

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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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 FRIDAY, 15TH NOVEMBER 2019 - DAY 118

118

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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1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 15TH
2 NOVEMBER 2019:

3
4 CHAIRMAN: Good morning, chief superintendent. Just
5 give me a moment to do something. Thank you very much. 10:30
6 This morning we have Mr. Kelly, then we have
7 Mr. O'Higgins, Ms. O'Rourke, I am so sorry for getting
8 your name wrong yesterday. When I looked over, I
9 wasn't paying proper attention. Thank you very much.
10 Now, Mr. Kelly. 10:31

11 MR. O'BRIEN: Good morning, Chairman, in fact I will be
12 asking the questions.

13 CHAIRMAN: Yes, Mr. O'Brien, indeed, I am sorry.
14

15 CHIEF SUPERINTENDENT MARK CURRAN WAS CROSS-EXAMINED BY 10:31
16 MR. O'BRIEN, AS FOLLOWS:

17
18 1 Q. MR. O'BRIEN: Good morning, chief superintendent.

19 A. Good morning.

20 2 Q. Patrick O'Brien is my name, I will be asking some 10:31
21 questions on behalf of Garda Keogh.

22
23 Just to commence, chief superintendent, I think you
24 were promoted to that rank in February of 2012 and you
25 transferred to the westmeath division, is that correct? 10:31

26 A. That's correct, Chairman.

27 3 Q. In that capacity and as such you are the divisional
28 officer for westmeath, is that right?

29 A. That's correct.

1 4 Q. If I just can ask for Volume 7, page 1931, which is
2 your statement to the Tribunal investigators, please.
3 You can see here, chief superintendent, I think you
4 confirmed to the investigators that you hadn't
5 investigated complaints made by Garda members under the 10:32
6 Protected Disclosure Act 2014, or interacted with
7 members in senior management with the exception of
8 Garda Keogh, is that right?

9 A. No, I didn't investigate anybody, but I met people who
10 made disclosures previously. 10:32

11 5 Q. I see. You also confirmed with the interview
12 investigators you were aware of the Garda circular that
13 was issued following the confidential reporting of
14 corruption and malpractice regulation 2007, you're
15 familiar with that? 10:32

16 A. (Inaudible).
17 MS. McGRATH: I wonder, Chairman, if the chief
18 superintendent could just lean a little bit forward or
19 pull his chair forward.
20 CHAIRMAN: Thank you very much. 10:32

21 6 Q. MR. O'BRIEN: If you just go forward, please, to page
22 1933. I think you told us yesterday, you told the
23 Chairman in evidence that you became aware of Garda
24 Keogh's protected disclosure from broadcast media. I
25 think that can be seen there. The protected disclosure 10:33
26 had been named in the Dáil. That was on 8th May 2014,
27 isn't that right?

28 A. Yes. In the Dáil, yes.

29 7 Q. I think you confirmed yesterday that while a divisional

1 officer since 2012, you'd only met Garda Keogh once in
2 passing?

3 A. That's correct.

4 8 Q. You had never had any real dealings with him, is that
5 correct? 10:33

6 A. No, Chairman.

7 9 Q. And certainly you didn't have any issues with
8 performance, I think you confirmed that, with Garda
9 Keogh?

10 A. No, no. 10:33

11 10 Q. And can I ask you, when you learned that Garda Keogh
12 had made this protected disclosure, was made in the
13 Dáil on 8th May 2014, as divisional officer for
14 Westmeath, what concerns did you have at that stage?

15 A. Well, my concern was -- the first thing is the wisdom 10:33
16 of actually being publicly named as a confidential
17 recipient. Then my concerns were the welfare concern,
18 that's why I sent down, on the 8th May, volume 7, page
19 1980, that's why I asked Superintendent McBrien to
20 make -- actually it was Inspector Farrell in the end, 10:34
21 to meet and just let him know that he was going to be
22 supported in the workplace. An Garda Síochána values
23 individuality within the workplace and any issues would
24 be addressed in a positive manner.

25 11 Q. I see. You will agree that at this stage in 2014, this 10:34
26 was an entirely new situation for the Westmeath
27 division, being faced with somebody who had made a
28 protected disclosure, isn't that right?

29 A. Em, I'd say what was new about it was the fact that the

1 person was named so publicly at the time, when making
2 it.

3 12 Q. You described to us -- sorry, you describe in your
4 evidence and you used the word "fluster" yesterday?
5 A. Did I? 10:35

6 13 Q. If you look at page 14 of yesterday's transcript, at
7 line 27?
8 A. Yes.

9 CHAIRMAN: would you like a hard copy? I'm sure that
10 Mr. O'Brien will probably be referring more than once 10:35
11 to the transcript, so it may be convenient.
12 WITNESS: what line did you say it was, sorry?

13 14 Q. MR. O'BRIEN: Page 14, line 27.
14 A. Line 27.

15 15 Q. Do you see it says: 10:35
16
17 "I think there was probably a bit of fluster around it
18 at the time."
19
20 I mean, was there a sense of panic? 10:35
21 A. I didn't say fluster. I don't use that word very often
22 I'm not sure if that's the right word, to be honest
23 with you. But anyway, there was a lot of activity
24 around it, you know.

25 16 Q. Amongst the senior management and the local management, 10:35
26 yourself and the district officers, what was the
27 feeling on the ground?
28 A. Well, Superintendent McBrien was off I think at the
29 time. To be honest with you, some weeks -- I mean the

1 Commissioner had been speaking publicly that people who
2 were whistleblowers, who want to report corruption and
3 malpractice in the workplace would be supported. I was
4 of the same view. If something is not right, I have no
5 issue with that being addressed whatsoever. So the 10:36
6 person making the report, they would be supported and I
7 would be of that mind.

8 17 Q. You told us a moment ago that you had instructed or
9 directed Inspector Farrell and Superintendent McBrien
10 to liaise with Garda Keogh in relation to the welfare 10:36
11 issues?

12 A. Yes.

13 18 Q. I think at the early stage Garda Keogh also indicated
14 to Inspector Farrell that he was happy to meet with
15 you? 10:36

16 A. Yes. I don't think he said he was happy to meet, I
17 know what --

18 19 Q. Well, in relation to welfare issues anyway?

19 A. Said it to Superintendent McBrien.

20 20 Q. To Superintendent McBrien? 10:37

21 A. Yeah.

22 21 Q. And that message was passed back to you, is that right?

23 A. Yes.

24 22 Q. But you didn't meet with them, sure you didn't?

25 A. No. 10:37

26 23 Q. Can I ask you just in relation to a management
27 situation on the ground where you have such a protected
28 disclosure, would it not have been best practice for
29 you as divisional officer to perhaps meet with Garda

1 Keogh yourself in relation to welfare concerns?

2 A. I had every intention of doing that. Then, when the
3 intelligence -- when Inspector Farrell met him, there
4 was reluctance there and I don't think he wanted to
5 meet anybody. I thought I would just let things lie a 10:37
6 little bit with the intention of meeting him several
7 weeks on. Then we had a couple of incidents that
8 distracted me. It's a very busy time operationally
9 down there afterwards. Very shortly afterwards, on the
10 26th, and there was a very intense period in June from 10:37
11 an operational point of view, on the 26th June I got a
12 call from Detective Superintendent Mulcahy with this
13 allegation that I'd removed property. That obviously
14 was the subject of a report to the confidential
15 reporting team, and that concerned me. I had to 10:38
16 reflect on that to some extent. It didn't mean I was
17 going to automatically not meet him. But then, when we
18 had interactions around the CHIS matter, I didn't want
19 to muddy the waters and I thought it was better from my
20 point of view to just to keep a bit of a distance. I 10:38
21 had asked him -- in this particular context,
22 Superintendent McBrien had been engaging now with Garda
23 Keogh and there was a good rapport there. There was a
24 connection from the past. Superintendent McBrien is
25 excellent at this type of stuff. She is very good at 10:38
26 supporting people. So I was comfortable that the best
27 possible support was being provided to him.

28 24 Q. I see. But just going back just in terms of being the
29 senior person in the Westmeath division, and I

1 understand what you are saying about Superintendent
2 McBrien, but between Garda Keogh being named in the
3 Dáil on the 8th May and the month of June, or the 24th
4 June, when you had the conversation with Detective
5 Superintendent Mulcahy, surely it would have been a 10:39
6 good idea for you to personally meet with Garda Keogh?
7 A. Yeah. You know, I have thought about it many times.
8 You know, I still think -- once the 26th June phone
9 call came to me, I think from that point of view it
10 became -- it wasn't wise for me to meet him in around 10:39
11 that time.
12 25 Q. I see.
13 A. Then there was a paper. He mentioned then in the 26th
14 or the 27th September report that he didn't want to
15 deal with me anyway, we'll wait on the form in relation 10:39
16 to the CHIS matter. I took that to be something
17 similar.
18 26 Q. Well, we will come back to that conversation in a
19 moment. But given Garda Keogh's particular situation
20 and in hindsight, knowing now what you know, within 10:39
21 that month, if you could change things, would you meet
22 with him, if you could go back?
23 A. Yes, if I had the time I would, yeah. I thought about
24 this quite a lot. I don't think it would make a
25 difference to us being here today. 10:40
26 27 Q. Now, Superintendent McBrien, in her statement to the
27 Tribunal investigators, this can be seen at page 6620,
28 it's volume 21, told the investigators that there was
29 an awareness around the station that Assistant

1 Commissioner Ó Cualáin was appointed to investigate the
2 complaint. In the course of that statement to the
3 Tribunal investigators, she also says that she can't
4 specifically recall if you, Chief Superintendent
5 Curran, would have mentioned his name to her but there 10:40
6 was also an awareness that Garda A was involved. At
7 that stage, as of the 12th May, were you aware of who
8 was involved in the Ó Cualáin investigation?

9 A. No.

10 28 Q. I mean, what Superintendent McBrien's statement 10:41
11 suggests --

12 A. Sorry, what page are you talking about here?

13 29 Q. Sorry, 6620?

14 A. Is that the page --

15 CHAIRMAN: No, it's not the page we have up here. 10:41
16 MR. O'BRIEN: Sorry.

17 CHAIRMAN: 6620, Peter, please. This is Superintendent
18 McBrien's statement that you're referring to. I am not
19 seeing that, this is a letter.

20 MR. O'BRIEN: Sorry, Chairman, I will come back to the 10:41
21 reference in a moment.

22 CHAIRMAN: I don't think you have the right number,
23 Mr. O'Brien, because Mr. Kavanagh is here saying, look,
24 I am giving you 6620 and it's a letter.

25 MR. O'BRIEN: Yes, my apologies, Chairman. 10:41
26 CHAIRMAN: All right. would you like to read out what
27 you say and we will muddle for the moment, subject to
28 checking on the actual paper. what do you say that
29 Superintendent McBrien's statement says, that you want

1 to ask the witness.

2 MR. O'BRIEN: well, what it says, Chairman, is that

3 she --

4 CHAIRMAN: Read it rather than -- don't tell me what it

5 says. If you wouldn't mind, quote it, Mr. O'Brien. If 10:42

6 you are reading from the statement, quote it.

7 MR. O'BRIEN: Yes, it says:

8

9 "I can't specifically recall if Chief Superintendent

10 Curran would have mentioned his name to me but there 10:42

11 was an awareness that Garda A was involved."

12

13 CHAIRMAN: Okay. Actually we have it up now. I don't

14 know what number it is but we have it up in front of

15 us. Yes, thanks. 10:42

16 30 Q. MR. O'BRIEN: I'm asking you, were you aware?

17 A. No, I wasn't aware. I mean, other than maybe you might

18 hear speculation, but nobody told me, you know.

19 31 Q. If we move forward then to the 18th May. We know that

20 this is the day that Garda Keogh creates the Pulse 10:43

21 entry or the intelligence entry on Pulse. I don't want

22 to pull this up, because I'm just conscious that it

23 contains certain sensitive information. But if Chief

24 Superintendent Curran could be just passed volume 7,

25 please, at page 1802? 10:43

26 CHAIRMAN: Thank you. Yes. So don't put it up on the

27 screen.

28 MR. O'BRIEN: It's essentially the Pulse entry,

29 Chairman, which we have had before.

1 CHAIRMAN: I understand. Sometimes it appears fully
2 redacted but because it is in a number of places, we
3 can never be sure whether it is the fully redacted
4 version or not.

5 MR. O'BRIEN: Exactly, Chairman. 10:43

6 MS. McGRATH: Chairman, I think 1802 has been redacted.

7 CHAIRMAN: 1802 is okay, thank you.

8 MS. McGRATH: It should come up fine.

9 CHAIRMAN: Okay, so we're safe to look at 1802. Okay,
10 thank you very much. 10:43

11 32 Q. MR. O'BRIEN: You will see here, chief superintendent,
12 that the Pulse entry reads as follows:

13

14 "I observed Ms. B in her car at the address and on
15 seeing the member she smiled and stuck her tongue out. 10:44

16 Ms. B is seriously involved in the heroin trade in
17 Athlone, with a turnover of approximately €2,500 per
18 week. She has no previous convictions for drugs due to
19 the fact that she has been aided and abetted for years
20 by a senior member of the drugs unit, who himself is a 10:44
21 close associate of a high ranking Garda officer.

22 Fact."

23

24 Now, when you read that, chief superintendent -- sorry,
25 I think that was passed up to you? 10:44

26 A. By way of report, yes.

27 33 Q. When you read the content of that, what was your
28 initial reaction?

29 A. First thing, first line, it's a comment "stuck out her

1 tongue". I mean, it's out of place from what I would
2 normally see in an intelligence entry. The next thing
3 is the turnover of approximately 2,500, so the alarm
4 are going to there, when you talk specific amounts of
5 money like that.

10:45

6 MS. McGRATH: Chairman, I think there's difficulty
7 picking up the answers.

8 WITNESS: Sorry, that's my fault. I should have put
9 the volume down. Apologies. Do you want me to start
10 again?

10:45

11 MS. McGRATH: Please.

12 WITNESS: Okay. So, the first thing that struck me was
13 her tongue, I said that and I hope you heard that.

14 Then the next is the 2,500 a week, where is that figure
15 coming from? That's really of interest to me. And she
16 has no previous convictions because she was being aided
17 and abetted by a Garda, who himself is a close
18 associate of high ranking guard. So we've got somebody
19 there who is a drug dealer, active, pretty active. An
20 associating high rank ranking Garda officer and then
21 the word "Fact". So that's interesting.

10:45

10:45

22 34 Q. MR. O'BRIEN: Looking at the words "aided and abetted
23 by a senior member of the drugs unit", I mean as
24 divisional officer did this set alarm bells ringing for
25 you?

10:46

26 A. Absolutely.

27 35 Q. Were you shocked and concerned that this was going on
28 within your division?

29 A. Of course. That's an allegation, so my concern then

1 is: Is this something that is the subject of the CR?
2 Confidential recipient. And do I investigate it or am
3 I threading on the toes of the confidential recipient
4 investigation? So I wrote, subsequently I wrote about
5 that and I asked for some direction on it. So it came 10:46
6 up yesterday.

7 36 Q. When Inspector Farrell sent you the e-mail, which is on
8 the 19th May, that's at page 8278?

9 A. Yes.

10 37 Q. You will see that there appears to be some criticism in 10:46
11 the last sentence of the intelligence report, isn't
12 that right?

13 A. If you just bring it up there.

14 38 Q. 8278. Just at the last sentence there of that report?

15 A. "Were not appropriate for recording this matter". 10:47

16 39 Q. Yes.

17

18 "Some of the contents of this intelligence report is
19 not appropriate for recording in this matter."

20

10:47

21 When you got the report, did you share that view?

22 A. Well, the first thing, sticking out a tongue is a very
23 personal view, right. It's -- it's just not -- it's a
24 bit unprofessional, to say the least. And then, the
25 fact that if you are reporting something around, say, 10:47
26 2,500 per week, so the source of the information, is he
27 being set up, for example, is one of the things that
28 occurred to me, or does that source know that it's on
29 Pulse or is this common knowledge, and is this somebody

1 else using the guard to set up somebody else or
2 eliminate a rival? Then, when you're looking at aided
3 and abetted by a member of the drugs unit, that's
4 concerning. But for me the issue to be resolved is:
5 Does it go off to the CR team, the Ó Cualáin team, or 10:48
6 do I do it? That's the biggest issue for me.

7 40 Q. I see. You wrote then subsequently to Inspector
8 Farrell with a list of directions. That's at page
9 1805. I think we can see from that letter that you're
10 looking for a number of items of information. You want 10:48
11 to know the content of the intelligence, isn't that
12 correct, in the first paragraph?

13 A. Discuss the contents, yes.

14 41 Q. To discuss the content with him. You want to ascertain
15 whether he has a specific source within his 10:48
16 information, at paragraph 2, isn't that correct?

17 A. Yes.

18 42 Q. You want to establish the basis -- sorry, that he
19 should be advised in relation to Directive 126/10; is
20 that correct? 10:49

21 A. Yes.

22 43 Q. And you want to establish on what basis Garda Keogh has
23 entered the additional information relating to
24 colleagues, and this his assertion about collusion,
25 isn't that right? 10:49

26 A. Yes.

27 44 Q. You requested that an immediate -- that upon -- sorry,
28 upon Inspector Farrell meeting with Garda Keogh, that
29 he should respond immediately, isn't that right?

1 A. That's correct.

2 45 Q. So there was an urgency in your mind in dealing with
3 this?

4 A. Yes, it was a very serious matter alleged. Yes. That
5 was the first thing that jumped out here. Do I 10:49
6 investigate it? And on the basis, is he making a
7 report to the westmeath division, to the superintendent
8 Athlone, that there's corruption? Or is he trying to
9 bring -- bringing it to our attention for
10 investigation? 10:49

11 46 Q. You wanted to know -- as of this date, which I think is
12 the 19th May, you wanted to know the content of the
13 intelligence -- sorry, you wanted him to discuss the
14 contents of the intelligence; isn't that right?

15 A. Yeah. I wanted him to -- yes, what's this about? 10:49
16 Because it's in a public forum here, you know, in a
17 way. It's internal in the organisation, it's
18 accessible to anybody, this piece of information.

19 47 Q. We know then that Inspector Farrell met with Garda
20 Keogh? 10:50

21 A. Yes.

22 48 Q. We have Inspector Farrell's response to you at page
23 1806. I just want to highlight that Inspector Farrell
24 informs you that upon this discussion with Garda Keogh,
25 you will see in the middle of the first paragraph. 10:50
26
27 "He stated that he was due to meet with Assistant
28 Commissioner Ó Cualáin and that he could not discuss
29 this entry with me. He said he was advised by the

1 confidential recipient that he did not need to talk to
2 anybody else except Assistant Commissioner Ó Cualáin. "
3
4 Isn't that correct?
5 A. That's what it's saying, yes. 10:50
6 49 Q. I see. So from that, Garda Keogh is saying to
7 Inspector Farrell to report to you, I am dealing with
8 Assistant Commissioner Ó Cualáin?
9 A. Yes.
10 50 Q. By doing that, I suggest to you that he is trying to 10:50
11 give comfort to Inspector Farrell and to yourself that
12 he is dealing with the Ó Cualáin investigation in
13 relation to the intelligence that he has entered on the
14 Pulse system, would you agree with that?
15 A. I don't think -- he might be ring-fencing his position. 10:51
16 The problem for me is, why did he put it in on in the
17 first place? If he's trying to infer this is a matter
18 for Assistant Commissioner Ó Cualáin, why is he
19 broadcasting it within the Westmeath division?
20 51 Q. Would he be seeking to ring-fence his position? 10:51
21 A. I mean --
22 52 Q. He has made his protected disclosure?
23 A. Yeah.
24 53 Q. Although he hasn't met with the investigation team yet, 10:51
25 he is saying, I have got to deal with Assistant
26 Commissioner Ó Cualáin. Essentially the message is,
27 take comfort in that situation?
28 A. But that doesn't relieve me of responsibilities that I
29 have. You see, he's after putting this on a system and

1 basically he's reporting to me and the superintendent
2 that there's corruption and there are other issues that
3 have to be addressed. So that doesn't shutdown, the
4 position I'm talking about is the position in relation
5 to the intelligence. 10:52

6 54 Q. I see.

7 A. Okay. It's not necessarily the position relating to
8 the CR. So I've got a dilemma here and that's not
9 resolved by him saying he's talking to AC Ó Cualáin.
10 Because I don't know what he is saying to AC Ó Cualáin. 10:52

11 55 Q. Yes. You mentioned that word dilemma yesterday, isn't
12 it the fact that -- sorry, the dilemma is that you're
13 not in contact with Assistant Commissioner Ó Cualáin,
14 so you don't know what he is -- in your mind you don't
15 know what he's investigating? 10:52

16 A. The dilemma is the process doesn't include me. Once
17 you go -- it's a confidential reported process, so it's
18 meant to be anonymous, people are not meant to be, you
19 know, normally, named. Therefore, these things don't
20 arise. But by reporting it, it's in a formal setting. 10:52
21 And that is perplexing for me, because I don't want to
22 investigate anything that is a part of the other team
23 and yet there's a piece of a report here, and all I'm
24 getting from Garda Keogh, or all Inspector Farrell is
25 getting from Garda Keogh is, AC Ó Cualáin has this. So 10:53
26 how do I know that? It doesn't relieve me of any
27 responsibility at all.

28 56 Q. When you break down the intelligence entry, was your
29 primary concern with the intelligence relating to the

1 reporting of drugs or was it in relation to the latter
2 part of the entry, where there is a suggestion that
3 there is aiding and abetting?

4 A. I think any criminality -- whatever criminality is
5 there has to be investigated. So like, if there is 10:53
6 corruption, that has to be investigated. If there is
7 drug dealing, that has to be addressed. So the whole
8 lot has to be addressed as one.

9 57 Q. We know that Garda Keogh has told Inspector Farrell
10 that he is due to meet with Assistant Commissioner Ó 10:53
11 Cualáin. And also, secondly, that he has been told by
12 the confidential recipient not to talk to anybody else
13 except Assistant Commissioner Ó Cualáin, isn't that
14 right?

15 A. Yes, that's what he's saying. 10:54

16 58 Q. And that's a position that Garda Keogh has maintained
17 throughout this process, isn't that right?

18 A. That's true. However, it was the first time.

19 59 Q. It is reasonable for Garda Keogh in his position,
20 having discussed his issues and made his disclosures to 10:54
21 of the confidential recipient, to take comfort from the
22 confidential recipient that he doesn't need to speak to
23 anybody else, isn't that correct?

24 A. I'm okay with that. I'm actually quite happy with all
25 this. I'm happy with the principles there. The 10:54
26 problem is, this is put into a public forum, it doesn't
27 appear to have been something put on -- there's a
28 certain -- the allegations are so serious, is this
29 something else entirely different to what Ó Cualáin is

1 investigating? Or is this similar? Or is this -- and
2 is there an additional piece to this? So I don't know
3 any of this. So I have a dilemma: Does this require
4 investigation by the Westmeath team or is AC Ó Cualáin
5 doing this? Is this the exact nature of the 10:55
6 confidential report or part of it? So, by reporting it
7 to the confidential recipient and then putting this on
8 the intelligence system, it's creating all sorts of
9 difficulties. And that, I mean, you can see the
10 correspondence, there's nearly 50 pieces of 10:55
11 correspondence in relation to this intel, to try and
12 sort it out and get through it.

13 60 Q. As of this stage, have you made a link between the
14 protected disclosure and what's contained in the Pulse
15 entry. Do you make any link with those? 10:55

16 A. I have no knowledge of the protected disclosure. I
17 have no knowledge whatsoever.

18 61 Q. Just moving forward then, we know that you escalated
19 the matter to the assistant commissioner -- sorry, yes,
20 to the assistant commissioner of the Eastern Region at 10:55
21 that stage. If we can turn to page 8276?

22 A. What date is that?

23 62 Q. That is --

24 A. A few of these are dated incorrectly.

25 63 Q. I believe the 21st is the corrected date? 10:56

26 A. Yes.

27 64 Q. This is a letter that you wrote to the assistant
28 commissioner. It sets out that Garda Keogh has created
29 an intelligence on the Pulse database and so on?

1 A. Mm-hmm.

2 65 Q. At this stage, I think you mentioned you're concerned
3 with the responsibilities under CHIS, is that right?

4 A. No, I think it's criminality. Acts of criminality. Do
5 you see that there, paragraph 4. 10:56

6

7 "I am mindful of the obligations placed on me to ensure
8 all aspects of criminality disclosed are to be
9 investigated further."

10 66 Q. Yes. But the letter itself doesn't refer to CHIS or 10:56
11 any responsibilities with CHIS?

12 A. No. Not at that point, no. The first thing here that
13 jumps out at me is, do I investigate this or not?
14 Because if I start investigating it, I can cause
15 difficulties for the Ó Cualáin investigation. 10:56

16 67 Q. But just going back to the previous letter, when you
17 gave your direction to Inspector Farrell, CHIS was on
18 your mind?

19 A. Of course it was, yes.

20 68 Q. So why then did you not follow-through with that in 10:56
21 your letter to the assistant commissioner to say, this
22 is also a concern I have as at the 20th?

23 A. Em, well, the issue here, the CHIS matter is a matter
24 for me as the chief superintendent. The criminality is
25 something that may be being dealt with by Assistant 10:57
26 Commissioner Ó Cualáin. That is the most pressing
27 issue. I didn't want to intrude on that investigation.
28 And also, part of what developed was, I got nothing in
29 terms of an assurance that there wasn't a CHIS matter

1 in this for me to worry about.

2 69 Q. Yes.

3 A. So, if you look at --

4 70 Q. We're going to revisit that.

5 A. Yeah. That's sometime afterwards. So I let it rest 10:57
6 anyway until such time as I am comfortable enough to
7 actually say, oh, I need to know that

8 71 Q. If we can move forward then to the 29th May 2019, and
9 just go back to your statement to the investigators,
10 the Tribunal investigators. This is at page 1934, at 10:58
11 the bottom of the page, please, going into page 1935.
12 I think you will see at page 1934, you confirmed on
13 29th May 2014:

14

15 "Superintendent Frank Walsh from the Garda 10:58
16 Commissioner's office contacted me by telephone and
17 made me aware that a complaint had been made to the
18 confidential recipient, Judge McMahon. The complaint
19 related to queries I had made of Garda Keogh in respect
20 of the intelligence entry that appeared on the Pulse 10:58
21 entry on 18th May 2014."

22

23 Do you recall that conversation?

24 A. Yes.

25 72 Q. You do. Did you make a note of the conversation? 10:58

26 A. No, I didn't.

27 73 Q. So Superintendent Walsh is the private secretary to the
28 Commissioner; is that right?

29 A. Yes.

1 74 Q. So this was quite a serious phone call?
2 A. Yeah, it was serious. But I have written on it. The
3 issues I was to worry about was: The criminality, was
4 that being investigated or not? So that phone call
5 really wasn't about that as such. 10:59

6 75 Q. What did Superintendent Walsh say to you in relation to
7 what the concerns of the confidential recipient were?
8 What was the message that was to be passed to you?
9 A. That I wasn't to ask Garda Keogh about the
10 intelligence. 10:59

11 76 Q. And the reason for that? Was it that it was within the
12 remit of the Ó Cualáin investigation?
13 A. The way that was -- Superintendent Walsh said he was
14 just passing on a message.

15 77 Q. So you have now received a phone call from the
16 Commissioner's office? 10:59
17 A. Mm-hmm.

18 78 Q. Why are you not taking comfort at that stage that
19 matters are in hand with the Ó Cualáin investigation in
20 relation to this? 10:59
21 A. Because I sent a note up on the 28th May, and I am
22 saying again, so this is volume 29, 8303, and that
23 stage I think I am saying that there's a conflict of
24 interest here and there is a dilemma for me. So I am
25 saying I propose to take no further action. It's at 11:00
26 the very end of it, I think.

27 79 Q. So we know that at that stage then, as at the 29th May,
28 your focus, I suggest to you, then turns primarily to
29 CHIS and your responsibilities on CHIS. You leave

1 aside the content of the entry, the intelligence and
2 you're now concerned with CHIS, isn't that right?

3 A. I would say, you know, there's a number -- CHIS is
4 probably -- if you ask me, the most important thing is:
5 If the criminality is being addressed by the Ó Cualáin 11:00
6 team, then the next thing that jumps out of urgency is
7 the CHIS matter. The CHIS matter is sort of unique in
8 that it leaves responsibilities on me, as we discussed
9 yesterday.

10 80 Q. Can I just move forward then to the conversation 11:01
11 between yourself and Detective Superintendent Mulcahy
12 on 26th June 2014?

13 A. Mm.

14 81 Q. Do you recall that conversation?

15 A. Yes. Briefly. 11:01

16 82 Q. And did you make a note of the conversation?

17 A. No.

18 83 Q. Was there any particular reason for that?

19 A. For not taking a note?

20 84 Q. Yes. 11:01

21 A. Well, there's a serious allegation being made and I was
22 being asked to comment on it, I expected to hear
23 something formally afterwards. I didn't.

24 85 Q. But we know that in the course of that conversation,
25 you yourself, an allegation or a suggestion of an 11:01
26 allegation is being made against you, isn't that right?

27 A. Yeah, but I knew it didn't happen.

28 86 Q. But you didn't make any note?

29 A. No, because I knew it didn't happen.

1 87 Q. If we could just -- what did you understand that
2 allegation to be?

3 A. That I removed DVDs and property from the store. I
4 can't remember if the word drugs was used. But
5 property anyway, from a storeroom in Athlone. At one 11:02
6 stage, I don't know when the date was, sometime prior
7 anyway to May, I think, maybe it was in May, I can't
8 remember. Actually, I'm not even sure if the date was
9 mentioned. I could be conflating that with my
10 understanding of the reports that I have seen now 11:02
11 since. But that I removed property a store cupboard in
12 Athlone in the course of being -- I don't know if it
13 was in the course of an audit or whatever. But anyway,
14 I knew it didn't happen because I wouldn't do that.

15 88 Q. That was obviously the first time that you learned that 11:02
16 you were somehow referred to in relation to the
17 Ó Cualáin investigation, is that right?

18 A. Yes. That's the first time, yeah. I knew nothing
19 else. That was my first time, and the only time,
20 actually, I heard about that. 11:03

21 89 Q. I think you told us that -- or you decided then to
22 proceed with caution in respect of Garda Keogh?

23 A. Well, here is another dilemma: So, Detective
24 Superintendent Mulcahy rings me, asks me for a
25 response. In my mind -- it was a very businesslike 11:03
26 call. In my mind, that doesn't mean it's the only
27 thing that is alleged against me. And I'm conscious
28 here that I haven't done anything. So I am wondering
29 what other things are being alleged about things I

1 haven't done.

2 90 Q. Did that give rise to an irritation on your part that
3 you had been --

4 A. No, I'll tell you, if you ask me, the expression I could
5 use, this is daft. 11:03

6 91 Q. If you hadn't received that phone call or had that
7 conversation with Detective Superintendent Mulcahy,
8 would you have sat down with Garda Keogh?

9 A. I think so, yes.

10 92 Q. So the upshot of that conversation is essentially that 11:04
11 it changed the manner in which you were proposing to
12 deal with Garda Keogh?

13 A. No. It changed the manner, not really how to
14 approach -- I decided not to meet with him.

15 93 Q. Well, on a one-on-one basis, you told us a moment ago 11:04
16 that you were happy to meet with him in relation to
17 welfare. We then have this conversation between
18 yourself and Detective Superintendent Mulcahy, and that
19 leads to you not meeting with him. The reason for
20 that, I suggest to you, is because you were somehow 11:04
21 implicated in the Ó Cualáin investigation?

22 A. I didn't see it that way because I wasn't -- in my view
23 I had done nothing wrong. So there was nothing to
24 investigate.

25 94 Q. Were you concerned about your own position? I mean, 11:04
26 were you concerned about --

27 A. No.

28 95 Q. -- self preservation or protection?

29 A. I wasn't concerned, I knew I did nothing wrong. I am

1 just concerned that there may be other allegations
2 coming my way. So if I met Garda Keogh and he knew
3 that I knew that allegations were put to me, it makes
4 for a difficult conversation and it may be seen to be
5 less than authentic.

11:05

6 96 Q. Just pausing there, we know that, and Garda Keogh has
7 accepted in cross-examination to Mr. Murphy, that the
8 initial enquiry that you make of him, he accepts that
9 that's okay. But his case against you is that the
10 targeting arises as a result of what happens
11 thereafter. You understand that to be his case?

11:05

12 A. I understand that is his case. I think I understand
13 that to be his case. If you look at the first one I
14 ask, and the second time I ask the superintendent are
15 we in compliance or has the source been handed over,
16 and the third one I ask are we in compliance. So I
17 fail to see how that is targeting. I reject the idea
18 that it's targeting or discrediting. It's a function
19 of the chief superintendent in an operational division
20 to manage compliance with the policy of CHIS. I have
21 no choice. If you read the Code of Practice, you will
22 see how tightly it must be complied with. There is
23 actually a very important part in the CHIS policy,
24 which is worth saying, it's somewhere in there, there's
25 no -- page 1817 on the CHIS policy, I know it's not to
26 be brought up on the scene, there is no novel
27 interpretations.

11:05

11:06

11:06

28 97 Q. We are going to come back to that in a moment?

29 A. Okay.

1 98 Q. I think you have look at the statement of
2 Superintendent Noreen McBrien. Sorry, that's page 834,
3 I think it's Volume 4. If we go to the second last
4 paragraph of that page, please. I think Superintendent
5 McBrien had been absent for some time, I think she 11:07
6 returned in June. You had to ask her to meet with
7 Garda Keogh in relation to a number of issues and one
8 of those was your concern about CHIS. Superintendent
9 McBrien deals with this at page 834. In the second
10 paragraph, she says: 11:07

11
12 "On the 16th July, Garda Keogh was unable to make a
13 meeting with me. We had some ongoing arrangement to
14 meet frequently throughout this period. I contacted
15 him by telephone. In this call I asked him about CHIS 11:07
16 obligations and an intelligence entry. This refers to
17 an intelligence entry that was put on the Garda Pulse
18 system by Garda Keogh on the 20th May, when I was on
19 annual leave."

20 A. Yes. 11:07

21 99 Q. It goes on to say:

22
23 "The intelligence entry was dealt with by Inspector
24 Farrell, who was acting superintendent at the time. He
25 reported it to Chief Superintendent Curran. I had been 11:08
26 made aware of the intelligence report on my return from
27 leave on the 5th June. Concerns were raised by Chief
28 Superintendent Curran, divisional officer, about this
29 and whether it met the criteria as outlined in 126/10

1 management of CHIS. "

2

3 Etcetera

4 A. Can I just, before you say that, that's Superintendent
5 McBrien picking up on the previous correspondence, I 11:08
6 returned from leave, as opposed to me generating an
7 enquiry again with her.

8 100 Q. Well, I think it's fair to say, however, that your
9 enquiries in relation to CHIS were continuing, in paper
10 form in any event, you were writing down because you 11:08
11 wanted to establish whether or not it was a CHIS
12 matter?

13 A. Yeah, the next enquiry is the 21st July, from reading
14 the papers.

15 101 Q. Yes. I think at all times again in relation to this, 11:08
16 Garda Keogh maintained his position that it wasn't a
17 CHIS matter, that it was in the care of Assistant
18 Commissioner Ó Cualáin, isn't that correct?

19 A. Yeah, he is consistent in that approach, yes, Chairman.

20 102 Q. Notwithstanding, he has met with the Ó Cualáin 11:09
21 investigation team at this stage?

22 A. Yes.

23 103 Q. Were you aware of that?

24 A. Yes.

25 104 Q. You were? 11:09

26 A. Well, I think I was. I mean, sometime around June.
27 Obviously I get a phone call on the 26th June, so
28 things were in train at that point. And he may have
29 said something to Superintendent McBrien on the 9th

1 June. I could be getting the dates wrong, but in
2 around that time. I think he met Ó Cualáin on the 7th
3 June. I think. That's from memory.

4 105 Q. If you return to page 835, please, you will see
5 Superintendent McBrien says in her statement:

11:09

6
7 "I asked Garda Keogh if this information came from a
8 specific source which gave rise to assertions made in
9 the intelligence entry. He responded to say it was
10 being fully investigated by the assistant
11 commissioner's investigation team. I advised him of HQ
12 126/10 and he said that this was an exceptional
13 circumstance and not sure if it came under CHIS."

11:09

14
15 I suggest to you that it was an exceptional
16 circumstance, do you agree with that?

11:10

17 A. Em...

18 106 Q. What Garda Keogh was faced with and the intelligence
19 entry that he made?

20 A. I understand. I have some understanding of his dilemma
21 too. He is being told not to say anything. However,
22 it doesn't relieve me of the responsibilities that
23 there is someone interacting with Garda Keogh, and that
24 is putting Garda Keogh at risk, the organisation at
25 risk and others at risk. The responsibility, he's
26 under my control within the division, that is not with
27 the Ó Cualáin team. They don't have that
28 responsibility. Their responsibility is to
29 investigate. They don't have the control that goes

11:10

11:10

1 with that.

2 107 Q. If we could move to page 164, please. You will see
3 that on the 18th September, Superintendent McBrien
4 points out to Sergeant Haran, sorry, it's page 164,
5 that you were not satisfied that it negated your 11:11
6 responsibilities as outlined in HQ Directive 126/10.
7 So still as of September it is a pressing issue for
8 you?

9 A. At that stage, I think previously I had asked if the
10 source had been handed over to the regional management 11:11
11 unit. Because if you look at it from my point of view,
12 I have an intelligence on the system that looks like
13 it's a live source, it's been evaluated. The source
14 has been evaluated, the information has been evaluated
15 and there's a possibility here that there's 11:11
16 interaction. He says I think that he's interacting
17 with criminals, in a report dated the 9th June from
18 Superintendent McBrien. So all the way through here, I
19 am concerned that we are compliant. So when I ask -- I
20 asked the question then, has it been handed over in 11:12
21 July. So when it comes to this point in September, I
22 am asking the superintendent are we complying with
23 126/10. I am asking is the question to be considered.
24 So it's a potential source, it may not be a source, but
25 I want to know are we compliant. 11:12

26 108 Q. I see.

27 A. You know.

28 109 Q. If we turn to page 165, there is a handwritten response
29 then to that by Garda Keogh?

1 A. Yes.

2 110 Q. It's date stamped 26th September 2014?

3 A. Yes.

4 111 Q. Were you at that stage -- do you recall receiving a
5 copy of this letter? 11:12

6 A. I can't recall. I can't recall the moment I saw it,
7 no, but I did see it.

8 112 Q. If you just look down, it's about five lines down, it
9 begins as follows -- this is his response and it's
10 quite, I suggest to you, a comprehensive response, to 11:12
11 try and allay any concerns that senior management would
12 have, would you accept that?

13 A. I know what he is trying to say here. It doesn't
14 relieve me, it doesn't mean that Garda Keogh is not
15 telling me that he's not dealing with a source. He's 11:13
16 not telling me that -- I'm not getting -- I need to get
17 some understanding that there's compliance with 126/10.

18 113 Q. We'll go back to that in a second. But he says as
19 follows:

20 11:13

21 "I believe it is inappropriate while the investigation
22 is ongoing for Chief Superintendent Curran to seek the
23 source related to the intelligence report, [number]
24 which is directly linked to this investigation at this
25 stage at least, as it could jeopardise the said 11:13
26 investigation. I believe the investigation team with
27 Assistant Commissioner Ó Cualáin should do their job
28 without any internal interference and at some point
29 they will make a finding and we can deal with the

1 intelligence report then."

2

3

That's what he says. So again I suggest to you, he is maintaining his position with regard to the Ó Cualáin investigation team, that they are dealing with it?

11:13

6

A. Yeah, but there's still a potential source there. He's saying that, you know, it is a live investigation, it's linked to the source. The source is linked to the Ó Cualáin investigation. So now he's saying there's a source.

11:14

10

11

114 Q. He then says in relation -- he is being asked about -- sorry, his attention is being drawn to your concern with HQ Directive 126/10. You can see that he deals with this in the next line:

12

13

14

15

11:14

16

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

11:14

20

21

22

You see that?

23

A. Yes.

24

115 Q. Now, Garda Keogh, I suggest, is dealing with your query and he's saying, can Chief Superintendent Curran please point out to me where in this directive he is referring to, so I can allay his fears?

11:14

25

26

27

28

A. Okay. So, the --

29

116 Q. First of all, if I can just finish my question. Did

1 you do that? Did you identify where the directive
2 says?

3 A. No, I didn't and I'll tell you why. The CHIS Code of
4 Practice was circulated in 2006 and every guard in the
5 country got a copy of it. Similarly, when the revised 11:15
6 Code of Practice came in 2010, it was distributed to
7 every guard in the country. In this, when I see --
8 when you read the Code of Practice, it's very
9 digestible. It's very easy to understand. You don't
10 need words to be -- and by the way, it's only up to a 11:15
11 sergeant, an inspector, a superintendent, to me to ask
12 what the words are. Everyone understands the Code of
13 Practice. To go back to what I said here, there's no
14 novel interpretations to be -- on page 1817, in the
15 code, no novel interpretations. The Code of Practice 11:15
16 is saying it rests with the chief superintendent. If
17 there is a source, it rests with the chief
18 superintendent.

19 117 Q. But wasn't that a simple matter of you saying in black
20 and white, here it is, Garda Keogh for your attention, 11:15
21 please answer?

22 A. I don't think -- when I saw that, I said, I think this
23 is going nowhere. That's why I didn't ask any more
24 questions of it. Then two weeks later, I read it and I
25 ask Assistant Commissioner Ó Cualáin for some type of 11:16
26 advice in relation to how to deal with it.

27 118 Q. Just on that, if the Ó Cualáin investigation team are
28 dealing with the source --

29 A. They can't deal with it. If it's a CHIS source they

1 don't have responsibility. You have to remember, if
2 you just put it this way: If there is a source on the
3 ground, the responsibility for that is with me, it's
4 not with them. The Code of Practice firmly puts it on
5 me. Everything is recorded in CHIS. There is one 11:16
6 central thing: which is everything is recorded. These
7 people are investigating what has been complained to
8 them. The source is not within their remit.

9 119 Q. I think yesterday you said in your evidence that what
10 you were concerned with was compliance? 11:17

11 A. Yes.

12 120 Q. You wanted compliance?

13 A. Yeah.

14 121 Q. If we can just look to the last sentence of Garda
15 Keogh's letter, please, on that page. He says: 11:17
16
17 "And I, therefore, request that any dealings between
18 myself and Chief Superintendent Curran, divisional
19 officer if Westmeath, should not be informal. I intend
20 to be compliant once the investigation has been 11:17
21 concluded."

22 A. It's is not within his gift. If he has a source, he
23 has no choice in this matter. It's is not for him to
24 say that. You have to remember, a source interacting
25 with one guard, who is not able to deal with it, is not 11:17
26 equipped or trained to deal with it, and with the CHIS
27 system, there are other safeguards there. There's
28 management oversight, that's why there's an intrusive
29 type of -- it even said it, intrusive type of nature,

1 nature of inquiry and has to be present. So, for him
2 to say that I will hand over the source afterwards,
3 that's just -- it's not acceptable.

4 122 Q. But you know, chief superintendent, that at this stage
5 he is dealing with the Ó Cualáin investigation team, 11:18
6 you know that?

7 A. It doesn't really make -- it gave me comfort, by the
8 way, that at this stage we're into four, five months --
9 where are we? September, from May. It gave me some
10 comfort that Declan Mulcahy, the D/Super, was a 11:18
11 controller himself and would understand it.

12 123 Q. Yes.

13 A. But it didn't remove my responsibility. So put it in
14 my situation, a year's time passes and next thing it
15 turns out that Garda Keogh has been dealing with a 11:18
16 source and a whole other set of circumstances arise.
17 I'm the one that has to answer those questions, not
18 Declan Mulcahy.

19 124 Q. Not only do we have that, but we also have in black and
20 white that Garda Keogh is saying to you, I will comply 11:18
21 with you, chief superintendent, once the investigation
22 is at an end?

23 A. Okay. So there is a document produced here yesterday
24 that went into 2006 and the DPP had given a direction
25 in relation to the file sometime in early '16. So, he 11:18
26 was saying that a source is going to be managed by a
27 garda for a year outside the organisation. That's not
28 -- it's just impossible for that to happen. It's
29 impossible for me to accept that.

1 125 Q. We will go back to the source issue in a moment.

2 A. The risk is too high. There is an extraordinary risk
3 with informants.

4 126 Q. In relation to -- at this stage you've spoken to
5 Detective Superintendent Mulcahy and you say that you 11:19
6 have taken comfort in relation to --

7 A. No.

8 127 Q. Sorry, I know, back in June?

9 A. Yeah, that was a different phone call, that was him
10 asking me questions about the DVD. He didn't mention 11:19
11 anything else.

12 128 Q. Well, why did you not pick up the phone as a senior
13 officer to Detective Superintendent Mulcahy and say --

14 A. No.

15 129 Q. -- not in relation to the intelligence, not asking him 11:19
16 to name the source but just say to him simply, I have a
17 concern in relation to compliance, which is, can you
18 give me some comfort in relation to that? wouldn't
19 that have sorted out all the issues at that stage?

20 A. Not necessarily. But apart from that, it would have 11:20
21 been me interfering with their investigation.

22 130 Q. I suggest to you it wouldn't, because what you are
23 simply doing is making enquiries to try and give
24 yourself some comfort. You're not asking him about
25 intelligence, you're not asking him to name the source, 11:20
26 you're simply saying to him, I have a CHIS compliance
27 concern, can you confirm that you are dealing with it?

28 A. You know, I suppose all I wanted was -- I mean, all I
29 wanted was compliance with 126/10. So if there's a

1 source then -- and the way you're talking suggests
2 there is a source all the way through, then it's not a
3 matter for me to ring Declan Mulcahy, because Declan
4 Mulcahy doesn't have control of Garda Keogh.

5 131 Q. As of this date, so we're in December 2014? 11:20
6 A. That is the 26th or the 27th.

7 132 Q. Yes.
8 A. Yes.

9 133 Q. But there are three issues pressing that concern
10 yourself and Garda Keogh at this stage, isn't that 11:21
11 correct? First of all -- isn't that correct?
12 A. So what --

13 134 Q. The first issue is the intelligence issue, the second
14 issue is the Olivia O'Neill issue and the third issue
15 is the Liam McHugh issue. They are all still live as 11:21
16 of September?
17 A. No, no, they're not.

18 135 Q. They're not?
19 A. No. The O'Neill and McHugh are not.

20 136 Q. Well, insofar as the CHIS issue is kept live, is the 11:21
21 reason for that because you didn't want to relinquish
22 control with dealing with Garda Keogh in relation to
23 that?
24 A. No, it's very clear: I have obligations under the Code
25 of Practice. I was controller. I understand the 11:21
26 risks. They're of the highest order. I can't think of
27 the most -- there was tribunals going back 20 years ago
28 all about -- central to the management of informants,
29 and that's where the CHIS Code of Practice came from.

1 They create -- they can undermine the criminal justice
2 system, they can create enormous problems for
3 individual guards who interact, unless they are
4 actually employing with the skills and backed up with
5 management assistance and oversight, which is what the 11:22
6 Code of Practice delivers and ensures. So I am
7 concerned Garda Keogh is being protected in this and
8 he's not exposing himself.

9 137 Q. Could we go back to -- sorry, could we go to page 830,
10 please? Again, this is the statement of Superintendent 11:22
11 McBrien. You will see in the second paragraph there,
12 this is going back I think to June of 2014. She says:

13
14 "While not prying into the issues being addressed by
15 him with Assistant Commissioner Ó Cualáin, I asked him 11:22
16 if he was in contact with criminals as I was concerned
17 about his personal safety. He said that he was. He
18 said he would give their names to the assistant
19 commissioner. He was no longer contacting criminals
20 and would pass everything to the assistant 11:23
21 commissioner. We agreed to meet in the week starting
22 the 16th June."

23
24 Were you aware of that at that stage?

25 A. Yes, I was aware of it, yeah. 11:23

26 138 Q. So that says he was no longer contacting criminals and
27 would pass everything to Assistant Commissioner Ó
28 Cualáin?

29 A. You know, if there's one thing that happens, is that

1 you don't leave it down to one individual. An
2 individual interacting with a -- an individual criminal
3 interacting with a guard outside the organisation's
4 oversight, is the highest risk. So his assurance is
5 not -- even if he believes it's right, isn't going to 11:23
6 give comfort that 126/10 is complied with.

7 139 Q. Moving on then, if we look to page 8067, please. This
8 is the Code of Practice. At paragraph 3.2, will you
9 see there the definition of a source is stated to be as
10 follows: 11:24

11

12 "A person who is in contact with criminals and agrees
13 to regularly provide information or assistance to An
14 Garda Síochána in respect of criminality activity and
15 in so doing has an expectation that it will be treated 11:24
16 confidentially."

17

18 A. Yeah.

19 140 Q. What I am suggesting to you is that the situation that
20 Garda Keogh found himself in does not fall within this 11:24
21 definition?

22 A. Okay.

23 141 Q. Do you accept that?

24 A. It depends, because we never got to understand that
25 fully. I'd also come back to page 1845 -- 11:24

26 142 Q. Well, look to the word "regularly" there?

27 A. Yeah.

28 143 Q. So this seems to envisage a scenario where there is
29 contact between a Garda member and a source regularly.

1 we know that Garda Keogh says, as in June of 2014, that
2 he is no longer contacting criminals. So there is no
3 regular contact, I suggest to you?
4 A. If you really want to get into the technical, that
5 doesn't mean they're not contacting him. 11:25
6 144 Q. well --
7 A. Can we go to page 1845.
8 CHAIRMAN: Page which?
9 WITNESS: 1845.
10 CHAIRMAN: 1845. 11:25
11 WITNESS: Yeah. I have a note of what is in it. I
12 don't know if we can produce the original document.
13 MS. McGRATH: The one we just had previously is
14 unredacted.
15 MR. O'BRIEN: I think it's in volume 29. 11:25
16 CHAIRMAN: Is there a particular part?
17 WITNESS: Yes:
18
19 "The tasking of any unregistered sources should not be
20 permitted under any circumstances." 11:25
21 CHAIRMAN: Just repeat that, please.
22 A.
23 "The tasking of any unregistered sources should not be
24 permitted under any circumstances."
25 145 Q. CHAIRMAN: The tasking? 11:26
26 A. Yes.
27 MS. McGRATH: I think, Chairman, the CHIS code is at
28 8067, the unredacted version.
29 MR. KELLY: Yes.

1 146 Q. CHAIRMAN: And where is this element in the CHIS code?
2 I am only seeing 3.2 and 3.1. I can't see anything
3 else.
4 A. So we're going through, I'm not sure if it's --
5 147 Q. CHAIRMAN: Don't worry, if you say it is there. Let's 11:26
6 not waste our time going down through it.
7 A. It is there. Look, it's a principle really of the
8 operation.
9 148 Q. MR. O'BRIEN: Just going back one step there, chief
10 superintendent. You never asked the question, did you, 11:26
11 that criminals were still contacting Garda Keogh?
12 A. No, I didn't ask that question but --
13 149 Q. Well, if that was your concern, why didn't you ask the
14 question?
15 A. Because the broader question is: Is there compliance 11:26
16 with 126/10? That covers everything.
17 150 Q. We know from Garda Keogh's evidence -- if I can ask you
18 to turn to page 8062. If you look to paragraph 2.5(a),
19 Garda Keogh relies on this paragraph in support of his
20 position. You accept that? That's what he said. 11:27
21 A. I'm not a hundred percent sure if he's saying that.
22 151 Q. That is what Garda Keogh's position is, is what I am
23 suggesting to you.
24 A. Yeah. I don't know if he actually used those words.
25 He may have. I can't recollect him saying it. 11:27
26 152 Q. It's at 2:5(a), it says as follows:
27
28 "Outside the CHIS system there will always be people
29 who pass on information to the Gardaí. In many

1 instances such contact will be a once off."

2 A. Yeah.

3 153 Q. "These people may be described as public spirited
4 citizens, exercising their civic duties and in normal
5 circumstances need not to be registered with CHIS. It 11:27
6 is important that An Garda Síochána continue to receive
7 information from such individuals and the CHIS system
8 should in no way prevent this from occurring."

9

10 I would suggest that it's reasonable for Garda Keogh to 11:28
11 rely on that passage?

12 A. And if you look at the question I ask, he has put up a
13 source, and, you know, we have gone through this
14 before, that I have some grounds on which to believe
15 that he may have been interacting with a source, from 11:28
16 the intelligence and then the way he interacted in some
17 way with Inspector Farrell, he nodded with the mention
18 of the CHIS. Then he's saying that he was in contact
19 with criminals and now we're saying that he's a
20 witness. So he may be relying on that. It doesn't 11:28
21 mean that the Code of Practice doesn't intrude in in
22 finding out is this a witness or not. So, a person
23 supplying information regularly, someone other than
24 Garda Keogh has to make that decision.

25

26 And the other side, I asked that question, but the two
27 subsequent questions was: Is there compliance with
28 126/10? But I wasn't getting that back as an answer.

29 154 Q. If a member of the guards meets a person in the street

1 and that person passes information to them? -

2 A. That's fine. There's no issue with that but there's an
3 issue around the relationship with some people. That's
4 when you get into difficulty.

5 155 Q. We know then by the end of September 2014 that Garda 11:29
6 Keogh is no longer contacted in relation to this issue,
7 the intelligence issue, isn't that right?

8 A. That's correct.

9 156 Q. Why was that?

10 A. Because I had written to Assistant Commissioner Ó 11:29
11 Cualáin, there on page 8360, and I asked him for his
12 views in relation to HQ 126/10.

13 157 Q. Over all it's Garda Keogh's position and he accepts
14 that as divisional officer you were entitled to make
15 that additional enquiry of him in relation to the 11:30
16 intelligence entry. But his position is clear, I
17 suggest to you, after that; is that your sustained
18 correspondence to him in relation to the source of this
19 intelligence, despite his maintained position that it
20 was within the remit of the Ó Cualáin investigation and 11:30
21 was being dealt with by the Ó Cualáin investigation,
22 amounts to you targeting?

23 A. Number one, I asked the superintendent in subsequent
24 correspondence was it in compliance 126/10, it wasn't
25 directed to him. But I wanted to establish whether 11:30
26 there was compliance or not. I wasn't getting the
27 answers, so I continued on afterwards, and I wrote,
28 even in December, saying that I had issues with
29 compliance with 126/10. It was an issue that hadn't

1 resolved itself for me. So, the issue didn't go away
2 in the last correspondence with Garda Keogh. There was
3 a lot of paper then went on after that.

4 158 Q. Yes.

5 A. I saw -- I have to say, I reject that there was any 11:31
6 targeting whatsoever.

7 159 Q. I mean --

8 A. If you look at this, it's very sort of neutral
9 language, is there compliance with 126/10?

10 160 Q. Just moving on then to the next issue, which concerns 11:31
11 Olivia O'Neill. If we can go to Volume 30, page 8686,
12 please. We know that Olivia O'Neill attended Athlone
13 Garda Station on 28th May 2014 and there was an
14 interaction between herself and Garda Keogh and Garda
15 Stephanie Treacy is tasked with taking a statement? 11:31

16 A. That's correct.

17 161 Q. Isn't that correct?

18 A. Yes.

19 162 Q. And the first that you became aware of this issue is
20 when you were informed by Inspector Farrell, isn't that 11:31
21 right?

22 A. Yes.

23 163 Q. As a result of the letter that's on the screen?

24 A. I think he rang me and said that he had made -- on the
25 previous day and he had made -- he had made a decision, 11:32
26 which I endorsed, that the statements should be taken
27 separately, one in relation to the specific incident
28 and then the separate issues around the advices.

29 164 Q. I see. If we can scroll down to the bottom of that

1 letter, please. The content of the letter, I mean
2 Inspector Farrell has taken the information that he is
3 passing to you from what he has been told by Garda
4 Treacy with her interaction with Ms. O'Neill, isn't
5 that right? 11:32

6 A. Yes.

7 165 Q. At the end there, it says, three paragraphs up:
8
9 "The advice allegedly given by Garda Keogh is not
10 appropriate in the circumstances and projects the image 11:32
11 of An Garda Síochána in an unfavourable light."
12
13 That's is what it says?

14 A. That's correct, yes.

15 166 Q. Isn't that the second letter in the matter of a number 11:32
16 of days or a very short period where Inspector Farrell,
17 I suppose, writes to you with a slightly negative
18 connotation regarding Garda Keogh?

19 A. Well --

20 167 Q. Because he said -- 11:33

21 A. Sorry.

22 168 Q. -- the other letter, sorry the e-mail and the
23 information that he says in relation to the Pulse
24 entry?

25 A. Okay. 11:33

26 169 Q. So now we have two, we have two letters and we have two
27 issues in the matter of a number of days, both of which
28 Inspector Farrell is saying to you as the divisional
29 officer, this is inappropriate?

1 A. Yeah, Inspector Farrell is saying that based on the
2 report of Garda Treacy.

3 170 Q. Did you share that view when you read the letter?
4 A. If we were to read the letter in the way it's
5 suggested, advices were given and they were 11:33
6 inappropriate, then would I agree that that's the right
7 word for it. But it's not entirely clear from the
8 report. You know, he's putting his spin, he was
9 interacting with the people on the ground in relation
10 to it, so he had more knowledge of it when he sends in 11:34
11 the report, you know.

12 171 Q. Did you ever go back to him and say, the report is not
13 entirely accurate, I'm not sure what you are referring
14 to? Did you ever express that view to Inspector
15 Farrell? 11:34

16 A. No, I didn't.

17 172 Q. So you took it that at that stage, anyway, you were
18 happy to proceed on the basis of what the report
19 contained?

20 A. I was happy to proceed on the report, even though 11:34
21 Inspector Farrell might may share a view, if you look
22 at what I am looking for, I sent back I was looking for
23 a statement in relation to the information divulged and
24 what was foremost in my mind was the fact that there
25 was alleged corruption here. 11:34

26 173 Q. I see.
27 A. And that there was an invitation for her to mention
28 something around -- to go to GSOC. In actual fact, she
29 could have reported that to us. So that's a

1 criminality piece.

2 174 Q. Could we just scroll up to the top of that letter,
3 please, if it's possible? You say you spoke to
4 Inspector Farrell on that day, the 29th May?

5 A. Mm-hmm. 11:35

6 175 Q. Do you recall the conversation?

7 A. I remember it was a very brief phone call in the early
8 part of the day, nine or ten o'clock.

9 176 Q. Again I ask you, did you make any note of it in a
10 diary? 11:35

11 A. No, because it's mirrored in my correspondence
12 afterwards and his correspondence to me, which is more
13 or less --

14 177 Q. The 29th May, that's the same day that you receive the
15 phone call from Superintendent Walsh in the 11:35
16 Commissioner's office; is that right?

17 A. Yeah.

18 178 Q. So again, as of that date, we have a number of pressing
19 issues regarding Garda Keogh. You have been told
20 there's been a complaint in relation to the information 11:36
21 you requested on the intelligence issue, isn't that
22 right?

23 A. Yeah, I have been told it's come through the system,
24 yeah.

25 179 Q. And now, as well as that, we have the live issue 11:36
26 regarding Olivia O'Neill?

27 A. Yes.

28 180 Q. This is concerning a person that prior to May 2014 you
29 had really no interaction with at all, you had never

1 met?

2 A. That's correct.

3 181 Q. And in the space of a couple of days --

4 A. Well, I met him once.

5 182 Q. Sorry you met him once, you said. 11:36

6 A. Yeah.

7 183 Q. In the space of a couple of days now we have two, what

8 you might say, serious issues, isn't that right?

9 A. Mm-hmm.

10 184 Q. Again, were you irritated at that stage by this? Did 11:36

11 you think, oh, here we go, another issue with Garda

12 Keogh?

13 A. I was concerned for Garda Keogh, you know, to some

14 extent, the media and a lot of commentary there and I'm

15 not sure Garda Keogh, how he was feeling. I know 11:37

16 Superintendent McBrien looked after all the welfare

17 afterwards. But really what's being alleged here is

18 that there's criminality and that's is what I am really

19 seeking to establish, to make sure that Olivia O'Neill

20 was to be given the opportunity to report that to us 11:37

21 and it's just not to GSOC. So that was the bit that

22 jumped out at me.

23 185 Q. Despite that concern, as you say, and the commentary

24 that was going on and so on, as divisional officer you

25 still took no step to go and speak with Garda Keogh, 11:37

26 did you? You have accepted that?

27 A. No, I understand that. But, I mean, at this stage,

28 contact had been made with Superintendent McBrien.

29 186 Q. What you did after that, however, is that you directed

1 -- sorry, that you wrote on the 29th to Inspector
2 Farrell and you directed that Detective Sergeant Curley
3 get a statement from Ms. O'Neill; is that right?
4 A. Yes.
5 187 Q. I think you can see that on page 514. And again, at 11:38
6 this stage, as divisional officer, you're involving
7 yourself and giving directions for how this issue is to
8 be dealt with from the outset, isn't that right?
9 A. Yes. It had come through the system to me, yes.
10 188 Q. Okay. We know that Detective Sergeant Curley met with 11:38
11 Olivia O'Neill. If could we go to 8690. He attempted
12 to take statement from her and we know that she
13 declined to make a statement, isn't that right?
14 A. Yes. That's true, Chairman.
15 189 Q. On the 10th June, at page 8693, if we scroll down, you 11:39
16 have requested Superintendent McBrien to seek a report
17 from Garda Keogh in relation to this issue, isn't that
18 right?
19 A. Yes, that's correct.
20 190 Q. You will see there that the reason a report is 11:39
21 required, you say, is to establish the veracity of the
22 claims of Ms. O'Neill during her conversation with
23 Garda Treacy. You were concerned about the veracity
24 obviously then at that stage?
25 A. If Garda Keogh had some -- you know, I was concerned 11:39
26 that Garda Keogh hadn't been asked, I just wanted to
27 make sure that we were getting his side of things.
28 191 Q. Just going back one step, we know then that as well and
29 alongside the intelligence issue, the Pulse entry and

1 this issue with Olivia O'Neill, we now have a third
2 issue concerning Garda Keogh and that relates to Liam
3 McHugh?

4 A. Yes.

5 192 Q. That arises as a result of a report of Garda Lyons, 11:40
6 which was sent by e-mail on 2nd June 2014?

7 A. Yes.

8 193 Q. That can be seen I think at Volume 5, page 1029.

9 A. Okay.

10 194 Q. So now we have three live issues, chief superintendent, 11:40
11 concerning Garda Keogh in a matter of days?

12 A. Yes.

13 195 Q. This is essentially in the aftermath of his protected
14 disclosure. I mean, is this not odd? Is this not
15 jumping out at you as being very strange? 11:40

16 A. But they're all separate.

17 196 Q. If we just look to the -- you received that e-mail, I
18 think was it on the 3rd June?

19 A. I think so, yes.

20 197 Q. I think again -- when you read that report of Garda 11:41
21 Lyons, what were your views? What were your concerns?

22 A. When I looked -- again, you have to read it two or
23 three times to pick up -- I had to read it two or three
24 times and actually do an analysis of it. But the
25 concern is, we went through them yesterday, there's a 11:41
26 number of possibilities may occur here but what jumped
27 at me was that all of the information was in Garda
28 Keogh's possession, allegedly, in relation to this.
29 There was no verification of this from Mr. McHugh. So

1 it suggested, as we said yesterday, was there
2 criminality? was there a breach of discipline? was
3 there some other aspect to it? The only way to deal
4 with that was to go directly to McHugh and see would he
5 provide a statement.

11:42

6 198 Q. I suggest to you that once you received this report
7 from Garda Lyons, the most appropriate step to take was
8 for Garda Lyons to make a statement, wouldn't that be
9 correct?

10 A. No.

11:42

11 199 Q. It's not?

12 A. It's not, no, it's not. The most important thing is to
13 get the evidence. Right. So, Garda Lyons reported
14 evidence himself and it can be incorporated in any
15 investigation afterwards as an exhibit. So the most
16 important thing was to go to Liam McHugh straightaway.

11:42

17 200 Q. What investigation did you make in relation to the
18 other guards that were allegedly involved in this?

19 A. Well, as I said yesterday, Garda Keogh was saying this
20 didn't happen, McHugh will make a statement. And Garda
21 Keogh is saying it didn't happen, in a previous
22 meeting, I think it was the 5th June, I may be getting
23 the dates wrong. Then subsequently, on the 5th August
24 I think, I got a report from Superintendent McBrien to
25 the same effect. At that stage, around the 27th July,
26 he had said that -- he had previously said he hadn't
27 met McHugh in two years, and then in July, in written
28 format to me, that he hadn't met him in three months.
29 So Garda Keogh is saying it didn't happen. He is

11:43

11:43

1 insistent it didn't happen. He is saying this to
2 Superintendent McBrien, someone who he has a very good
3 rapport with, has a good relationship and she is very
4 supportive. He is saying it didn't happen. So he has
5 committed that to writing. He said he hasn't met 11:44
6 McHugh in three months. So if it didn't happen,
7 there's no other guards to go to.

8 201 Q. But in terms of consistency and your approach to
9 matters where there's a criminal complaint or there's
10 an allegation of criminality, I mean -- 11:44

11 A. There's no complaint here.

12 202 Q. Well there's an allegation of criminality?

13 A. There's an insinuation, perhaps, that's about it, you
14 know.

15 203 Q. Why was no further investigation carried out of the 11:44
16 other guards -- or sorry, in relation to this?

17 A. Because Garda Keogh -- you see, McHugh, he is saying
18 that Garda Keogh has all the information in his
19 possession. So Garda Keogh is the guard that allegedly
20 knows all of this and he is saying it never happened. 11:44
21 I am accepting that. There's no further investigation
22 required.

23 204 Q. At that stage in 2014, did you accept that?

24 A. I did accept it. I accepted it. Myself and
25 Superintendent McBrien agreed, we didn't believe it 11:44
26 happened, because she was interacting with him. And
27 that was it, he said it didn't happen, that was the end
28 of it.

29 205 Q. But nobody ever told you that didn't happen?

1 A. Garda Keogh is saying it didn't happen.

2 206 Q. Garda Keogh --

3 A. He is saying it didn't happen to Superintendent McBrien
4 in meetings, two meeting, and then he has submitted in
5 writing that he hasn't met MCHugh. He is saying -- if 11:45
6 you look at the report, I don't know the page number,
7 he is saying that it didn't happen. There's no way it
8 happened. If you want I can refer you to documents.
9 9th June, volume 5, 1037, he said he had a conversation
10 with MCHugh in two years. Right. And then it comes 11:46
11 back to me, he is saying, I think then the 5th
12 August --

13 207 Q. But Garda Lyons was never challenged, the content of
14 his report was never really challenged by senior
15 management? 11:46

16 A. Garda Lyons sent up a report with no commentary. So,
17 he is just trying to leave a message. There's no
18 complaint. It's an insinuation from someone on the
19 street, that didn't make a report, wouldn't make a
20 statement and Garda Keogh is saying it didn't happen. 11:46
21 So I am accepting it didn't happen at that time.
22 That's all I can do.

23 208 Q. Well, you said yesterday that you didn't know what
24 allegations were made by Garda Keogh in his protected
25 disclosure? 11:47

26 A. That's correct.

27 209 Q. So, essentially that means, doesn't it, that the
28 allegation could have been about Garda Lyons as well as
29 Garda A, couldn't it?

1 A. I wouldn't even jump to that conclusion.

2 210 Q. And you know then in June of 2014 there's an allegation
3 made about you yourself?

4 A. That's correct. Although an allegation that I knew had
5 no basis and was wrong. 11:47

6 211 Q. Garda Treacy, at page 480, she says in her statement
7 that it was common knowledge around the station what
8 was going on?

9 A. I suppose you would have to ask her what that meant.
10 You know, she's in the station. I'm not there that 11:47
11 much, you know, compared to her.

12 212 Q. Would you accept that in relation to the Pulse entry
13 and the correspondence between yourself and
14 Superintendent McBrien, I mean you're told this issue
15 is going to the investigation team, weren't you, the 11:48
16 Ó Cualáin investigation team?

17 A. No. On the 15th July, Declan Mulcahy came along and
18 said that they were dealing with the complaint of Garda
19 Keogh through the confidential recipient system. They
20 didn't say they weren't -- they didn't confirm or deny 11:48
21 that they were dealing with this. And I left it that
22 they may have been dealing with this.

23 213 Q. From that, I am suggesting to you that you know that
24 it's a senior member of the drugs squad that's being
25 investigated? 11:48

26 A. That's a matter for them. I don't know anything about
27 what they are doing.

28 214 Q. I am suggesting to you that it's most improbable that
29 you are not aware that the allegations were about the

1 sale and supply of drugs?

2 A. I can speculate from what was in the confidential -- in
3 the intelligence.

4 215 Q. Secondly, I am suggesting to you is that it's most
5 improbable as well that you weren't aware that it was 11:49
6 the Athlone drugs unit that was implicated, would you
7 agree with that?

8 A. There's no mention of drugs in that report of Garda
9 Lyons.

10 216 Q. If we go back to page 1802, this is in relation to the 11:49
11 Pulse entry. If we scroll down. So, you see it says
12 there -- well, sorry, just dealing with the Pulse entry
13 as opposed to the Lyons' report, sorry, I should have
14 said that?

15 A. Okay. 11:49

16 217 Q. You will accept then that there was a mention in this
17 report of the drugs unit in Athlone and that they're
18 implicated?

19 A. There isn't a mention of the drugs unit in Athlone.
20 There's a mention that somebody -- aided and abetted by 11:49
21 a guard who is a senior member of the drugs unit.

22 218 Q. A senior member of the drugs unit. Garda Lyons is a
23 member of the drugs squad, isn't he?

24 A. I don't think he was at that time, you know.

25 219 Q. Isn't he a peer, don't you know, of Garda A? 11:50

26 A. I don't know what their relationship is at that stage,
27 to be honest with you. Garda Lyons is someone that
28 strikes me as a man of high integrity. Sergeant Lyons
29 now.

1 220 Q. They worked together, that's a fact?
2 A. To be honest with you, I wasn't sure how often they
3 were interacting.
4 221 Q. Did it ever occur to you, I mean, since you say that
5 you didn't know the details of the allegations, that 11:50
6 Garda Lyons was a person being implicated by Garda
7 Keogh?
8 A. I didn't know who the investigation team were focusing
9 on. That's their business and I have made it my
10 business not to know their business. 11:51
11 222 Q. Did you make any inquiry of Garda Lyons as to why he
12 delayed in reporting the issue, the McHugh issue?
13 A. No. Well, I didn't, no. It might have been the day of
14 it? Was it? I think it might have been the 2nd he
15 reported up. So I mean, I don't think -- it's not -- 11:51
16 it doesn't worry me that it's a day or two out.
17 223 Q. Just dealing with this issue: If it was a false
18 complaint being reported by Garda Lyons, surely you
19 would want to meet with him and ask him what he was up
20 to? 11:51
21 A. It's not a complaint.
22 224 Q. A report.
23 A. It's not even that. He has a conversation with a
24 person on the street and he decides to report it. The
25 person on the street is saying he doesn't want to 11:52
26 report it. He's doesn't really say it did happen, it's
27 only mentioned in the report.
28 225 Q. There was a Pulse entry dealing with the Lyons --
29 A. Yes, I didn't know about it at the time. It didn't

1 really matter to me because I was dealing with whatever
2 interactions I had to do.

3 226 Q. Can we have Volume 56, page 15713, please. This is the
4 station book or the station diary for Athlone Station
5 on the 1st June. Are you familiar with -- I presume 11:52
6 you're familiar with a station book?

7 A. Oh I am, yes.

8 227 Q. We can see from this, that Garda Lyons is on duty until
9 4am on the 1st June.

10 A. Mm. 11:52

11 228 Q. He comes back on duty at 6pm on the 1st June, if we go
12 to 15714. So again he has waited a number of days to
13 make this complaint of what we can see is an allegation
14 of serious criminal activity within An Garda Síochána.
15 I think they were your words as well? 11:53

16 A. It's an insinuation, that's really the best -- I don't
17 know if that is even the right word but, em...

18 229 Q. You can see from that, that Garda Lyons is on duty with
19 Garda A?

20 A. Okay. Well, I don't see this record, you know, that's 11:53
21 a matter really for what happens in Athlone. You know,
22 the relationship between Garda Lyons and Garda A, you
23 have to remember, it's coming to up to me as a report,
24 I'm not getting anything other than that report sent up
25 to me. There's no observations from any of the 11:53
26 management suggesting there's something here that needs
27 to be addressed or something untoward.

28 MR. MÍCHEÁL O' HIGGINS: Chairman, I wonder could I
29 just --

1 CHAIRMAN: Certainly, yes, Mr. O'Higgins.
2 MR. MÍCHEÁL O' HIGGINS: To make one observation.
3 Mr. O'Brien is putting questions to the witness,
4 referable to, as I understand it, a situation that the
5 guard who made the report, Garda Lyons, may have made 11:54
6 it up.
7 CHAIRMAN: Yes.
8 MR. MÍCHEÁL O' HIGGINS: Hence he has suggested that
9 there is a delay in it and that's somehow suspicious.
10 CHAIRMAN: Yes. 11:54
11 MR. MÍCHEÁL O' HIGGINS: In my respectful submission, if
12 that line is being pursued, it doesn't appear to have
13 been a line that was pursued at the time, at the time
14 of these events.
15 CHAIRMAN: Yes. 11:54
16 MR. MÍCHEÁL O' HIGGINS: But if that is being pursued,
17 my respectful submission is that's ultimately a matter
18 that would have to be put to Garda Lyons.
19 CHAIRMAN: Clearly.
20 MR. MÍCHEÁL O' HIGGINS: It's not a matter that this 11:54
21 witness can answer to.
22 CHAIRMAN: Obviously. But the chief superintendent has
23 said, I dealt with the material that came to me, the
24 material that came to me was the report from Garda
25 Lyons. 11:54
26 MR. MÍCHEÁL O' HIGGINS: Yes.
27 CHAIRMAN: He has expressed a view about his opinion of
28 Garda Lyons and he has said that's what I had in front
29 of me, I didn't have anything else, I didn't have the

1 times or the dates when Garda Lyons was on duty. So,
2 he says, that's nothing to do with me.
3 MR. MÍCHEÁL O' HIGGINS: Yes.
4 CHAIRMAN: I didn't know it at the time. That's what
5 he says. 11:55
6 MR. MÍCHEÁL O' HIGGINS: I suppose the only point I am
7 saying --
8 CHAIRMAN: I don't know that Mr. O'Brien is entitled to
9 say to him, do you think it's a bit fishy. I don't
10 know that Mr. O'Brien is entitled to say that to him, 11:55
11 maybe he is, but if he's going to do it, maybe he's
12 going to do it. But that's what the chief
13 superintendent has said, that's not what came before
14 me. As I understand it, he said, look, what came
15 before me, the report. That's what he says. 11:55
16 MR. MÍCHEÁL O' HIGGINS: Thank you.
17 CHAIRMAN: That's right, Mr. O'Brien.
18 MR. O'BRIEN: what I am trying to establish essentially
19 with the chief superintendent is that he should have
20 made a chain of enquiry in relation to this at the 11:55
21 time.
22 CHAIRMAN: Yes. But if he didn't see the station
23 record or shouldn't have seen the station record or
24 shouldn't have known the station record, it's hard to
25 criticise him. But maybe you're saying, well, 11:56
26 shouldn't you have pursued the possibility that Garda
27 Keogh was being set up.
28 MR. O'BRIEN: That's exactly what I am saying.
29 CHAIRMAN: well, that might be a good one to ask,

1 Mr. O'Brien.

2 MR. O'BRIEN: Yes. That is what I am suggesting to
3 you, chief superintendent.

4 230 Q. CHAIRMAN: Do you understand? I mean, the question is
5 this: Okay, nothing comes of this, you send it back. 11:56
6 Question: Was there an obligation to check up whether
7 Garda Keogh was being set up? That's the question.
8 what do you say to that, chief superintendent?

9 A. Em, I don't have the information that suggests anything
10 other than that Garda Lyons transmits this in good 11:56
11 faith, having heard it, probably having reflected on it
12 for a day or two before he sent it up. Garda Lyons is
13 someone that is held in high esteem. He's now a
14 sergeant. I get nothing from the management team or
15 the supervisors to suggest there's something untoward 11:57
16 here. which is what I would rely on if there was
17 something that I had to deal with.

18 231 Q. what I am suggesting to you, chief superintendent, is
19 that as a result of the failure to investigate this,
20 that it was a deliberate attempt to discredit a 11:57
21 whistleblower?

22 A. You see, there was a statement of request, asked of
23 McHugh, Garda Keogh is saying it didn't happen. So it
24 didn't happen. The way I saw it: It didn't happen,
25 there was nothing to suggest there was anything to 11:57
26 investigate. It was finished.

27 232 Q. I suggest to you that this had the effect of targeting
28 Garda Keogh as a whistleblower?

29 A. I reject that. I don't see how he can say that. I am

1 just doing my job. It comes up to me through the
2 system. I am sending it back down with some basic
3 enquiries and it dies very quickly afterwards, and on
4 the basis of Garda Keogh's word.

5 233 Q. Finally, I'm suggesting to you is that the entirety of 11:58
6 your actions in relation to the three issues, the
7 intelligence issue, the Olivia O'Neill issue and the
8 Liam McHugh, just given the proximity and timing of
9 each of these and when you consider them collectively,
10 I suggest to you this amounts to targeting of you by 11:58
11 Garda Keogh -- targeting on your part against Garda
12 Keogh?

13 A. No. I am doing my job, I am doing what's necessary and
14 important. I would have dealt with that, with any of
15 those situations with any other person the same way. A 11:58
16 standard approach. I reject that there is any
17 targeting or discrediting on my behalf or anybody else,
18 for that matter.

19 MR. O'BRIEN: No further questions, Judge, for this
20 witness. 11:58
21

22 END OF EXAMINATION
23

24 CHAIRMAN: Thanks very much. Now, who is next?
25 Ms. O'Rourke, are you next? Isn't that right, you 11:58
26 should really finish, you should really end and then we
27 will come back to Ms. McGrath, is that correct?

28 MR. MÍCHEÁL O'HIGGINS: Yes, Chairman.

29 CHAIRMAN: Yes, Ms. O'Rourke.

1 CHIEF SUPERINTENDENT MARK CURRAN WAS CROSS-EXAMINED BY
2 MS. O'ROURKE, AS FOLLOWS:

3
4 234 Q. MS. O'ROURKE: Thank you, Chair. Chief Superintendent
5 Curran, I really have very few questions for you. In 11:59
6 that regard, I think you have indicated that Garda
7 Lyons -- there's a number of matters I want to raise in
8 respect of Garda Lyons, the Mr. McHugh statement
9 arising out of the evidence of Garda Keogh here on day
10 100 and equally arising out of cross-examination. 11:59

11
12 In that regard, I think you said, chief superintendent,
13 that Garda Lyons is a member who is held in the highest
14 esteem, isn't that correct?

15 A. Yes. Yes. And I have interacted with him quite a few 11:59
16 times in investigations and I found him a very straight
17 and direct and an honourable person, yes.

18 235 Q. I think you received a report which Garda Lyons had
19 prepared on 2nd June 2014?

20 A. That's correct, Chairman, yes. 12:00

21 236 Q. That report, I think, can be brought up. It's at 522.
22 In that report there is reference to an approach that
23 was made by Mr. McHugh to Garda Lyons on the 31st May
24 and the conversation that then took place.

25 A. Yes. 12:00

26 237 Q. You have indicated that when you read that report, that
27 there was a number of issues but one of those issues
28 that you had was a concern about criminality?

29 A. Yes.

1 238 Q. In light of that, you sought to establish the position?
2 A. That's correct.

3 239 Q. But as you have indicated in your evidence, the report
4 was made to you and you had no issues in respect of
5 the -- you didn't consider anything other than this was 12:00
6 Garda Lyons relaying the conversation that he had?
7 A. No, exactly. And that's why I saw him as transmitting,
8 not a complaint, just a conversation that he had, and
9 that had to be followed up because there was inferences
10 there of criminality. So that's why I asked for a 12:01
11 statement to be taken off Liam McHugh.

12 240 Q. Subsequently, you know that Superintendent McBrien
13 discussed the matter with Garda Keogh, including on the
14 9th June?
15 A. That's correct. 12:01

16 241 Q. I think evidence was given yesterday in relation to
17 that conversation. I think on the 9th June, Garda
18 Keogh indicated, and I think it's at page 126 or 162 of
19 the transcript, that he had not -- he had met -- he had
20 met Mr. McHugh on a number of occasions but other than 12:01
21 general chitchat. I will just get the --
22 A. Garda Keogh was saying that, I think.

23 242 Q. Yes. That he was adamant that apart from general
24 chitchat, saying hello, etcetera, he hadn't had a
25 conversation with him in two years? 12:01
26 A. That was the first time and then later on he said
27 something, that it was three months.

28 243 Q. Exactly?
29 A. Yes.

1 244 Q. And following upon receipt of that, as you say, you now
2 had Garda Keogh saying he had nothing other than a
3 general conversation --
4 A. Garda Lyons.
5 245 Q. Sorry, this is Garda Keogh has said to Superintendent 12:02
6 McBrien --
7 A. Yes.
8 246 Q. -- that he hasn't had other than a general chitchat
9 with Mr. --
10 A. I think he said, other than hello, I think he said, he 12:02
11 hasn't had a conversation, yes.
12 247 Q. Exactly. Following on from that, you then still faced
13 the fact that there was potential, you say, of
14 criminality --
15 A. Yes. 12:02
16 248 Q. -- in what was relayed in the conversation?
17 A. Yes.
18 249 Q. You followed on from that and you sought to get a
19 statement from Mr. McHugh?
20 A. That's correct. 12:02
21 250 Q. Mr. McHugh wasn't willing to give a statement?
22 A. Yes.
23 251 Q. That's what you understood. In the light of that,
24 Garda Keogh hadn't committed to writing his views on --
25 A. On the interaction. 12:03
26 252 Q. Exactly.
27 A. Yeah.
28 253 Q. But he had a further conversation with Superintendent
29 McBrien and ultimately you said that you didn't believe

1 the incident happened. I think, when you're referring
2 to that incident, can you just clarify what incident
3 you believed had not happened?

4 A. I don't think the interaction between Garda Keogh and
5 MCHugh took place. 12:03

6 254 Q. Yes.

7 A. That's on the basis of what Garda Keogh was saying. He
8 was insistent on it and insistent right through with
9 Superintendent McBrien in his conversations and then in
10 the paper sent up afterwards. 12:03

11 255 Q. I think you'd accept that the report that was made by
12 Garda Lyons was made in good faith.

13 A. Absolutely, I would accept that, yes. Chairman.

14 256 Q. Thank you very much.

15 12:03

16 END OF EXAMINATION

17

18 CHAIRMAN: Now, anybody else? Mr. McGrath, have you
19 any questions.

20 MR. McGRATH: No, I appear for Garda Greene, we have no 12:03
21 questions.

22 CHAIRMAN: Thank you very much.

23 MR. McGRATH: Thank you very much.

24 CHAIRMAN: So, nobody else has any questions? Thank
25 you very much. Very good, okay, Mr. O'Higgins. 12:04

26

27

28

29 CHIEF SUPERINTENDENT MARK CURRAN WAS EXAMINED BY MR.

1 O' HIGGINS, AS FOLLOWS:

2

3 257 Q. MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman. Chief
4 Superintendent Curran, good morning.

5 A. Good morning.

12:04

6 258 Q. Could I start with just a few general matters before we
7 get into the four issues which we are presently
8 concerned with?

9 A. Yes, Chairman.

10 259 Q. That is, I suppose, the straightforward matter
11 concerning your tenure in the westmeath division. You
12 remained -- I think it's the case you remained in
13 Coolock as superintendent until February 2012?

12:04

14 A. February '12, yes.

15 260 Q. You've told us already you were promoted to the rank of
16 chief superintendent at that point and then you were
17 transferred to the westmeath division?

12:04

18 A. Exactly, on the 21st February of that year.

19 261 Q. Yes. Now, we know that the division comprises two
20 districts; Athlone and Mullingar?

12:04

21 A. Yes, Chairman.

22 262 Q. Can you tell the Chairman, divisional functions
23 operated mostly from where?

24 A. From Mullingar station. My office would have been
25 there.

12:05

26 263 Q. From where?

27 A. From Mullingar station, that was the divisional
28 headquarters.

29 264 Q. Yes. The divisional superintendents, I think we know,

1 of course, in Athlone was Noreen McBrien and I think it
2 was Superintendent Patrick McMEnamin in Mullingar?

3 A. That's true, McMEnamin was Mullingar, yeah.

4 265 Q. We've heard, of course, that in Athlone the two
5 inspectors were Nicholas Farrell and Aidan Minnock? 12:05

6 A. Yes.

7 266 Q. Garda Keogh -- we're not concerned with the car tax
8 issue, because that's for another day, but just in
9 terms of the breadth of the allegations that are now
10 being made against you, you are aware, aren't you, that 12:05
11 Garda Keogh has stated his belief that, for instance,
12 Superintendent Pat Murray had targeted him in relation
13 to the car tax issue?

14 A. Yes.

15 267 Q. Mr. Murphy dealt with that in his cross-examination on 12:05
16 behalf of Superintendent McBrien. But Garda Keogh,
17 you're aware, has alleged that Pat Murray did that with
18 the acquiescence of you, you're aware of that?

19 A. Yes.

20 268 Q. Can I ask you, just in terms of -- and that is for 12:06
21 another day.

22 A. Yes.

23 269 Q. But just in terms of the temporal question.

24 A. Yes.

25 270 Q. During your time as divisional officer, was 12:06
26 Superintendent Pat Murray assigned to the Westmeath
27 division?

28 A. No, Superintendent Pat Murray came and replaced
29 Superintendent McBrien and myself and Superintendent

1 McBrien left and transferred on the same day, I think
2 it was 9th March 2015. I never met Pat Murray before
3 that. My first conversation with Pat Murray was some
4 time, I think it was probably October of '18. At that
5 stage we provided a response to the bullying allegation 12:06
6 and I think that's where we had some common ground to
7 some extent. But I never spoke to Pat Murray at any
8 time when Pat Murray was a superintendent in Athlone.
9 Ever. I didn't know him, I never met him. I don't
10 think I ever corresponded with him. So to suggest that 12:07
11 I acquiesced with him would be entirely wrong.

12 271 Q. Yes. Could I bring you then to the format with which
13 we are concerned directly at the moment, and that is
14 firstly the Pulse record. It might be put up again. I
15 am sure the Chairman is almost tired of looking at 12:07
16 this, it's page 1802.

17 CHAIRMAN: Indeed.

18 272 Q. MR. MÍCHEÁL O' HIGGINS: You've given us already,
19 arising from Mr. O'Brien's questions, outlining your
20 concerns that occurred to you. Can I just ask you, in 12:07
21 terms of the -- apart from the issue of corruption and
22 the necessity to investigate that, and CHIS matters,
23 which we will come to presently, do you see the last
24 entry "fact".

25 A. Mm-hmm. 12:08

26 273 Q. The last there, and the reference to a grading of the
27 source, if source is the right word?

28 A. Yes.

29 274 Q. Just from an accuracy point of view, as to whether

1 these details that are up on a public record, which are
2 accessible by any Garda, what concerns did that give
3 you, if any, as to whether these details were or were
4 not factually correct?

5 A. Well, the crosses by which the source of the 12:08
6 information was being evaluated and where was the
7 information coming from. That was the biggest issue.
8 I suppose you ask me about the source, if you look at,
9 you know, fact. Also, it's the provenance of where the
10 information is coming from, if you are talking about 12:08
11 that in particular. I don't know how someone can say
12 it's fact without saying some justification as to how
13 it is fact. There has to be a basis to it. So there
14 is an evaluation put here, as everything is factual.
15 So that generally would suggest that there's absolute 12:09
16 certainty in all the information of where it's coming
17 from.

18 275 Q. All right. Now, I think the next day, on 19th May
19 2014, we have seen already that you sent a memorandum
20 to Superintendent Noreen McBrien. We might have that. 12:09
21 It's 1805, please, Volume 7. If you have a paper copy.
22 You have already been brought through by Ms. McGrath
23 and Mr. O'Brien separately, issues concerning the CHIS
24 policy?

25 A. Yes. 12:09

26 276 Q. We see here in this, in the contemporaneous memorandum,
27 you are referencing the covert human intelligence
28 sources policy and revised Code of Practice, in the
29 second paragraph there, is that so?

1 A. That's correct, Chairman, yes.

2 277 Q. Just to fill out the factual background, I think on the
3 same date, Inspector Nicholas Farrell had raised the
4 issue of the Pulse record directly with Garda Keogh.
5 That's at 1806. 12:10

6 A. Yeah.

7 278 Q. Just if you scroll down on that for a moment. I think
8 in the last sentence on the first paragraph, do you see
9 that there:
10 12:10

11 "I informed him that if he had an informant that they
12 should be registered with CHIS in accordance with HQ
13 directive 126/10. He nodded."
14

15 A. He nodded, yes. 12:10

16 279 Q. Right. There has been mention already of the policy.
17 Could I ask you to deal with that now and perhaps, from
18 your point of view, if you could take up volume 15. I
19 will try to do this as speedily as possible, mindful
20 that the Chairman will have this. 12:11

21 CHAIRMAN: It's all right, take your time.

22 MR. MÍCHEÁL O' HIGGINS: And to a degree there's --

23 A. So I need a hard copy of volume 15.

24 280 Q. It might be worthwhile for you to have a copy of volume
25 15? 12:11

26 CHAIRMAN: 15?

27 281 Q. MR. MÍCHEÁL O' HIGGINS: Yes, thank you. If we can
28 start perhaps with -- well, the page reference I have
29 is page 40559.

1 A. Yes, that's the Garda Headquarters circular 126/10.
2 282 Q. Yes. This then is -- we see in the top right-hand
3 corner. Just scroll down a small bit, please,
4 Mr. Kavanagh. We see there on the top right-hand
5 corner: "HQ Directive 126 -- " Sorry, "185/5." 12:12
6 A. Yes.
7 283 Q. Sorry, I brought you to the wrong page. Page 4559, if
8 we might start there?
9 A. I have that here, yes.
10 284 Q. This is a document that is signed by W I Rice, 12:12
11 assistant commissioner, of 13th November 2005?
12 CHAIRMAN: No, it's not. Assistant commissioner
13 O'Sullivan signs this one at 4559, Mr. O'Higgins.
14 MR. MÍCHEÁL O' HIGGINS: If we move on a few pages, we
15 get to it then. 12:13
16 CHAIRMAN: You want to keep scrolling down, yes. Is
17 this the one? Yes, here we are.
18 MR. MÍCHEÁL O' HIGGINS: No, that's not it, that's
19 Assistant Commissioner O'Dea.
20 CHAIRMAN: Right. 12:13
21 285 Q. MR. MÍCHEÁL O' HIGGINS: The signature page is 4561, I
22 think. There we are. So that's the document there.
23 This is the November '05 memorandum. So if
24 Mr. Kavanagh might scroll up to the top of that
25 document, please. It's a three-page document. There 12:13
26 we are. Thank you. So, about halfway down that, in
27 the paragraph commencing "From 3rd April 2006", the
28 following is stated:
29

1 "The Code of Practice will be adopted as the
2 organisational policy in respect of the management and
3 use of covert human intelligence sources (CHIS) by An
4 Garda Síochána. It will replace the current
5 intelligence source management system. The Code of
6 Practice provides safeguards for all those involved in
7 CHIS management, including the source."

12:13

8
9 Then, the next two paragraphs I am going to ask you to
10 comment upon. It is stated that:

12:14

11
12 "It is imperative that no member should contemplate
13 running a CHIS that is not properly registered in
14 accordance with the Code of Practice. In this regard,
15 assistant commissioners, divisional and district
16 officers have responsibility to ensure that this Code
17 of Practice is strictly adhered to and that all members
18 are familiar with its contents. Failure by any member
19 to comply with the CHIS management procedures will not
20 be tolerated in any circumstances."

12:14

12:14

21
22 Was that your understanding of mandatory requirements?

23 A. That's my understanding. That's exactly -- that's the
24 position I took. It was consistent with everything I
25 did.

12:14

26 286 Q. Then in the next paragraph, it continues:

27
28 "A rigid system of registration will be compulsory for
29 each CHIS. This registration will be subjected to

1 authorisation by assistant commissioner, Crime and
2 Security, who will be the holder of true identities. A
3 full and detailed assessment in respect of each
4 proposed CHIS will be prepared and will include
5 in-depth background, risk assessment and a face-to-face 12:15
6 interview."

7
8 Then, if we skip down to the next paragraph after that,
9 commencing "A minimum of two members..." do you have
10 that 12:15

11 A. Yes.

12 287 Q. It states:

13
14 "A minimum of two members of An Garda Síochána will be
15 involved in the handling of a CHIS, and will be present 12:15
16 together at all meetings with the CHIS. To facilitate
17 the smooth transition from the current system to the
18 new system, at least one of the members attending these
19 meeting must be trained under the no programme. The
20 transition period will end on 1st December 2006 and 12:15
21 from that date only trained members will attend
22 meetings with a CHIS."

23 A. That's correct.

24 288 Q. Again, does that reflect your understanding?

25 A. Yes, and that was one of my concerns, is that Garda 12:15
26 Keogh, if meeting a source, was meeting him on his own
27 and, therefore, there was no protection for him or the
28 organisation. And the training goes along with that
29 because training is key to it, how you deal with a

1 source.

2 289 Q. Could I ask then, if we could scroll back a few pages
3 to the Nóirín O'Sullivan document, HQ Directive 126/10.
4 Yes, that's it there, thank you. So if we go back up
5 to the top of that page, please. At the top right-hand 12:16
6 corner we see HQ Directive 126/10. I think this is the
7 document to which you have been making reference from
8 time to time?

9 A. Yes. That's the revised Code of Practice, yes.

10 290 Q. Yes. And we see in the heading: 12:16

11

12 "Re: Management and use of covert human intelligence
13 source (CHIS) Garda Code of Practice."

14

15 I am just going to ask you to comment upon, it's a 12:16
16 short document but I think it's somewhat important. It
17 states:

18

19 "The Covert Human Intelligence Source (CHIS system)
20 came into effect on 3rd April 2006 with the adoption of 12:17
21 the Code of Practice as the organisational policy in
22 respect of the management and use of covert human
23 intelligence sources by An Garda Síochána. The system
24 has been the subject of a number of reviews and
25 amendments in the meantime, as a result of which the 12:17
26 Code of Practice has now been revised and amended to
27 take account of the various changes."

28

29 Then this next piece:

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"The revised Code of Practice has been placed on the Garda portal and should be accessed and perused by all members of An Garda Síochána."

12:17

Just for those of us who are not familiar, what is the Garda portal and who has access to it?

A. All members of An Garda Síochána and all Garda staff members have access to this, at least most of them have access to the portal, but all Garda members have access to the portal. So when you open up the Pulse screen, the portal is what actually hits you first of all. Basically it's like an internal web page and it has a lot of links and you can search for documents, search for directives and they're all there in their entirety. All directives are there in their entirety. And the Code of Practice is one of those documents. That's very easy to access.

12:17

12:18

291 Q. Looking at the next paragraph there, there's something of an imperative statement, it states: "Managers --" well, sorry, the next paragraph reads:

12:18

"CHIS, including compliance with the Code of Practice, will be a regular item on district, divisional and regional management/accountability meetings."

12:18

A. That's correct, Chairman.

292 Q. Has that been your experience?

A. Yes. It's a high risk business, dealing with informants. Yes. Probably in my business it's -- when

1 you're in the operational world, every second day it
2 becomes -- it's a discussion somewhere around CHIS or
3 who should be a CHIS.

4 293 Q. Then the final paragraph I want to ask you to comment
5 upon:

12:19

6
7 "Managers and supervisors will ensure that the
8 instructions contained in the Code of Practice are
9 strictly complied with."

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12:19

That presumably is something directed at your level and
management level generally?

A. Yeah. There's no latitude on this. It's a very
tight -- there's very strict instructions in relation
to it. As I said, there's no novel interpretations of
it either.

294 Q. I think it's clear for everybody to see, this, in fact,
is not the Code of Practice itself but it's a circular
relating to it, isn't that right?

A. That's true, Chairman.

295 Q. For the policy itself, I wonder might the witness be
provided with volume 7 for a moment?

A. I have it here.

296 Q. If we might go to -- it's my page -- I hope it's page
1812 within volume 7. It's the start of the
substantive part?

12:20

A. Mine is redacted in this.

297 Q. The unredacted one is perhaps -- I think Ms. McGrath
pointed out page 8067, if we might have that on the

1 screen. Perhaps if we can scroll back and go back to
2 paragraph 2.1, please, Mr. Kavanagh.

3 A. Okay.

4 298 Q. Thank you. So the heading of this is:

5 12:21

6 "Covert Human Intelligence Sources - general."

7

8 And the following is stated, chief superintendent, at
9 paragraph 2.1:

10 12:21

11 "A fundamental point to be emphasised at the outset in
12 relation to the management of Covert Human Intelligence
13 Sources is that any person providing information to the
14 Gardaí is not the sole responsibility of the Garda
15 member who happens to be interacting with that person. 12:21

16 That individual should be viewed as providing
17 information to be used for the benefit of the
18 organisation as a whole and responsibility for the
19 interaction, control, accountability and evaluation
20 will impact at corporate rather than individual level." 12:21

21 A. Yes.

22 299 Q. Would it be fair to describe that as being a key
23 principle of the CHIS policy?

24 A. It's a key principle of it, of both the policy and how
25 it operates. 12:21

26 300 Q. So it's a corporate rather than individual level?

27 A. It is corporate, yeah. The management is at -- the
28 management is with chief superintendent in the Code.

29 301 Q. If we move down to paragraph 2.3, the following is

1 stated:
2
3 "A lack of experience on the part of the Garda dealing
4 with the source may result in inappropriate
5 relationships or a relationship that lacks appropriate 12:22
6 control. It is possible that in such circumstances a
7 CHIS may deliberately or unintentionally drift into the
8 role of agent provocateur, where he/she becomes
9 involved in instigating an offence."
10 A. Yes. That is one of the highest risks. 12:22
11 302 Q. Over the page then to the next paragraph, 2.4:
12
13 "A CHIS can give information solely with the intention
14 of eliminating a rival in the context of criminal
15 activity." 12:22
16
17 Is that a real or practical concern?
18 A. That's a real concern. Motivation of someone who is an
19 informant, especially when you're talking in the
20 business of money, it's ever present. 12:23
21 303 Q. If we can scroll down to paragraph 2.6, please, or just
22 above 2.6. Just above. If we can just scroll up a
23 small bit. Just above 2.6, the following is stated,
24 chief superintendent:
25
26 "In every case involving the supply of information 12:23
27 where a member of An Garda Síochána establishes a
28 relationship or tasks any individual, then the member
29 must have that person referred for assessment within

1 the CHIS system by notifying their regional source
2 handling unit. "

3
4 That element of the exercise, the referral for
5 assessment, again, is that a key component of the
6 policy? 12:23

7 A. It is, because that's where those who are trained can
8 perform an assessment and the manager or the controller
9 can actually come along and do an valuation of
10 everything that they have done. So, you can see where 12:23
11 the risks are and whether it is acceptable to retain
12 that person as a CHIS, for recommendation to go up the
13 line to the AC Crime and Security.

14 304 Q. Arising from that then, if we look at paragraph 2.6,
15 the next paragraph, the policy then provides: 12:24

16
17 "With a view to addressing the potential risk and
18 seeking to maintain integrity standards within the
19 system, this Code is based upon a number of fundamental
20 principles. " 12:24

21
22 Then, if we might turn over. Can we scroll down to
23 viii at the bottom of the next page, and get your view
24 on this, please. viii provides:

25
26 "All Garda officers overseeing CHIS activity have a
27 responsibility to supervise the administration,
28 legality, integrity and security of operations. "

29 A. Yes.

1 305 Q. From your point of view as the chief superintendent at
2 that time in the westmeath division, as far as you're
3 concerned, does that create obligations for you?
4 A. It creates obligations on me, which are actually
5 described with the Code of Practice. And also, as I 12:25
6 say, any of the superintendents.
7 306 Q. Yes. If we can go down to paragraph 2.9, please, which
8 is the top of the next page. This is a matter that
9 have you already referred to in evidence with
10 Mr. O'Brien. It says: 12:25
11
12 "The Code of Practice must be considered in its
13 entirety and there should be no novel interpretations
14 of individual sections of it. Where there is a doubt,
15 the views of national source management unit or the 12:25
16 holder of true identities should be sought."
17
18 That reference to "novel interpretations" what do you
19 understand at that to mean?
20 A. Well, I suppose anything outside the main -- the 12:25
21 concern would be that someone is -- you can't have an
22 interpretation that suits an individual garda. That
23 also works both ways, for the managers as well. The
24 managers can't allow a novel interpretation. So, if we
25 relate it to the Garda Keogh case, that he, for some 12:26
26 reason, thought that because he was interacting with AC
27 Ó Cualáin that this gave him a way out, or not a way
28 out, but excused him from actually referring the
29 source. This policy, and we have read through some of

1 the sections, shows that the risks are there and that
2 shouldn't happen. That the Code has to be strictly
3 complied with. Strictly. So, no matter what the
4 circumstances.

12:26

5
6 In that case, even if the source was referred to the
7 Eastern Region management unit, it might be a case that
8 another chief superintendent manages that source. But
9 on the ground, in terms of the interpretation, it has
10 to be strictly applied, strictly implemented.

12:26

11 307 Q. You made reference yesterday in your evidence to an
12 necessity for, according to the Policy at any right, an
13 intrusive style of supervision in respect of a handler
14 and the CHIS relationship?

15 A. Yes.

12:27

16 308 Q. Perhaps if we can scroll down to paragraph 4.8, the
17 heading "controller", I might just ask you to deal with
18 that. So 4.8 is a few pages on. We have it up on
19 screen there. This obviously applies to the
20 controllers, which, in fairness, Garda Keogh is not.
21 But it provides that:

12:27

22
23 "Controllers will be of superintendent rank or higher.
24 They will arrange the appointment of at least two
25 handlers to deal with each CHIS and will adopt an
26 intrusive style of supervision in respect of the
27 handler/CHIS relationship, to ensure that it is at all
28 times being conducted to the highest professional
29 standards. They are also responsible for the

12:27

1 operational management of the dedicated source handling
2 unit established within their area of operation."

3
4 From your point of view, although, am I right, you
5 weren't a controller? 12:28

6 A. I wasn't a controller as a chief but I was a controller
7 previously, from 2006 to 2012.

8 309 Q. Yes. But that reference to a necessity for an
9 intrusive style of supervision.

10 A. Yes. 12:28

11 310 Q. What is the Policy telling us there?

12 A. What's really interesting there is, it's not the rank
13 that matters, the term is "controller". So, if you
14 talk to anybody in the CHIS unit, they don't talk about
15 the superintendent, they talk about controller. In 12:28
16 other words, all control is with the controller. So
17 every decision is with the controller. So the handlers
18 are protected, that whatever they do has management
19 cover on it. But very importantly, that the
20 questions -- the controller must ask all the questions 12:28
21 so make sure that inappropriate relationships don't
22 occur and there is no unprofessionalism. They're
23 entitled to do that. The members know and expect those
24 questions, because they know everybody in the area
25 understands the risk. So it's an acceptable practice. 12:29

26 311 Q. Can I ask you, chief superintendent, to deal then with
27 -- and we will pass from the Policy shortly. But if we
28 could go on about 10 pages on, my page 1834, to
29 paragraph 5.1, we will get the substantive instructions

1 regarding referral, assessment and recruitment. It's
2 headed Chapter 5, it's paragraph 5.14 of the document
3 on my page 1834. Under the heading of "referral"
4 there, the following is stated:

5
6 "Where a potential CHIS is identified, referral should
7 take place without delay through the local
8 superintendent. The superintendent will contact the
9 regional controller to have the necessary arrangements
10 put in place to facilitate the assessment process. The 12:29
11 referring member should only disclose the identity of
12 the potential source to the regional controller or
13 handler appointed to carry out the assessment process."

14
15 The question I have for you, chief superintendent, is: 12:30
16 That requirement, that when a CHIS is identified or a
17 potential CHIS is identified, the referral should take
18 place without delay. Again, is that regarded as the
19 key principle on the policy?

20 A. Yeah, because there should be no -- everything here 12:30
21 have management oversight. Everything. And that's
22 where the controller comes in. So it's control.
23 Management and control.

24 312 Q. If we can go on to paragraph 6.1, please, a few pages
25 on, under the heading of "registration process". Just 12:30
26 the first sentence there, 6.1, Mr. Kavanagh.

27
28 "The registration of a CHIS is a requirement of this
29 Code."

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Again, is that a key requirement?

A. Absolutely. There's no alternative in this.

313 Q. And lastly then in relation to the Code, could I ask for paragraph 7.10 to be put on the screen, it's a few pages on. This is a provision that you were referring to yourself in evidence with Mr. O'Brien. That's it there. So, 7:10 reads: 12:31

"The tasking of unregistered sources should not be permitted under any circumstances." 12:31

Again, was that your understanding of what appears to be a mandatory requirement?

A. It's the start of the most -- the most serious risk is when you start doing tasking. That's why you should never have an unregistered source. 12:31

314 Q. In terms of the Pulse entry itself, we needn't go back to it, and it's on page 1802 if required. The source is characterised as being "always reliable". It is my understanding that there is a number of different -- that is's there, do you see, in the top left-hand box? 12:32

A. Yes, Chairman.

315 Q. Is it correct that there is a number of different drop down entries possible? 12:32

A. Yes.

316 Q. I think they range from "always reliable, proved reliable, proved unreliable and source untied"?

A. Yes.

1 317 Q. Presumably "always reliable" is the top?
2 A. That's the top.
3 318 Q. Most reliable?
4 A. That's the one you want if you are going to act on it,
5 yeah. That's suggesting history, obviously that's 12:32
6 suggesting, by implication, there's a history, so
7 there's previous interactions.
8 319 Q. Yes. We might leave the Policy there for the moment
9 then and just return to the 14th, that the Chairman is
10 investigating. Garda Keogh has told us that Judge 12:33
11 McMahon told him he should not have put these matters
12 up on Pulse. I think that early in his evidence. As
13 far as you're concerned, was it reasonable for Garda
14 management to raise the matter of the Pulse record with
15 the person who had put it up? 12:33
16 A. I don't think we have any choice considering the
17 seriousness of what's inferred in it, or alleged.
18 320 Q. Again, as far as you're concerned, was this an inquiry
19 with Garda Keogh or was it an investigation launched
20 into his conduct? 12:34
21 A. This was an inquiry of Garda Keogh.
22 321 Q. Apart from the CHIS issues and the concerns for the
23 safety of any source, if source there was, what other
24 risks were presented by this intelligence, as you saw
25 it? 12:34
26 A. There's a risk to the -- first of all, to the source,
27 because there's a quantity of money there being
28 mentioned that may be in the possession of only one or
29 two people, potentially. There's the risk to -- I

1 think there's a risk that this is being put out there
2 and being supplied by someone who is trying to take
3 someone else out of the market.

4 322 Q. Yes. When Garda Keogh gave an assurance that the
5 substantive criminal matter was being processed through 12:34
6 the confidential recipient process, you told us that
7 that did not exhaust your responsibilities as chief
8 superintendent?

9 A. That's correct, Chairman.

10 323 Q. Why not? 12:35

11 A. Because the Code of Practice places responsibility on
12 me and not on AC Ó Cualáin. And I have control of
13 Garda Keogh as the chief superintendent within the
14 division. Assistant Commissioner Ó Cualáin does not.

15 324 Q. You have told the Tribunal that you sought directions 12:35
16 from, as it were, your superiors?

17 A. Mm-hmm.

18 325 Q. We might have page 1878, please, on the screen. If we
19 just move on a few pages, I am looking for the -- it's
20 12th December 2014 document signed by yourself. 12:36

21 A. Okay.

22 326 Q. I think that's it. Thank you, Mr. Kavanagh. So, in
23 the second paragraph there, and this is a December '14
24 letter up to the assistant commissioner Eastern Region,
25 who is that? 12:36

26 A. Assistant Commissioner Fintan Fanning.

27 327 Q. December '14, you're writing to him and we have seen
28 this document before. In the second paragraph, you
29 have asked the question -- you have made the statement,

1 the last sentence:

2

3 "This is an essential ingredient to establish whether
4 or not this is untested, uncorroborated and potentially
5 inaccurate information." 12:36

6

7 was that a potential concern arising from the placing
8 of this entry on Pulse? Do you see that there?

9 A. Yeah, I do. Just give me a second. What I am saying
10 is, I can't talk to the guard. He's not talking to me. 12:37
11 So I can't, I can't do an evaluation of the information
12 and the source. So I can't get to the bottom of it.

13 328 Q. Yes. You mentioned yesterday and again with
14 Mr. O'Brien, you used the word "dilemma", that you felt
15 you were placed in as a result of the intelligence 12:37
16 record being placed on Pulse. I think it's the case
17 that at some point in July '14, Garda A made a
18 complaint, which was something you also had to deal
19 with?

20 A. Yes, Chairman. 12:37

21 329 Q. We might just have that very briefly. Page 1163, I
22 think is a reasonable copy of the complaint made. I
23 think this is Garda A's memo raising an objection or
24 complaint, for want of a better word, about the Pulse.
25 Again, we have seen this document before. Do you see 12:38
26 the last paragraph there:

27

28 "I wish to express my severe disappointment that this
29 matter has not been dealt with in a more timely

1 fashion. If the situation is not resolved, I will be
2 forced to take legal advice on the matter, which is
3 causing me great upset."
4

5 From the organisation's point of view, was that a risk 12:38
6 for management?

7 A. Well, there was a concern, potentially -- first of all,
8 Garda A is saying he is the focus of the
9 investigations, but I don't know that. So that's the
10 problem that I face there. But also, if he is, then he 12:38
11 may -- there's a civil aspect to that, he may go off
12 and pursue some complaint in relation to data
13 protection or, you know, some issue. That's what we
14 thought at the time. So, it posed an additional layer
15 of concern and it prompted correspondence up to 12:39
16 assistant commissioner, ODSP, organisation development
17 and strategic planning, to try and see if we could deal
18 with it from that point of view, data protection, and
19 with civil being present in that as well.

20 330 Q. Yes. Could I ask you to look at page 8342. This is in 12:39
21 the context of evidence you gave yesterday to
22 Ms. McGrath in her questioning, where you made efforts
23 to, as it were, get some help in relation to this
24 dilemma from superior officers. This is, I think, a
25 document you have authored again to assistant 12:39
26 commissioner Eastern Region?

27 A. That's correct.

28 331 Q. Sorry, it's copied to the assistant commissioner
29 Eastern Region but it's a letter to assistant

1 commissioner, organisation development and strategic
2 planning.

3 A. That's right, yeah.

4 332 Q. It carries a date of the 19th May but I'm not sure --

5 A. It's 10th September, is the correct date. 12:40

6 333 Q. This is one of the documents that are misdated?

7 A. Yes.

8 334 Q. If we just look at that for a moment. You outline
9 something of the dilemma where you say -- in the second
10 paragraph you refer to Garda A's concerns regarding the 12:40
11 intelligence created by Garda Keogh and the fact that
12 this intelligence has been the subject of discussion in
13 the station.

14

15 "Garda A has also stated that it has on occasion 12:40
16 resulted in him being the subject of unfavourable
17 comment."

18

19 Then it goes on in the next paragraph:

20

21 "Garda A states that he does not believe the 12:40
22 intelligence system is the forum for members to make
23 scurrilous, slanderous and unfounded allegations
24 against other members in order to settle personal
25 grievances." 12:40

26

27 That's a quotation.

28

29 "He has outlined that if the matter is not resolved he

1 will be forced to take legal advice on the matter."

2
3 Then you outline the background in the next paragraph.

4
5 "This is set against the backdrop of an inquiry being 12:41
6 conducted by Assistant Commissioner Ó Cualáin into
7 certain allegations made by Garda Keogh through the
8 confidential recipient. Garda Keogh was named publicly
9 in the Dáil and as a result most members attached to
10 Athlone Garda Station are aware that this investigation 12:41
11 is ongoing in respect of matters alleged by Garda Keogh
12 against D/Garda A. Some of these members have been
13 interviewed by Assistant Commissioner Ó Cualáin's
14 investigation team but it is not known when this will
15 be concluded." 12:41

16
17 Can I ask you about that? Arising from the somewhat
18 unusual situation here, where, in common parlance, a
19 whistleblower has made allegations, which absolutely
20 have to be investigated, but also appears on one 12:41
21 reading of matters, and it's a matter for the Chairman
22 ultimately, but appears to have done something perhaps
23 unacceptable, posting these matters up on Pulse.

24 A. Yes, Chairman.

25 335 Q. As far as you're concerned, was that a situation of 12:41
26 complexity or of difficulty that presented challenges
27 for you in management?

28 A. It did, because Garda Keogh wasn't giving anything --
29 he more or less shutdown -- first of all, he wasn't

1 prepared to talk to us when he was talking to Inspector
2 Farrell. Then the judge had put a restriction, that's
3 why I took that conversation from Superintendent Walsh,
4 put a restriction on me talking to him about the
5 intelligence. Then we had Garda A here, who he 12:42
6 believes, but I don't know, he is the person that is
7 the subject of it. The complexity then goes into, how
8 does the organisation deal with that? Assistant
9 Commissioner O'Mahony had previously done a review, a
10 review that required a hold on it until the 12:42
11 investigation was complete. So that was done in June.
12 So, I suppose that was one of the many issues. I mean,
13 there was a lot of discussion around this. That's
14 where we ended up in our meeting then in December.

15 336 Q. Yes. I think just in terms of the timeline, these 12:43
16 dilemmas, if that's the correct word, appeared to have
17 continued on the burner, as it were, because, if you
18 look at page 8360, we have a memo again from you to
19 assistant commissioner Eastern Region in October of
20 2014. Page 8360. Do you recognise this document? 12:43

21 A. Yes, I do actually.

22 337 Q. I think we had it yesterday in evidence.

23 A. Yes. It's quite an important document.

24 338 Q. I am just going to ask you to deal with the last
25 paragraph of the first page, commencing "owing to the 12:43
26 vacuum" do you see that yeah?

27 A. Yes.

28 339 Q. You state there in this memorandum:
29

1 "Owing to the vacuum of information that is created as
2 a result of this investigation being conducted in
3 accordance with the CR mechanism, I am not in a
4 position to confirm that this aspect of the file is
5 being addressed as part of the ongoing investigation 12:43
6 being conducted by AC Ó Cualáin."
7

8 I just wanted to ask you to deal with that. Does that
9 correctly characterise your view of matters then, there
10 was a vacuum of information available to you? 12:44

11 A. I was getting no confirmation that the intelligence
12 that was on Pulse was to be investigated or not.
13 That's really where I am at there. There's nothing
14 coming to me by way of confirmation from the Ó Cualáin
15 side as to exactly what was to be investigated. I 12:44
16 wasn't even looking to know what he was doing. I
17 wanted him to relieve me of the responsibility of
18 investigation in relation to the item on Pulse.

19 340 Q. Those are the questions I have for you in relation to
20 the intelligence item. Could we move to -- 12:44

21 A. At the very end, I think the end of that document, I
22 don't know if it's on it.

23 341 Q. Yes.

24 A. I think I talked about the dilemma in relation to 126
25 as well. 12:44

26 342 Q. You do, yes.

27 CHAIRMAN: Yes.

28 343 Q. MR. MÍCHEÁL O' HIGGINS: That reads:
29

1 "Accordingly, I welcome the views of AC Ó Cualáin as to
2 how this matter might best be addressed so that the
3 terms of HQ Directive 126/10 might be met in this
4 instance."

5 A. Yes. 12:45

6 344 Q. That was a concern that you continued to have in
7 October 2014?

8 A. Yes, Chairman.

9 345 Q. Sorry, what it says is "in this unique instance"?

10 A. Yes. 12:45

11 346 Q. Just then to move matters on. Can we move to issue 3
12 then, the Olivia O'Neill matter? We might have up on
13 screen page 1888, please. Garda Keogh, chief
14 superintendent, is saying or has said that management
15 of An Garda Síochána, if I understand this part of the 12:45
16 allegation correctly, effectively sought to procure a
17 complaint about him from Olivia O'Neill. All right.
18 Isn't that part of one of the allegations that
19 management was facing?

20 A. Yes, that's what he said. 12:46

21 347 Q. As far as you're concerned, as we look at this
22 document, and, in fact, what I'm actually looking for
23 is the statement provided by Garda Stephanie Treacy,
24 which might be a page on. Yes, that's it there.

25 A. Okay. 12:46

26 348 Q. We might just look at this for a moment. So this is
27 Garda Stephanie Treacy's actual report of the
28 conversation she indicated she had with Olivia O'Neill
29 at the relevant date. It's headed "statement of

1 Cheyanne O'Neill, 28th May 2014"?

2 A. Yes.

3 349 Q. If you see at the bottom of it, it's indicating that
4 Garda Treacy appears to be relaying -- sorry, she's
5 reporting not just a suggestion of alleged coaching, 12:47
6 but ahead of that she's relaying an allegation that
7 Ms. O'Neill is said to have made, that her and her
8 daughter Cheyanne --

9 CHAIRMAN: I think it's pretty clear what it's saying,
10 Mr. O'Higgins. 12:47

11 MR. MÍCHEÁL O' HIGGINS: Yes. Sorry, Chairman. Just
12 insofar as it was suggested that really the only focus
13 was on coaching.

14 A. Yes.

15 350 Q. I mean, the Chairman can see the thing there. 12:47

16 A. Yes.

17 CHAIRMAN: That's right.

18 351 Q. MR. MÍCHEÁL O' HIGGINS: The report was of very
19 significant corruption?

20 A. That was my primary concern, and that's what the 12:48
21 information divulged. The instruction was about
22 dealing with that. The coaching is a secondary issue.

23 352 Q. Yes?

24 A. So, Olivia O'Neill wasn't invited to make a statement
25 in relation to that, from the documentation I read. So 12:48
26 that's why I asked for that to be sent to her, for a
27 statement to be taken.

28 353 Q. Yes. In fairness to Garda Keogh, he has stated on
29 record and on the transcript and, if needs be, we can

1 mention it, it's Day 100, page 43, lines 20-23, and
2 also the same day, page 50. It's probably not
3 necessary to put it up, but he has confirmed his
4 position that there was nothing in Garda Treacy
5 reporting that up the line?

12:48

6 A. Yes, I think I recall that.

7 CHAIRMAN: Yes.

8 354 Q. MR. MÍCHEÁL O' HIGGINS: So that having been reported up
9 the line, can you just assist, and perhaps it's seeking
10 the answer to an obvious question, but from your
11 perspective, was it reasonable for steps to be taken to
12 at least investigate these serious matters?

12:49

13 A. I had no choice, I was duty bound to pursue the
14 insinuation that Olivia O'Neill had information
15 relating to Garda corruption. The superintendent and
16 myself were of a similar view, we have to pursue that.
17 But it was nearly a technical thing, she was asked to
18 go to GSOC or told to go to GSOC, but she wasn't
19 invited to make a statement directly to the guards,
20 which she could have done.

12:49

21 355 Q. Can I ask you, this is a point made by Noreen McBrien:
22 Is there a difference as far as you're concerned
23 between Gardaí seeking a statement from Olivia O'Neill
24 and Gardaí procuring, as is alleged, procuring a
25 complaint from her?

12:50

26 A. Well, what I was asking for was the information, a
27 statement to be taken in relation to criminality. If
28 the interaction with Garda Keogh came up in that, fine.
29 But number one is criminality. The Garda Keogh thing,

1 it wasn't about Garda Keogh, to me it was about, number
2 one, and total primacy, was the information on
3 corruption that she may have had or hadn't. So that
4 needed to be bottomed out. That conversation she had
5 with Garda Keogh would perhaps come up in that 12:50
6 conversation with her. All I am looking for is the
7 facts. That's it.

8 356 Q. Moving on to the next issue, that of Liam McHugh. I
9 think it's the case that this issue also arose as a
10 result of a civilian making a report of some sort? 12:50

11 A. Well, he had a conversation and the report then was to
12 Garda Lyons.

13 357 Q. Having words with the guards?

14 A. Yes.

15 358 Q. As alleged. 12:51

16 A. Yes.

17 359 Q. And we know this is said to have happened on 31st May
18 '14?

19 A. That's correct, Chairman.

20 360 Q. We have seen the Garda Aidan Lyons report that was sent 12:51
21 to Sergeant Curley. We might have page 1897. We can
22 do this quickly, because we have seen this repeatedly.
23 Perhaps just move on a small bit there, again we may
24 have the wrong page, but it's the Garda Aidan Lyons
25 report. That's it there. The third paragraph has put 12:51
26 in quotation marks what it is said the civilian,
27 Mr. McHugh, said to Garda Lyons. We have seen and we
28 have heard already that Noreen McBrien formed an
29 assessment in favour of Garda Keogh's position, as

1 appears from the memorandum that we have already seen
2 earlier today and yesterday. She had met Garda Keogh,
3 isn't that right, and discussed with him on the 19th
4 July, where he confirmed that he knew nothing about
5 that at all? 12:52

6 A. It could have been June actually, that one. But
7 anyway, he had a conversation with her and said that it
8 didn't happen. And he was upset. I think he was
9 upset.

10 361 Q. And she concluded with the fact that: 12:52
11
12 "His assertion that he had not been in contact with
13 Liam McHugh is consistent with his conversation with me
14 on the 9th June 2014."

15 A. Yeah, that's the time. Yeah, that's right. 12:52

16 362 Q. Did Noreen McBrien's view accord with your own view?
17 A. It did. We both had the same view afterwards, you
18 know.

19 363 Q. Was that view informed by the fact that Mr. McHugh
20 declined when asked to provide a statement? 12:53
21 A. No, I think it was -- there was no evidence from
22 McHugh. McHugh in this information wasn't a witness to
23 anything, according to this. He was just repeating
24 something Garda Keogh said. So Garda Keogh was the
25 primary person to talk to in terms of -- sorry, McHugh 12:53
26 was a primary in terms of finding any potential
27 criminality, but then after that it was Garda Keogh.

28 364 Q. When enquiries were made on foot of this communication
29 being sent, as we see on the screen, did those

1 enquiries corroborate any case of criminality at all?

2 A. No.

3 365 Q. I think it's fair to infer, no prosecution file was
4 ever --

5 A. No. It came up to me and I let it rest. Garda Keogh 12:53
6 had insisted it wasn't him and that was it. Sorry, it
7 didn't happen. So that was it.

8 366 Q. What do you say to the suggestion that these enquiries
9 or this type of scrutiny was unnecessary or
10 disproportionate? 12:54

11 A. I had no choice. There's an insinuation -- it's
12 reported up to me through the superintendent and it has
13 to be pursued and bottomed out in some way, otherwise I
14 would be negligent. So there's no question of
15 targeting or discrediting anybody here. I am just 12:54
16 doing my duty.

17 367 Q. Now, we are aware, the Tribunal is aware that Garda
18 Keogh pursued a complaint of bullying and harassment
19 against you personally, isn't that so?

20 A. That's true, Chairman. 12:54

21 368 Q. And other Garda officers, isn't that right?

22 A. Yes, Chairman.

23 369 Q. Can you indicate when was the first that you became
24 aware that a bullying complaint had been made against
25 you? 12:54

26 A. My first knowledge was, I was in the offices of
27 corporate affairs, which is in the Commissioner's
28 office, the Chairperson of GSOC wrote to the Minister
29 advising the Commissioner that because I had signed a

1 Section 41 report that there was -- I think the words
2 used was, a shocking display, or something, that I
3 shouldn't be dealing with correspondence relating to
4 Garda Keogh. So that's the first time I had heard
5 anything in relation to it.

12:55

6 370 Q. Yes.

7 A. So I knew nothing about bullying. I never even -- I
8 heard bullying being mentioned and I didn't think it
9 was me in any way, shape or form. Then the next thing
10 I heard about was when Commissioner Fanning wrote -- he
11 had appointed Mick Finn. I think Commissioner Fanning
12 wrote to us in November of '17 and then Commissioner
13 Finn was in contact with me around December, I think I
14 received the allegation on paper in around January of
15 '18.

12:55

16 371 Q. I see. So, if we could have up on screen, please, I
17 hope it's page 4219, from volume 14, which is a
18 document again we have seen before but it's the
19 Mullingar Park Hotel meeting between Garda Keogh, his
20 solicitor, Assistant Commissioner Michael Finn and his
21 team, Chief Superintendent Myers, Inspector Annette
22 Browne. We have it there. Could I ask you to look at
23 the bottom of the second page, in the middle. That's
24 it there. Just above, Garda Keogh is saying:

12:55

12:56

25
26 "Pat Murray."

12:56

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28 He is being asked against whom he is making the
29 complaint.

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

12:57

Then he is pressed a little bit:

"So against Pat Murray and Mark Curran?"

12:57

And then he says:

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

12:57

Then if you turn over the page, please, towards the bottom of the next page. Again, AC Finn asked the question:

12:57

"I need to be clear whom I need to approach and investigate."

Do you see that there? It is on the screen.

12:57

A. Yes.

372 Q. "I am investigating bullying and harassment against persons. I need to know who the complaint is being made against."

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Mr. Cullen says:

"There's lots of documents and it's in there."

12:58

AC Finn says:

"I need to know the people."

Then Garda Keogh says:

12:58

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

12:58

If that is the basis upon which you are being brought into the bullying complaint, could I just ask you, looking at it now, how do you feel about that. It is for the Chairman to determine how strong or flimsy or otherwise this is.

12:58

A. It's upsetting, to be honest with you. It's very upsetting to be in this situation.

373 Q. And to be involved in a Tribunal of Inquiry arising from the same matter it seems.

12:58

A. Well, it's over a long period of time.

374 Q. Finally, chief superintendent, can I ask you this:

It's been suggested that you participated in a campaign

1 of deliberate discrediting and targeting of a member of
2 An Garda Síochána. Just tell the Chairman, what's your
3 position on that?

4 A. It's not true. I wouldn't target anybody. I didn't
5 target Garda Keogh. I wouldn't do it. It's not in my 12:59
6 nature to do it. I wouldn't discredit him. It's not
7 in the values of the organisation which I believe in.
8 I can only say that Garda Keogh is very misguided in
9 the way he views me or a lot of the people here.

10 375 Q. Thank you very much. 12:59

11

12 END OF EXAMINATION

13

14 CHAIRMAN: Ms. McGrath.

15 MS. McGRATH: Chairman, I will be very short, if the 12:59
16 Tribunal wants to continue.

17 CHAIRMAN: If everyone is happy. Are you happy to
18 proceed? If that is convenient for you, Ms. McGrath,
19 then we will proceed and we will finish.

20 MS. McGRATH: Yes, Chairman. 13:00

21

22 CHIEF SUPERINTENDENT MARK CURRAN WAS RE-EXAMINED BY MS.
23 McGRATH, AS FOLLOWS:

24

25 376 Q. MS. McGRATH: Chief superintendent, I want to just, 13:00
26 before I start, I want to deal with some issues from
27 this morning but just one in relation to yesterday, if
28 I can ask you about it. If the transcript could come
29 up of 117, which is yesterday's transcript, at page 18.

1 CHAIRMAN: Page 18 of yesterday's?
2 MS. McGRATH: of 17, it's line 5.
3 CHAIRMAN: Have you got a copy of this, a hard copy of
4 this?
5 WITNESS: I don't have a hard copy. I'm okay for the 13:01
6 moment.
7 CHAIRMAN: Okay. If you need a hard copy, I will give
8 you one.
9 WITNESS: Sure.

10 377 Q. MS. McGRATH: Chief superintendent, I had put a 13:01
11 question to you. It's line 5, Mr. Kavanagh, sorry, at
12 the top. I just want to look at your answer there, but
13 the nature of the question was, we were talking about
14 the meeting that Garda Keogh had on the night of the
15 9th May with Inspector Farrell. It was put to you it 13:01
16 hadn't been a particularly positive meeting with
17 Inspector Farrell. You see that there. And you said:
18
19 "To some extent, yes, but I think if I was to really
20 rationalise it, there was anti-management things going
21 for him, you know, at that time."
22
23 Now, it's my error there, I didn't go on to ask you
24 what you meant by that. I just want to ask you this
25 morning and give you an opportunity to say, what did 13:02
26 you mean by that "anti-management things going on for
27 him"?
28 A. I had a conversation with Inspector Farrell after that
29 meeting and he had the impression that Garda Keogh --

1 he mentioned words "ticked the box". So there was an
2 impression from Inspector Farrell that there was
3 certain circumspection, I suppose, around the motives
4 of Inspector Farrell at that time.

5 378 Q. So you're saying that that was Inspector Farrell's 13:02
6 specific comment you made there as opposed to an over
7 all...

8 A. No, that's what I gleaned from Inspector Farrell's view
9 of Garda Keogh.

10 379 Q. Did Inspector Farrell tell you there was an 13:02
11 anti-management position being taken in respect of
12 Garda Keogh?

13 A. No, I think he actually said that he felt there was an
14 issue with him personally.

15 380 Q. Now, just in relation to this morning, there's just a 13:02
16 couple of brief things I just want to ask you about.
17 Just at the very start of your cross-examination by
18 Mr. O'Brien, you were asked about whether or not you
19 might have sat down with Garda Keogh, and I am
20 paraphrasing there, at the very outset. And your 13:03
21 answer, and I think is at page 721 of this morning, you
22 say:

23

24 "I don't think it would have made a difference to us
25 being here today." 13:03

26

27 Can I just ask you and give you an opportunity to say
28 what you mean by that?

29 A. Well, I'm saying it in the position now. But in

1 terms -- I say that in the context of having considered
2 this several times. Would it have made a difference
3 had he not -- would he have made an allegation against
4 me had I met him? That's what I meant. And at this
5 point I don't think it would have made a difference had 13:03
6 I met him. But had I met him, it would have been for
7 welfare concerns anyway, but as you know, complications
8 then arose afterwards.

9 381 Q. So do you say this Tribunal of inquiry was an
10 inevitability after the 8th May 2014? 13:04

11 A. I'd have to think on that very carefully before I would
12 answer. But I would say, would he have made a bullying
13 complaint against me had I met him and maybe got a
14 sense that I was bona fide in relation to him. I'm not
15 sure that I wouldn't be here still. I know Chief 13:04
16 Superintendent Wheatley met him and she's here.

17 382 Q. Is it your view that Garda Keogh was on a certain
18 course and so be it, is that right?

19 A. I don't know if I want to answer that. I would have to
20 think about the implications of an answer like that, to 13:04
21 be honest with you.

22 383 Q. Okay. Can I ask you then, just continuing on I think
23 still in respect of Mr. O'Brien's questioning. He was
24 asking you about the intelligence entry and the date in
25 question, he was looking at a period of 18th May 2014. 13:05
26 And you said to him:

27
28 "The issue to be resolved is, does it go off to the CR
29 team, Ó Cualáin team, or do I do it? That is the

1 biggest issue for me."
2
3 I think in fairness to you, is that your position from
4 the immediate outset on the 18th May?
5 A. That's the immediate, that's what jumps out, do I have 13:05
6 to investigate? Is there criminality that I have to
7 investigate or have someone investigate, or appoint
8 someone to investigate?
9 384 Q. I think over the last now day and a half, it took over
10 six months, as you said this morning, and over 50 13:05
11 pieces of correspondence to find some sort of answer to
12 that question. What's your view on that?
13 A. Em, it's just a very complicated situation because in
14 the intelligence system -- in the normal source of
15 events, had the intelligence item not been put in there 13:06
16 in the first place, a lot of this wouldn't have been --
17 the paper wouldn't have happened.
18 385 Q. But I think the question I have asked you is: What's
19 your view on the duration it took, the level of
20 correspondence involved? Do you have a view on that? 13:06
21 A. Well --
22 386 Q. Was that reasonable, understandable?
23 A. It's complex. You know, I suppose in terms of -- if
24 you are talking about criminality, at least it was
25 being investigated straightaway by Assistant 13:06
26 Commissioner Ó Cualáin. In terms of the HQ 126/10,
27 that took some time to resolve itself. But that was
28 only after four months or I think from May to September
29 was the final correspondence I had with Garda Keogh.

1 After that, it took three months, I think it was
2 September or December then I got something from
3 Mulcahy.

4 387 Q. I just want to clarify something with you about during
5 the six-month period that we're talking about. We have 13:07
6 seen the letter many times, page 165, that's the 26th
7 September 2016. This is Garda Keogh's handwritten
8 letter, where he is asking for, for example, what part
9 of Directive 126/10 applies, etcetera.

10 A. Yes. 13:07

11 388 Q. I am paraphrasing, but that's is the letter, it's at
12 page 165. He is saying in that letter -- we will just
13 wait for it to come up there. And apologies for
14 opening this again, I know it's been opened a times?
15 CHAIRMAN: It's all right. 13:07

16 389 Q. MS. McGRATH: If you go down a couple of lines, there's
17 a reference by Garda Keogh, he's telling the
18 superintendent that the matter is directly linked to
19 the investigation at this stage, at least as it could
20 jeopardise the said investigation. Can I just ask you, 13:07
21 bearing in mind what he has just said, my Friend
22 Mr. O'Higgins has opened in some detail the CHIS code
23 to you, isn't that right?

24 A. Yes.

25 390 Q. With regard to how CHIS would work -- 13:08

26 A. Yes.

27 391 Q. -- hand in hand with the criminal investigation that
28 was going on, or whether it could work hand in hand --

29 A. Okay.

1 392 Q. -- with the criminal investigation. Can I just ask you
2 about that? You were looking for the source to be
3 referred. Can I ask you, it would appear from the CHIS
4 document that the member does not have to tell the
5 superintendent the identity? 13:08

6 A. That's correct.

7 393 Q. Okay. So it wasn't necessary for Garda Keogh to tell
8 Superintendent McBrien who the source was?

9 A. No.

10 394 Q. Can I ask you then, if Garda Keogh had taken the route 13:08
11 of going to report the source to a controller, at that
12 stage the identity is live, is that right?

13 A. Yes.

14 395 Q. Obviously.

15 A. Mm-hmm. 13:09

16 396 Q. From a divisional level then, can I ask you, would you
17 then know the source?

18 A. What I would have done in that case is, and as I said
19 earlier on, I would have transferred that source to
20 another chief superintendent. And that happens 13:09
21 frequently enough.

22 397 Q. But I suppose I am asking you, would the name have come
23 to you?

24 A. No. I wouldn't want to know. If it was anything to do
25 with the Ó Cualáin investigation, I wouldn't want to 13:09
26 know. I would send that to someone else and another
27 unit would run that.

28 398 Q. Okay.

29 A. That's the protection in the system.

1 399 Q. Did you think through how all this would work on a
2 practical level, in the sense that if a source was
3 referred? As I say, my Friend opened the document,
4 it's a very complex and detailed manner of dealing with
5 the source and what the source can and cannot say, what 13:09
6 the handler can and cannot do?

7 A. Yeah.

8 400 Q. As you said, it's a very intrusive style of supervision
9 and it's very strictly controlled?

10 A. Yes. 13:09

11 401 Q. How was that going to be compatible with what the
12 Ó Cualáin investigation was doing?

13 A. I'm not following you there.

14 402 Q. In the sense that we know that the Ó Cualáin
15 investigation was dealing with the source. Was there 13:10
16 going to be a sharing of duty? How was this all going
17 to work in practical terms?

18 A. You see, the Ó Cualáin investigation, if there was
19 source the Ó Cualáin investigation would not be dealing
20 with that source. They'd interact but they wouldn't 13:10
21 manage the source. So the source management unit do
22 that with a controller. It's a specialist unit. They
23 only deal with that type of stuff. Nothing else. Only
24 informants. So the Ó Cualáin investigation would feed
25 in. So if that source was providing information, it 13:10
26 would feed information. The source would feed
27 information in to the national unit and then there's an
28 assessment of the intelligence and then it's
29 disseminated. So it's centrally controlled.

1 403 Q. But all of that is triggered when the source is
2 registered, is that right?

3 A. No.

4 404 Q. Okay.
5 A. When there's evaluation. 13:11

6 405 Q. During the evaluation period?

7 A. Yes.

8 406 Q. We know that Garda Keogh has said, I had referred the
9 source to the Ó Cualáin investigation --

10 A. No, that's not a referral. 13:11

11 407 Q. Well, not a referral, sorry, that's the wrong word. He
12 had given the details of the source.

13 A. Yes. But the Ó Cualáin investigation had no
14 responsibility on it. That's my point all along.

15 408 Q. But the Ó Cualáin investigation was meeting with the 13:11
16 source?

17 A. They may have met him, but they may be going to and
18 from and not -- so the source could be interacting with
19 the garda outside of their view and that's where the
20 risk is. And the risk, the risk is with me. It's the 13:11
21 chief is the person who has to form a view, with the
22 superintendent.

23 409 Q. Did you consider whether this source was a potential
24 witness in a criminal investigation and how that might
25 affect your -- 13:11

26 A. No, I did consider that, and that's why you will see:
27 Are we compliant with 126/10?

28 410 Q. So is it your view that it all could have gone ahead in
29 a compatible manner, the referral process, the

1 evaluation process and yet at the same time the
2 Ó Cualáin investigation continuing unhindered?

3 A. Absolutely.

4 411 Q. So what's your view then on the statement of Garda
5 Keogh in the letter, that it could jeopardise the said 13:12
6 investigation?

7 A. Well, you see, what happens there is -- I don't know
8 why it would jeopardise it. I know he might have
9 concerns I understand, I know, from his view at that
10 time, for some reason, and not known to me. But if 13:12
11 it's done right, the system works very well. They feed
12 the information. It's not an issue for Ó Cualáin. It
13 wouldn't jeopardise the investigation. As a matter of
14 fact, it would actually protect the integrity of the
15 investigation by doing a proper evaluation of the 13:12
16 source.

17 412 Q. Was this explained to Garda Keogh?

18 A. No, it wasn't. All he to do was be compliant with
19 126/10, the rest of it looks after itself then.

20 413 Q. I suppose what I am saying to you, he is expressing his 13:13
21 concerns, as you say he had the view it might
22 jeopardise the investigation, did anyone put him at
23 ease in this regard?

24 A. But you see, 126/10, once there's compliance -- and if
25 there's a witness then there's no issue here, but if 13:13
26 there's 126/10 compliance, then we have to go through
27 that and implement that the way the Code of Practice is
28 meant to be implemented.

29 414 Q. Thank you, chief superintendent. Can I just move on,

1 again just a couple of other matters in relation to
2 this morning. Mr. O'Brien asked you about the phone
3 call in respect of Detective Superintendent Mulcahy on
4 26th June 2014?

5 A. Mm-hmm.

13:13

6 415 Q. You were asked did you have any notes of this
7 conversation and you said you didn't make any note.
8 Can I just ask you, did you maintain journals or
9 diaries your period as divisional officer in Westmeath?

10 A. My journals would mainly have -- nearly all my journals
11 contains all the extensions and legal authorisations.
12 If I have meetings they're minuted and if I do an
13 action, I commit it to writing.

13:13

14 416 Q. Were the journals given --

15 A. No, I don't have a journal about that, no.

13:14

16 417 Q. So you don't have journal or diaries?

17 A. As much as possible I commit it in writing. That's
18 where you see all -- anything there is -- I don't do an
19 index or a timeline of what happens every day. But
20 it's there in record.

13:14

21 418 Q. Did you keep notes of telephone conversations in your
22 role as divisional officer?

23 A. No.

24 419 Q. Can I ask you this in respect of the Olivia O'Neill
25 matter: One of the things that you repeated this
26 morning to Mr. O'Brien and throughout the morning, you
27 say one of your main concerns was that she would have
28 been given an opportunity to make a statement in
29 respect of alleged Garda corruption; isn't that right?

13:14

1 A. This is Olivia O'Neill?

2 420 Q. Ms. O'Neill, yes.

3 A. Yes.

4 421 Q. You repeat it again, you say, and this is at page 46
5 this morning, line 27:

13:15

6

7 "To make sure that Olivia O'Neill was to be given the
8 opportunity to report to us. It is not just going to
9 GSOC. So that was the bit that jumped at me."

10 A. Mm-hmm. Yes. That was the piece that was missing.
11 You know, she was told she could go to GSOC, but she
12 wasn't told she could make a complaint to us in
13 relation to corruption.

13:15

14 422 Q. Well, can I just ask you to look at the statement of
15 Garda Stephanie Treacy, which is at page 476. Can I
16 ask you to look at line 114, there at the end?

13:15

17 A. Sure.

18 423 Q. She says:

19

20 "My recollection is that Inspector Farrell advised that
21 Olivia O'Neill could make a statement to Gardaí in
22 Athlone or could make a complaint to the Garda
23 Ombudsman Commission. If Olivia O'Neill did wish to
24 make a statement in relation to the conduct of Gardaí,
25 my belief is that I would not be taking the statement,
26 that someone of a higher rank would have taken that
27 statement."

13:15

13:16

28

29 So I think she is saying there that in fact she was

1 asked that night did she wish to make a statement to
2 the superintendent in Athlone?

3 A. I think it's, advice is received, is what's actually
4 mentioned in Farrell's statement, if I'm right.

5 424 Q. But I'm just saying, this is Garda Stephanie Treacy -- 13:16

6 A. Yeah, but that's her recollection, you know. That's
7 her belief. I am just going on what comes to me in
8 terms of, you know, the report from Inspector Farrell.

9 425 Q. If you look at Inspector Farrell's report, at page 653.
10 And again, I am just asking you, we will deal with this 13:16
11 in with Inspector Farrell, but it was just arising from
12 the evidence you gave this morning. On the first
13 paragraph, the last three lines there:

14

15 "That she should also be made aware of the options 13:16
16 available to her in respect of bringing her concerns to
17 the superintendent at Athlone and/or the Garda
18 Ombudsman Commission."

19 A. Yeah, but she wasn't invited to make a statement in
20 relation to the criminal allegations. 13:17

21 426 Q. Well, the reference to the superintendent and the Garda
22 Ombudsman Commission, would that suggest to you -- did
23 you read that that she had actually been given that
24 opportunity?

25 A. No, she wasn't then invited to make statement, you 13:17
26 know. It was just a piece that needed to be done to
27 close it off.

28 427 Q. Okay. So, as I say, we can clarify that with Inspector
29 Farrell. Just one or two small matters. In relation

1 to the Liam McHugh incident, both yesterday and this
2 morning you told the Chairman that you accepted Garda
3 Keogh's position that the incident didn't happen, is
4 that right?

5 A. Yes. Well, that's what I believe, you know, when I 13:17
6 look at his assurances, I have gone through all that,
7 yeah, so I accepted Garda Keogh's account.

8 428 Q. Okay. This morning, at page 50, line 14-15, you say:

9
10 "He is saying he hasn't met McHugh in three months, so 13:18
11 if it didn't happen, there's no other guards to go to."
12

13 The following page, page 51, 23 to 24, you say:

14
15 "Garda Keogh is saying it didn't happen, so I am 13:18
16 accepting it didn't happen at that time."
17

18 I think that's your evidence to the Chairman.

19 A. Yes.

20 429 Q. Can I ask you, in your statement to the Tribunal did 13:18
21 you set out that position?

22 A. No. But I think the allegation was did I send
23 something to McHugh, that was the issue, to ground a
24 discipline complaint. which was never the case.

25 430 Q. When you were meeting with the Tribunal investigators, 13:18
26 did you set out this position?

27 A. No, but I understood that -- if you look at it, from
28 the outset he was saying that there was an attempt here
29 to start a discipline process. There was never such a

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thing.

431 Q. Can I ask you, Day 106, when Garda Keogh as being cross-examined by Mr. Murphy, and at page 68. Day 106, page 68. So it's 68, you see at the top of the page there, actually in the previous page, page 67, the answer -- what is happening here is, Garda Keogh -- sorry, at the very end of the page, page 23 onwards, that answer from Garda Keogh.

13:19

"Again, like the previous two or three matters, Judge, on the first round, first round, fair enough, he'd be entitled, yes, of course the chief is entitled to carry out these enquiries..."

Now this is in relation to the Liam McHugh issue.

13:20

"But equally, the way this is done, they do the digging on this before they even put the allegation to me and the way even it's done, where I don't get to see the author of the report, which is Garda Lyons, I don't find that out until years afterwards. Judge, the whole way this is dealt with is not normal Garda policy. It's not the way things are normally dealt with and I will dispute -- I am standing my ground fully on this one, Judge."

Then Mr. Murphy puts it to Garda Keogh:

"Q. You see, Garda Keogh, I suggest to you that you are

1 wrong and that this will fit into a number of your
2 other complaints. Because here we have an example of
3 information coming to the Gardaí, a query being raised
4 and the matter being investigated and finalised. You
5 seem to have a problem in some cases with matters being
6 finalised, like crime files, for example, which we will
7 come to later on. But I have to suggest to you, all
8 that occurred here was standard, normal policing.

9 A. No.

10 Q. And the matter ended at that point."

11
12 Now, a couple of pages on, the Chairman is putting some
13 questions to seek to clarify matters with Garda Keogh.
14 Page 75, at line 9, the Chairman says:

15
16 "There's the debate. Mr. Murphy says they went and
17 tried to get a statement from Mr. McHugh, he wouldn't
18 give them a statement and that's the end of the matter,
19 they couldn't progress any further. That's the case he
20 is putting to you?

21
22 Nobody corrected the Chairman otherwise. Can I say, it
23 wasn't put to Garda Keogh that the reason everything
24 came to an end was because his position was accepted?

25 A. He was told by Superintendent McBrien there was no
26 investigation. She was interacting with him and she
27 had taken notes and then he supplied the fact, he said,
28 I haven't met him in three months. And that was the
29 end of it from my point of view.

13:22

1 432 Q. would you accept that it's the first time yesterday
2 that it seems to be stated that his position was being
3 accepted?

4 MR. MÍCHEÁL O' HIGGINS: Chairman, I just wonder --

5 CHAIRMAN: Ms. McGrath, how is Chief Superintendent 13:22
6 Curran to be queried on the basis of what counsel did
7 or didn't put? I mean, that's what I'm -- I mean,
8 let's suppose, I'm not saying it did happen, but let me
9 suppose that Mr. Murphy did not put it at all.

10 MS. McGRATH: Judge, I am sorry, but there is a 13:23
11 misunderstanding.

12 CHAIRMAN: That's a criticism you can make, you can
13 suggest -- let me finish for a second. You can suggest
14 that he didn't have instructions on that. You can
15 suggest that there are inferences or implications. But 13:23
16 to say that Mr. Murphy didn't put this or we're hearing
17 this for the first time, I mean how does that --

18 MS. McGRATH: Maybe I could rephrase that.

19 CHAIRMAN: No, listen, you're entitled to criticise
20 anybody you like. 13:23

21 MS. McGRATH: I'm not criticising anybody.

22 CHAIRMAN: Sorry, let's be absolutely clear, we all
23 know perfectly well it's perfectly legitimate but I am
24 concerned to know just what is the question and what's
25 it based on? what's is the question? 13:23

26 433 Q. MS. McGRATH: Can I ask you to clarify whether you have
27 ever stated before that you accept Garda Keogh's
28 position on this matter, before yesterday?

29 A. Well, you see, that's an interesting point, because

1 it's inferred that that vacuum caused problems. If
2 there was some -- and there was an attempt here to
3 ground discipline. If discipline was to be pursued,
4 there would be a notification very promptly. And
5 there's a process there that has all the safeguards in 13:24
6 it, it has been tried and tested in the courts, and
7 discipline process. Someone goes off -- I appoint
8 someone, someone goes off and deals with it. That
9 never happened.

10 434 Q. I'm sorry, I am not understanding, chief 13:24
11 superintendent. Your reference to the discipline
12 process, how does that come into the equation?

13 A. Well I am throwing it back to Garda Keogh's original
14 complaint. So he's saying this was an attempt to
15 actually go off and start a discipline process. So he 13:24
16 is saying now it doesn't happen. Right. So I am
17 accepting that. Because no discipline happened, he was
18 saying, well, there was intent to get discipline.

19 435 Q. CHAIRMAN: If I understand, Ms. McGrath is saying,
20 okay, so, we now know from your evidence that you 13:24
21 accepted what Garda Keogh said?

22 A. Mm.

23 436 Q. CHAIRMAN: I'm understanding counsel's query to be:
24 Did anybody tell him that? To say, okay, that's the
25 end of that? 13:25

26 A. Yeah. I can't -- I understood that Superintendent
27 McBrien in her conversations with him said there was no
28 investigation. There was no attempt to ground
29 discipline, I don't use those words.

1 CHAIRMAN: I understand.

2 437 Q. MS. McGRATH: I suppose I just really want to get a
3 very straight answer in respect of this. Did you ever
4 say it to him?

5 A. No, I didn't, no, I just left it at that. I let it 13:25
6 rest.

7 438 Q. Can I ask you then, we seem to have now reached a
8 position where it would appear that Mr. McHugh has made
9 a false report, do you accept or dispute that?

10 A. I don't think he made any false report. He had a 13:25
11 conversation and it was reported unknowns to him.

12 439 Q. Had a conversation with whom, chief superintendent?

13 A. With Garda Lyons.

14 440 Q. And in that conversation --

15 A. You see, he didn't actually make a complaint or a 13:26
16 report. He had a conversation and he was asked did it
17 happen and he said no, not at all. Not at all. Oh
18 yes, did it happen, no, not at all. I don't want to
19 get myself into trouble, or something like that. I
20 don't know what -- whatever he was -- I can put a 13:26
21 couple of interpretations on that but he never makes a
22 report. His he has a conversation and then Garda Lyons
23 reports it.

24 441 Q. Can I say, you have told the Chairman that you were
25 satisfied this conversation didn't happen, so therefore 13:26
26 did you then have a concern as to what Liam McHugh was
27 is doing?

28 A. Well he hasn't made a complaint or a report, it's a
29 comment.

1 442 Q. I can't put that any further. Thank you, chief
2 superintendent. I don't have any further questions?
3 CHAIRMAN: Just to follow up on that.
4 A. Sure.

5 443 Q. CHAIRMAN: Suppose it were to be suggested, well, 13:27
6 that's okay, McHugh won't make a statement, that's in
7 effect the end of that. And if Olivia O'Neill won't
8 make a statement, that's the end of that. But is there
9 hanging in the ether, is there hanging in the air a
10 sort of notion that Garda Keogh is drumming up 13:27
11 complaints against the guards? Do you know what I
12 mean? If Olivia O'Neill is to be believed and if Liam
13 McHugh is to be believed, somebody is saying something?
14 A. Well, Garda Keogh knows that these people haven't made
15 statements. 13:27

16 444 Q. CHAIRMAN: Yes.
17 A. So that's for him. I think with the controversy that
18 came around being publicly named, there was obviously
19 some concern when you hear that -- one of the
20 interpretations, there's about six of them I think, of 13:28
21 the McHugh one, is that he could have been doing that.
22 To me it wasn't automatically that at all. Was it
23 hanging in the air? Some people may have had that
24 view.

25 445 Q. CHAIRMAN: Okay. 13:28
26 A. It wasn't really mine.

27 446 Q. CHAIRMAN: One further thing: In relation to the CHIS
28 protocols and the operation of an informant?
29 A. Yes.

1 447 Q. CHAIRMAN: In the ordinary way and in a, how do I say
2 this, I'm trying to be as careful as possible, in a
3 perfect world -- sorry, if the rules were to be
4 observed?
5 A. Yes. 13:28

6 448 Q. CHAIRMAN: Am I understanding that if an informant
7 presents himself or herself, the procedure, the proper
8 procedure, not necessarily always followed, but the
9 proper procedure would be that in advance that would be
10 notified. That that would be, if I was the guard and 13:28
11 somebody approaches me?
12 A. Yeah.

13 449 Q. CHAIRMAN: would I go and get this registered first?
14 A. No. You see, he can't register. The registration only
15 happens after the source unit do the evaluation. 13:29

16 450 Q. CHAIRMAN: So in the ideal world?
17 A. Yes.

18 451 Q. CHAIRMAN: Or, I should say, in a world where the
19 protocols were being followed?
20 A. Okay. 13:29

21 452 Q. CHAIRMAN: And I understand what you say, this is a
22 precise and important thing, what would happen? A
23 guard becomes aware of an informant?
24 A. Yes.

25 453 Q. CHAIRMAN: Or a potential informant having information? 13:29
26 A. Yes.

27 454 Q. CHAIRMAN: Now what happens?
28 A. He gets -- he goes and he reports --

29 455 Q. CHAIRMAN: Lean forward.

1 A. I beg your pardon, Chairman. He can go forward to his
2 supervisor or superintendent or inspector. They then
3 make an arrangement, they get on to the controller, who
4 then sends out a handler to talk to the source.
5 Handlers, rather, to talk to the source. That's how it 13:29
6 works. Somebody who comes along who is an informant,
7 there's a number of reasons why you wouldn't
8 necessarily -- if it's just a public spirited citizen,
9 you don't necessarily --

10 456 Q. CHAIRMAN: Yes, I understand that. And that's one of 13:30
11 the issues, I know, as to whether it applies and so on.

12 A. A lot of the work they do is just evaluations before it
13 ever gets to registration.

14 457 Q. CHAIRMAN: Okay. Does the person give to the
15 information to the controllers? 13:30

16 A. No, to handlers. A Controller can be part of that
17 conversation, it's up to the controller. But the
18 handlers do all that and everything is recorded.

19 458 Q. CHAIRMAN: So if I am the original garda who gets the
20 information. 13:30

21 A. Yes, you're gone.

22 459 Q. CHAIRMAN: I'm sidelined?

23 A. You're gone.

24 460 Q. CHAIRMAN: I'm sidelined, not so to speak, I am
25 literally sidelined? 13:30

26 A. You're gone. You're removed from the interactions.

27 461 Q. CHAIRMAN: Thanks very much. Thank you very much.

28 A. Thank you, Chairman.

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END OF EXAMINATION

CHAIRMAN: Are we finished with Chief Superintendent Curran?

MS. McGRATH: Yes, thank you very much.

13:30

CHAIRMAN: Thank you very much. Okay. Very good.

MS. McGRATH: Chairman, I think you mentioned yesterday that we were adjourning to Tuesday morning with Ms. O'Neill I think, the 26th of November.

CHAIRMAN: Yes. We are not sitting on the first day, on the Monday. You can stand down.

13:31

WITNESS: Thank you.

CHAIRMAN: So the on the Tuesday and we will resume with Ms. O'Neill, okay. Okay. Thanks very much.

13:31

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