh. Had you gone back to Garda Keogh
23 at this stage? I don't think so?

24 A. I don't think so. No. The 29th May. I think was it
25 the 9th or 10th May the instruction went out for --
26 sorry 30th May I think Sergeant Curley met her. The
27 29th, May I had sent this out to Sergeant Curley the
28 same day, the 29th, to get a statement.

14:37

29 503 Q. Again I have to ask you, are you seeking to establish

1 alleged Garda coaching or are you seeking to establish
2 alleged Garda corruption, in May?

3 A. Whatever that says, the motivation behind it is get a
4 statement off Olivia O'Neill, to see where was the
5 evidence of Garda corruption. 14:38

6 504 Q. I mean, I think the language is conveyed to her by
7 Garda Keogh, isn't that right?

8 A. Where is that? Sorry?

9 505 Q. Would you agree that it is moved beyond impressions or
10 allegations, to believing as a fact that there was a 14:38
11 message conveyed to Ms. O'Neill by Garda Keogh, or not,
12 what is your view?

13 A. If we go back to inappropriate behaviour. So there is
14 some suggestion that Garda Keogh did something wrong
15 here. This here may put emphasis on that side of it. 14:38
16 But the particular motivation of getting a statement
17 from Olivia O'Neill was about the criminality.

18 506 Q. You go on to say in the next paragraph:
19
20 "This information is closely associated with an item of 14:38
21 intelligence created on Pulse by Garda Keogh recently."
22
23 why do you say that?

24 A. Because one of the parties involved in the complaint,
25 you know when she came in to complain, the suspect in 14:39
26 that complaint was Ms. B.

27 507 Q. So you link, you say it's closely associated?

28 A. Yeah. You see I was concerned there was an
29 investigation into Ms. B and yet we have another

1 channel here that may involve Ms. B somewhere along the
2 way.

3 508 Q. You say:

4
5 "This has also been the subject of recent 14:39
6 correspondence to your office, seeking a direction from
7 the Commissioner."

8
9 Now, is that in relation to 409, the Pulse intelligence
10 entry? 14:39

11 A. Yes. The concern here is, I don't want to go in and
12 interfere with anything that the confidential recipient
13 team -- sorry, the Ó Cualáin are dealing with the CR
14 issue. I don't want to cross paths here. That's why
15 you only hear of one thing later on, to make sure 14:40
16 there was a wholistic perspective in relation to our
17 approach.

18 509 Q. You go on to say:

19
20 "I will await further correspondence from the district 14:40
21 officer in advance of taking action on the matter."

22
23 what did you mean by taking action?

24 A. Well, making some type of decision on it, that's all.

25 510 Q. Can you just tell me, some type of decision is quite 14:40
26 vague, chief superintendent, could you tell me what you
27 had in mind? You must have had something in mind when
28 you said, in advance of taking action on this matter.
29 Is this the Olivia O'Neill matter, I suppose first of

1 all we should clarify?

2 A. well, you know, there's a suggestion here that has to
3 be bottomed out. After that, I have to wait to see
4 what comes up in terms of the information that channels
5 up to from the chief superintendent after she makes her 14:40
6 enquiries. That's all. There's no assumption or
7 presumption here.

8 511 Q. Can I just go to the next piece of correspondence,
9 we're still on the 29th May, which is the following
10 day, at page 514. You go back to the superintendent in 14:40
11 Athlone. On the same day, you say:

12
13 "I refer to the correspondence of even date of the
14 above matter.

15 14:41
16 Please have D/Sergeant Curley meet with Ms. O'Neill and
17 obtain a statement in relation to the information
18 divulged to Garda Treacy on 28th May 2014.

19
20 This statement should be forwarded to this office 14:41
21 immediately upon receipt of same."

22
23 So you went back and you nominated an officer. Is that
24 normal Garda -- would you nominate an officer to take a
25 statement? 14:41

26 A. I would in terms of corruption, yes. He's a detective
27 sergeant, so criminality is primary here. Number one,
28 whatever Garda Keogh does is secondary, number one is
29 the criminality. So that's why D/Sergeant Curley was

1 asked to take the statement.

2 512 Q. Are you saying that because there was an allegation of
3 corruption, that that is why Detective Sergeant Curley
4 was nominated by you?

5 A. Yes, yes. 14:41

6 513 Q. Would it normally be the superintendent who would elect
7 an officer to go out and take a statement?

8 A. It had been sent up to me, remember, as an issue. So
9 when I ask for the information to be divulged, I then
10 follow this through by asking Sergeant Curley to do it. 14:42
11 The superintendent had reported this to me, in effect.

12 514 Q. Before I move on from that date, one thing that the
13 Tribunal has become aware of is that, in fact,
14 Ms. O'Neill was back in Athlone Garda Station that day,
15 on 29th May 2014? 14:42

16 A. At some stage, apparently, yeah. I'm not sure of the
17 dates. I'm a bit confused over the amount of
18 interactions she had with us.

19 515 Q. At volume 52, at page 14667, if that can come up.
20 14667. 14:42

21 CHAIRMAN: If you would prefer the actual hard copy on
22 any of these ones. -

23 A. That's easier.

24 CHAIRMAN: Ms. McGrath, if it's obvious from the thing
25 and the chief superintendent is happy to deal with it 14:43
26 on the screen, well and good.

27 A. Sometimes it's hard.

28 CHAIRMAN: Absolutely and people have found it so.
29 There's not a problem whatsoever.

1 A. Okay.

2 CHAIRMAN: We will be very happy to produce it. So
3 just let me know.

4 WITNESS: Right, I will let you know, Chairman. Thank
5 you.

14:43

6 516 Q. MS. McGRATH: I am just asking for your view in
7 relation to this, chief superintendent. On the 29th
8 May, which is that way we see these letters emanating
9 from, a statement of Kayla O'Neill, she's the daughter,
10 you may know this, she is the daughter of Ms. Olivia
11 O'Neill. You see there, I don't need to go into the
12 statement but just in the second paragraph, the
13 statement taken in the presence of her mother Olivia
14 O'Neill; Do you see that?

14:43

15 A. Yes.

14:43

16 517 Q. If you look to the following page, that statement is
17 taken, if you go to the bottom, by Garda Nicholas
18 Keogh?

19 A. Yes.

20 518 Q. So would you have been aware of that?

14:43

21 A. No.

22 519 Q. I think you say that you read from Inspector Farrell's
23 report that there was an impression, I think you said,
24 of inappropriate conduct by Garda Keogh in respect
25 of --

14:44

26 A. Based on Garda Treacy's report and the reaction, to
27 some extent the reaction at the time was Sergeant Keane
28 came along as well and then there is a mention of GSOC
29 etcetera.

1 520 Q. Can I ask for your view on that? Are you surprised
2 that the following day Garda Keogh --

3 A. Yes, I was, yes.

4 521 Q. Why were you surprised? Just for the record, for the
5 transcript.

14:44

6 A. Well, if there was an inappropriate -- an assertion or
7 an inference of inappropriate behaviour by Garda Keogh
8 in relation to speaking with Ms. O'Neill, then the
9 following day he is talking to her and taking a
10 statement about an injured party and there's

14:44

11 potentially a conflict there that we haven't bottomed
12 it out. So I'm not sure if this was apparent to the
13 people locally that it was happening. I don't think it
14 makes any difference, to be honest with you, in taking
15 a statement, because at the end of the day, the
16 original thing was to divide up the two. So the
17 corruption was separated away from criminality. So
18 this is just the account of someone here. And no
19 action -- from what I know, there's no action ever
20 flowed from this from a management perspective.
21 Looking at it from a management point of view as
22 opposed to channelling it though.

14:45

14:45

23 522 Q. I would have to put it to you, chief superintendent,
24 that you can't really -- or maybe, is it correct to
25 draw such a strict line, because locally you had
26 Inspector Farrell, who you say is pointing out
27 inappropriate conduct the night before, with this very
28 same lady who is in the room?

14:45

29 A. But we don't know what the conduct is.

1 523 Q. Well, I think he has outlined in his report what he
2 thinks the conduct is?
3 A. He just has a view on what it might be.
4 524 Q. Now, we know that Detective Sergeant Curley went out
5 the following day, on the 30th May, and he met with 14:46
6 Ms. O'Neill, isn't that right?
7 A. That's correct.
8 525 Q. We have his report at page 519. Now, this is Detective
9 Sergeant Curley's report to the superintendent. We
10 will see that he says in the middle paragraph there 14:46
11 that he met with Olivia O'Neill at 3:50pm today, on
12 30th May 2014, isn't that right?
13 A. That's correct, Chairman.
14 526 Q. And he says:
15
16 "I informed her that I was conducting enquiries into
17 the information that she had divulged to Garda
18 Stephanie Treacy as received from by her from Garda
19 Nick Keogh in Athlone Garda Station on 28/4/2014."
20 A. Mm. 14:47
21 527 Q. "I explained to her that I wished to record a witness
22 statement from her outlining what she was told by Garda
23 Keogh."
24
25 Now, she says she didn't wish to make any statement and 14:47
26 that she couldn't really remember what she had said in
27 the Garda station that night at all. Now, can I just
28 ask you, what's your view on what he was specifically
29 asking from her? Was this directed by you? Is this

1 what you wanted him to --

2 A. No, my direction was clear, just the information
3 divulged by her at the time. So that was driven by the
4 fact that there was Garda corruption here, it looked
5 like she was being told GSOC, go to GSOC, when in 14:47
6 actual fact she could make a complaint directly to us
7 in relation to corruption.

8 528 Q. Well --

9 A. Put it this way: I don't know if you are asking me did
10 I have role in suggesting, you know, what Garda Keogh 14:48
11 said, the information she got from Garda Keogh was what
12 should be explored, I was only interested in the
13 information she had in terms of evidence.

14 529 Q. Well then, again, as I say, I am trying to be clear
15 here? 14:48

16 A. Yeah.

17 530 Q. What is the focus of the inquiry? Is it Garda Keogh or
18 is it the alleged underlying information?

19 A. You see, what's jumping out at me is criminality, yet
20 it's untreated in way. That an invitation should have 14:48
21 been put to her to report the criminality to us. If in
22 the course of that it turns out that -- in the
23 conversation with Garda Keogh, that there was some
24 level of coaching, fine, that's a minor matter. But
25 that's where the inappropriate behaviour might come in. 14:48
26 We don't know what happened at this point, we're blind
27 to what happened, you know.

28 531 Q. Now, I think just to move on, I want to do this
29 chronologically, because that's Detective Sergeant

1 Curley going out on the 30th May. It's on the 2nd or
2 3rd June that the Liam McHugh issue becomes a live
3 issue?

4 A. Yes.

5 532 Q. You are informed on 3rd June 2014, and this is page 14:49
6 657, you are informed were Inspector Farrell that a
7 report has come in from Garda Lyons?

8 A. Yes, Chairman.

9 533 Q. That should come up there. There's the report. This
10 is what is sent up to you, isn't that right? 14:49

11 A. That's correct, Chairman.

12 534 Q. Now, he attaches the report, he does a summary of it to
13 you in the first paragraph. I think he's following on
14 that e-mail to you, is that right?

15 A. Yes. That comes in to my office, I think the next day. 14:50
16 I think there was actually a direct e-mail to my office
17 on the 9th June, yeah, Superintendent McBrien. So I
18 think it's actually Nicholas Farrell. It comes from
19 one of the clerks, yes.

20 535 Q. It says: 14:50
21
22 "The conversation occurred on Bastion Street, Athlone,
23 on 21st May 2014 and during the course of same Liam
24 McHugh outlined a separate conversation he was alleged
25 to have had with Garda Keogh, the content of which is 14:50
26 outlined in Garda Lyons' report below."
27
28 Then you would have read that report, isn't that right?

29 A. Yes, Chairman.

1 536 Q. He goes on to say:
2
3 "Previous reports from this office in respect of
4 intelligence report number 4085409 of 20th May 2014 and
5 information divulged by Olivia O'Neill to Garda 14:51
6 Stephanie Treacy at Athlone Garda Station on 28th May
7 2014, forwarded to 29th May 2014, also appear to refer
8 to similar incidents."
9
10 Now, we will come back to this again a couple of times 14:51
11 I think in fairness to you, chief superintendent, but
12 one of Garda Keogh's complaints to the Chairman is what
13 he called the mounting up of incidents or the rolling
14 together of incidents. Now you have Inspector Farrell
15 tying up this report with 409, the intelligence report, 14:51
16 and tying it up with the Olivia O'Neill issue; is that
17 right?
18 A. Yes.
19 537 Q. What did you understand was meant by similar incidents?
20 A. I wouldn't use that wording myself, but I can see a 14:51
21 thread running through all three. That's the
22 confidential recipient investigation could potentially
23 be dealing with all of these issues or some part of
24 them.
25 538 Q. Is that the thread? Was there any other thread you saw 14:51
26 running through them?
27 A. No. That's the way I saw it. It's like, you know, we
28 talked about the intelligence and that obviously was
29 being dealt with by the Ó Cualáin team. The

1 information divulged by Olivia O'Neill relates also to
2 corruption by Guards and they may have been
3 investigating that. I don't know what they are
4 investigating. Then we move into this last one here,
5 where there's a mention here of guards did something 14:52
6 wrong and, allegedly, Garda Keogh had some knowledge of
7 this, if you were to believe that report. Therefore,
8 there was some connection, a common strand.

9 539 Q. Can I ask you, was the thread alleged inappropriate
10 conduct by Garda Keogh? 14:52

11 A. No, I think the concern was not to tiptoe -- we didn't
12 want to interfere with the confidential reporting
13 mechanism, that was number one. It's actually followed
14 up in correspondence later on.

15 540 Q. But can I ask you, you say that you are linking this 14:52
16 report in to --

17 A. Well no, I'm not.

18 541 Q. Sorry.

19 A. Inspector Farrell is here.

20 542 Q. Okay. 14:53

21 A. Yeah.

22 543 Q. But if we are to take your first explanation for the
23 thread and the linking of all of the issues, how would
24 this one, when you read the report at the bottom of the
25 page, how would that link in to the confidential 14:53
26 recipient?

27 A. Well, you see, this is Inspector Farrell's report.

28 544 Q. Okay.

29 A. So I don't -- you know, I'm reading between the lines

1 here about what Inspector Farrell is saying here. I'm
2 not sure if that is what he is saying. But that's --
3 similar incidents to me, the risk here from a
4 management point of view is not to interfere with the
5 confidential recipient investigation. That was really 14:53
6 important for us not to do that. And we didn't. With
7 that, that created -- because we didn't know the
8 parameters of that, we had to stand back and just
9 consider everything very carefully.

10 545 Q. Can I ask you for your own view of that report? If you 14:53
11 look at it there. The Chairman has seen it many, many
12 times, I am not going to read it verbatim into the
13 record.

14 A. Yeah.

15 546 Q. But have you read it yourself? 14:54
16 A. This report?

17 547 Q. Yes.
18 A. I read it at the time, yeah.

19 548 Q. Okay.
20 A. And I have read it since, obviously. 14:54

21 549 Q. Can I ask you, do you see it linking into anything to
22 do with the Ó Cualáin investigation?

23 A. No. I can see a common thread between the three. So
24 you can say Garda Keogh is in some way involved in the
25 three and the CR investigation is continuing. That's 14:54
26 all it is. You just have to be very careful.

27 550 Q. When you got this report, what did you think -- sorry,
28 when you got this report, what did you think it meant?
29 what is the issue that jumped out of this report for

1 you?

2 A. I suppose the connection with Garda Keogh and the CR
3 mechanism.

4 551 Q. What did you think it was reporting in respect of Garda
5 Keogh? 14:54

6 A. The actual incident now or the report?

7 552 Q. The report.

8 A. The report itself. So if we go to what MCHugh is
9 saying, is that what you're saying?

10 553 Q. Yes. 14:55

11 A. So what's interesting about what MCHugh was saying is,
12 he's not saying he knows anything about this. He is
13 saying that the only person that -- the way I read it
14 is, the only person who knows anything about this is
15 meant to be Garda Keogh. But the fact that Keogh was 14:55
16 actually asking MCHugh about it, suggests MCHugh knew
17 something about it. If you were to believe it.

18 554 Q. Well, if I can put my question another way: why do you
19 think you were getting this report? why did Garda
20 Aidan Lyons report this up? why did you believe you 14:55
21 were getting this report as the chief superintendent?

22 A. Because of the seriousness of the allegation.

23 555 Q. And what was the allegation?

24 A. The allegation was the Guards had actually taken money.
25 There's a number of possibilities here, but one of them 14:55
26 was that there was criminality involved and Guards had
27 taken money from this person and then went off and
28 squandered it. The other possibility is there, did
29 Garda Keogh anticipate? Did he witness this and did he

1 fail to report it? And also, was it potentially
2 something that he had reported to the confidential
3 recipient mechanism in the first place.

4 556 Q. You say there is a number of possibilities here?
5 A. Yes. 14:56

6 557 Q. One of them, was criminality involved?
7 A. Yeah.

8 558 Q. That guards had taken money from a person, went off.
9 The other possibility is that Garda Keogh was
10 participating, is that what you meant to say? 14:56
11 A. Well, he could have been a participant. It's alleged
12 he knew something of this and that he had superior
13 knowledge, do you know what I mean?

14 559 Q. Was the report not -- from Aidan Lyons, was it not to
15 the effect that Garda Keogh was telling Mr. MCHugh to 14:56
16 say this?
17 A. That's what MCHugh is saying.

18 560 Q. Was that the allegation?
19 A. MCHugh is saying that's what Garda Keogh did. That's
20 all. 14:56

21 561 Q. Well this is what Garda Lyons is saying.
22 A. Oh, yes, no, he's saying that if you want I will back
23 you up. I don't have the report in front of me. If
24 you could bring that up, it would be easier for me.

25 562 Q. So is that why it was reported up to you? That Garda 14:57
26 Nicholas Keogh was telling a civilian to do this?
27 A. No, I think -- again, first -- everything we do,
28 there's a hierarchy in everything we do, criminality
29 supercedes everything. So, we have to start off with,

1 there is a criminal allegation here and that has to be
2 bottomed out and pursued.

3 563 Q. Now, if I can just ask you in that regard, at page
4 11719 of the brief. 11719. This is the statement of
5 Garda Aidan Lyons to the Tribunal on 17th June 2019?

14:58

6 A. Yes.

7 564 Q. Can I ask you to look at paragraph 4.31?

8 A. Yes.

9 565 Q. He says:

10

14:58

11 "My understanding is that Garda Keogh was encouraging
12 Mr. McHugh to make a false complaint."

13

14 A. That's a possibility. I wouldn't say a false
15 complaint, a complaint.

14:58

16 566 Q. Well no, this is what he says.

17 A. Yeah. Well that's his impression, that's not my
18 impression necessarily. I have to keep an open mind to
19 these things. By the way, he's not saying that in the
20 report to me. I don't have that.

14:58

21 567 Q. Well he's saying -- I asked you what was your concerns
22 when this report came up to you.

23 A. Yes.

24 568 Q. You listed a number of concerns, concerning
25 criminality, etcetera, gardaí being involved in taking
26 money from a civilian.

14:58

27 A. Yeah.

28 569 Q. But what you didn't mention was a concern that Garda
29 Keogh was encouraging Mr. McHugh to make false

1 complaints. Now this is his own statement?

2 A. I would accept that Garda McHugh [sic] -- one of the
3 things you can deduce is that Garda Keogh was asking
4 him to make a complaint, not necessarily a false
5 complaint. 14:59

6 570 Q. But this is Garda Aidan Lyons himself saying this, he
7 is the one who is reporting to you?

8 A. All I can do is read off the paper. I didn't have a
9 discussion with Aidan Lyons about this. So what he is
10 saying afterwards and his impression wasn't conveyed in 14:59
11 the report there on the 2nd. On 6/3 it came up to me,
12 or the 3/6. So that may be the impression he got, that
13 wasn't conveyed to me at any time.

14 571 Q. So is that statement in Garda Aidan Lyons statement
15 that I read out to you, is that news to you? Does that 14:59
16 take you by surprise?

17 A. It's only an interpretation. I can understand the
18 interpretation on it but I don't see that in coming up
19 to me in terms of making a decision.

20 572 Q. Did you go back -- you say that you got this report, a 14:59
21 number of interpretations are possible, did you go back
22 to Garda Aidan Lyons to clarify any of this?

23 A. No.

24 573 Q. Did you give any direction for anyone to go back and
25 clarify it? 15:00

26 A. With Garda Lyons?

27 574 Q. With Garda Lyons.

28 A. No. And, you know, there's another way of looking at
29 it: It travels through the system. So if Garda Lyons

1 sends it to Sergeant Curley, who sends it to the
2 superintendent, there's nothing in those other --
3 because they didn't say this in any of their reports to
4 me.

5 575 Q. But the report that we see there, on the e-mail of his 15:00
6 reports that you got, that's what you saw?

7 A. The report I got was very clinical, as I said, there
8 was no impression given or no opinion given by anybody
9 in relation to it. So what he says there in that,
10 that's his impression, but he didn't commit that to 15:00
11 writing at the time.

12 576 Q. But, chief superintendent, I have to ask you, what it
13 triggered was not an investigation into criminality,
14 was not an investigation as to who were these other
15 gardaí who are allegedly robbing from a civilian, what 15:01
16 it triggered was a line of enquiry with Garda Keogh, is
17 that correct? Do you agree with that?

18 A. No, the first action was to go to Liam McHugh.

19 577 Q. Well, can I ask you, we don't do that for a moment, if 15:01
20 I can ask you to just stay with the documentation, it
21 seems that what happened was, if I can ask you to look
22 at Superintendent Noreen McBrien's report to you on
23 this of the 9th June, just a couple of days later,
24 1896. If you go to the second page. At the top of the
25 page she is saying she spoke with Garda Keogh for 90 15:01
26 minutes?

27 A. Yes.

28 578 Q. She says:
29

1 "During this period I addressed the situation regarding
2 Olivia O'Neill. He said that this was the matter you
3 mentioned in our telephone conversation on the 5th
4 June. He had brought it to the attention of
5 Commissioner Ó Cualáin and he was dealing with it. 15:02
6 Garda Keogh said that Olivia O'Neill called to the
7 counter in Athlone when he was PO. She mentioned to
8 him that he was having trouble with her neighbours and
9 he advised her to include this in her statement. He
10 was insistent that this is what happened." 15:02
11

12 A. Yes.

13 579 Q. Unfortunately now we see the correspondence dealing
14 with both issues?

15 A. Yes. 15:02

16 580 Q. So we just have to bear that in mind?

17 A. Yes.

18 581 Q. She goes on to say:

19
20 "I also discussed the situation with Liam McHugh. He 15:02
21 was adamant that apart from general chit chat, saying
22 hello, etcetera, that he hadn't had a conversation with
23 him in about two years."
24

25 A. Okay. 15:02

26 582 Q. So, would you accept, is the focus on Garda Keogh or
27 not at this stage?

28 A. Like, I have to respond to what has come up to me in
29 writing. So that is set in train by asking Sergeant

1 Curley to go off and get a statement. In relation to
2 what Garda Keogh is saying here, he's not saying it in
3 writing, he's saying it to a super. Now, I put a lot
4 of weight on the fact that he's saying it to the super
5 and I will talk about that in a subsequent -- when all 15:03
6 the paper came together. But I had an obligation at
7 the very least to go off and ensure that Liam McHugh
8 was interviewed in relation to what all these potential
9 issues are. The Garda Keogh discussion with
10 Superintendent McBrien is of importance, in that I know 15:03
11 he has a very good rapport with her and he is adamant
12 and I think she would be telling me if she thought he
13 wasn't being truthful.

14
15 So I am very conscious that in that piece of 15:03
16 intelligence that was sent up or that report that was
17 sent up by Garda Lyons, that everything is attributed
18 to Garda Keogh as having all the knowledge. There's no
19 confirmation of that with McHugh. But I still have to
20 ask the question of McHugh. No more than that. If I 15:03
21 didn't, I would be doing something wrong.

22 583 Q. Can I ask you, at this stage again we don't see anybody
23 going to any other members. We see the focus on Garda
24 Keogh. He is giving his position, and that's as of the
25 9th June, to the superintendent. Do you accept that is 15:04
26 what he told the superintendent on that date?

27 A. No, I do accept that. Listen, I accept what he is
28 saying. That doesn't mean -- I can't ignore the fact
29 that McHugh has to be approached. And also, I don't

1 want to jump ahead particularly, but at a later stage I
2 asked for -- when McHugh doesn't make a statement, I
3 ask for a statement to be taken -- or I ask for Garda
4 Keogh. In that particular interaction she said he
5 hadn't met Keogh in two years or hadn't had a decent 15:04
6 conversation with him. So I just posed the question at
7 a later date, has he met him in the last three months.
8 And he came back and said he hadn't met him in three
9 months. At that stage it satisfied me that we had
10 nothing from McHugh, Garda Keogh was saying that he 15:05
11 hadn't even met him in three years. He's saying it to
12 the superintendent, he's now backing it up. He was
13 invited to sign the notes of the superintendent at that
14 meeting and I think at a subsequent meeting and he
15 didn't sign it. When I look at it, there's nothing to 15:05
16 support what McHugh was saying. So I went on the side
17 of Garda Keogh. I believed him, because he was
18 committing it to writing. So to me it was simple
19 enough, it closed matter.

20 584 Q. Well I think it's Garda Keogh's position that the 15:05
21 matter continued. He is after having this conversation
22 with the superintendent, it is reported up to you, but
23 the following day, I think you write two letters. On
24 the 10th June 2014 --

25 A. But I may not have got that 9th June letter until after 15:05
26 the 10th. Do you know what I mean, even though it
27 might be dated the 9th.

28 585 Q. Well, we will look at the letters and we will see,
29 maybe that might be the case.

1 A. Yes.

2 586 Q. You might see if that's the case. At 8693, you go back
3 in respect of the Olivia O'Neill matter. You say:
4
5 "In the light of the decision of Ms. O'Neill not to 15:06
6 make any statement in this matter and owing to the
7 contents of the discussion she engaged in with Garda
8 Treacy, in which she outlined that Garda Keogh made
9 certain disclosures to her while in the public office
10 in Athlone Garda Station on 28th May 2014, you should 15:06
11 now request a report from Garda Keogh setting out the
12 nature of the conversation he engaged in with
13 Ms. O'Neill, if any, on the occasion of her visit to
14 Athlone Garda Station on that date."
15 15:06
16 Now you say:
17
18 "A report is required in this matter to establish the
19 veracity of the claims of Ms. O'Neill during her
20 conversation with Garda Treacy on 28th May 2014." 15:06
21
22 A. Yeah.

23 587 Q. So, are you saying this is before or after
24 Superintendent McBrien has given her report to you on
25 the 9th June? 15:06

26 A. It's slightly different here. We're talking about
27 McHugh -- I think you dropped back to O'Neill from
28 McHugh here. Do you know what I mean.

29 588 Q. She also told you the previous day in respect of Olivia

1 O'Neill, that he said that he was insistent, she said,
2 that he had advised her to include the information in
3 her statement?

4 A. That's fine. Like, I don't have an issue with that. I
5 just need to get -- to be fair, if I go back to 15:07
6 O'Neill, all I want -- all of this was going on, asking
7 for statements and Garda Keogh wasn't cited to it, I
8 think it is only fair for me to ask Keogh exactly what
9 his view was or with what actually happened. So, I
10 wanted to be fair to him, that is why I asked the 15:07
11 question.

12 589 Q. But can I ask you, is the focus on Garda Keogh and
13 alleged inappropriate conduct from him or is the focus
14 on --

15 A. If you talk about O'Neill, the focus would be on -- 15:07
16 there was no statement from O'Neill, I just needed to
17 ask Garda Keogh through Superintendent McBrien what
18 exactly happened. I just want to get -- he hadn't been
19 invited to give any input at all into this. To be fair
20 to him, he needed to get that opportunity, and that's 15:08
21 where I came from on it.

22 590 Q. Okay. So if we go back to Garda Keogh. He wanted to
23 establish the veracity of the claims of Ms. O'Neill.
24 what did you see those claims as being?

25 A. Well, whatever, if there was something there, if there 15:08
26 was any evidence at all that could be shared. There
27 was a danger there, because he may have shared
28 something with the CR team and I didn't know anything
29 about it, but what she is saying is something that was

1 corruption, that needed to be treated.

2 591 Q. Just to be clear to the Chairman, is it the claim that
3 she said Garda Keogh told her to -- well, allegedly,
4 that Garda Keogh told her to say things or is it the
5 claim of Ms. B? 15:08

6 A. I don't know if there is even a claim there. We just
7 wanted to know what was the interaction between Garda
8 Keogh and Olivia O'Neill that caused all of this. So I
9 am giving him an opportunity to give a response.
10 That's all. 15:08

11 592 Q. Okay. Now, on the 10th June you write a second letter
12 in relation to Liam McHugh. That's 1985.

13 A. Okay.

14 593 Q. In the middle, that's the 10th June, in the middle of
15 it he says: 15:09

16
17 "In the light of the recent report from Garda Lyons,
18 you should arrange for a statement to be taken from
19 Liam McHugh."

20 A. Yes. 15:09

21 594 Q. "All the matters as they relate to Garda Keogh should
22 be dealt with collectively, so as to ensure that his
23 rights under the confidential reporting mechanism are
24 not interfered with."
25 15:09

26 Now, can we just break that down? You're looking for a
27 statement from Liam McHugh in the light of the recent
28 report.

29 A. Can you tell me the date that is?

1 595 Q. That's 10th June 2014.

2 A. Okay. Yes, I have it here.

3 596 Q. Can you tell us why you were looking for that?

4 A. For a statement from Liam McHugh?

5 597 Q. Yes. 15:09

6 A. Because there is a suggestion here -- the multitude

7 of -- there was a number of possibilities, as I

8 previously discussed, and I needed to go to him to see

9 what was he talking about here, to bottom that out, so

10 that we could actually get an understanding of exactly 15:09

11 what exactly was going on. But no one knew what was

12 going on. Everything is alleged to have -- everything

13 seemed to be Garda Keogh. All the information of the

14 allegation, of the concern seemed to be Garda Keogh.

15 But McHugh was the one that we needed to bottom out 15:10

16 with first of all.

17 598 Q. Well, it might be suggested just in respect of Garda

18 Keogh and I am simply just putting it to you it, you

19 are talking about a lack of clarity and confusion. Why

20 did you not decide at that point to go back to Garda 15:10

21 Aidan Lyons? I am just asking for your response to

22 that?

23 A. Because the way it worked, you'd start off with -- why

24 would you go back to Garda Lyons? I don't see why. He

25 has sent in a report. The way I saw it, he was a 15:10

26 messenger, or he was a transmitter of information.

27 That came up to me. Then I bottomed it out one way or

28 another. He is reporting a conversation. I have to go

29 and ask McHugh. I heard earlier on about a report,

1 it's not necessary for me to go back and get a
2 statement off Garda Lyons. That can be treated
3 differently down the road if there was an
4 investigation, but there wasn't an investigation in
5 this case.

15:10

6 599 Q. Well, you describe him as a messenger or a transmitter
7 of information. But, chief superintendent, was he a
8 little bit more than that? He was the person who
9 allegedly had had this encounter and you are saying
10 there was a lack of clarity as to what it was all
11 about?

15:11

12 A. I think, you know, he may say in a statement afterwards
13 that it was false, but at this point in time all I have
14 is what McHugh was meant to have said. There was no
15 commentary or opinion shared with me by Lyons, his
16 sergeant, the superintendent. So I had to go off, I
17 had to go off and ask the question of Liam McHugh,
18 what's this about.

15:11

19 600 Q. And you want all these matters treated collectively.
20 What matters are you talking about at this stage?

15:11

21 A.
22 "All the matters as they relate to Garda Keogh should
23 be dealt with collectively so as to ensure his rights."

24
25 So they are the three that were put together. So the
26 intelligence, McHugh and O'Neill files.

15:11

27 601 Q. Can you look at the second paragraph before we move on
28 from this, or sorry, the third paragraph. It says:

29

1 "In the light of the comments attributed to Garda Keogh
2 by Mr. McHugh..."

3
4 So that's clearly putting Garda Keogh in the frame and
5 it also would align with what we now know from Garda 15:12
6 Aidan Lyons' statement, that paragraph I opened to you,
7 4.31, are they consistent?

8 A. Well, Garda Lyons' statement wasn't available to me at
9 the time I wrote this. All I have is a piece of
10 correspondence came up to me with minimal facts that 15:12
11 had to be bottomed out.

12 602 Q. But are you the one who is saying this:

13
14 "In the light of the comments attributed to Garda
15 Keogh..." 15:12
16

17 So was that your concern? Was that your main concern?

18 A. But that's what it was. I mean, that's a description
19 of what was sent up to me.

20 603 Q. So again I have to suggest to you, it would appear the 15:12
21 focus is on Garda Keogh?

22 A. Well, in the allegation or assertion, Garda Keogh is
23 the person named by McHugh. That's all it is. There's
24 no assumptions here, we have to keep an open mind.
25 That's really a principle of investigations, we must 15:13
26 keep an open mind before we do anything. So when we go
27 to McHugh, we will see what he says and then we will
28 see what happens after that.

29 604 Q. Now, what happens next is that we know that -- as we

1 have seen, we have looked for a report from Garda Keogh
2 in respect of Olivia O'Neill. Just in time sequence,
3 this is how it works: I think Superintendent McBrien
4 asks Garda Keogh for the report and Garda Keogh
5 provides that report. The typed version is at 8696 and 15:13
6 that's the 15th June. 8696. I think he outlining his
7 position there. You have probably seen that a number
8 of times, chief superintendent?

9 A. Yes.

10 605 Q. What's your view on that response? 15:14

11 A. That's what he says. That's all I can go on. I have
12 to accept that's what he's saying, no more than that.

13 606 Q. So, can you just confirm, are you accepting the
14 veracity of his explanation as put forward there?

15 A. I am actually, yeah, because he is putting it down in 15:14
16 writing and that's what he is saying to me. Having
17 given some consideration as to why I am asking the
18 question, he says, look, I'm naming guards, I didn't do
19 anything wrong here.

20 607 Q. He says: 15:14

21
22 "At no point during the conversation did either
23 Ms. O'Neill or I mention the name of any particular
24 guard."

25 15:14

26 A. That's true. But subsequently when you see Sergeant
27 Haran's statement, there is a mention of Garda A, I
28 think.

29 608 Q. Can you just clarify where you're taking that reference

1 from?

2 A. I could be wrong, I thought there was a mention at the
3 time that there was some mention of Garda A. That's
4 not in -- that's afterwards, I am reading this from the
5 Tribunal file. 15:15

6 609 Q. I think it was accepted by Garda Keogh, I think
7 Mr. McGuinness clarified this with him, did anyone
8 mention anyone's name, he said he didn't mention a
9 name, he said she didn't mention a name. I think
10 that's the evidence before the Chairman. 15:15

11 A. I suppose the most important thing is: When I am
12 looking at this I'm saying, Garda Keogh is saying all I
13 did was name -- as a response to her is, name names,
14 name guards. I'm accepting that.

15 610 Q. Now, this report is sent on to you, 8699, on the 16th 15:15
16 June, the following day.

17 A. Yeah.

18 611 Q. It says:

19

20 "Please find attached final report of Garda Nicholas 15:15
21 Keogh, in which he outlines his conversation with
22 Olivia O'Neill in the public office in Athlone Garda
23 Station on the 28th May, along with the report of his
24 unit supervisor, Sergeant Andrew Haran."

25

26 Did you accept the position as of that date? I asked
27 you did you accept the veracity of what was in his
28 typed report, you said yes.

29 A. Yeah. I sent it back afterwards looking for

1 observations. I didn't have enough information in
2 relation to O'Neill. When I look at that report,
3 that's all I have. He is saying all I did was respond
4 to her and say name names, name guards, I didn't do
5 anything wrong. That was my position. There was
6 nothing else for me to do in relation to that.

15:16

7 612 Q. We will come back to that in a moment. Moving on to
8 July, there is a discussion between -- on 8th July
9 2014, the Chairman has heard about it, whereby
10 Superintendent McBrien meets Garda Keogh in his office,
11 or in her office, and he a diary entry of the 8th July
12 which he said he understood that someone was going to
13 go out again and get a statement or -- I will read out
14 the exact thing.

15:16

15
16 "The super is sending people out to try and get
17 statements from Ms. O'Neill."

15:17

18
19 I'm sorry, I don't have the page reference just at the
20 minute.

15:17

21 A. That's okay.

22 613 Q. Can I just ask you, did you know anything about that?

23 A. No. Whatever instructions I gave in writing.

24 614 Q. I know it is clear that Superintendent McBrien doesn't
25 share that view and that's her evidence. I am just
26 asking, did you know anything about any possible
27 subsequent attempt or approach to Ms. O'Neill?

15:17

28 A. No, I don't think so. No. I mean, I never asked for a
29 subsequent statement or anything like that, no.

1 615 Q. Okay. Now on the 9th July, the report comes in from
2 Detective Superintendent Curley, it's at 527. Sorry,
3 Detective Sergeant Curley. It's at 527. We see there
4 in the middle of it, you say that:

5
6 "I tasked Garda Tom Higgins with this role. Garda Tom
7 Higgins met with Liam McHugh and invited him to make a
8 statement in relation to this incident. Liam McHugh
9 refused to consent to provide a witness statement at
10 that time but undertook to think about it and maybe 15:18
11 make himself available to provide such a statement in
12 the future."

13
14 Were you made aware of that position in relation to
15 Liam McHugh? 15:18

16 A. I am not sure if it came back to me. I knew there was
17 no statement taken.

18 616 Q. Did you know what exactly he had said? He refused to
19 consent at that date but undertook to think about it,
20 were you aware of that? 15:18

21 A. I'm not sure. Is there correspondence from
22 Superintendent McBrien on that, do you know? There's a
23 lot of stuff here, so there's a lot of issues being
24 discussed and I think at this stage we're moving into
25 consolidated reports. 15:18

26 617 Q. That's right. I'm not so sure I see that report being
27 forwarded on to you specifically. I will look into --

28 A. No, I don't think -- I never got this, I just knew
29 there was no statement taken. But then I learnt

1 afterwards that Superintendent McBrien had tried to
2 make contact with the CR team, you know, Detective
3 Superintendent Mulcahy and Coppinger. And because this
4 may relate -- they thought it may relate to the
5 confidential recipient team, they thought that maybe 15:19
6 that team could be pursuing some role in bottoming this
7 out. So I think I got this all afterwards.

8 618 Q. So you knew that he wasn't disposed to making a
9 statement at that time?

10 A. I can't say. You know, I think what happened is, the 15:19
11 team in Athlone decided to go off then and to go -- so
12 it was sometime afterwards before I learned that MCHugh
13 hadn't made a statement.

14 619 Q. So, move on after this particular date, this is the 9th
15 July. On the 9th and 11th July, you go back to 15:20
16 Superintendent Noreen McBrien and you are requesting
17 updates. I think it's at 1986 and 1987 of the brief,
18 that's on the 9th July. You're saying there:

19
20 "To date no reply has been received in respect of the 15:20
21 queries raised. In the light of the impact these
22 matters may have on all personnel in the Athlone
23 district, a response is now required immediately in
24 respect of these matters to ensure the entitlement of
25 all personnel to a safe and dignified workplace." 15:20
26

27 Now, you are requesting an update there and you repeat
28 that request at 1987. Now it's in relation to the two
29 matters, Olivia O'Neill and Liam MCHugh. Now, would

1 that give the impression that you didn't accept Garda
2 Keogh's explanation or report that had come into you
3 earlier in June.

4 A. No.

5 620 Q. In respect of Ms. O'Neill? 15:21

6 A. No, it's not that I didn't accept it, I was looking for
7 her view on it, that's all.

8 621 Q. You say:

9

10 "No reply has been received in respect of the queries 15:21
11 raised."

12

13 what did you mean by that?

14 A. I would have to look at the document. But obviously I
15 hadn't got some response to a document that I had sent. 15:21

16 622 Q. It's 1986, just the previous one there.

17 A. I think that was probably McHugh. I hadn't received
18 anything in relation to McHugh, because when -- that
19 statement, it took a while for the statement to be --
20 or the offer of a statement to be made to McHugh. At 15:21
21 that stage then they went off to the people in Galway,
22 AC Ó Cualáin's team. I think that was on the 15th
23 July. So they report all of this to me afterwards.

24 623 Q. But I think the letter that is referring to, the 10th
25 June, we opened it there a moment ago, 1985, you're 15:21
26 asking for her views and recommendations on both
27 matters, Garda Keogh vis-à-vis Mr. McHugh and Garda
28 Keogh vis-à-vis Ms. O'Neill?

29 A. Can we bring that up? Because I know there's another

1 one there where --

2 624 Q. It's 1985.

3 A. Yeah, okay. Yeah I'm looking for her views.

4 625 Q. On both matters, is that right?

5 A. Yeah, at that time, yeah. 15:22

6 626 Q. Okay. So I think then that is early July. On the 16th

7 July, we mentioned this morning, that Superintendent

8 McBrien himself had a telephone conversation with Garda

9 Keogh. I think she reports to you later that day, at

10 1893. We looked at this earlier just vis-à-vis the 15:22

11 intelligence report but there's also a reference to the

12 report of Garda Aidan Lyons, do you see that?

13 A. Yes.

14 627 Q. And the information divulged by Olivia O'Neill; isn't

15 that right? 15:23

16 A. Yes.

17 628 Q. Now, she concludes, she is outlining the position which

18 we have just been going through a little bit slowly,

19 she says at 1895, her recommendation. In fairness, you

20 pointed this out earlier on, that this recommendation 15:23

21 was in respect of all of the previous matters, the

22 three matters, is that right. She is saying:

23

24 "I am of the opinion the above incidents warrant

25 further investigation." 15:23

26

27 She is referring to Legal Affairs and Human Resource

28 Management?

29 A. Yes.

1 629 Q. I think you pointed out earlier this morning that this
2 was in relation to all of the issues, is that right?
3 A. I just want to make sure. There was one issue, there
4 is one piece of correspondence where I say I am
5 satisfied with Olivia O'Neill, the information, but I 15:23
6 need some input from her.

7 630 Q. We will come to that. If we don't, we will certainly
8 find it but I think we might come to that a little
9 later on. We will come to that actually in a moment.
10 But this is the position she is outlining at 1893. She 15:24
11 sends it back to you, isn't that right? So, would you
12 say that the three issues are still very much alive at
13 this stage; Olivia O'Neill, Liam McHugh and the
14 intelligence entry?

15 A. Well, all I am looking for in relation to Olivia 15:24
16 O'Neill was her views; in relation to McHugh, I just
17 need to know that first of all the statement offer has
18 been made to McHugh, and also, at a later stage I asked
19 for Garda Keogh's input into in relation to it. Then
20 I'm looking for her views. So they are live in that. 15:24
21 I think at one stage I'm saying I'm happy with the
22 information but I may be looking for her views. That's
23 about it.

24 631 Q. Can I move it along to the 21st July? I think this is
25 the letter you're talking about, it's at 1886. Now, at 15:25
26 1886.

27 A. Yes.

28 632 Q. The second paragraph there:
29

1 "This matter has been ongoing for some time and while I
2 am satisfied that all of the required information has
3 now been forwarded in respect of the information
4 divulged by Ms. O'Neill, I am now requesting that the
5 following matters be attended to in advance of 15:25
6 forwarding these matters for review by an independent
7 chief superintendent."

8
9 You talk about the CHIS in the first bullet-point and
10 in second bullet-point you ask the question: 15:25

11
12 "Has it been established with Garda Keogh whether or
13 not he had a conversation with Liam McHugh in relation
14 to the matters outlined in the report of Garda Aidan
15 Lyons? Has Garda Keogh been asked to comment on the 15:25
16 veracity of the information contained within the report
17 of Garda Lyons?"

18
19 So at this stage you're going to Garda Keogh at this
20 stage, is that right? 15:25

21 A. In that one, yeah, Garda Keogh in relation to McHugh
22 and then obviously the intel was the other piece there.
23 So at that stage, I think they're the only two
24 outstanding matters. At that stage, I don't think I
25 got any -- I don't think I got any view of 15:26
26 Superintendent McBrien in relation to O'Neill. So I am
27 waiting for her to do these two.

28 633 Q. Can I ask you, why were you focusing on asking him
29 about the veracity of information in Garda Lyons'

1 report? was there any question mark over the veracity
2 of the information?

3 A. I think in a previous piece of correspondence there, I
4 mention, if any, if it actually happened at all. so
5 the veracity is, McHugh is not making a statement, 15:26
6 everything is attributed to him. Garda Keogh is saying
7 to his superintendent that it wasn't him, he hasn't met
8 him. To me, in the round, I am looking -- on balance
9 I'm looking at, Garda Keogh is the only one here saying
10 that it didn't happen and he's saying it very strongly 15:26
11 and consistently. In June he said it to her when he
12 met her. So I just wanted to get his view on anything
13 this was in that conversation.

14 634 Q. So just to be very crystal clear, chief
15 superintendent -- 15:27

16 A. Yes.

17 635 Q. -- is there now, by the 21st July, a question mark over
18 the veracity of Garda Lyons' report?

19 A. There is, in that Garda Keogh is saying it didn't
20 happen. 15:27

21 636 Q. What's your state of knowledge at this stage about
22 Mr. McHugh himself in Athlone? Did you know anything
23 about him? Had you made any enquiries as to who he
24 might be?

25 A. I was told he's around the town all the time. That's 15:27
26 about it.

27 637 Q. Was he known to Gardaí?

28 A. He was known to Gardaí, yes.

29 638 Q. Again, I have to put it to you that are you going back

1 to Garda Keogh but you're not going back to Garda Aidan
2 Lyons, is that right?

3 A. Yes. But Garda Lyons is sending in information.

4 639 Q. Why are you making that decision?

5 A. Because the only person that seems to know anything 15:28
6 about this, according to McHugh, was Garda Keogh.
7 Everything was attributed to Garda Keogh. There's no
8 validation of -- even in the conversation, in the
9 conversation with Garda Lyons, there's no validation of
10 anything in that from McHugh. 15:28

11 640 Q. But I have to put it to you, chief superintendent, just
12 in relation to what you've said, and we're going full
13 circle, was this now all about Garda Keogh?

14 A. No, it never was. It is just about -- it's a process 15:28
15 that we have to follow. Criminality has to be pursued.
16 No statement from McHugh. Then Garda Lyons [sic]
17 should be given an opportunity to make a comment in
18 relation to it, seeing as all of the stuff has been
19 attributed to him. He is saying to the superintendent,
20 but didn't commit it in writing. I am just looking for 15:28
21 it in writing. So he is saying he hasn't met him in
22 two years, hasn't had a conversation with him in two
23 years except for hello. So I am just looking for
24 something in writing.

25 641 Q. We should correct the record there, you said that Garda 15:29
26 Lyons should be given an opportunity to make a comment,
27 I think you mean Garda Keogh?

28 A. Garda Keogh, sorry.

29 642 Q. You mention there -- sorry, I'm losing my train of

1 thought. So on the 21st July, this is the position,
2 there is now a question mark over the veracity of
3 incident at all. Can we move along to the 23rd July,
4 page 8712? This is Superintendent Noreen McBrien, she
5 is going back to Garda Keogh, she says:

15:29

6
7 "Further to our telephone conversation on this date,
8 can you provide me with a report outlining your contact
9 with Mr. Liam McHugh over the past three months and the
10 nature of such interaction?"

15:30

11
12 And he replies on the 27th July:

13
14 "I wish to report I met Liam McHugh at 21:50 on the
15 19/7/2014 at Church Street, Athlone, while on the beat.
16 Prior to that I had no contact or dealings with Liam
17 McHugh over the past three months."

15:30

18
19 That's his position as of that date. Isn't that right?

20 A. Yes. That's correct, yeah, Chairman.

15:30

21 643 Q. Now, you're informed about this on the 5th August?

22 A. Yes.

23 644 Q. Is that right?

24 A. Yes.

25 645 Q. That is 8716. I think Superintendent McBrien is
26 telling you, it's on the next page -- sorry, if you
27 look at 8716, the conversation with Liam McHugh. She
28 attaches the report from Garda Keogh; isn't that right?

15:30

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

1 646 Q. She tells you, on the top of the next page, that she
2 read out the allegation of Garda Lyons dated 2nd June
3 2014 and he requested to view the allegation.
4
5 "I allowed him to do so without disclosing the identity 15:31
6 of the member making the complaint. He was informed
7 that it was a member in Athlone Garda Station."
8
9 Do you know why that particular position was taken with
10 regard to the identity of the author of the report? 15:31
11 A. No, that was a matter for Superintendent McBrien.
12 647 Q. Do you have a view on it? When you saw it written down
13 in black and white, did it strike you in any particular
14 way?
15 A. I would say it struck me that she was, I can only 15:31
16 imagine, trying to make sure that there was no
17 disharmony in the station or something along those
18 lines.
19 648 Q. Did you take a position that he should have been told
20 or not who the author of the report was? 15:31
21 A. Em, I suppose it was more important they address the --
22 the fact that it was a guard and he was anonymous, it
23 was more important he address those issues one way or
24 another. Now that's her decision at the time, I didn't
25 direct that. 15:32
26 649 Q. What was he addressing in your view?
27 A. The report of Garda Lyons and whatever was alleged, you
28 know, the original report.
29 650 Q. I think the report is telling you it never happened, is

1 that right?

2 A. What report? No, the report from Garda Lyons is not
3 saying that.

4 651 Q. No, sorry, the report from Garda Keogh on the 27th
5 July. He says:

15:32

6
7 "I had no contact or dealings with Liam McHugh over the
8 past three months."

9 A. I know that, but he is reporting to her and she is
10 reporting to me. So I am looking at -- like he is
11 saying it's not happening, this is her methodology in
12 talking to him at the time. He then responds, gives a
13 report saying he hasn't met him in three months. I was
14 tying it down to three months. I just wanted to know
15 that from him, because he said two years. I said, can
16 we tie it down to three months. He gave it in writing.
17 She is then saying, he's adamant in this report, he
18 knows nothing about and he hasn't spoken to him for a
19 long time. So she goes through that. He doesn't know
20 anything about any meeting. Right. Then she sends it
21 to up me. I leave it rest there.

15:32

15:32

15:33

22 652 Q. It comes up to you and she says, the last paragraph
23 there. I just want, Mr. Kavanagh, to go down to the
24 last paragraph:

25
26 "His assertion that he has not been in contact with
27 Liam McHugh is consistent with his conversation with me
28 on the 9th June, which is covered in my correspondence
29 to you on the same date."

15:33

1 A. Yes.

2 653 Q. Now, do you see that as the end of the matter?

3 A. Yes. I believe Garda Keogh on this. If you ask me, I
4 don't believe there was an interaction with Liam
5 MCHugh. 15:33

6 654 Q. Was Garda Keogh ever informed of this belief or this
7 acceptance?

8 A. Well, I don't think he was, I let the matter rest at
9 that time. But if he didn't do it, he didn't do it.

10 655 Q. Now, matters seem to die away for a while at that 15:33
11 stage, we're at the 5th August. Can I ask you to look
12 at 8701? On the 13th October -- so bearing in mind
13 that your evidence was that you let the matter rest.
14 We here have a correspondence from the assistant
15 commissioner of the Eastern Region. He is referring to 15:34
16 the Olivia O'Neill matter and he is looking for a
17 current status of this, is that right?

18 A. I see that, yes, Chairman.

19 656 Q. Okay. Now you respond on the following day, 14th 15:34
20 October. Well you don't respond to him at the moment,
21 sorry, you go back to the super in Athlone on the 14th
22 October, which is at 8702?

23 A. Yeah. I have looked at this one. I don't think -- I
24 can't remember this and I'm not sure if it's signed. I
25 am trying to find -- I don't think it would make sense 15:34
26 for me to send that down to Athlone.

27 657 Q. Is it your document?

28 A. Someone could have been in there. I don't see my
29 signature on that. It doesn't make sense for me, if I

1 was happy with the information, to send that down.

2 658 Q. There is a signature there, it's hard to read?

3 A. Where is it, sorry?

4 659 Q. Is it a stamped signature?

5 A. It's a seal, I think. It's not my signature, no. 15:35

6 660 Q. That's not your signature?

7 A. No.

8 661 Q. Do we know who sent this letter?

9 A. No, I don't, no.

10 662 Q. So is it your evidence that it wasn't you? 15:35

11 A. I can't say. What I would say is, it doesn't make

12 sense that I would send that down to the super Athlone

13 because the matter had finalised and there was nothing

14 else. The super in Athlone is going to have nothing

15 more to do with it. 15:35

16 663 Q. There is a reminder sent to you, at page 8704, on the

17 1st December. So again the issue dies away for a

18 while. Again it's the Olivia O'Neill matter. It's

19 referring to correspondence of the 4th June, 13th

20 October 2014? 15:35

21

22 "Assistant commissioner Eastern Region further directs

23 me to enquire if the member has met with Ms. O'Neill

24 and whether a statement in relation to her interaction

25 with Garda Keogh has been taken." 15:36

26

27 The response is required by the 15th December, do you

28 see that?

29 A. The 15th, it comes up there -- that's the first --

1 sorry, response by 15th, I beg your pardon, yes.

2 664 Q. Do you accept that you received that?

3 A. I can't remember. I don't see anything -- if it came

4 to me, it came to me, I would have respond to it.

5 665 Q. You do respond, at 8705, on the 10th December. Now, 15:36

6 again that's one of the letters, the dates you've

7 corrected?

8 A. Yes.

9 666 Q. You've corrected this as reading the 10th December.

10 You say: 15:36

11

12 "I refer to your correspondence on the 1st December.

13

14 Ms. O'Neill declined to make a statement in this matter

15 having been approached by Detective Sergeant Curley in 15:36

16 respect of the matters disclosed in the report of Garda

17 Treacy. I have retained the reports of D/Sergeant

18 Curley and that of Garda Treacy which I intend to

19 forward to your office with all matters relating to

20 reports received in respect of the alleged actions by 15:36

21 Garda Keogh. It is my intention, following receipt of

22 the audit of Pulse in respect of an unrelated incident,

23 to refer all matters to your office for consideration

24 by a divisional officer outside the Westmeath

25 division." 15:37

26

27 So, are the issues very much still alive by December?

28 A. No, the issue that was alive really there was, 126/10

29 was still present for me. The reason I am using that

1 is mentioning an external, another chief superintendent
2 to conduct a peer review, is that the allegation has
3 been made against me that I did something wrong by
4 Garda Keogh. I also have Garda A, who is obviously
5 aggrieved with Garda Keogh, and if my decisions were 15:37
6 called into account I wanted to make sure that I was on
7 the right line for a peer review. That is all.

8 667 Q. Chief superintendent, I have to put it to you that the
9 plain language of the report would appear to suggest
10 that you were talking about, you say "all matters 15:37
11 relating to reports received in respect of the alleged
12 actions of Garda Keogh", and the heading is
13 "information divulged by Olivia O'Neill" and you are
14 intending, it seems on that date, to refer the matter
15 to a divisional officer outside the Westmeath division; 15:38
16 now, is that correct or not correct?

17 A. Well, it is the audit of Pulse as well in relation to
18 it.

19 668 Q. You say that when that is received in respect of an
20 unrelated incident? 15:38

21 A. Yes.

22 669 Q. But the plain language, I have to suggest to you, it
23 would seem that everything is still very much alive and
24 on the boil and that it is going to be sent to a
25 divisional officer? 15:38

26 A. No, I would disagree with that. There is no suggestion
27 that they are live. This is an audit. You could say
28 it is a peer review. There is no suggestion that
29 something else has to be done. It is really to make

1 sure that my decisions were appropriate and balanced
2 and not biased.

3 670 Q. Now, just to give you an opportunity to -- one of the
4 things I want to clear up with you, and we're coming to
5 the end of matters, in relation to the Olivia O'Neill 15:38
6 matter, in your statement to the Tribunal, which is at
7 page 1788 to 1789, they can be opened or we can just
8 deal with them generally, you say that you had no role
9 in directing any actions in respect of Olivia O'Neill.
10 Now I think when you met with the investigators you 15:39
11 clarified this, is that right?

12 A. Yes.

13 671 Q. Would you accept that you repeated it a number of times
14 in your statement, that you had no role in relation to
15 any -- you say you had no role in directing these 15:39
16 actions and I think --

17 A. I was mistaken when I was doing that. I mean... When
18 I was doing that, I was probably doing ten things at
19 the same time so I probably lost interest.

20 672 Q. Can I ask you to go to page 1967 of your interview? If 15:39
21 we just scroll down there. You're asked about:
22
23 "In the interests of clarity I have been asked in the
24 above quote where I state "I did not have a role in
25 relation to Olivia O'Neill's visit to Athlone Garda 15:40
26 Station on the 28th May 2014"..."
27
28 And if you keep going on down.

29 A. Yes.

1 673 Q. You say:
2
3 "I can confirm that that line from my statement is not
4 accurate."
5 15:40
6 So I think you accept that, with respect to the
7 investigators, is that right?
8 A. That's correct, Chairman, yes.
9 674 Q. But what I want to ask you about is: When you made
10 your submission to Assistant Commissioner Finn in 15:40
11 relation to his investigation, was that correction made
12 to him?
13 A. No, it wasn't made to him. But it was obvious, I would
14 say, from the documentation.
15 675 Q. Can I ask you to look at page 5531? 15:40
16 A. Whose statement is that, sorry?
17 676 Q. This is the Finn report.
18 A. Okay.
19 677 Q. It's on this particular issue. If you can just scroll
20 down there please, Mr. Kavanagh. At 5531m you see the 15:41
21 findings:
22
23 "There is no evidence to suggest that Chief
24 Superintendent Curran or any of the officers against
25 whom Garda Keogh was making a formal complaint had 15:41
26 instigated the query in relation to Olivia O'Neill."
27 A. Okay.
28 678 Q. Would you agree that that's --
29 A. There seems to be a conflict there. I don't know, I

1 can't explain why that is, to be honest with you.

2 679 Q. Would you say it is an error on the part of Assistant
3 Commissioner Finn?

4 A. I think the word is instigated the query. So is that
5 the initial query that Inspector Farrell was dealing 15:41
6 with?

7 680 Q. And I think the same error is repeated at page 1911 by
8 Assistant Commissioner O'Brien.

9 A. I think the point here is, in the allegation of
10 targeting it seems to be if I started all this. This 15:42
11 was generated by an underground report that came up to
12 me and I had to respond to it.

13 681 Q. Can I just ask you, you see the same paragraph is
14 repeated, would you accept, in Assistant Commissioner
15 O'Brien's report? 15:42

16 A. It is very important for me to put this across: At no
17 point did I actually initiate anything to do with
18 Olivia O'Neill. This all came in -- and McHugh. And
19 the intelligence. All of those items were reported to
20 me and I had to respond to them. I didn't initiate 15:42
21 anything.

22 682 Q. Can I ask you to look at 1905, which is your submission
23 to the AC Finn investigation?

24 A. Okay.

25 683 Q. So, it is 1905. Sorry, if you can just go back up to 15:42
26 the top there. You say:

27

28 "I did not have a role in directing any actions arising
29 from the matter of Olivia O'Neill's visit to Athlone

1 Garda Station on the 28th May 2014. No action or
2 recommendation was made to me as divisional officer
3 that impacted on Garda Keogh in a negative manner."
4

5 But I think, as you say, you corrected that. 15:43

6 A. I corrected that. But look, all I'm saying is: I am
7 responding to something I have no choice but to respond
8 to. That's my view on it. I'm not starting anything.

9 I know nothing about these things. This is all
10 reported by the people locally on the ground. They are 15:43
11 channelling it through to me, which they should do.

12 Any actions I do on this is a response to theirs. I
13 didn't initiate anything. The suggestion of Garda
14 Keogh right through all of this is that I am trying to
15 manipulate and manoeuvre something. It couldn't be 15:43
16 further from the truth. I would never do that to
17 anybody.

18 684 Q. Can I ask you, are you saying then to the Chairman that
19 that extract from your submission to Assistant
20 Commissioner Finn is correct or incorrect? 15:43

21 A. Which bit here now are we talking about?

22 685 Q. The lines I just read out to you there.

23 A. Sorry, one, two and three, is it?

24 686 Q. That is right.

25 A. "I did not have a role in directing any actions arising 15:44
26 from the matter..." I corrected that.

27 687 Q. Yes. So that is incorrect.

28 A. I corrected that to the Tribunal. We have done that
29 later, afterwards that is corrected, yeah.

1 688 Q. Okay, but this is to AC Finn and he has relied on this
2 in his report and you are saying that is an error?

3 A. Yeah. That predates the Tribunal interview.

4 689 Q. Just finishing with up the Liam McHugh matter, at page
5 1789 --

15:44

6 A. Yes.

7 690 Q. -- this is your statement, can I ask you to look under
8 2.4, the paragraph starting with allegations, you say:

9

10 "The allegations..."

15:44

11

12 This is your own to the statement to the Tribunal. You
13 say~

14

15 "The allegations reported by Garda Lyons were serious
16 matters. I directed that the matters should be
17 followed up to establish if the Gardaí alleged to be
18 involved (including Garda Keogh) had been given an
19 opportunity to comment on the veracity of the
20 information contained within the report prepared by
21 Garda Lyons."

15:44

15:45

22

23 Now we have been through extensive correspondence,
24 chief superintendent, and maybe you might say is there
25 something we have missed, but is there a direction in
26 respect of Gardaí, plural, the other members allegedly
27 involved in that incident?

15:45

28 A. I think that should be Garda alleged to be involved.
29 There's only one, there's only Garda Keogh in the case.

1 691 Q. well, I think if you look at Garda Aidan Lyons' report
2 he references a number of Gardaí, is that right?

3 A. You see, that's very important. If you accept Garda
4 Keogh's side of things, it didn't happen, and I accept
5 that, then there was no Gardaí. 15:45

6 692 Q. well, can I just ask you how that sits with the
7 following paragraph again:

8
9 "The enquiries necessary to test the veracity of the
10 intelligence were twofold, in that the members 15:45
11 concerned --"

12
13 "Members" plural.

14
15 "-- were requested to account for their interactions 15:46
16 with Mr. Liam McHugh."

17
18 who were the members?

19 A. There's only one member asked. It's only -- I don't
20 know how that is there. It was only Garda Keogh that 15:46
21 was asked. You see, there's no members, there's nobody
22 else, there's nobody identified anyway. But Garda
23 Keogh, McHugh doesn't make a statement and Garda Keogh,
24 as I said to you, Garda Keogh is saying it never
25 happened, so there can't be any members. 15:46

26 693 Q. And you repeat it again at the last line:

27
28 "There was no further information to substantiate the
29 information contained within the report following

1 enquiries with Garda members and Liam McHugh declined
2 to make a statement on the matter."

3
4 So I think there's three references just there alone in
5 the plural, can you clarify that for the Tribunal? 15:46

6 A. I think where that is, is I am writing down to
7 superintendent, the superintendent is writing down to
8 the sergeant, there's an inspector there as well. So,
9 there's no input from them. I think I was expecting
10 them to add something to it. 15:47

11 694 Q. Can I ask you, you say there, you said it now a number
12 of times, chief superintendent, that you accepted Garda
13 Keogh's position that this never happened. Is that the
14 position? Is that your evidence to the Chairman?

15 A. That's my belief, yes. 15:47

16 695 Q. Was that submission made to Assistant Commissioner
17 Finn?

18 A. You see, I'm not even sure that that was very central.
19 I am looking -- what is being said here is that there
20 was an attempt to get discipline off the ground. 15:47
21 That's in the Finn investigation. And there was never
22 a question of discipline in this.

23 696 Q. Can I ask you to open page 5532 of the Finn report?
24 This is the assistant commissioner's finding on this
25 particular issue. At this stage, on the 9th June, just 15:48
26 under paragraph 4:

27
28 "On 9th June Superintendent McBrien became aware of an
29 allegation that Mr. Liam McHugh had been searched by a

1 number of Gardaí (including Garda Keogh)..."

2

3 Have you any assistance for the chair as to where that

4 came from?

5 A. That's AC Finn's report, is it? 15:48

6 697 Q. Yes.

7 A. You're asking me to comment on his report. I would

8 say, go back to the Lyons report, he said that he was

9 there, he seemed to suggest he was a witness in it at

10 the least. 15:48

11 698 Q. I think, with respect, we can go back to it, but I

12 don't think he uses the words "including Garda Keogh",

13 would you accept that?

14 A. No, he doesn't say Garda Keogh, it is only an inference

15 that you can draw from it. 15:49

16 699 Q. He continues to say in the third paragraph:

17

18 "An investigation was initiated --"

19 MR. MÍCHEÁL O' HIGGINS: Chairman, can I make one

20 observation? 15:49

21 CHAIRMAN: Yes.

22 MR. MÍCHEÁL O' HIGGINS: The witness is being -- this is

23 a repeat of this, the witness is being continuously

24 asked to effectively comment upon documents he has not

25 authored. 15:49

26 MS. McGRATH: That he has not what, sorry?

27 MR. MÍCHEÁL O' HIGGINS: Authored.

28 CHAIRMAN: Authored.

29 MR. MÍCHEÁL O' HIGGINS: I appreciate that may be

1 entirely appropriate, but there is potentially an
2 unfairness arising and he is being asked to give the
3 viewpoint perhaps of the author, what is meant by that.
4 And I just raise the query as to whether that is
5 appropriate in the context. 15:49

6 MS. McGRATH: well, if I can just --

7 CHAIRMAN: That does seem right, Ms. McGrath. I mean,
8 if you are asking him for his opinion, he is not an
9 expert witness, he is not entitled to give opinion
10 evidence. He can give evidence as to facts within his 15:49
11 knowledge. He can have put to him other facts that
12 appear to contradict that.

13 MS. McGRATH: I accept that, Chairman. If I could ask,
14 then to confine it to a fact, and subject to what my
15 friend would say I would like to ask him about this 15:50
16 last paragraph on that page, 5532.

17 CHAIRMAN: Yes.

18 MS. McGRATH: Because this does concern Chief
19 Superintendent Curran.

20 CHAIRMAN: Yes. 15:50

21 MS. McGRATH: It says:

22
23 "Superintendent McBrien reported the matter to the
24 divisional officer, Chief Superintendent Curran --"

25
26 And he says here: 15:50

27
28 "-- who directed that the matter should be followed up
29 to establish if the Gardaí involved (including Garda

1 Keogh) --"

2 CHAIRMAN: I'm sorry, I can't see where you are at.

3 MS. McGRATH: Sorry, it's the very last paragraph of

4 the page. I will start again.

5 CHAIRMAN: Thanks very much. Yes. Superintendent 15:50

6 McBrien, yes.

7 700 Q. MS. McGRATH: "Superintendent McBrien reported the

8 matter to the divisional officer, Chief Superintendent

9 Curran, who directed that the matter should be followed

10 up to establish if the Gardaí involved (including Garda 15:50

11 Keogh) had been given an opportunity to comment on the

12 veracity of information contained within the report

13 prepared by Garda Lyons."

14

15 So there, we have a reference again to a number of 15:50

16 Gardaí being asked about this incident, but I think it

17 is your evidence that that is not correct.

18 A. No. Nobody is ever named in any time in all this and

19 then Garda Keogh says it didn't happen. So McHugh

20 doesn't name him, there's no information about it, 15:51

21 there's nothing coming to me from anybody, sergeant or

22 inspector or superintendent telling me anything else.

23 So that's really it.

24 701 Q. And I think it's Garda Keogh's evidence to the Tribunal

25 that there was never an investigation into any alleged 15:51

26 underlying criminality, namely the alleged theft of

27 monies from this man, and I think that is supported by

28 the statement of Superintendent Minnock. Is that your

29 state of knowledge?

1 A. Garda Keogh is saying it didn't happen.

2 702 Q. Now, can I ask you just to finish up with one matter,
3 Garda Keogh made the point to the Chairman, during Day
4 99 and Day 100 of his evidence that, just looking back
5 over the issues we have talked about, one of his 15:51
6 complaints to the Chairperson is that matters all
7 started to mount up against him during this year and
8 after his protected disclosure. Now, I want to ask you
9 about that. I think you will accept, that in the
10 correspondence we do have the matters rolling in 15:52
11 together in the correspondence. Do you accept that or
12 not?

13 A. Well, I go back to it. They weren't generated by me.
14 I responded, from a management point of view, to the
15 issues that landed on my desk. That is all this was. 15:52

16 703 Q. Do you accept that they are run in together from a very
17 early stage?

18 A. Yeah.

19 704 Q. I won't go back to the letters we have opened --

20 A. Yes. 15:52

21 705 Q. -- but the Chairman will have seen the letters.
22 A. They all happened within a very short window of time.
23 And the concerns and the reason they were put together
24 was concerns around interfering with the confidential
25 reporting investigation by Assistant Commissioner 15:52
26 Ó Cualáin.

27 706 Q. Now this is put to you in your interview at 1795.
28 Sorry, it must be your statement. If you just scroll
29 down please Mr. Kavanagh. That middle paragraph

1 please. I think this is your statement in the middle
2 there you say "my actions stand", do you see that?

3 A. Yes.

4 707 Q. You say:

5

15:53

6 "My actions stand as set out in the correspondence
7 throughout and I reject any assertion that my actions
8 were an attempt to target or discredit Garda Keogh.
9 This is simply not the case as I dealt with the issues
10 individually as they arose and in the absence of a
11 policy for dealing with a member in my divisional
12 personnel who had been publicly named as having made a
13 protected disclosure."

15:53

14 A. Yes.

15 708 Q. Can I ask you about that reference to "the absence of a
16 policy", what did you mean by that?

15:53

17 A. As I said, there was a difficulty that I encountered in
18 relation to the intelligence that was put on and
19 formally expected, a formal response was expected from
20 me. Number one, was the criminality and then the
21 intelligence entry, etcetera. But what I am really
22 talking about is, in those days, in 2014, An Garda
23 Síochána was I suppose starting off on a journey of
24 understanding around the whole whistleblowing thing, so
25 the policy that was in place was very basic in form.
26 Subsequently, you will see Chief Superintendent
27 McLoughlin was appointed as protected disclosure
28 manager, and there is a policy produced in 2017 that
29 goes some way to dealing with issues, I'm not sure it

15:54

15:54

1 deals with this one and I know it is under review, but
2 that is what I am talking about there. That there is
3 no real policy to bridge, to deal with dilemmas like
4 this. It is done in a management way, but it doesn't
5 leave people -- it exposes some of the managers on the 15:54
6 ground to some difficult situations and it could be
7 treated differently with a more refined approach to
8 managing stuff away from -- you know, away from the
9 operational setting, if that makes sense to you.

10 709 Q. Would this explain what happened -- you mentioned in 15:55
11 your evidence this morning, this issue of an intrusive
12 style of supervision when it came to CHIS, for example.
13 Would you accept that that is the position in respect
14 of how CHIS will operate within the Gardaí?

15 A. I don't see the link to the previous question. 15:55

16 710 Q. Well in the sense of, you're saying there's an absence
17 of policy for dealing with confidential reporters at
18 this time?

19 A. Well, the CHIS system is only dealing with a particular
20 piece of intelligence, an informant. But in terms of 15:55
21 dealing with people who made a protected disclosure who
22 decide to go out and the name is publicised, I know
23 Garda Keogh is saying he didn't decide that, but all of
24 a sudden that creates a difficulty for everybody,
25 because everybody knows who the person is and the whole 15:55
26 idea is that the person who makes it is meant to be
27 anonymous. But in some of the issues that I faced the
28 organisation hadn't come across those previously. And
29 all I am saying is that there was policy in place at

1 that time to deal with them. So there was some
2 confusion. And they were complex.

3 711 Q. But there was a set of regulations, the Confidential
4 Reporter Corruption Malpractice Regulations 2007?
5 A. Yeah. 15:56

6 712 Q. Is that right?
7 A. Yeah. They weren't dealing with these situations for
8 me. They have no protected disclosure matter, for
9 example.

10 713 Q. But I think there was also a charter, a confidential 15:56
11 reporters charter at that time, is that right?
12 A. Yeah. But that was like, you know compared to what --
13 even in the newer policy, that was very basic in its
14 understanding of the dilemmas that people come across.
15 And that is why we found ourselves in An Garda Síochána 15:56
16 facing difficulties; because these people weren't
17 properly supported and managed and the issues that
18 arose. So in the new policy, in the policy there,
19 which came out in 2017, and I think it is currently
20 under review currently, that it is more comprehensive 15:56
21 in dealing with the issues. But I think there is
22 learning all the time in relation to this.

23 714 Q. I think in fairness to Garda Keogh we have to talk
24 about this period, 2014-2015, and you say in your
25 interview that no guidance was ever given to you by 15:57
26 senior management in this respect, is that right?
27 A. Can I see that? I just want to make sure I am linking
28 that to some particular line here, so where does it say
29 that?

1 715 Q. If we go to page 1938 -- well 1944, first of all. If
2 you go down there. Sorry, that is the one where you
3 had no conversation with senior management about the
4 investigation. I think you confirmed that in your
5 evidence earlier? 15:57

6 A. Yeah. So therefore I wasn't -- I'm talking about AC
7 Ó Cualáin's investigation here I think in that.

8 716 Q. If you just bear with me for a one moment.

9 A. I think that's all about Assistant Commissioner
10 Ó Cualáin. 15:58

11 717 Q. I will bring that part up for you in a moment, but what
12 I want to ask you is: That, in relation to that
13 particular time where we have these issues arising, to
14 what extent were you as divisional officer linking up
15 issues like CHIS with obligations under the 15:58
16 confidential reporting charter and how you should deal
17 with employee welfare under the charter?

18 A. Well, what I didn't want is the organisation going at
19 cross purposes to the investigation, the Ó Cualáin
20 investigation. I didn't want that happen. And I 15:58
21 didn't -- so in that respect, the rights of Garda Keogh
22 under that, to have him investigated -- the
23 investigation should be kept clear, he shouldn't be
24 asked about anything that touches on that. That's one.
25 In terms of welfare, the welfare that was provided to 15:59
26 Garda Keogh by Superintendent McBrien I think Garda
27 Keogh himself, he was very complimentary of her. And I
28 think that was a very important part of all of that for
29 me; that Garda Keogh was getting the best support he

1 could get over there.

2 718 Q. But I think whilst that might be the case on one hand,
3 would you accept that you were very removed from the
4 day-to-day operations of the investigation?

5 A. Of what investigation? 15:59

6 719 Q. Of the investigation that was ongoing.

7 A. Oh, Ó Cualáin?

8 720 Q. Yes.

9 A. I had nothing to do with that. I really had nothing to
10 do with that. 15:59

11 721 Q. And I think you accept that, for example, at page 1938,
12 you say that you believed the interviews were relocated
13 at one point. So you believed that, is that right?
14 It's 1938 of your interview.

15 A. I suppose you could say I believed or understood that 15:59
16 there was an issue and they, I think this came up in
17 the statements there, earlier evidence, that there was
18 an issue with witnesses being interviewed. That's all
19 I knew. I didn't know -- actually I didn't even know
20 they were in Galway, I wasn't sure what station they 16:00
21 were in.

22 722 Q. Have you a view on whether this was satisfactory given
23 your role in running the division and the welfare of
24 members?

25 A. I wasn't getting a report in relation to this, so I 16:00
26 wasn't -- I have no view on it. If I got a report on
27 it I would have had a view on it.

28 723 Q. And just to finish up, I think you handed over -- after
29 all this, you hand it over to Chief Superintendent

1 wheatley on the 9th March 2015, is that right?

2 A. That's correct.

3 724 Q. And you were asked about whether or not you discussed
4 Garda Keogh with her, in your interview at page 1978
5 you say it would have been very brief, is that right? 16:00

6 A. Very brief. I dealt with a conversation about maybe 40
7 or 50 things and Garda Keogh might have been a matter
8 of 10 or 15 seconds and I would have said something
9 like the file is in inside and the welfare is being
10 treated. Something on welfare maybe. There was 16:01
11 nothing of significance attached to anything that Garda
12 Keogh -- Garda Keogh, it might have been the briefest
13 of mentions. It had nothing -- it wasn't an agenda
14 item or anything like that. There was no agenda set.
15 It was more or less talking about the transfer of, you 16:01
16 know, moving into the new position and the new role for
17 her.

18 725 Q. If you give me a moment please, chief superintendent.

19 A. Sure.

20 MS. McGRATH: Thank you, chief superintendent. 16:01

21

22 END OF EXAMINATION

23

24 WITNESS: Thank you Chairman.

25 CHAIRMAN: Thanks very much. So we will come back 16:01
26 tomorrow and 10:30. How long do you think you will be,
27 Mr. Kelly?

28 MR. KELLY: About two hours.

29 CHAIRMAN: Very good.

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MR. KELLY: Or thereabouts.

CHAIRMAN: Thank you very much. It is just to get a rough idea. And Mr. O'Higgins?

MR. MÍCHEÁL O' HIGGINS: Chairman, I imagine in the region of an hour.

16:02

CHAIRMAN: Very good. Thank you very much.

MS. O'ROURKE: Chairman, I should say that I am --

CHAIRMAN: I am sorry.

MS. O'ROURKE: I should say I will probably be ten minutes.

16:02

CHAIRMAN: I am so sorry. I should of course, Ms. O'Rourke, have asked you. I am sorry. Don't think there is anything in it. I am full of mistakes today. Sorry. Thank you very much. Very good.

16:02

THE HEARING THEN ADJOURNED UNTIL FRIDAY, 15TH NOVEMBER 2019 AT 10:30AM

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