

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

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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT  
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HELD IN DUBLIN CASTLE  
ON WEDNESDAY, 4TH DECEMBER 2019 - DAY 125

125

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 WEDNESDAY, 4TH  
2 DECEMBER 2019:

3  
4 CHIEF SUPERINTENDENT PATRICK MURRAY CONTINUED TO BE  
5 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

10:21

6  
7 CHAIRMAN: Good morning. Yes.

8 1 Q. MR. MARRINAN: Good morning, chief superintendent.

9 A. Good morning, Chairman.

10 2 Q. Just before we move on to issue 15, which is the  
11 alleged denial of commendations, was there anything  
12 arising out of yesterday's evidence that you were  
13 particularly concerned about?

10:32

14 A. No, Chairman.

15 CHAIRMAN: Thanks very much.

10:33

16 3 Q. MR. MARRINAN: The first of these issues concerns the  
17 quite serious incident that occurred on 4th August of  
18 2015, where an elderly taximan was stabbed. This was  
19 quite a serious offence, isn't that right?

20 A. It was.

10:33

21 4 Q. I think it was an offence that received some degree of  
22 notoriety in the town of Athlone?

23 A. It did, Chairman. There was quite a lot of media  
24 publicity about it. The gentleman was well into his  
25 70s, and he had, after retirement, engaged in taxiing,  
26 work as a taximan, and this happened to him late at  
27 night.

10:33

28 5 Q. I think it was an incident that you took an interest  
29 in, isn't that right?

1 A. Well, it was a serious and critical incident and one of  
2 public notoriety and was going to cause concern in the  
3 community. We knew that. I was very anxious that we  
4 would, I suppose, deal with it as quickly as possible  
5 and bring some level of comfort to the community,  
6 particularly the elderly community around town.

10:34

7 6 Q. If we could just have page 86 up on the screen. This  
8 is what Garda Keogh says in relation to this incident.  
9 If we scroll down to line 1236, please.

10

10:34

11 "What I mean by being taken off the case is the record  
12 of my involvement was erased from Pulse. It is  
13 possible that a detective unit took over the case and I  
14 have no issue with that. It is just included in my  
15 statement because I was removed from Pulse entirely  
16 though I had worked on the case, and where any  
17 commendations arose I would not be included. I do not  
18 know who removed me from Pulse but I am sure this may  
19 be checked. I would have no issue if I was removed  
20 from investigating garda to assisting garda on Pulse,  
21 rather than being removed altogether from the  
22 incident."

10:34

10:35

23

24 If we could then just briefly look at the entry that he  
25 made in relation to this, which is at page 13323,  
26 please, Mr. Kavanagh. That will come up on the screen.  
27 You see there, the 3rd August, he has:

10:35

28

29 "Night taximan stabbed at Bloomfield Drive."

1 A. Yes.

2 7 Q. Then if we go over across the page, you will see, it  
3 seems to be blanked out but it's Saturday 8th:

4

5 "I noticed I was removed on Pulse from stabbing  
6 taxi man. I seized clothes and car T."

10:36

7

8 That's technical examination, is that right?

9 A. Yes.

10 8 Q. If we can look then at your answer to this in your  
11 statement. If we look at 2056, please. You say here  
12 at the bottom of the page, if we could scroll down to  
13 the bottom, please:

10:36

14

15 "On 3rd August 2015, two serious crimes of robbery were  
16 committed in Athlone within a number of hours of each  
17 other, both had a common denominator, in that both  
18 victims were elderly males, one a taxi driver and one a  
19 shop owner. A meticulous investigation was carried out  
20 in relation to both crimes. It was coordinated by then  
21 Detective Sergeant Curley and his team. I was not  
22 aware of Garda Keogh's involvement in either of those  
23 crimes, which were investigated together. The culprits  
24 for both crimes were prosecuted and convicted at the  
25 Circuit Court sitting in Longford on 8th November of  
26 2016, at which I was present with both victims."

10:37

10:37

10:38

27

28 so there you're stating that you were unaware of Garda  
29 Keogh's involvement in relation to the matter. If we

1 could have 3093 of volume 11 up on the screen, please.  
2 This is your interview with the Tribunal investigators.

3 A. Yes.

4 9 Q. If we scroll down to question 1310. Again you refer to  
5 the fact that it was quite a series incident and it 10:39  
6 followed on from another incident of a similar nature  
7 and both were investigated together. Again you point  
8 out there was a certain notoriety about it and you  
9 refer back to your statement. You say that you took a  
10 hands on approach with the case and that you had no 10:39  
11 knowledge of Garda Keogh's involvement. You say:

12  
13 "I don't think he supplied a statement to the  
14 investigation file which went to the DPP. The file was  
15 done and completed through the incident room and chief 10:39  
16 superintendent and I visited one of the victims the  
17 evening after it happened. I had no knowledge of Garda  
18 Keogh being involved in that one and to the best of my  
19 recollection and knowledge there is no statement on the  
20 investigation file from him, so I would interpret that 10:40  
21 as him having very little or not involvement."

22  
23 You then state:

24  
25 "I believe he handed in a piece of clothing to the 10:40  
26 exhibits officer."

27  
28 was that as a result of enquiries that you made since  
29 you had made the statement?

1 A. Yes. I had an opportunity to look at the actual file.

2 10 Q. Then you say -- sorry?

3 A. Sorry, before I met the Tribunal investigators.

4 11 Q. So that was an additional piece of information that you  
5 gleaned? 10:40

6 A. Yes.

7 12 Q. So that, rather than having no involvement you say that  
8 you believed that he had a limited involvement?

9 A. That's what the file -- the exhibits chart on the file,  
10 I saw that, he was recorded as handing in some clothing 10:40  
11 to the exhibits officer.

12 13 Q. You say:

13

14 "Pulse leaves a footprint. It is an audit trail of  
15 anyone who went through the incident and I can't see 10:41  
16 anyone having any reason to do what Garda Keogh  
17 alleges."

18

19 Just in relation to that, the entries on Pulse are  
20 designed to be an audit in relation to where there is 10:41  
21 an investigation, isn't that right?

22 A. Yes. Every interaction with Pulse leaves a footprint.

23 14 Q. Yes.

24 A. Electronically, that can be audited.

25 15 Q. And if Garda Keogh had seized clothes as an exhibit, he 10:41  
26 should have been on the Pulse entry as an assisting  
27 member, isn't that right?

28 A. Yes. Well, I understand that he put the entry on  
29 Pulse, I understand that now.

1 16 Q. No, but I am just saying in normal circumstances it  
2 would be a record of anybody who had any dealings with  
3 the investigation?

4 A. Yes, indeed. It's an electronic record.

5 17 Q. So, for instance, if somebody was looking after 10:41  
6 exhibits, they ought to be on Pulse, isn't that right?

7 A. Yeah. It wouldn't always happen that they would be,  
8 because the file would be the primary source of  
9 information and I suppose Pulse is a storage of data  
10 there. In the ideal world everything would go on it 10:42  
11 and it would be accurately kept at all stages of the  
12 investigation. That doesn't always happen in practice  
13 and there have been some failings in that down through  
14 the years, which have led have controversies in itself.  
15 So the file is, I suppose, the primary source of 10:42  
16 information, as it were, in relation to anyone who had  
17 any dealings with the investigation.

18 18 Q. If we could look at the Pulse entry then itself, the  
19 first page of it is at page 533 of the materials.  
20 There's no need to go through all this document. It 10:43  
21 sets out the time the incident occurred, when it was  
22 reported, the time it was reported, the details of what  
23 was stolen, the details of the injured party, the names  
24 of suspects. We now know that all these were matters  
25 were recorded by Garda Keogh, isn't that right? 10:43

26 A. Yes.

27 19 Q. If we go down, we will see that reporting garda has  
28 Garda John J Glennon. That appears to be an error?

29 A. Yes.

1 20 Q. And then investigating garda, Niall Cogavin?  
2 A. Yes, he was a detective garda.  
3 21 Q. Then it lists the assisting gardaí for the rest of the  
4 page. There were quite a number of them. And then we  
5 go on to 534. Again, there are another eight gardaí 10:44  
6 there as assisting gardaí. These would have been  
7 guards who were at the scene, first responders?  
8 A. Yeah. And people who, I suppose, formed part of the  
9 investigation team that began soon after the incident  
10 occurred. 10:44  
11 22 Q. They would have been people who preserved the scene?  
12 A. Absolutely.  
13 23 Q. Anybody who had any dealings with the scene --  
14 A. Yeah.  
15 24 Q. -- in the normal course of events. People who would 10:44  
16 take exhibits?  
17 A. Yes.  
18 25 Q. And then moving on to arresting members?  
19 A. Yes.  
20 26 Q. And interviewing members, isn't that right? 10:44  
21 A. Yes, people who carrying out searches.  
22 27 Q. And then if we just scroll down page 534, we see in the  
23 third last line there, under "narrative":  
24  
25 "Incident recategorised to robbery and Garda 10:45  
26 Cogavin/Di villy assigned to investi gate fol lowing  
27 deci sion of dai ly PAF meeti ng."  
28 A. Yes.  
29 28 Q. If we could just please have up on the screen page

1 14706. This was a report through an e-mail. Is this  
2 the type of report -- it's from the superintendent  
3 Athlone, was this the type of report that you  
4 envisaged, how it should be set out in relation to  
5 serious and critical incidents? 10:46

6 A. I suppose that report was I think on the 4th August, so  
7 it's before I issued that instruction. But, yeah, I  
8 suppose it's something I had envisaged, it's an e-mail  
9 that was sent to me.

10 29 Q. But sorry, the e-mail itself, the body of it, is that 10:46  
11 the sort of report that you envisaged would be sent?

12 A. In a broad sense.

13 30 Q. Pardon?

14 A. In a broad sense, yeah, maybe with some more  
15 information perhaps of the notoriety of the crime. 10:46

16 31 Q. But we discussed this yesterday --

17 A. Yes.

18 32 Q. -- in relation to the duty of a sergeant --

19 A. Yes.

20 33 Q. -- to send in a report? 10:46

21 A. Yes.

22 34 Q. Is this the sort of report we're now looking at?

23 A. Absolutely, yes.

24 35 Q. And the importance of that report was that it would  
25 alert senior management to matters that would be 10:46  
26 important for senior management to know at the outset  
27 of any investigation?

28 A. That's correct, and it would kick start the process of  
29 investigation, where the structure of the team that

1 would be put together to deal with this would roll into  
2 place and make some progress on it at an early stage.

3 36 Q. So it's dated 4th August 2015. It's:

4

5 "Subject: Assault causing harm."

10:47

6

7 I think the incident was recategorised to robbery at  
8 the PAF meeting?

9 A. That's correct, reclassified at the PAF meeting from  
10 assault to robbery.

10:47

11 37 Q. And it's sent on the 4th August at 4:33 and it's  
12 received on the 4th August at the same time.

13

14 "With reference to the above, Gardaí received a call in  
15 relation to taxi driver having been mugged at a certain 10:47

16 location in Athlone at approximately 1:35am. When

17 Gardaí arrived the taxi driver had made his way to the

18 grounds of another location. He had received several

19 slash wounds to the cheek of his face, a slash to his

20 neck area and a deep laceration to the thumb area of 10:48

21 his hand. He was attended to by ambulance personnel

22 and was conveyed to Ballinasloe hospital, where he is

23 comfortable. He reported that he collected two males

24 wearing hoodies outside a location in Athlone and they

25 asked to be brought to another location. When they 10:48

26 arrived there, they attacked him with a knife and stole

27 his watch and taxi money, approximately €100. They ran

28 in a certain direction. He was not in a position to

29 give any sort of description of the culprits. The car

1 was towed to the ABS recovery for examination. Garda  
2 CCTV was viewed and further enquiries have to be  
3 carried out in relation to local CCTV. Family members  
4 were contacted. Garda Keogh is investigating member  
5 and will attend to further enquiries when he returns 10:49  
6 from rest days. A search was carried out by members  
7 under [a location] and in the general area where the  
8 incident happened and nothing was found. Forwarded for  
9 your information, please."

10  
11 That clearly indicates that Garda Keogh is the  
12 investigating member, isn't that right?

13 A. Yes.

14 38 Q. And indicates that he is going on some rest days?

15 A. Yes. 10:49

16 39 Q. Which obviously wouldn't be satisfactory if he was then  
17 going to deal with it on his return?

18 A. No.

19 40 Q. Yes. You told us in your statement that you don't have  
20 a recollection of Garda Keogh being involved in this 10:50  
21 incident?

22 A. Yes.

23 41 Q. And then in your interview with the Tribunal  
24 investigators you say that you think that he had  
25 limited involvement. But he was the investigating 10:50  
26 member, member in charge of the investigation at one  
27 stage, isn't that right?

28 A. At a very early point in time, yes.

29 42 Q. And here you have been notified of that?

1 A. Yes.

2 43 Q. Isn't that right?

3 A. Yes.

4 44 Q. In circumstances where you weren't happy really that he  
5 was doing his work, isn't that right? 10:50

6 A. Well, I suppose I had raised some concerns, yes.

7 45 Q. Yes. I suppose of anybody that you had been dealing  
8 with at that stage in Athlone Garda Station, you  
9 wouldn't have been happy with him being the  
10 investigating member of such a serious offence? 10:51

11 A. Well, he may well be allowed to be the investigating  
12 member, as he was with the theft of the trailer, but he  
13 would need quite a bit of support. And this was an  
14 investigation that one person wouldn't be able to  
15 handle anyway, this was a team based approach. 10:51

16 46 Q. I think Garda Keogh has no difficulty that this matter  
17 went to the detective unit and he even seems to think  
18 that it was perhaps more appropriate that they would  
19 take over the investigation of such a serious incident?

20 A. It would be quite normal, yes, Chairman. 10:51

21 47 Q. When you saw that e-mail, were the alarm bells not  
22 ringing for you at that stage, to say, well, look, we  
23 can't have Garda Keogh leading this, we will get the  
24 detective unit to take over?

25 A. I can't recall seeing the e-mail. But when I went in 10:51  
26 to work that morning enquiries had already begun and  
27 Detective Garda Cogavin and Divilly, who were in, had  
28 already begun to make enquiries. So when the meeting  
29 happened at 10am, a certain amount of enquiries had

1 already begun and some CCTV had been procured, which  
2 gave a broad indication of a particular subject.

3 48 Q. Yes. I am more concerned about your response and  
4 reaction when you got this e-mail?

5 A. Well, I don't recall getting the e-mail and when I saw 10:52  
6 it here, that was, you know, the first time it came  
7 into my mind again. And I have no recollection of  
8 actually reading it on the night, I see it came to me  
9 at 4:30, or the following morning.

10 49 Q. But you would have got your emails the following 10:52  
11 morning?

12 A. Absolutely.

13 50 Q. And you would have updated yourself before going to the  
14 PAF meeting?

15 A. Yes, absolutely. 10:52

16 51 Q. The purpose of the PAF is update you.

17 A. Yes.

18 52 Q. So the e-mail would have been available to you at PAF  
19 meeting?

20 A. Oh, I have no doubt the e-mail was in my in-box and I 10:52  
21 more than likely read it and I am sure the e-mail  
22 system would be able to indicate that.

23 53 Q. At the PAF meeting, the offence was recategorised,  
24 isn't that right?

25 A. Yes. On analysis, yeah, it was a robbery, a clear 10:53  
26 robbery, it was a stealing, attended to by the use of  
27 force and the person was subjected to --

28 54 Q. And also, Garda Divilly was assigned to be the  
29 investigating member, isn't that right?

1 A. Yes, at that stage, yes.

2 55 Q. So Garda Keogh was removed from that role?

3 A. He was, yeah.

4 56 Q. So certainly if you hadn't read the e-mail, you knew at  
5 the PAF meeting? 10:53

6 A. Oh absolutely, yeah, that was a decision that was made  
7 at the PAF meeting.

8 57 Q. But you knew that Garda Keogh was down as investigating  
9 member, isn't that right?

10 A. Yes. 10:53

11 58 Q. I am just wondering how is it that those two matters,  
12 the e-mail and the discussion at the PAF meeting,  
13 escaped your mind when you came to make a statement in  
14 relation to Garda Keogh's involvement in relation to  
15 this offence? 10:53

16 A. I suppose, it was four years previously and I just  
17 hadn't looked at the material in the same way I did  
18 before the interview with the Tribunal investigators.  
19 I hadn't access to it when I made the statement, I was  
20 working off my own records and diaries and notes. 10:54

21 59 Q. It's just, you know, from your evidence yesterday in  
22 relation to the concerns that had you about Garda Keogh  
23 and his capacity to carry out his duties, I am just  
24 wondering how you wouldn't remember an incident such as  
25 this that was such a serious incident and that Garda 10:54  
26 Keogh's involvement and initial involvement wouldn't  
27 have stuck out in your mind?

28 A. I wasn't watching everything that Garda Keogh was  
29 involved in that degree. In fact, every incident or

1 issue I dealt with with Garda Keogh, it came across my  
2 desk. I never looked for anything in that fashion.

3 60 Q. Now, I think that we have a statement from Garda  
4 Shankey-Smith and also a statement from Mr. Brian  
5 Savage. I don't need them up on the screen. They're 10:55  
6 page 6202 of the material and 6203. But this concerns  
7 the trail that was left on Pulse?

8 A. Yes.

9 61 Q. It appears that Sergeant Curley had removed Garda Keogh  
10 from Pulse. And it may well have just been simply 10:55  
11 inadvertence --

12 A. Yes.

13 62 Q. -- that the investigating member was put down as Garda  
14 Divilly and that Garda Keogh ought to have been put  
15 down as assisting member, isn't that right? 10:55

16 A. Oh absolutely.

17 63 Q. Yes.

18 A. Yes.

19 64 Q. So when Garda Keogh says that this ought to have been  
20 done, he's correct in that regard? 10:55

21 A. He's very correct, yes.

22 65 Q. Yes. He suggests that this was done in a way to remove  
23 him from the incident because of the work that he had  
24 done and in some sense that this is a targeting of him.  
25 what do you say in relation to that? 10:56

26 A. I can understand in relation to what was going on in  
27 his life, that may be a perception that he held. And  
28 when he saw, I suppose, everyone else that had been at  
29 the scene with him continue as assisting gardaí on the

1 incident and he didn't see himself there. But what I  
2 understand what happens when someone is removed as an  
3 investigating person, it was -- I suppose there was an  
4 understanding that that person automatically dropped  
5 down to an assisting role without having to be removed 10:56  
6 and reentered, and that wasn't the case and no one  
7 seemed to realise that at the time.

8 66 Q. I referred to it yesterday, the transcript of his  
9 telephone conversation to the Pulse centre is at page  
10 12639? 10:57

11 A. Yes.

12 67 Q. And goes through to 12646?

13 A. Yes.

14 68 Q. It appears he was on top of the case at that stage and  
15 gives all the relevant details in relation to the 10:57  
16 investigation?

17 A. Yes.

18 69 Q. Isn't that right?

19 A. He was tasked to put the incident on with the call  
20 centre and on Pulse, yes. 10:57

21 70 Q. He seems to be familiar with all the details of the  
22 incident?

23 A. Yes.

24 71 Q. You couldn't criticise him in any way for his  
25 interaction with the Pulse centre, isn't that right? 10:57

26 A. No. There's a little bit of indecision about the  
27 classification, but that's is normal and that's what  
28 the PAF process is designed to do; to, you know, make  
29 those corrections in the morning. No issue with that.

1 72 Q. He also makes the case that a number of investigating  
2 members received commendations?  
3 A. Yes.

4 73 Q. Was it when it went to the Circuit Court eventually  
5 that it was after that, that commendations were handed 10:58  
6 out?  
7 A. I think the EPW1 form in line with the policy was  
8 completed then by Inspector Curley, then Detective  
9 Sergeant Curley.

10 74 Q. A large number of the members who were investigating 10:58  
11 received commendations, but not all of them, is that  
12 right?  
13 A. I think 11 out of 23.

14 75 Q. Were any who had attended at the scene and who were  
15 involved in preserving the scene, did they receive 10:58  
16 commendations?  
17 A. I can't honestly say, because I haven't compared the  
18 names prior to giving evidence.

19 76 Q. Yes.  
20 A. But I suppose this investigation and the one that 10:59  
21 followed a number of hours later were treated as one  
22 and there was a common denominator in relation to the  
23 suspects. The first one involved two culprits and the  
24 second crime, which was again targeted at an elderly  
25 male, involved four, and one person was common to both 10:59  
26 groups. And the two investigations were treated as  
27 one, with the same group of youths, I suppose, having  
28 knowledge of being involved in some conspiratorial way  
29 in both crimes.

1 77 Q. He makes the case that he believes that he was removed  
2 from Pulse so that he wouldn't be up there to be  
3 considered for commendations, for a commendation. And,  
4 of course, if he wasn't on the Pulse and hadn't been  
5 shown to have a role in relation to the matter, he 10:59  
6 wouldn't have been considered, is that right?  
7 A. That's right.

8 78 Q. And, of course, you would make the case, well, he was  
9 removed from Pulse at a very early stage and there  
10 wasn't an issue in relation to commendations and you 11:00  
11 didn't know that the matter was going to be  
12 investigated as well as it was leading to prosecutions  
13 and convictions and thereby commendations?  
14 A. Yes.

15 79 Q. Yes. 11:00  
16 A. I suppose commendations seem to be confined to the  
17 period from the morning of the 4th, when the  
18 investigation began, as it were, and then it became  
19 intertwined with the second crime and the two of them  
20 were treated together. I think the investigation went 11:00  
21 on over about four days. I suppose the work that went  
22 into it in that period it seems to have been a  
23 determining factor in the decision that was made as to  
24 who would be nominated.

25 80 Q. Just come back to something that you said there a 11:00  
26 moment ago when you referred to, that you could  
27 understand in relation to Garda Keogh and the place  
28 that he was in at that particular time?  
29 A. Yes.

1 81 Q. Can you understand how he may have felt having seen his  
2 name erased, as it were, from having been involved in a  
3 major investigation like that?  
4 A. Sitting here now, I can see that, and the entry in his  
5 diary absolutely reflects his mindset in that vein. 11:01  
6 82 Q. And would you accept that it might have inadvertently  
7 fed into the concerns that he had at the time and his  
8 perception --  
9 A. I do, I accept that.  
10 83 Q. -- of how he was being dealt with by management? 11:01  
11 A. I do.  
12 84 Q. And also the fact that ultimately people in the Garda  
13 station were to receive commendations.  
14 A. Yes.  
15 85 Q. That that may also have fueled his concerns. 11:01  
16 A. Yes. I can understand that.  
17 86 Q. You can readily accept that?  
18 A. But no one had any motive, you know, in relation to  
19 that perception that he had. There was no motive for  
20 anyone to do it that way and it seems to have just been 11:02  
21 something that occurred in an inadvertent way.  
22 87 Q. Is there anything else you wish to say in relation to  
23 that?  
24 A. No, Chairman.  
25 88 Q. If we could then move on please, this was the lady who 11:02  
26 got into trouble in the River Shannon on the 22nd  
27 September, which is a few weeks later after the last  
28 incident.  
29 A. Yes, Chairman.

1 89 Q. If we look at Garda Keogh's diary entry, it's at page  
2 1330. It's an entry there on the 21st September. It  
3 says:

4  
5 "Pulled lady alive out of the Shannon by hair." 11:03

6  
7 And then there is a note here:

8  
9 "Sergeant Monaghan said he will look for commendations  
10 for the unit." 11:03

11 A. Yes.

12 90 Q. And then he says:

13  
14 "Doubt I'll get one." 11:03

15  
16 If we could then look at his interview with the  
17 Tribunal investigators, at page 91 of the material.  
18 And if we scroll down to 1313, please. He says:

19  
20 "Sergeant Monaghan was the sergeant present at the 11:04  
21 scene, who later applied for commendations for  
22 everyone."

23  
24 Did Sergeant Monaghan apply for commendations?

25 A. Not as far as I know. No, I have no recollection of 11:04  
26 that, of him ever applying for commendations.

27 91 Q. "It is my belief that no commendations were granted as  
28 I was the one who rescued the lady from the water. But  
29 nobody told me that. In my experience a rescue such as

1 this would bring about commendations from the Gardaí  
2 unusually in this situation. Only Irish Water Safety  
3 gave an award."  
4

5 And then:

11:04

6  
7 "This award was given on 8th November 2016, which was  
8 over a year after the incident occurred on the 22nd th  
9 September. It is my belief that the commendation  
10 belatedly triggered from An Garda Síochána for an award 11:05  
11 from the Irish Water Safety, coincides with the  
12 issuance of and Garda receipt of my application to the  
13 Personal Injuries Assessment Board in respect of my  
14 civil proceedings against the Gardaí."

11:05

15  
16 Now, I think that Garda Keogh, when he was confronted  
17 with your letter that you wrote to the chief  
18 superintendent and then the letter that you wrote to  
19 the Irish Safety Board, accepted that that couldn't be  
20 correct.

11:05

21 A. Okay.

22 92 Q. That allegation was, nevertheless, made against you,  
23 isn't that right?

24 A. Yes, for some time.

25 93 Q. What impact did that have on you?

11:05

26 A. It was a very damaging allegation, I suppose, you know,  
27 against me. I suppose it had gone on for some time and  
28 it had an impact obviously on my character, my  
29 reputation and my career.

1 94 Q. He then continued on:

2

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"It is my belief that this was a guise to counteract the receipt of the said application as it was difficult for the Gardaí to perform a U-turn of their earlier position not to follow Sergeant Monaghan's recommendation for commendation, hence the unusual of the sole award from the Irish Water Safety."

11:06

If we can look at the Pulse entry in relation to this incident, it is to be found at page 9211. That entry sets out the location, the scene and then there is a narrative of what occurred. It says:

11:06

"Received phone call from Malin Head coast guard that a lady had telephoned them stating that she was in the river in Athlone. Garda searched the banks of the river and found a lady swimming in the river at the strand Athlone. After several attempts, Gardaí removed the lady from the water. Ambulance was called. The lady was placed in the ambulance. Was very agitated. Mydoc was called to sedate the patient. Patient transferred to hospital under Garda escort and the family were notified."

11:07

11:07

11:07

Then it has the Gardaí and Garda Keogh is listed as an assisting garda and we see that Sergeant Monaghan was in fact the supervising member.

A. Yes.

1 95 Q. That would have come before the daily PAF meeting;  
2 isn't that right?

3 A. It did.

4 96 Q. Pardon?

5 A. It did. 11:08

6 97 Q. Do you remember did you speak to Sergeant Monaghan?

7 A. I do remember, yeah. It would be normal, something  
8 like that, for me to maybe write in hand on the  
9 incident summary at the PAF 'good work, consider EPW1'  
10 or something along those lines. But I remember 11:08  
11 speaking to Sergeant Monaghan and having a discussion  
12 how he would like to deal with it, considering that we  
13 had already used the Seiko Irish water safety awards as  
14 a way of commending excellent work of a similar nature  
15 a number of months previously. 11:08

16 98 Q. In relation to your discussion with Sergeant Monaghan,  
17 not in a formal way, did you in an informal way ask him  
18 what happened?

19 A. Yes, absolutely, and he explained to me what happened  
20 as outlined in the incident, yeah. 11:09

21 99 Q. Did you realise that Garda Keogh was to the fore in  
22 relation to it, insofar as he was the person who  
23 reached out and pulled the lady from the water?

24 A. I don't think it went into that much detail, but he  
25 outlined the team involvement that occurred in relation 11:09  
26 to it, and he was commending I suppose everybody on his  
27 team for the way they handled it. He didn't name  
28 anyone in particular and he didn't concentrate on Garda  
29 Keogh or any other member associated with it, to the

1 best of my recollection.

2 100 Q. I asked you this yesterday, but you didn't think at the  
3 time that it might have been, given the circumstances  
4 of Garda Keogh, given what we have spoken about earlier  
5 on and the position that he then found himself in, that 11:10  
6 this was excellent police work.

7 A. Yes.

8 101 Q. Did you not think of maybe recognising it there and  
9 then by either contacting him by phone or by calling  
10 him in and saying, I believe you were part of a party 11:10  
11 involved in saving a drowning lady from the River  
12 Shannon and I would like you to know that I appreciate  
13 it and well done?

14 A. No, I didn't.

15 102 Q. You didn't think of doing that? 11:10

16 A. No, and I didn't consider that for anybody else either.  
17 I wanted to acknowledge it in a formal way and I  
18 discussed with Sergeant Monaghan what the best way to  
19 do that was.

20 103 Q. In a formal way would be to put them forward for 11:10  
21 commendations --

22 A. Yes.

23 104 Q. -- within An Garda Síochána, isn't that right?

24 A. Well, either that or the seiko or indeed both, could be  
25 options, yes. 11:10

26 105 Q. You could have done both?

27 A. Well, I suppose the policy in relation to EPWIs  
28 indicate that the sergeant is the one who would  
29 initiate the commendation by completing the form and

1 submitting it to me and then I would submit it in turn  
2 to the divisional award board.

3 106 Q. So you are saying the reason that you didn't recommend  
4 a commendation was because Sergeant Monaghan hadn't  
5 initiated the process? 11:11

6 A. Whatever would come up to me, I would certainly have  
7 endorsed it and forwarded it in that fashion.

8 107 Q. So you would have done so had Sergeant Monaghan  
9 initiated it?

10 A. Absolutely, yes. 11:11

11 108 Q. So the fact that it wasn't done in this instance is  
12 down to Sergeant Monaghan not making the  
13 recommendation?

14 A. Well, I suppose he did send in a Seiko form.

15 109 Q. Yes. 11:11

16 A. He sent in that form. And that was the way it went  
17 then and I suppose, as you said, I did send a report  
18 that day to the chief superintendent.

19 110 Q. We will come to that now. It's at page 9210 of the  
20 material, please. This is a letter that you sent to 11:11  
21 the chief superintendent. Perhaps if we just blank out  
22 the -- just move it up, it refers to the type of  
23 incident it was, which mightn't be accurate in any  
24 event?

25 A. Yes. 11:12

26 111 Q. You say:  
27  
28 "I refer to the above and wish to draw your attention  
29 to the excellent work carried out by the members

1 involved led by Sergeant Monaghan in this case, who at  
2 3am, in the dark, located a lady in the water and saved  
3 her life."

4  
5 Then you say:

11:12

6  
7 "The actions of Sergeant Monaghan and his team warrant  
8 mention and I have asked that they notify Irish Water  
9 Safety so their good work is acknowledged."

10 A. Yes.

11:12

11 112 Q. Then if we go over at page 2383, this is the letter  
12 that you wrote to the Just in Time Seiko Rescue Award?

13 A. Yes.

14 113 Q. "Plead find attached completed application form in  
15 respect of a Seiko Just in Time Rescue Award."

11:13

16  
17 And then you refer to the incident and you say -- which  
18 is the narrative, more or less, that is on the Pulse  
19 entry, isn't that right?

20 A. Yes.

11:13

21 114 Q. And you point out that:

22  
23 "Sergeant Dermot Monaghan, Garda Nicholas Keogh, Garda  
24 Ciaran Dempsey, Garda Mary Murphy, Garda Karl Moore,  
25 Joanna Connolly and Garda Reese Gleenon, all of Athlone  
26 Garda Station, rushed to the location and commenced  
27 searching thoroughly along the shoreline in an effort  
28 to locate the distressed female. Their search was  
29 severely hampered by the darkness and the difficult

1 weather conditions. They subsequently located the  
2 female about 15 feet from the bank, swimming up and  
3 down. They spoke at length cajoling her and after  
4 several attempts removed her from the water."

11:14

6 I suppose you don't highlight Garda Keogh's role in  
7 pulling her from the water there, but you are dealing  
8 with them as operating as a team, is that right?

9 A. I am. And I suppose there was an application form  
10 completed by Sergeant Monaghan that went with that and 11:14  
11 I summarised what was in that.

12 115 Q. You then go on to say:

13  
14 "The speed in which the members acted, their dedication  
15 and commitment in such inclement weather conditions 11:14  
16 ensured a positive outcome to what could possibly have  
17 been a tragic incident. I highly recommend the  
18 nominees to be considered for a Seiko Just in Time  
19 bravery award."

11:15

21 Now, in relation to that, we know that there was a  
22 national award ceremony held the following year, on the  
23 8th November and Garda Keogh was invited to receive his  
24 award at that, isn't that right?

25 A. That's correct. 11:15

26 116 Q. Garda Keogh, in relation to this, believes that he  
27 wasn't nominated for a commendation and none of his  
28 unit were nominated for a commendation for good police  
29 work and the reason the others weren't was because if

1           you nominated the others, he'd have had to have been  
2           nominated?

3           A.    Yes.

4 117    Q.    Do you understand?

5           A.    I do. 11:15

6 118    Q.    He also makes that case in relation to the incident  
7           involving the taxi driver?

8           A.    Yes.

9 119    Q.    Where he makes the case that the other personnel on his  
10          unit who had responded to the incident weren't 11:16  
11          nominated for a commendation because he ought to have  
12          been nominated for a commendation. What do you say in  
13          relation to that?

14          A.    I wouldn't agree with that at all. Those type of  
15          considerations were never a factor in this. I think 11:16  
16          what led to the Seiko award here was the way that award  
17          was used in the past when I nominated a group of  
18          members previously. And in the assessment of that  
19          situation, Seiko decided to award them Seiko watches.  
20          I think that might have been a factor in heading that 11:16  
21          direction with this one. And I remember having that  
22          conversation with Sergeant Monaghan at the time. And  
23          there was no other reason for it, other than that. And  
24          no slight on Garda Keogh in either incident and those  
25          things were under consideration. 11:17

26 120    Q.    The earlier nominations that you made, for an incident  
27          again at the River Shannon.

28          A.    Yes.

29 121    Q.    In that instance a number were nominated for the Seiko

1 Just in Time awards, and they all received it?

2 A. Yes.

3 122 Q. But one of them I think who had been involved in  
4 catching a person who had -- or grabbing them by the  
5 hoodie, I think it was, who had tried to throw 11:17  
6 themselves from a bridge.

7 A. Yes.

8 123 Q. He also received a commendation as well the Seiko Just  
9 in Time award. I suppose that demonstrates that a  
10 commendation, a Garda commendation remains important, 11:17  
11 isn't that right?

12 A. Absolutely, and there's no issue with that, indeed.

13 124 Q. I think we can move on from that. Is there anything  
14 else that you wish to say in relation to that?

15 A. No, Chairman. 11:18

16 125 Q. I am now just going to deal briefly with an issue  
17 concerning an entry that was made by Garda Keogh on the  
18 28th October, in relation to his sighting of, he  
19 alleges, Ms. B driving in the vicinity of his home in a  
20 car? 11:18

21 A. Yes, Chairman.

22 126 Q. This is a matter, and if I can deal with it in short  
23 form, if it's possible to deal with it in that way.  
24 And we will see if it is possible to deal with it in  
25 that way in the first instance. This was a matter that 11:19  
26 was entered on Pulse by Garda Keogh, isn't that right?

27 A. Yes.

28 127 Q. There was a view taken that that wasn't the appropriate  
29 way to report an incident of this nature, isn't that

1 right?

2 A. Yes. That's an organisational view, Chairman.

3 128 Q. Yes. But nevertheless, it was an investigation  
4 conducted by Gardaí in Tullamore?

5 A. Tullamore, yes. 11:19

6 129 Q. Garda Keogh nominated a particular time when the  
7 incident occurred?

8 A. Yes.

9 130 Q. The matter was investigated. Ms. B refused to make a  
10 statement? 11:19

11 A. Yes.

12 131 Q. But nevertheless told Gardaí that she wasn't in  
13 Tullamore at the time?

14 A. Yes.

15 132 Q. But declined to make a statement? 11:19

16 A. Yes.

17 133 Q. And as such didn't cooperate with the Gardaí?

18 A. Yes.

19 134 Q. She indicated that her car had been left in on the 28th  
20 October for a pre-NCT test? 11:20

21 A. Yes.

22 135 Q. Enquiries were made with the garage man, he couldn't  
23 confirm the date and all he could confirm was that the  
24 car had been left in in or around about that time for a  
25 pre-NCT test, isn't that right? 11:20

26 A. That's correct, Chairman.

27 136 Q. So there was no proof available to the Gardaí that her  
28 car had been left in for an NCT test on the day in  
29 question?

1 A. No, Chairman.

2 137 Q. As a result of that, no statement was taken from the  
3 garage man because it actually established very little?

4 A. Yes.

5 138 Q. The CCTV footage was viewed by an investigating member? 11:20

6 A. Yes.

7 139 Q. He made notes, which demonstrated that the car was seen  
8 in Athlone.

9 A. Yes.

10 140 Q. Earlier on in the afternoon? 11:21

11 A. Yes.

12 141 Q. And then was seen later on in the evening?

13 A. Yes.

14 142 Q. Once leaving her premises?

15 A. Yes. 11:21

16 143 Q. And on the second occasion returning to it?

17 A. Yes.

18 144 Q. That left a single issue in relation to the matter, as  
19 to whether or not the car could have been in Tullamore?

20 A. Yes. 11:21

21 145 Q. Isn't that right? That CCTV footage didn't exclude the  
22 possibility that the car could have been in Tullamore?

23 A. I suppose it created a situation where the time made  
24 it, I suppose, nearly impossible because the time of  
25 the incident, around five to six, and the sighting of 11:21  
26 her car at twenty-five past and the distance involved  
27 and locations involved, made it, I suppose, extremely  
28 tight time wise to have got --

29 146 Q. When you say tight, it didn't establish that the

1 offence couldn't have been committed?

2 A. No, absolutely not. That required probably more  
3 investigation.

4 147 Q. What it did was, establish in your mind a question mark  
5 whether or not the lady in question could have driven 11:22  
6 the distance that she drove in the time that had been  
7 allocated to do that?

8 A. That's correct, Chairman.

9 148 Q. But the timing was such, and I can open this up, and we  
10 can go through the actual timing, we can look at the 11:22  
11 times on the CCTV, and I want to avoid that?

12 A. Yes.

13 149 Q. That's why I am dealing with this in a general way.  
14 But do you accept that the timings that were recorded  
15 in the notebook entry and in the report by the 11:22  
16 investigating member didn't exclude the possibility  
17 that in fact she had left her home and that she had in  
18 fact gone to Tullamore and that she had returned to her  
19 home?

20 A. It didn't exclude it completely, Chairman. 11:23

21 150 Q. No. Garda Keogh gave a statement in relation to the  
22 matter?

23 A. He did.

24 151 Q. Where he made a positive assertion that it was she who  
25 he had sighted near his home in her car, isn't that 11:23  
26 right?

27 A. I think he was adamant about the car.

28 152 Q. Yes, sorry, the car.

29 A. Yes. He said a lady or a person with long hair.

1 153 Q. Yes. Well, that's very helpful, because if we can move  
2 then to your report in relation to this matter, which  
3 is at page 8662. Obviously this incident occurred on  
4 28th October 2015, which is shortly after Garda Keogh  
5 had been placed on indoor duties. Your report is on 11:24  
6 the 24th February 2016. If we can go to page 8663 of  
7 the material?  
8  
9 "It appears that Garda Keogh's alleged observation  
10 regarding the presence of Ms. B around his home may 11:24  
11 lack credibility."  
12 A. Yes.  
13 154 Q. Now, on what basis did you make that assertion?  
14 A. I suppose that was as a result of the information that  
15 was supplied to me about the CCTV and the tight 11:24  
16 timeframe. I was well familiar with the geographical  
17 locations that were mentioned here. And in my mind,  
18 from knowing the geographical locations and travelling  
19 both directions many times, I found it almost  
20 impossible that the drive could be done in that time. 11:25  
21 That was in my mind.  
22 155 Q. Well look, I just went through a summary there with  
23 you, and you agreed with me?  
24 A. Yes.  
25 156 Q. And I don't really want to have to open up this file if 11:25  
26 I can avoid it?  
27 A. Yes.  
28 157 Q. And looking through the report. But I thought that you  
29 had agreed with me that --

1 A. That it would be possible.

2 158 Q. It would be possible?

3 A. You would have been driving quite fast and possibly  
4 reckless.

5 159 Q. All right. 11:25

6 A. Yes.

7 160 Q. But on that basis, even though this is possible and  
8 what Garda Keogh is saying is possible, and Ms. B has  
9 declined and refused to make a statement, and there is  
10 no other evidence to suggest an alibi for her or 11:25  
11 otherwise, you have made a statement here that his  
12 observations may lack credibility. And you have  
13 dismissed his allegations. Now Garda Keogh says that  
14 this is evidence of an attitude towards him, do you  
15 understand? 11:26

16 A. Yes.

17 161 Q. What do you say in relation to that?

18 A. I disagree with that entirely. When this first came to  
19 my attention in November of '15, what concerned me was  
20 that it could have occurred -- I was aware that Ms. B 11:26  
21 and her property had been searched on the 9th October  
22 and I was concerned that if this happened there was a  
23 security issue here and if this lady was targeting  
24 Garda Keogh following that search, well that was quite  
25 serious. What concerned me there was: what would a 11:26  
26 superintendent in Tullamore have to do to -- I suppose  
27 what measures or what risk assessment would have to  
28 occur and would measures have to be put in place in  
29 relation to Garda Keogh around his home? And that was

1 my primary consideration. I remember speaking to  
2 superintendent in Tullamore at the time about it, in  
3 the hope that we might bottom this out to try and  
4 decide it. I suppose the manner in which the incident  
5 was put onto Pulse as well didn't give anyone an  
6 opportunity to ensure that we get the best possible  
7 opportunity to deal with it. And Garda Keogh's first  
8 report on the 6th November, he didn't seem to make much  
9 of it and put it down to a coincidence.

11:27

10 162 Q. You're saying "his alleged observation of Ms. B around  
11 the presence of his home may lack credibility"?

11:27

12 A. Yes.

13 163 Q. This credibility issue of a member of An Garda  
14 Síochána, who has made a statement after the statutory  
15 declaration and signed a statement and this is an  
16 attack on his credibility?

11:28

17 A. It's not an attack on his credibility, but I am saying  
18 it may lack credibility in terms of did he get the  
19 right number, could he have been correct in it. And I  
20 suppose it would have been important to know why he  
21 chose to deal with it in the fashion he did on the  
22 evening, considering the longstanding and well known  
23 policy in the organisation, that if one is involved  
24 personally in an incident like that, like one would  
25 have to report it to the local Garda station and not  
26 become, I suppose, personally involved in entering the  
27 incident if one were a victim and now one is, I  
28 suppose, compromised in some way in entering, putting  
29 an incident on Pulse, which may give rise or an attack

11:28

11:28

1 by anybody to why that was done in that manner.

2 164 Q. In the previous paragraph, the last line:

3

4 "I understand superintendent Tullamore now intends  
5 making the incident invalid." 11:29

6 A. Yes.

7 165 Q. If we carry on:

8

9 "The manner and circumstances under which the incident  
10 was created by Garda Keogh via GISC requires 11:29

11 explanation, in that Garda Keogh, who was off duty, did  
12 not contact Tullamore Garda station at the time of his  
13 alleged observation. Neither did he report the matter  
14 to anyone other than GISC. The creation of an incident  
15 by Garda Keogh, which he has intertwined with a 11:29

16 whistleblower investigation, merits further explanation  
17 by the member in light of the clear assertion by Ms. B  
18 that her car was at a garage that afternoon and that  
19 neither she nor her car were in Tullamore. Therefore,  
20 I respectfully suggest that a member of inspector rank 11:30  
21 be tasked with carrying out a fact-finding exercise in  
22 relation to the creation of the incident by Garda  
23 Keogh."

24 A. Yes.

25 166 Q. So now the focus is on Garda Keogh and the creation of 11:30  
26 the incident?

27 A. No, I wouldn't agree with that. The focus -- my  
28 intention was, suggesting to the chief superintendent  
29 perhaps someone impartial other than me would make some

1 assessment on this. I would -- in my eyes at that time  
2 I would never be deemed impartial by Garda Keogh. So  
3 any assessment I would make of it would only be  
4 construed in one way; as a negative toward me and a  
5 negative toward Garda Keogh by me. And I wanted 11:30  
6 someone else to look at this. And I sent over the file  
7 with all the papers and the CCTV, suggesting to the  
8 chief superintendent that if we could bring it to  
9 conclusion, it would be fantastic. And if this lady  
10 were there, well then there was a different issue to be 11:31  
11 considered.

12 167 Q. Is there anything else that you would like to say in  
13 relation to that?

14 A. No, Chairman.

15 168 Q. If we can just move on then to issue number 12, which 11:31  
16 is complaints by Garda Keogh in relation to the  
17 misrecording of his sick leave and reduction of his  
18 salary. You might just bear with me as I go through  
19 some documentation here. There is quite a lot of it,  
20 but I intend to try and deal with only the relevant 11:31  
21 matters that are there for consideration.

22  
23 If we just have 1678 up on the screen. This is a note  
24 from Superintendent McBrien, dated the 4th March.  
25 Scroll down, please, Mr. Kavanagh. 4th March 2015: 11:32  
26

27 "Duty Athlone. Met with Superintendent Murray."  
28

29 This is the handover of roles. And then:

1  
2  
3  
4  
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27  
28  
29

"Updated him on district and members etcetera. Gave him a copy of my notes re Garda Nick Keogh. Discussed claims."

11:32

what did those notes relate to?

A. I have no recollection of ever receiving or seeing those notes. When I saw that in the disclosures and when I saw them appearing a number of times, I made an enquiry in Athlone in relation to what notes were handed in and it appears that a set of Superintendent McBrien's notes were found in a drawer in a sealed envelope in the superintendent's office. So, when I met Superintendent McBrien, she didn't give me notes that day, nor did she give me the file in relation to his tax but she left that file for me. I just have no recollection of ever receiving or seeing notes belonging to Superintendent McBrien.

11:32

11:33

169 Q. Thank you. If we can go to page 14485, please. This is a letter on 19th March 2015, before you met Garda Keogh?

11:33

A. Yes.

170 Q. It refers to sick leave from the 2nd March to the 14th March, 12 days. There is a note here:

11:33

"Garda Keogh has indicated that he suffered from a prescribed disease caused by the nature of his work. As a result I have to complete a section of the form."

1 Is that a reference to work related stress?

2 A. I got a form called an MC1.

3 171 Q. Yes.

4 A. Garda Keogh had indicated on that -- that he ticked the  
5 box in relation to a prescribed disease and I don't 11:34  
6 think there was any more information on it. And I was  
7 required to sign it, and I sent it back, just looking  
8 for more information.

9 172 Q. If we could have 14486 up on the screen, please. This  
10 is the form you're referring to, is that right? 11:34

11 A. Yes.

12 173 Q. Then, if you look there, you will see:

13

14 "Describe injuries you received."

15 11:34

16 You will see:

17

18 "Work related stress."

19 A. Yes.

20 174 Q. This is the form you're referring to, is that right? 11:34

21 A. Yes.

22 175 Q. Then if you look down:

23

24 "Prescribed disease.

25 11:34

26 Type of disease."

27

28 There is the beginning of work related, then the first  
29 S and then it's just crossed out because it appears

1 above?

2 A. Yes.

3 176 Q. Is that the form that you're referring to?

4 A. Yes.

5 177 Q. You then go on in the second paragraph:

11:35

6

7 "Therefore, Garda Keogh should set out what prescribed  
8 disease he is suffering from that is caused by the  
9 nature of his work."

10

11:35

11 You haven't then referred to it as work related stress.  
12 And I wonder, is that a reflection of the view that you  
13 had?

14 A. Absolutely not, I was just dealing with a form that was  
15 in front of me. It just arrived in a single sheet. I  
16 was required to append my signature to it. And before  
17 I sent it anywhere, I just wanted to make sure that it  
18 was completed correctly and that I understood what it  
19 was about. I don't recall ever receiving the form  
20 back.

11:35

11:36

21 178 Q. Then if we can deal with the Garda Code, paragraph  
22 11.30. This is at page 7957. If we scroll down the  
23 page to 11.30, "recording of absences". You see there:

24

25 "All absences from duty, save those occasioned by rest  
26 days, shall be recorded in the appropriate form D5.  
27 Separate forms should be used in respect of each  
28 member. The district officer will make arrangements  
29 for the completion and filing of the forms. Forms D5

11:36

1 in respect of officers will be completed by the  
2 divisional officer and will be sent to the  
3 regional /branch assistant commissioner at the end of  
4 the leave year. "

11:36

5  
6 And then if we can go to 7962. 11.35, if we scroll  
7 down the page, please, Mr. Kavanagh. We see:

8  
9 "Record of sickness. "

10  
11 If we look at the last two lines there: 11:37

12  
13 "Form D5 by the district officer in the case of members  
14 up to and including the rank of inspector and by  
15 divisional officers in the case of officers. "

11:37

16  
17 This is the obligation that's placed on the district  
18 officer, is that correct?

19 A. Yes.

20 179 Q. And we see, if we go over to 9306, we will see that  
21 form, isn't that right?

11:37

22 A. Yes.

23 180 Q. We see on the right-hand side there "work related  
24 stress"?

25 A. Yes.

11:37

26 181 Q. Work related stress is identified, isn't that right?

27 A. Yes.

28 182 Q. If we could then go to 8205. This is HQ Directive  
29 139/10, it's the obligation of local management in

1 relation to investigations. If we just read this:

2  
3 "Where members report non-effective for duty as a  
4 result of an injury on duty or work related stress, a  
5 thorough investigation shall be carried out immediately 11:38  
6 and the outcome reported to assistant commissioner HRM  
7 for the attention of the CMO. The member concerned  
8 shall be advised of the employee assistance service,  
9 peer support and any other support deemed necessary.  
10 Local management shall address the issues causing the 11:39  
11 member's stress."

12  
13 I think that that's the obligation that is put on the  
14 district officer, isn't that right?

15 A. Yes, the district officer has the applications. 11:39

16 183 Q. If we look at page 8206 then, it refers to:

17  
18 "Meetings on referral to the chief medical officer."

19  
20 It says: 11:39

21  
22 "District officer, superintendents will ensure they  
23 meet with each member who is referred to CMO for review  
24 and firstly discuss the reason that the member is being  
25 referred to the CMO, is to determine their medical 11:39  
26 fitness for policing duty. Advise the member to  
27 forward all relevant case notes and/or medical reports  
28 for treating certifying doctors, including specialist  
29 report and test results relevant to his/her current

1 medical condition to the Garda Occupational Health  
2 Service on or prior to the review date. Member should  
3 be assured that these medical reports will be treated  
4 in the strictest medical confidence by the CMO, who  
5 will consult with the member's treating certifying 11:40  
6 doctors. Members should also be advised that if this  
7 their condition is sufficiently complex, they may be  
8 referred to an independent medical adviser by the  
9 Occupational Health Service who is expert in the area  
10 of their complaint and may also be referred, if 11:40  
11 necessary, for further tests. The member's treating  
12 certifying doctor will also be made aware of this by  
13 the CMO. "

14  
15 **The next obligation:** 11:41

16  
17 "Discuss any other non-medical issues which may have a  
18 bearing on the member's medical fitness for duty.  
19 Medical fitness of the member should not be discussed  
20 but rather other detriments of fitness such as work 11:41  
21 performance, coping skills, effort to overcome coping  
22 difficulties and relationship in the working  
23 environment, as well as any obstacles of a non-medical  
24 nature which are interfering with the member's desire  
25 or ability to return to work." 11:41

26  
27 we don't have a note of you having discussed any of  
28 these issues with Garda Keogh before he went to the see  
29 the chief medical officer on the 19th May?

1 A. I think on the 3rd April, and I think I mentioned it  
2 yesterday in evidence, I had a discussion with him  
3 about his medical records and the confidentiality of  
4 them, in my meeting with him on 3rd April 2015. I had  
5 completed the referral form on the day before, on the 11:42  
6 2nd, and I went through it, I suppose that's  
7 information that is common to everyone that is referred  
8 to the CMO and it's a common request that that be done  
9 and I did it on the 3rd April when I met him, having  
10 discussed with him that I completed the referral the 11:42  
11 day before, on the 2nd.

12 184 Q. Did you discuss his performance, his coping skills, his  
13 effort to overcome coping skills, the difficulties and  
14 relationships in the working environment, as well as  
15 any obstacles of a non-medical nature which may 11:42  
16 interfere with the member's desire or ability to return  
17 to work?

18 A. I think I did, and my notes of the 26th March '15 and  
19 3rd April '15 reflect that.

20 185 Q. It then goes on to say: 11:42  
21  
22 "It is of the utmost important that the district  
23 officers/superintendents meet with members in advance  
24 of their consultation with the CMO. A summary memo of  
25 this meeting will be forwarded to in advance of the 11:43  
26 medical appointment to the assistant commissioner HRM."

27  
28 Did you do that?

29 A. No. Outside the 3rd April, I didn't.

1 186 Q. Did you send a memo of that meeting in the chief  
2 medical officer?

3 A. No.

4 187 Q. Or to the assistant commissioner HRM?

5 A. No, outside of my report on the 2nd April, I didn't. 11:43  
6 That was the intention of that report; that it would go  
7 to the HRM department or the occupational health  
8 department.

9 188 Q. Then further down:

10

11:43

11 "Management meetings: Absence management is critical  
12 to the wellbeing of members of the organisation. Local  
13 management will take a proactive role in the monitoring  
14 of sickness absence, in order to ensure that effective  
15 interventions are put in place. Absence will be an 11:44  
16 item on the agenda for all accountability meetings from  
17 district to regional level. Absence in excess of 28  
18 continuous days or where a pattern of absence can be  
19 identified, will be monitored and actions identified to  
20 manage the member back to work. Emphasis will be 11:44  
21 placed on the rehabilitative actions required."

22

23 Did you do that?

24 A. Yeah, at the daily PAF meeting absence was a recurring 11:44  
25 item on the agenda. I designed a new accountability  
26 form, which would make all of us in Athlone accountable  
27 to the chief superintendent on a fortnightly basis.  
28 And we completed that form on a monthly basis for  
29 discussion and to show, to demonstrate in an open and

1 transparent way what was occurring in the district.  
2 And absent management was also on that, with a list of  
3 the members who were on long-term sick and anybody with  
4 short-term sick absences then was captured in a  
5 separate numerical type chart.

11:45

6 189 Q. If we go to page 3644 of the material, please. This is  
7 Dr. Oghuvbu. At the top there, section 15, this is in  
8 reference to Garda Keogh's statement, but he states?

9  
10 "It is my understanding that the acceptance and  
11 classification of a period of absence as work related  
12 stress by Garda absence section is not exclusively  
13 based on the information provided in medical  
14 certification submitted by the member. It also  
15 involved HRPD absence section and local managements  
16 ascertaining the work-related factors or stressors  
17 being reported by the member. I understand it is the  
18 practice of HRPD absence section to record absences as  
19 ordinary illness prior to the work-related  
20 circumstances being established."

11:45

11:46

11:46

21  
22 His understanding is that there's an obligation on  
23 local management there in relation to issues  
24 surrounding work related stress and its categorisation,  
25 is that right?

11:46

26 A. Yes, and I tried to explore those factors, yes.

27 190 Q. Then if we could go, please, to page 3270. We have  
28 already opened this. If we go down to the bottom of  
29 the page. This is a letter from you to the chief

1 superintendent dated the 2nd April. You say:  
2  
3 "As an additional measure, I wish to have an  
4 appointment with the chief medical officer arranged for  
5 Garda Keogh in order that professional medical 11:47  
6 expertise can advise of other workplace supports which  
7 may assist the member."  
8 A. Yes.  
9 191 Q. "The member indicated that he had not attended the CMO  
10 previously." 11:47  
11  
12 Isn't that right?  
13 A. Yes.  
14 192 Q. And then, on the next page, at 3271, in the second last  
15 paragraph you say: 11:47  
16  
17 "I believe both the member and the organisation would  
18 benefit by referring him to the Occupational Health  
19 Service at this time."  
20 11:47  
21 Then if we could go to page 14500. This is a letter  
22 from Alan Mulligan, who is the director of Human  
23 Resources and people development, to the chief  
24 superintendent. You will see there:  
25 11:48  
26 "Prior to the member's review, local management shall  
27 meet with the member and discuss the following:  
28  
29 The reason the member is being referred to the CMO is

1 to determine the member's medical fitness grade for  
2 policing duty. "

3  
4 I think you say that that's something you had already  
5 addressed?

11:48

6 A. Yes, and that is common to everyone. That generic  
7 terminology is common to everyone who is referred to  
8 the CMO.

9 193 Q. "Advise the member to forward all medical reports. "

10

11:48

11 And that's something that you say that you had already  
12 done?

13 A. Yes.

14 194 Q. "Any other non-medical issues. "

15

11:49

16 And that's something you say that you had already done,  
17 even though it appears that Mr. Mulligan doesn't appear  
18 to have been aware of that when he wrote the letter.

19 A. It's a very generic type letter, it's in common use,  
20 yeah.

11:49

21 195 Q. Yes, indeed. Then if we can go to page 9429. This is  
22 again Alan Mulligan writing to the chief  
23 superintendent.

24

25 "It is noted the above mentioned member's absence from  
26 20th April 2015 to 25th April 2015 was stress related.

11:49

27

28 You should now interview this member in order to  
29 establish the source of the member's stress and if it

1 is suggested as being work related, a full  
2 investigation should be carried out.

3  
4 This branch requires a full report, referral form and  
5 medical certificates in accordance with Code 11.34 11:50  
6 relating to the above member's absence."

7  
8 At 9428, Chief Superintendent wheatley refers that to  
9 you on the 12th May, isn't that right?

10 A. Yes. 11:50

11 196 Q. And then, on the 29th May, at 9436, you respond to  
12 that, to the chief superintendent. In the first  
13 paragraph, four lines down you say:

14  
15 "When I met the member on the 26th March, I discussed 11:50  
16 his work absences, including the fact that his medical  
17 certificates were indicating that he was suffering from  
18 work related stress. The member was quick to point out  
19 that he was a confidential reporter and had certain  
20 protections in that role. He indicated the assistant 11:51  
21 commissioner Western Region was investigating reports  
22 and allegations he has made to the confidential  
23 recipient. Outside of disclosing that the member was  
24 reticent to discuss the work related stress he  
25 indicates he is suffering from, relying instead on the 11:51  
26 protections he has in the confidential reporting  
27 legislation.

28  
29 In these circumstances I cannot further explore the

1 situation with the member. I am aware anecdotally that  
2 a full investigation is being carried out into the  
3 member's claims of corruption and malpractice. I have  
4 no further information in relation to that  
5 investigation. I understand that the member is 11:52  
6 engaging with the welfare service via the investigation  
7 he is involved in. I did not, however, advise him of  
8 its benefit to him."

9  
10 I am just wondering in relation to that, you obviously 11:52  
11 clearly regarded your conversation with him on the 26th  
12 March as complying with your obligation to thoroughly  
13 investigate the matter. Did you advise Garda Keogh on  
14 the 26th March that what you wanted to discuss with him  
15 was necessary in relation to an assessment of his work 11:52  
16 related stress and was part of an obligation that was  
17 placed on you to make an assessment in relation to his  
18 claims of work related stress?

19 A. No, I didn't, I suppose, set it out in maybe clearer  
20 position. But I attempted to explore his work related 11:53  
21 stress or what the causes of it were, and he wasn't  
22 inclined to discuss it with me and he made that  
23 position clear. I do recall him saying here that that  
24 was his position now even, that he didn't want to  
25 discuss it with me, because he felt that I was in some 11:53  
26 way a cause of that stress. And I don't know how that  
27 could be, because I was meeting him for the first time  
28 and perhaps he had a preconceived notion of me. But  
29 when I got that from the chief superintendent, I felt

1 that perhaps no one had seen my 2nd April report or  
2 that it had crossed over in the wrong way, because I  
3 had set out the context around which Garda Keogh came  
4 to be involved in the absences and the work related  
5 stress that he was indicating. And it was clear to me, 11:53  
6 anyway, in writing the document and sending it forward  
7 that because of the nature of the work related stress  
8 and its intertwined connection with the whistleblowing  
9 investigation, that it was going to be almost  
10 impossible for me to find out what was causing the 11:54  
11 stress because of that intertwined position. In that,  
12 he couldn't tell me anything about it, nor could  
13 anybody else. And I felt that getting him to the CMO  
14 and having medical expertise assess the situation in as  
15 far as stress was concerned, while allowing them to 11:54  
16 know that its overriding, I suppose, component was the  
17 whistleblower investigation he was involved in, was a  
18 prudent step on my part. I wanted to hand him over to  
19 professional medical expert care.

20 197 Q. Did you see the conversation that you had on the 26th 11:54  
21 March with Garda Keogh as relieving you of any further  
22 responsibilities to investigate the causes of his  
23 stress?

24 A. I couldn't see how I could do that, because of the  
25 constraints that were impeding me from going further 11:55  
26 and impeding him from giving --

27 198 Q. Did you raise that issue with the chief superintendent  
28 at any time?

29 A. Yes, the chief superintendent was also well aware of

1 that issue and we discussed it. And that was an  
2 impediment, I suppose, to preventing us delving further  
3 into the issue, I felt.

4 199 Q. Did you raise that issue with the HRM?  
5 A. Well, I know the chief superintendent had some 11:55  
6 communications with them outside of what I had in  
7 relation to this issue.

8 200 Q. Did you raise the issues with the Ó Cualáin  
9 investigation?  
10 A. No. I didn't, no. The chief superintendent and I 11:55  
11 confined our communications with the medical health  
12 section in HR department.

13 201 Q. We know that you sent on a copy of a report to  
14 Assistant Commissioner Ó Cualáin in relation to the tax  
15 issue? 11:56  
16 A. Oh that was a different thing.

17 202 Q. Yes.  
18 A. That was closing off, I suppose, an enquiry that he was  
19 making of me, which led to a -- was a catalyst for an  
20 outburst in Dáil Éireann. 11:56

21 203 Q. You see, this is an obligation that appears to be  
22 imposed on the district officer, with a view to first  
23 of all identifying what it is that's causing the  
24 stress. And that would involve talking to the member.  
25 You say that Garda Keogh didn't wish to discuss that 11:56  
26 matter with you and declined to do so. But you didn't  
27 tell him the importance of that discussion and the  
28 impact that it could potentially have in relation to  
29 how he would be paid if he were out sick, do you

1 understand?

2 A. Yes, I do. And I didn't I suppose go that far in  
3 making that as clear as you possibly do here. But my  
4 intentions were that when he became -- when he would  
5 come under expert medical care and in dealing with 11:57  
6 Detective Superintendent Mulcahy and when the employee  
7 assistance service would come on train with him, people  
8 who he would be dealing with in a supportive way, who  
9 he might listen to and who well knew all those things,  
10 and would be well in a position, it being their 11:57  
11 specialised field, to explain all that to him, that was  
12 my train of thought on the whole thing. I just didn't  
13 see how I could delve further in the circumstances that  
14 were presented to me.

15 204 Q. If we could just move forward then to page 3205, 11:57  
16 please. Sorry, we might go back, I beg your pardon,  
17 yes, to page 3205. It seems to be an e-mail that was  
18 sent, it seems to have been perhaps forwarded to you or  
19 a copy of it. No, it's from Mr. McLoughlin to Chief  
20 Superintendent Lorraine wheatley. It's dated 4th June 11:59  
21 2016.

22 A. Yes.

23 205 Q. "Lorraine, was a work related stress investigation  
24 conducted?"  
25  
26 So this matter has arisen again, isn't that right?  
27 A. Yes, this is the head of HR who reports would have gone  
28 to a year previously.

29 206 Q. And over the page, at 3206, this is an e-mail from

1 Assistant Commissioner Fanning, again refers to this:

2  
3 "Lorraine, Garda Keogh reports sick with work related  
4 stress. Can you confirm if an investigation carried  
5 out in accordance with the regulations into the work 11:59  
6 related stress and the outcome of it."  
7

8 Then if we go over to 3207. It's an e-mail from Chief  
9 Superintendent Lorraine wheatley to Mr. McLoughlin.

10 Then:

11  
12 "The CMO has deemed Garda Keogh unfit for duty. He was  
13 again reviewed by him about two weeks ago. I spoke  
14 with the CMO's office and his reviewing doctor and he  
15 advised me that he wants to hold an early conference 12:00  
16 with me and John Barrett in respect of Garda Keogh  
17 before he issues advices on his suitability to return  
18 to work. I would welcome an unit to discuss this case  
19 with you in the light of your e-mail. I understand  
20 that Garda Keogh's recent certificates from his own 12:00  
21 doctor have him certified unfit due to stress.

22 However, in the light of all the attendant issues in  
23 respect of this member, I would like to discuss this  
24 member's case with you in early course. Perhaps you  
25 might be in a position to get an update from the CMO's 12:00  
26 office in respect of this member and we can discuss on  
27 Tuesday."

28  
29 It would appear that at this stage this issue had been

1 identified again as being an issue, whether or not an  
2 inquiry had been conducted. And if we go over to page  
3 3208, this is from you to Chief Superintendent Lorraine  
4 wheatley

5  
6 "Yes, it's a really funny questioning, considering he's  
7 a whistleblower and an investigation into the entire  
8 set of allegations he is making, which Garda Keogh may  
9 say is causing him stress, was carried out by AC  
10 Ó Cualáin. The reason he is prevented by the CMO from 12:01  
11 working is because of alcohol addiction. Don't know  
12 why Tony has copied all these people either. Might be  
13 one to sort out on the phone. All very strange. A  
14 lack of communication is a major stumbling block here.  
15 Don't get me started!" 12:02

16  
17 In relation to that, this is an e-mail where again the  
18 work related stress aspect of it --

19 A. Yes.

20 207 Q. -- is being to some extent dismissed by you, and you 12:02  
21 are highlighting the alcohol addiction, isn't that  
22 right?

23 A. No, that's not true at all. In fact, I feel that  
24 reinforces the point I made earlier, that people didn't  
25 seem to understand that locally it was impossible to 12:02  
26 delve further into this.

27 208 Q. Yes.

28 A. The cause of the stress was quite possibly the  
29 involvement in the whistleblower allegation. That was

1 all the medical department or HR should need to know in  
2 order to get expert help for Garda Keogh. And they  
3 didn't seem to, I suppose, comprehend or want to  
4 communicate in any way in relation to overcoming this  
5 impediment that they saw, which seemed to involve 12:03  
6 carrying out an investigation where I felt that was  
7 impossible in the circumstances that were presented to  
8 me.

9 209 Q. There is, in fact, a full response by Chief  
10 Superintendent Wheatley to the executive director of 12:03  
11 HRPD. It's at volume 20, 6169 of the materials. It is  
12 dated 8th June 2016. We see there in paragraph two, at  
13 line four, she says:

14  
15 "Efforts have been made locally to establish the source 12:04  
16 of the member's alleged work related stress. However,  
17 the member is reluctant to discuss the matter as he has  
18 indicated that it arises out of matters which he has  
19 reported through the confidential reporting mechanism  
20 and matters which he does not want to discuss with 12:04  
21 management within the division."

22  
23 Again, that's referring back and a reliance on your  
24 conversation with Garda Keogh the first time that you  
25 met him? 12:04

26 A. Well, I think Chief Superintendent Wheatley at that  
27 stage had met Garda Keogh herself on the 17th May, just  
28 before she wrote that report.

29 210 Q. Then if we turn over the page, 6170, and we go down to

1 the fourth paragraph:

2  
3 "Superintendent Murray, Athlone, made the necessary  
4 enquiries in order to establish that Garda Keogh's  
5 welfare was being addressed by Detective Superintendent 12:05  
6 Mulcahy, who had been tasked with carrying out an  
7 investigation on behalf of Deputy Commissioner  
8 Ó Cualáin. It was established that Garda Keogh was in  
9 contact with Garda Quinn of the employee assistance  
10 service and that he was availing of this service. This 12:05  
11 was the extent to which the enquiry could be made with  
12 the investigation team, as all other matters could not  
13 be touched upon due to the confidential nature of the  
14 enquiries being conducted by the investigation team."

15  
16 And that's the matter that you alluded to earlier on,  
17 isn't that right?

18 A. Yes.

19 211 Q. But just reviewing that and coming back to your meeting  
20 with Garda Keogh on the 26th March, that was primarily 12:06  
21 to deal with the issue of the road tax, is that right?

22 A. Well, I think there were three issues; absence and,  
23 following that conversation, a decision to refer to the  
24 CMO and the road tax. Well I think the payment of the  
25 monies owed to him was the primary consideration, road 12:06  
26 tax was an impediment to that, and then there was  
27 whatever work supports that I could put in place in  
28 Athlone within my limited gift.

29 212 Q. If we could just move onto the actual referral to the

1 CMO. It's at page 14488 of the materials, please.  
2 It's the referral form, I think that you filled this  
3 out, is that right?

4 A. I did, Chairman.

5 213 Q. And then:

12:07

6  
7 "Please indicate the reason for referral by ticking the  
8 appropriate box."

9  
10 And you have:

12:07

11  
12 "Frequent short-term sickness absence that exceed 12  
13 accumulated days in a year."

14  
15 And then:

12:07

16  
17 "Management concerned re mental health of employee."

18  
19 And then you go and deal with the nature of the work  
20 that Garda Keogh was performing and then the attendance 12:08  
21 record. And then:

22  
23 "Background detail.

24  
25 Other work related issues.

12:08

26  
27 Is the member experiencing or reporting to experience  
28 difficulty carrying out their usual duties? No.

29

1 Have efforts been made to resolve coping difficulties  
2 at work, if reported? Yes. See attached report."  
3  
4 what report is that?  
5 A. It's the report dated 2nd April 2015, which accompanied 12:08  
6 this document going to HR department for the CMO.  
7 214 Q. And that is the report that we have already opened?  
8 A. Yes.  
9 215 Q. "Is there any reported difficulty relevant to his or  
10 her relationship with peer supervisors and those under 12:09  
11 his/her command? Yes. As set out in the report  
12 attached."  
13  
14 That's the same report, is that right?  
15 A. Yes. 12:09  
16 216 Q. That actually merely states that Garda Keogh won't  
17 discuss the issue, isn't that so?  
18 A. No, well I suppose it sets a context at the start of  
19 the report in relation to his involvement as a  
20 confidential reporter. And I felt that setting that 12:09  
21 context would allow everyone understand where Garda  
22 Keogh was. But it didn't seem to give the  
23 understanding that I felt it should, when it left me.  
24 217 Q. And then the final box there, we can see:  
25 12:09  
26 "Are there any other matters of a non-medical nature  
27 which appears to be interfering with the work  
28 performance and enjoyment of work i.e. disciplinary  
29 charges pending, absent without leave, an incomplete

1 bullying and harassment file in process, difficulty  
2 contacting member etcetera?"

3

4 And "yes". And then it says:

5

12:10

6 "See attached report."

7 A. Same report.

8 218 Q. That refers back to the same report?

9 A. Yes, I was allowing reliance to be placed on the  
10 report.

12:10

11 219 Q. Then at the end of that, if we scroll down, you say,  
12 there is a declaration there:

13

14 "I can confirm that I contacted the member and advised  
15 the member of this referral to the Garda Occupational  
16 Health Service and its purpose."

12:10

17

18 And you signed off on that on the 2nd April, isn't that  
19 right?

20 A. Yes, Chairman.

12:10

21 220 Q. Then if we could go to page 9396 of the material,  
22 please. That's an SR1 form. It's dated -- there's a  
23 notification date 20/4/2015. We can see there, there  
24 is an ordinary illness category and then there is an  
25 occupational injury arising from duty category.

12:11

26 A. Sorry, I may have the wrong...

27 221 Q. Sorry.

28 CHAIRMAN: I can't see it.

29 222 Q. MR. MARRINAN: Sorry, I beg your pardon. 9328 of the

1 material, I beg your pardon.

2 223 Q. CHAIRMAN: what did you have to do with this?

3 A. Nothing.

4 224 Q. MR. MARRINAN: You had nothing. Were you aware -- did  
5 you see this at all? 12:11

6 A. This is a sick report when someone reports sick. No.

7 225 Q. No, you didn't?

8 A. I wouldn't see those.

9 226 Q. Yes. You will see that there is a note there on the  
10 SR1 " occupational illness arising from duty" and it 12:12  
11 says "work related stress"?

12 A. Yes.

13 227 Q. Yes. Sorry, if we could go back to 9396 of the  
14 material that we had up on the screen a moment ago.  
15 This is Thursday, the 16th April. It's an e-mail from 12:12  
16 Mr. Guinan, who is the divisional clerk. He refers to  
17 attached correspondence, that I needn't open.

18

19 "Certificates in respect of periods of absence from the  
20 31st March to the 2nd April are now required to 12:12  
21 facilitate payment of the TR remuneration in light of  
22 the member having exceeding 183 days in a four year  
23 rolling period."

24 A. Yes.

25 228 Q. That's something you became aware of at the time; isn't 12:13  
26 that right?

27 A. I suppose in my report on the 2nd April, I did outline  
28 that 183 days had been reached.

29 229 Q. Yes.

1 A. And now this is -- the sickness absence regulations  
2 came into being, which I suppose halved the normal  
3 allowance for sick pay for everyone in the public  
4 sector and this was the first time it was biting for  
5 Garda Keogh, to the best of my knowledge. And this 12:13  
6 document came down to advise him of that. And I  
7 remember it, because I had been in contact with  
8 Detective Superintendent Mulcahy in relation to a phone  
9 call he got from Garda Keogh and inspector, then  
10 Detective Sergeant Curley, had made a report to me on 12:13  
11 the 21st April in relation to a phone call he got from  
12 Garda Keogh. And I phoned Garda Keogh that day and  
13 recorded it in my diary, but the call wasn't answered.  
14 So in order to deliver this to him, I sent it to  
15 Tullamore and I had an inspector there give him the 12:14  
16 document. I think the inspector reported back then at  
17 some stage that he had done that. The document went  
18 back up along the line.

19 230 Q. And in relation to how Garda Keogh was being reported  
20 on the SAMS system, you weren't involved in any aspect 12:14  
21 of that, is that right?

22 A. I never had occasion to use SAMS until this issue was  
23 pointed out to me on 23rd May 2016. I have no  
24 functional role in SAMS. It's a very confidential  
25 system, it relates to the recording of absences and I 12:14  
26 suppose it's primarily owned by the HR department.

27 231 Q. I think you attended a case conference on 9th December  
28 2015 at the CMO, isn't that right?

29 A. I did.

1 232 Q. I think Garda Michael Quinn was also in attendance.  
2 And if we could have 3642 up on the screen, please. If  
3 we scroll down, about eight lines from the bottom he  
4 says:

5  
6 "My recollection of the proceedings were that each of  
7 the main participants, the doctor" yourself "Detective  
8 Superintendent Mulcahy, all gave our perspective on how  
9 we found Garda Keogh when we had dealt with him. There  
10 was some discussion as to how the member's sick absence 12:16  
11 was being recorded. I took the main theme to come from  
12 the meeting to be the possible consequence for Garda  
13 Keogh's career (and his wellbeing) if he didn't stop  
14 drinking and address his addiction issues by undergoing  
15 a suitable programme." 12:16

16  
17 Do you recall the issue of how his sick absence was  
18 being recorded arising at that meeting?

19 A. No, I did not. AND I received an e-mail from Inspector  
20 Downey at HRM at the time, and it bears out the second 12:16  
21 sentence that you read out there in that e-mail, but  
22 not the first. And I made no record of that, nor do I  
23 have a recollection of his sick absences being  
24 recorded. The first, as far as I'm concerned, that I  
25 became aware of that was on 23rd May 2016. 12:16

26 233 Q. Yes. We know that on the 16th May, or we're going to  
27 hear that on the 16th May Chief Superintendent Lorraine  
28 Wheatley, 16th May 2016, visited Garda Keogh at his  
29 home, where he made a complaint in relation to being

1 recorded on SAMS as being out with the flu and that his  
2 pay had been reduced accordingly. We also know, and we  
3 will hear from Mr. McLoughlin, who will tell us that on  
4 the 20th May he discovered that Garda Keogh was at the  
5 time experiencing some difficulties with an alleged 12:18  
6 misclassification of his sick record. When did you  
7 become aware of that yourself?

8 A. 23rd May 2016, when Chief Superintendent Wheatley  
9 phoned me.

10 234 Q. And what did she say to you at that time? 12:18

11 A. She indicated that she had been in discussions with  
12 Chief Superintendent McLoughlin and that Garda Keogh  
13 was complaining about the manner in which his absence  
14 was being recorded on SAMS. And I remember having my  
15 computer open when I was talking to her and I couldn't 12:18  
16 find the SAMS icon on the computer. I had never used  
17 it before. So I went to my district clerk and when I  
18 got to her she had already received a phone call from  
19 someone in the HR department, directing her to change  
20 the manner in which she had been recording the sick 12:18  
21 absences.

22 235 Q. That's Olivia Kelly, is that right?

23 A. Olivia Kelly, yes.

24 236 Q. Now, it appears that Mr. McLoughlin had also sought to  
25 address this issue coincidentally on the same day. If 12:19  
26 we could have 3229 up on the screen, please. If we can  
27 just scroll down there, he says:

28

29 "I contacted Ms. Clare Egan of the HR Directorate and

1 asked her for her update in respect of Garda Keogh's  
2 sickness management. As a result, on the 23rd May I  
3 received by e-mail correspondence from Ms. Egan. Garda  
4 Keogh's absence had been recorded as ordinary illness  
5 on the sickness absence management system. This had 12:20  
6 taken place in early December 2015. Garda Keogh was  
7 diagnosed as being unfit for duty. I was also made  
8 aware that An Garda Síochána's OHD was liaising  
9 directly with Garda Keogh's treating doctor. Ms. Egan  
10 continued as is the procedure in all cases where stress 12:20  
11 is cited as the nature of illness. Garda Keogh's  
12 management met with him to discuss the source of his  
13 stress. That management were advised that Garda Keogh  
14 did not wish to discuss such matters as he claimed he  
15 was under the protection of the relevant legislation. 12:21  
16 Ms. Egan confirmed in her correspondence to me that her  
17 branch was not in receipt nor were aware of any  
18 application for Garda Keogh's sickness absence to be  
19 treated than anything other than ordinary illness. It  
20 was recorded under the Garda management sick leave 12:21  
21 regulation 2014. Garda Keogh's accumulated sick leave  
22 in a four-year period was in excess of 183 days and the  
23 member was being paid at the rate of temporary  
24 rehabilitation remuneration."

25  
26 It's clear that he became aware of that at that time  
27 and then he took some action in relation to it and  
28 eventually the issue was rectified, isn't that right?

29 A. I had no communication with Chief Superintendent



1 inspector and I had met, and Inspector Minnock was  
2 appointed to liaise with Garda Keogh and be available  
3 to serve these type documents.

4 CHAIRMAN: Okay.

5 244 Q. MR. MARRINAN: So up until this point in time, as I 12:24  
6 understand the position to be, Garda Keogh was out  
7 sick, he had exceeded the 183 days back in March of  
8 2014 - 2015

9 A. '15. March/April 2015, yeah.

10 245 Q. You weren't responsible in any way as to how he would 12:24  
11 be recorded on SAMS?

12 A. No.

13 246 Q. There was an obligation on you to conduct an  
14 investigation in relation to the work related stress,  
15 because that would have an impact as to how the illness 12:24  
16 would be categorised; is that right?

17 A. Yes, and there was an obligation on the organisation  
18 through me to try and find out what was going on and I  
19 did the best I could.

20 247 Q. That would mean whether or not it could be classified 12:24  
21 as ordinary illness or classified as an occupational  
22 injury, as such, is that right?

23 A. The investigation alone wouldn't be sufficient, there  
24 would have to be, I suppose -- the primary decision in  
25 relation to that, to the best of my knowledge, is made 12:25  
26 between the CMO, the chief medical officer, and the  
27 head of HR in An Garda Síochána at executive director  
28 level. And they ultimately sign off on any case where  
29 work related stress is to be treated as an injury on

1 duty.

2 248 Q. Yes. I opened Dr. Oghuvbu's statement to you?

3 A. Yes.

4 249 Q. And he believes that local management also have a role  
5 in relation to that? 12:25

6 CHAIRMAN: That's right. I think we have been over  
7 that, Mr. Marrinan, fairly thoroughly, I would have  
8 thought.

9 MR. MARRINAN: Yes.

10 250 Q. CHAIRMAN: We are now downstream and he got his pay 12:25  
11 because of Chief Superintendent McLoughlin.

12 A. Yes.

13 251 Q. CHAIRMAN: And here we are in 2016, with documents  
14 being served by Inspector Minnock. I am sorry. If I  
15 sound impatient, I am sorry, forgive me. But I do 12:25  
16 think we have explored it fairly thoroughly?

17 252 Q. MR. MARRINAN: I can understand that impatience. In  
18 any event, we know that Garda Keogh raised this issue  
19 with the chief superintendent?

20 A. Yes. 12:26

21 253 Q. Both you and Mr. McLoughlin sought to deal with the  
22 issue; is that right?

23 A. Yes. I was independent of Mr. McLoughlin, yes.

24 254 Q. It appears Mr. McLoughlin got in there first, but it  
25 doesn't matter? 12:26

26 A. Yes.

27 255 Q. The matter was addressed?

28 A. Absolutely.

29 256 Q. It was then changed to mental health?

1 A. Yes.

2 257 Q. Because there's no category on SAMS that would allow  
3 for work related stress. It comes under mental health,  
4 isn't that right?

5 A. Yes. Garda Kelly explained all that to me and 12:26  
6 furnished add report, you know, indicating what had  
7 occurred, and I sent that to the chief superintendent.

8 258 Q. We know then and we have heard evidence in relation to  
9 Garda Keogh's concerns then that arose in relation to  
10 the categorisation under mental health. You had no 12:27  
11 dealings with that whatsoever --

12 A. No, no.

13 259 Q. -- is that right?

14 A. No.

15 260 Q. And we know that later on in relation -- and just for 12:27  
16 completeness sake, in late September 2016  
17 Mr. McLoughlin completely separately of you,  
18 Superintendent McLoughlin met with Alan Mulligan and  
19 John Barrett to discuss the welfare of Garda Keogh and  
20 the pay issue and then they sought guidance from the 12:28  
21 Department of Public Expenditure and Reform,  
22 recommending that he be reinstated to full pay because  
23 of the unique circumstances he faced.

24 A. Yes. I had no knowledge of that until I saw the  
25 documents. 12:28

26 261 Q. I suppose that's an acknowledgment that actually these  
27 were fairly unique circumstances --

28 A. Yes.

29 262 Q. -- that were being dealt with. I am not entirely sure

1 that the allegation is there, but just in case it is  
2 there, did you do anything to deliberately cause Garda  
3 Keogh's illness to be recorded in any form, whether on  
4 SAMS or otherwise --

5 A. No. 12:29

6 263 Q. -- to cause his disadvantage in relation to in relation  
7 to his pay?

8 A. No, absolutely not Chairman. I do note in the  
9 documents a letter from Mr. Barrett to Garda Keogh's  
10 solicitor in August '17, which includes quotes from 12:29  
11 some of the reports that Chief Superintendent Wheatley  
12 sent, that you opened there, explaining different  
13 aspects of what might have occurred.

14 CHAIRMAN: Okay.

15 264 Q. MR. MARRINAN: We may have to return to that issue in 12:29  
16 case there is something that I neglected to introduce.

17 A. Okay, Chairman.

18 CHAIRMAN: I am not understanding that, Mr. Marrinan.  
19 MR. MARRINAN: We may have to return to that in case  
20 there is some matter that I neglected that might be 12:30  
21 drawn to my attention. But for the moment we will pass  
22 on from that. Do you feel you've said enough in  
23 relation to that?

24 A. Yes, Chairman.

25 CHAIRMAN: Thank you very much. 12:30

26 A. I had no knowledge of it.

27 CHAIRMAN: Okay.

28 265 Q. MR. MARRINAN: So finally, if could just then turn very  
29 briefly in relation to an issue concerning a complaint

1 by Garda Keogh that the Tribunal's disclosure order was  
2 deliberately withheld from him. It's issue number  
3 21 in the issues.

4 CHAIRMAN: Yes.

5 266 Q. MR. MARRINAN: If I could just say at the outset in 12:30  
6 relation to this, it appears that Garda Keogh was  
7 labouring under the misapprehension that the Tribunal  
8 order in some way was inviting submissions from people  
9 who could potentially come under term of reference (p),  
10 which we are now examining. I think it is fairly clear 12:31  
11 from the examination of Garda Keogh by Mr. McGuinness  
12 that he held that view up until it was pointed out to  
13 him that the Tribunal order in fact relates to the  
14 earlier modules of the Tribunal?

15 A. Yes. 12:31

16 267 Q. Isn't that right?

17 A. Yes.

18 268 Q. It relates not to submissions but in actual fact it was  
19 merely a preservation order --

20 A. Yes. 12:31

21 269 Q. -- directed to members of An Garda Síochána?

22 CHAIRMAN: Is this an issue, Mr. Kelly?

23 MR. KELLY: Excuse me just for a moment.

24 CHAIRMAN: I'm not sure it is, Mr. Marrinan. I  
25 appreciate Mr. Marrinan is raising it for completeness 12:31  
26 sake, but I am not sure that --

27 MR. KELLY: I am quite happy that he does that. My  
28 view is, I indicated this to Mr. Marrinan and to  
29 Mr. McGuinness, that on the face of it it doesn't

1 appear to be. However, that is not a view that is  
2 taken by my instructing solicitor.

3 CHAIRMAN: Perfect. Perfect. So I think that  
4 Mr. Marrinan should deal with it.

5 MR. KELLY: Yes.

12:32

6 270 Q. CHAIRMAN: And if that changes, Mr. Kelly, you can let  
7 us know. But for the moment, yes, Mr. Marrinan. I  
8 think that was explored in some detail with Garda Keogh  
9 and in fairness to Garda Keogh, I think he was

10 acknowledging what did appear to be in documents. So  
11 in essence, Mr. Marrinan, what do you say is the  
12 position? I mean the question, I may as well tell you  
13 so as everybody knows, the question I have under number  
14 21, is: was the Disclosures Tribunal's order

12:32

15 deliberately withheld from Garda Keogh? A and B, did  
16 Superintendent Murray order that to be done? So those  
17 are the questions that strike me as being relevant.  
18 Did you have something to do with withholding the  
19 Disclosures Tribunal's order from Garda Keogh.

12:33

20 A. No, Chairman. I first learned of this when I received  
21 a letter that had been sent by Garda Keogh's legal  
22 representatives to Assistant Commissioner Fanning. It  
23 came down the line to me, we made our enquiries and  
24 carried out the research and sent a report back  
25 explaining what had occurred. I really had no  
26 knowledge. Inspector Minnock outlined fully the delay  
27 that had occurred and how that occurred. That report  
28 went back and Assistant Commissioner Fanning asked the  
29 chief superintendent in Westmeath to reply to the query

12:33

12:33

1 generated by Garda Keogh, which was cc'd to the  
2 Tribunal. And the chief superintendent then did so on  
3 the 11th June '17, explaining what the position was.  
4 CHAIRMAN: I am inclined to leave that, Mr. Marrinan,  
5 and see if Mr. Kelly's team forms a consensus and he 12:34  
6 will exercise his judgment on that matter and you can  
7 return to it that in re-examination if any issue arises  
8 either from Mr. Kelly's cross-examination or from  
9 anybody else. So my suggestion is that we can leave  
10 the matter with the chief superintendent's declaration 12:34  
11 that he has just made.

12 271 Q. MR. MARRINAN: Now, that deals with all the issues with  
13 the exception of the issue concerning promotion. You  
14 realise that we will be returning to that. But just to  
15 give you an opportunity in relation to the allegations 12:34  
16 that have been levelled against you in relation to what  
17 we have gone through in relation to this. A lot of  
18 them were made publicly. We're not going to go into  
19 them individually at this stage?

20 A. Yes. 12:35

21 272 Q. A lot of them were made publicly, do you wish just to  
22 address the Chairman in relation to how that has  
23 impacted on you?

24 A. Very briefly, Chairman. Thank you for the opportunity.  
25 I suppose I came to Athlone in a very normal sort of 12:35  
26 way.

27 273 Q. CHAIRMAN: Can I help you a tiny bit on this and help  
28 everybody a tiny bit on this? Chief superintendent,  
29 first of all, we know that the promotion issue we're

1 leaving as an operate issue.

2 A. Yes.

3 274 Q. CHAIRMAN: Because it seems to fall separately. It  
4 does seem to me that some things are obvious, some  
5 things can be left to me to work out for myself, and  
6 some things can be made the subject of a submission. 12:36  
7 But before we get to a stage -- now, I understand your  
8 position and you are going to say, look here, these  
9 things are being said about me and they were wrong?

10 A. Yes. 12:36

11 275 Q. CHAIRMAN: Garda Keogh says, yes, these things were  
12 said about you, but they're right. So that's what we  
13 are here to decide. Mr. Marrinan and chief  
14 superintendent, I am inclined to leave aside the  
15 impact, because it seems to me that it's a legitimate 12:36  
16 point for Mr. O'Higgins, now subject to anything else  
17 anybody else may say, Mr. O'Higgins and Mr. Murphy may  
18 say, look here, (a) these allegations are groundless,  
19 (b) they're unfair (c) they were done in an unfair  
20 manner, whatever it is, as a legitimate submission to 12:37  
21 make and no doubt the other side will argue the other  
22 way. I am inclined to leave that over, Mr. Marrinan  
23 and chief superintendent. But if Mr. O'Higgins wishes  
24 to explore that issue with the chief superintendent, I  
25 think it's for him to decide that as Chief 12:37  
26 Superintendent Murray's counsel. I think that it's for  
27 him to do it. My own suggestion is it's probably best  
28 left to a later point and as a matter of submission,  
29 depending on all the evidence we have and so on. Are

1 you happy with that, Mr. O'Higgins?  
2 MR. MÍCHEÁL O' HIGGINS: Certainly, Chairman. If I may  
3 reserve my position on it.  
4 CHAIRMAN: Yes, if you want to raise it. But my  
5 belief, my thought is that it's probably more 12:37  
6 appropriate if it's sort of briefly dealt with in that  
7 context. Mr. Kelly, you don't probably have a lot to  
8 say about that but have you anything to say about it?  
9 MR. KELLY: I do. I think it's best if the whole of it  
10 is left over, rather than address part of it. I think 12:38  
11 the sensible thing is to take a break, put it over.  
12 CHAIRMAN: I think so, at the end, when we have had  
13 more evidence and everything else. We will have a full  
14 picture of the evidence with other witnesses having  
15 given their views of the matter. So I am not shutting 12:38  
16 out anything or I am not unmindful of the impact on you  
17 and the impact on Garda Keogh and the impact on the  
18 various others, I mean I am not forgetting that. Is  
19 that the position then, Mr. Murrinan; you've covered  
20 pretty well everything? 12:38  
21 MR. MURRINAN: Yes.  
22  
23 END OF EXAMINATION  
24  
25 CHAIRMAN: Thank you very much. Well now, it's 12:38 12:38  
26 and I thought that we could do with a little break, if  
27 everybody was happy with that, and you can sort of get  
28 yourself ready for cross-examination and we will start  
29 that at two o'clock. Okay. Thanks very much.

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

3  
4 CHAIRMAN: Good afternoon. Now Mr. Kelly.

5 14:00

6 CHIEF SUPERINTENDENT PATRICK MURRAY WAS CROSS-EXAMINED  
7 BY MR. KELLY, AS FOLLOWS:

8  
9 276 Q. MR. KELLY: Good afternoon, chief superintendent. As  
10 you probably know, my name is Matthias Kelly and I am  
11 asking questions on behalf of Garda Nicholas Keogh.

12 14:00

12 A. Yes.

13 277 Q. Can you tell me what is your view of Garda Nicholas  
14 Keogh?

15 A. When I went to Athlone first, I had never met Garda  
16 Keogh before. I have no issue with him whatsoever. I  
17 had the height of respect for him, as did I with every  
18 other member in the station. And I admired, you know,  
19 what he had done in relation to reporting wrongdoing  
20 and his history in the Garda Síochána reflects my  
21 admiration for him in that regard.

14:01

14:01

22  
23 However, at this point in time I feel that he developed  
24 some type of an unhealthy obsession with me that had a  
25 big impact on, as I said earlier, my character, my  
26 reputation my career prospects.

14:01

27 278 Q. I see. Well, we will perhaps come on to that another  
28 time, as to whether you are a victim or not. Did you  
29 see him as a drunk?

1 A. I never met the man before, so I didn't see him as  
2 anything.

3 279 Q. No, but you have met him now and have you dealt with  
4 him; do you see him as a drunk?

5 A. No, I see that he had a problem with alcohol. 14:02

6 280 Q. Do you see him as a poor Guard?

7 A. No, I don't. But I see that the effects of the alcohol  
8 has had an impact on his performance, and that's  
9 natural.

10 281 Q. Do you see him as an inefficient Guard? 14:02

11 A. Again it's the same answer: I suppose his alcohol  
12 problems and how that manifested in the workplace  
13 caused performance problems for him.

14 282 Q. Bearing in mind that the protected disclosure was made  
15 on the 8th May 2014, the previous year, when you joined 14:02  
16 Westmeath, Athlone, what was your view of what you  
17 found there, what you encountered?

18 A. I found, I suppose, a vibrant work force who were very  
19 committed. The people in the key roles had great  
20 experience, they had served in the area for a bit of 14:03  
21 time, they knew it well. And they were receptive, I  
22 suppose, to the reforming element of change that I  
23 wanted to introduce.

24 283 Q. How would you describe your management style?

25 A. I would describe it as open, inclusive, progressive, 14:03  
26 with an emphasis on, I suppose, team-based results,  
27 orientated approach. Very much focused on team  
28 empowerment and distributed leadership where possible.

29 284 Q. So have you got a concern for the welfare of the

1 ordinary gardaí under your command?

2 A. I have, welfare for all staff. And I have been, I  
3 suppose, prominent in welfare issues in Athlone and in  
4 other places that I have served, my history reflects  
5 that, I feel. 14:03

6 285 Q. What I wanted to ask you about was this: Your  
7 predecessor, Noreen McBrien, described the role of the  
8 superintendent as being, in her first statement, very  
9 supportive of members with difficulties, would you  
10 agree with that? 14:04

11 A. Yeah, there are some, I suppose, 40 broad roles and  
12 responsibilities which the superintendent must fulfil  
13 set out in the Garda Code.

14 286 Q. Does that include being supportive of members with  
15 difficulties? 14:04

16 A. Absolutely, yeah.

17 287 Q. Okay, the answer is yes, okay.

18 A. Yes.

19 288 Q. She also she was asked by the Tribunal investigators  
20 what she regarded as her duties towards a person who 14:04  
21 had made confidential disclosures. We needn't call it  
22 up but the reference is volume 21, page 6211, where she  
23 said this:

24

25 "I was to ensure confidentiality, welfare and that the 14:04  
26 guard concerned was not adversely treated."  
27

28 Do you agree with that?

29 A. Absolutely.

1 289 Q. would you say that that's how you behaved towards  
2 Nicholas Keogh?

3 A. Yes.

4 290 Q. I see. Had you ever dealt with anybody who had made a  
5 protected disclosure before? 14:05

6 A. No, but I had dealt with quite a few members of An  
7 Garda Síochána who had reported wrongdoing, albeit not  
8 under this process.

9 291 Q. You have. How many times have you dealt with such a  
10 situation? 14:05

11 A. I'd say, roughly ten.

12 292 Q. what did you know of the substantive content of the  
13 protected disclosures?

14 A. Before going to Athlone?

15 293 Q. Yes. 14:05

16 A. I didn't know anything.

17 294 Q. when you got to Athlone?

18 A. when I got to Athlone I discovered that primarily the  
19 anecdotal information in the station was that Garda A  
20 had been -- or Garda Keogh had been complaining about 14:05  
21 Garda A and a former superintendent who had been there.

22 295 Q. what relationship, if any, did you have with Assistant  
23 Commissioner Ó Cualáin before you arrived in Athlone?

24 A. A professional, working relationship. He was my boss  
25 and I was promoted to superintendent and transferred to 14:06  
26 Gort in County Galway.

27 296 Q. So you had met him before. How long had you known him?

28 A. I first him in 2010, when he became my boss, when I was  
29 transferred to Galway.

1 297 Q. You have already told the Tribunal that when you went  
2 to Athlone in March 2015, you said that you were  
3 unaware of the details of what his disclosure was. But  
4 at the same time you say -- perhaps you can have a look  
5 at this, volume 11, page 3019. Have you found that? 14:06

6 A. Yeah.

7 298 Q. You were asked there:

8  
9 "I have been asked when I first became aware of former  
10 Assistant Commissioner Ó Cualáin's investigation into 14:07  
11 the allegations raised by Garda Nicholas Keogh to the  
12 confidential recipient and how I became aware of them

13  
14 A. I wasn't informed officially of anything. When I  
15 went to Athlone, members of An Garda Síochána attached 14:07  
16 to Galway division were arriving to interview garda  
17 members there. There was no formal communication with  
18 me by anybody about what was happening. So  
19 interviewers just arrived and they had private  
20 arrangements made to interview members in Athlone and I 14:07  
21 wasn't involved at all. A lot of interviews had  
22 happened before I got there and I knew nothing about  
23 it."

24  
25 You were also asked: when you became aware of the 14:08  
26 investigation what, if anything, I was advised in  
27 respect of the scope of the investigation and who were  
28 the central parties involved or did I make any  
29 enquiries in that regard?

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And your answer recorded there is:

"My only knowledge on that came from Detective Superintendent Mulcahy. He was part of the investigating team. So I have set out when I first began to contact him about my statement."

14:08

You also said when you went to Athlone, that's further down the page, line 150:

14:09

"I noticed a palpable air of fear around the whole place but I learned that it might not have been just from this situation."

14:09

what was the palpable air of fear? How did it manifest itself?

A. It took me a bit of time to work that out, because I had barriers to breakdown myself, I was new to the area and new to all the people there. But I suppose a number of issues that attracted national controversy I felt had impinged on maybe the confidence of people.

14:09

299 Q. what, were people sort of huddling around talking about it or what?

A. They just lacked confidence, I felt, you know, because of the issues that had arisen.

14:09

300 Q. There was an air of fear, was there?

A. Yeah, well, I suppose fear in the sense of a lack of confidence and, you know, a fear, I suppose, that

1 people were looking in constantly over their shoulders.  
2 And that was sort of the mindset that had developed  
3 because of the national controversies that had arisen.  
4 301 Q. I think you described it as being an air of innuendo  
5 about it as well in the station? 14:10  
6 A. About?  
7 302 Q. The protected disclosures and what was going on?  
8 A. Well, no one seemed to know exactly, but people had  
9 been interviewed at the stage when I got there, so  
10 certain information anecdotally went around in that 14:10  
11 regard.  
12 303 Q. So it would be fair to say when you came there, it  
13 became rapidly pretty apparent to you that morale was  
14 affected and it was having an impact on the  
15 organisation and you didn't regard it as a positive 14:10  
16 thing, is that right?  
17 A. Well, all of the -- no -- well, I mean, it's not that  
18 it wasn't a positive thing. I suppose, you know, the  
19 protected disclosure situation had to be dealt with.  
20 It was being dealt with by someone else and I was 14:11  
21 responsible for delivering the policing service and I  
22 suppose, you know, the motivational aspect of what  
23 might be the station party, as it were, in delivering  
24 that.  
25 304 Q. That was a problem for you, that you had to face? 14:11  
26 A. I wouldn't say it was a problem, but it did cause  
27 difficulties as my number of months went on, yes.  
28 305 Q. Okay. Let's go through the number of times you've met  
29 with Nick Keogh. As I understand it, from my reading

1 of the papers, there are really five significant  
2 contacts with him. I will go through those. You had  
3 the first meeting on the 26th March?  
4 A. Yes.  
5 306 Q. You then had a meeting on the 3rd April with him? 14:11  
6 A. Yes.  
7 307 Q. That was to give him a regulation 10 caution?  
8 A. Yeah, as well as discussing other things.  
9 308 Q. Yes.  
10 A. Yeah. 14:11  
11 309 Q. And then 15th July 2015, when you phoned him about his  
12 absence from work?  
13 A. Yes.  
14 310 Q. The fourth one, 30th August 2015, when you served him  
15 with papers about the absence without leave charge? 14:12  
16 A. Yes.  
17 311 Q. Then on the 22nd October, when you handed him a notice  
18 and you assigned him to indoor duties?  
19 A. Yes.  
20 312 Q. That's the extent of your contact with him? 14:12  
21 A. Yes.  
22 313 Q. Personally?  
23 A. Personally, yes.  
24 314 Q. Yes. Let's look at that first meeting of the 26th  
25 March. If we can turn up the minute of that, volume 8, 14:12  
26 page 2187. You describe that as a general meeting, is  
27 that right?  
28 A. I'm not sure I said that. It was a meeting, I suppose,  
29 which I felt was designed to pay the monies owed to him

1 and deal with his car tax.

2 315 Q. The first item you discussed on that was his -- just  
3 there, you describe his reluctance to discuss the  
4 ongoing investigation?

5 A. Yes. 14:13

6 316 Q. Then his in and out sick days since you came?

7 A. Yes.

8 317 Q. Then there was mention of work related stress, that's  
9 right, isn't it?

10 A. Stress, yes. 14:13

11 318 Q. Work related stress?

12 A. Yes.

13 319 Q. In your view that wasn't supported by what you could  
14 see, was it?

15 A. Oh no, I never said that. I couldn't determine what 14:13  
16 level of stress Garda Keogh had. I have been clear on  
17 that. The vagueness in which he -- where the  
18 discussion went, I couldn't make any determination  
19 about the excuse that he was giving.

20 320 Q. And in your view, him being in some days and out some 14:13  
21 days didn't really bear it out?

22 A. Yeah. Well, the work absences were intermittent. So  
23 he was reporting fit for work after periods of being  
24 out.

25 321 Q. He requested that you contact Superintendent Mulcahy 14:14  
26 and Superintendent McBrien?

27 A. Yes.

28 322 Q. And you said you wouldn't do it, isn't that right?

29 A. I didn't say I wouldn't do it. I said I wouldn't

1 contact them to obtain anecdotal information. That's a  
2 different thing.

3 323 Q. And did you contact him about what he was saying?  
4 A. No. I had contact with Detective Superintendent  
5 Mulcahy, as it turned out, and that began on the 1st 14:14  
6 April.

7 324 Q. You asked him if he was doing any work?  
8 A. Yes.

9 325 Q. You didn't tell him at that meeting that his pay might  
10 be reduced because of his sick absences, did you? 14:14  
11 A. No.

12 326 Q. You told him that you were appointing Sergeant Yvonne  
13 Martin to support him?  
14 A. Yes.

15 327 Q. You discussed his travel claims and the fact that his 14:14  
16 vehicle was taxed as goods?  
17 A. Yes.

18 328 Q. You told him you had already been onto the tax office?  
19 A. Yes.

20 329 Q. We know that prior to this, on the 19th March, you had 14:15  
21 Inspector Minnock e-mail the tax office, isn't that  
22 right?  
23 A. I asked Inspector Minnock, yes.

24 330 Q. And he did?  
25 A. He did. 14:15

26 331 Q. And you saw the e-mail?  
27 A. Yes.

28 332 Q. Did you show Nick Keogh the e-mail?  
29 A. I didn't show him the e-mail, but I showed him, I

1           suppose, the file I had coming back from the tax  
2           office.

3 333 Q.    You also told him that you saw the statutory  
4           declaration, didn't you?

5           A.    No, I didn't tell him that, no, absolutely not. There   14:15  
6           was no discussion about a statutory declaration in any  
7           shape or form.

8 334 Q.    There's a dispute about that. The Chairman has already  
9           been taken to Nick Keogh's entry on that, which is at  
10          126, where he has a rather account. But we will pass   14:15  
11          on. Did you know at that time that Garda White had  
12          checked Nick Keogh's car?

13          A.    No, I did not.

14 335 Q.    When did you get to know that?

15          A.    During the course of the disclosures or the information   14:16  
16          that came to me in relation to this case.

17 336 Q.    And you would agree with Garda White, that's not normal  
18          practice, is it; for one guard to be checking another's  
19          car tax status on Pulse?

20          A.    I don't know -- I don't know the circumstances in which   14:16  
21          that happened, so it's very difficult for me to  
22          comment.

23 337 Q.    Well, I would invite you to look at what Garda White  
24          says. Volume 3, page 486. Have you seen that  
25          statement before?   14:17

26          A.    Only in the disclosures that came to me as a result of  
27          this Tribunal.

28 338 Q.    You see, he says there:  
29

1 "This would have been done to ensure --"

2

3

Middle of the page:

4

5

"I do recall Superintendent McBrien asking me to do a 14:17

6

check on the car details of random Garda members whose

7

claims were in the process. This check would have been

8

done to ensure the vehicle was properly taxed and

9

insured under the dates claimed. I cannot recall if

10

Superintendent McBrien or the finance officer handed me 14:17

11

the claims to be checked or I took them from the

12

bundle. I do not recall if Nick Keogh's vehicle was

13

one of those checked. Though Pulse entries supplied

14

would indicate that it may have been."

15

A. Yes. 14:17

16

339 Q. Up at the top, ten lines down:

17

18

"I do not recall specifically checking Nick Keogh's

19

vehicle on any occasion. It would not be normal

20

practice for me to check Garda members vehicles beyond 14:18

21

the occasional check where a car may be blocking access

22

to front car parking spaces in the Garda station yard."

23

24

Do you agree that that would be normal practice?

25

A. I don't know what Garda white means by that. I don't 14:18

26

know what circumstances he is talking about there.

27

It's very difficult for me to comment on his mindset.

28

340 Q. Yes, but you have been in the Guards a long time?

29

A. Yeah.

1 341 Q. Do you go around checking each other's vehicles for tax  
2 and insurance on Pulse?  
3 A. Well, it depends on, I suppose -- like first of all,  
4 the details in relation to tax and insurance may not  
5 always be accurate, it wouldn't be a primary source of 14:18  
6 information for specific -- for specificity in relation  
7 to facts like that. So it's difficult. It depends if  
8 investigations were going on, if claims had been made,  
9 that people may resort to checking on Pulse. But I  
10 would be speculating on offering an answer without 14:19  
11 knowing the full circumstances in which Garda White did  
12 that.

13 342 Q. Well, I am suggesting to you that it certainly wouldn't  
14 be normal practice?  
15 A. Again, all I can say is, it depends on the 14:19  
16 circumstances. I just don't know the circumstances  
17 that Garda White faced.

18 343 Q. Right, we will move on. Is it right that from the very  
19 first meeting with Nick Keogh you wanted him out of  
20 Athlone? 14:19  
21 A. No, that's absolutely untrue.

22 344 Q. Right. If we look at volume 1, page 126. This is Nick  
23 Keogh's account of his first meeting with you?  
24 A. Yes.

25 345 Q. You see page 126? 14:19  
26 A. Yes.

27 346 Q. The last paragraph:  
28  
29 "He asked me if I would like to take a transfer."

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Did you ask him that?

A. Not in the first meeting, no.

347 Q. "I replied no, that I didn't want a transfer. I had not asked for a transfer. I believed the transfer he was proposing was an attempt to prevent me from observing close-up the patently inadequate criminal investigation into Garda collusion with criminals (condoned by management), the non-interviewing of witnesses etcetera."

14:20

14:20

So he is completely wrong about that; no transfers were mentioned in the first meeting, is that right?

A. No, not in the first meeting.

348 Q. Okay. If we look at Nick Keogh's diary entry for the second meeting, the 2nd April 2015?

14:20

A. Yes.

349 Q. It's in Volume 47, page 13305. If we move it a little to the right, I think. Right. This is the 3rd April:

14:21

"Meeting Mullingar. Met Superintendent Murray re tax. I showed him the tax disk and receipt and he then gave a regulation 10 discipline for the same. I said I wrote a report months ago re this, asking was there a problem and pointed out it should have been dealt with then."

14:21

Do you see that?

A. Yes.

1 350 Q. Do you agree with that?  
2 A. No, I can't recall him making protestations in that  
3 regard. The tax came up at the first meeting and I  
4 showed him what I had got from the tax office and  
5 explained to him that this had been left for me and 14:22  
6 that it had an impact on the claims that were there.  
7 That's my recollection of that.

8 351 Q. Then if we look at volume 11, page 3127. Do you have  
9 volume 11?  
10 A. I do. 14:22

11 352 Q. This is a management case conference?  
12 A. Yes.

13 353 Q. 9th December 2015?  
14 A. Yes.

15 354 Q. The chief medical officer is there? 14:22  
16 A. Yes.

17 355 Q. If you look on the right-hand column?  
18 A. Yes.

19 356 Q. It's recording:  
20 14:23  
21 "Local management's observations and actions."  
22  
23 The third paragraph there reads:  
24  
25 "Management suggesting medium to long-term support to 14:23  
26 be given for a transfer out of Athlone in view of the  
27 events that that transpired there if it is considered  
28 to be beneficial for member's sustained wellbeing and  
29 effectiveness after he would have come through an

1 appropriate treatment programme."

2 A. Yes.

3 357 Q. So that's a transfer still alive then?

4 A. That meeting was with the chief medical officer and I  
5 was at pains to try and arrange that for a number of 14:23  
6 months. All options were discussed there in terms of  
7 Garda Keogh's welfare. Everyone there contributed very  
8 positively to the meeting, that I remember. The human  
9 resource section were there, they were positive about  
10 that sort of move. I discussed that in a very open way 14:23  
11 with Garda Keogh on 3rd April 2015, a number of months  
12 before this meeting.

13 358 Q. Yeah, but this is under the heading "local management's  
14 observations"?

15 A. Yes. 14:24

16 359 Q. So this suggests that a transfer is coming from local  
17 management?

18 A. No, I wouldn't agree that.

19 360 Q. Oh!

20 A. The transfer was a solution, one solution, if it were 14:24  
21 benefit for his sustained wellbeing after he came  
22 through a treatment programme. No transfer would be  
23 feasted on Garda Keogh by the organisation in my  
24 experience without him willingly engaging with that,  
25 you know, by application. 14:24

26 361 Q. I am suggesting that this is a suggestion coming from  
27 local management?

28 A. No.

29 362 Q. And it's recorded here as that meeting as coming from

1 local management?

2 A. No. I did not make a specific suggestion at that  
3 meeting to have Garda Keogh transferred anywhere. This  
4 was discussed in the context of an over all probably  
5 solution or way of dealing with the problems that Garda 14:24  
6 Keogh had.

7 363 Q. Looking at the -- this is volume 9, page 2498. Have  
8 you got it?

9 A. Yes.

10 364 Q. It's one of your minutes? 14:25

11 A. Yes.

12 365 Q. And exhibits to your statement?

13 A. Yes.

14 366 Q. It's dated 11th November 2015?

15 A. Yes. 14:25

16 367 Q. Garda Greene called, told you Garda Keogh told him he'd  
17 gone public again.

18

19 "I asked him to tell Garda Keogh my views re treatment  
20 and transfer to get him better." 14:25

21 A. Yes.

22 368 Q. So you were thinking about a transfer then?

23 A. I was referring to the transfer on 3rd April. Garda  
24 Keogh well knows that was in my view a very meaningful  
25 conversation, where we discussed the opportunity that I 14:26  
26 might provide to him to reignite the value that he got  
27 from work.

28 369 Q. But this was a conversation that you were having which  
29 was in advance of that meeting we just looked at with

1 the CMO. And I am suggesting to you that transfer was  
2 very much alive in your mind then?

3 A. Okay. So, while it's a fact that that meeting with  
4 Garda Greene took place before the other one, what I am  
5 referring to in asking Garda Greene to pass that on to 14:26  
6 Garda Keogh is our conversation of the 3rd April.

7 370 Q. If we have a look at the agenda, I think you described  
8 it as, or the meeting with the CMO. I think it's  
9 volume 9, page 2500. Do you recognise that?

10 A. That's -- the first part of it is a list of issues that 14:27  
11 I had written down before going to the meeting.

12 371 Q. That's right. I think you told the Chairman earlier,  
13 this is your aide memoire or agenda for the meeting?

14 A. Yes.

15 372 Q. You have in there: Alcohol, sickness, etcetera, 14:27  
16 etcetera.

17

18 "He needs to engage in treatment. To arrange  
19 appointment. Tell him he has to go in himself. If  
20 not, discipline will take over." 14:27  
21

22 The next page, if you look at the middle in the second  
23 paragraph:

24

25 "If he goes in, transfer to be discussed." 14:28

26 A. Yes.

27 373 Q. "If not, continue with discipline and job in jeopardy."  
28 A. Yes.

29 374 Q. What do you mean by that?

1 A. That was something that the CMO said. And it's  
2 reflected in an e-mail I received later from Inspector  
3 Downey from Human Resource Management.

4 375 Q. So was the view at that time, if he didn't cooperate,  
5 he would be disciplined and his job might well be in 14:28  
6 jeopardy?

7 A. The CMO was, I suppose, trying to map out what he had  
8 in mind in terms of Garda Keogh and treatment and how  
9 he had to, I suppose, engage with that treatment in a  
10 meaningful way in as far as the organisation was 14:28  
11 concerned.

12 376 Q. And if he didn't?

13 A. Well, various options would have to be discussed then  
14 in terms of sanctions or discipline or his job.

15 377 Q. And who would judge whether he engaged in a 14:29  
16 meaningfully or not?

17 A. It certainly wouldn't be me anyway. It would be the  
18 organisation. The meeting was hosted by the human  
19 resource section and I suppose this was being  
20 transferred over to their domain. 14:29

21 378 Q. So I am suggesting that from your time throughout that  
22 year, 2015, transfer was on the agenda throughout,  
23 isn't that right?

24 A. No. No, as I said, I had a discussion with Garda Keogh  
25 on the 3rd April and that's the position. Nothing 14:29  
26 would ever happen in that regard without Garda Keogh's  
27 full involvement and cooperation.

28 379 Q. Now let's move on to the discrete issues, as it were.  
29 We will start with issue 5, which is the hyper

1 supervision. You met, as I have understood your  
2 evidence, Sergeant Haran on the 13th March?

3 A. Yes.

4 380 Q. At that meeting you asked him if there was any  
5 perception of him being on one side, is that right? We 14:30  
6 can call it up, volume 8, page 2041. So you're raising  
7 this issue, you see there, with Sergeant Haran?

8 A. I'm not arranging anything. It was a discussion that  
9 began about something else that Sergeant Haran  
10 approached me about. 14:31

11 381 Q. If you just look at your diary entry or the file note  
12 you have for that, which is at page 2184. This is your  
13 file note for the meeting? 143142

14 A. Yes.

15 382 Q. 14:31  
16 "Friday, 13th March. Met Sergeant Haran at the request  
17 of Inspector Farrell. He brought up Garda Ni chol as  
18 Keogh and discussed the broad outline. He  
19 indicated..."

20 14:31  
21 I take it that 'he' there is Sergeant Haran; is that  
22 right

23 A. Yes.

24 383 Q. " -- indicated that he was in contact for Garda Keogh  
25 and knew his mind and said he was returning to work 14:32  
26 etcetera. Said he wasn't directly involved in any of  
27 it. Asked him" -- is that you asked him?

28 A. Yes.

29 384 Q. "Asked him if there was a perception he was on one side

1           because of his role."

2           A.    Yes.

3 385 Q.    What did you mean by that?

4           A.    So the context of the conversation, after we discussed  
5           the issue Sergeant Haran came up with, it turned to 14:32  
6           Garda Keogh and Sergeant Haran explained to me that he  
7           was almost the single point of contact for Garda Keogh  
8           at that point. And the position he found himself in  
9           with the issue that came about was troubling him. And  
10          I got the impression that he wanted to unburden himself 14:32  
11          from that job and I asked him the question because of  
12          the nature of the conversation and the way he was  
13          describing, I suppose, the huge support he had given to  
14          Garda Keogh for a long number of months, both on the  
15          phone day and night at various times. And I suppose 14:32  
16          his involvement with this new issue, I felt in talking  
17          to him, was something that he wanted to, I suppose,  
18          step back from it slightly in relation to Garda Keogh,  
19          so that he wouldn't be seen to be on one side or the  
20          other. And I got the impression that he was nervous of 14:33  
21          that.

22 386 Q.    That's what I am interested in; one side or the other?

23           A.    Yes.

24 387 Q.    Was there more than one side in Athlone?

25           A.    Well, when I came in there -- 14:33

26 388 Q.    What is meant by that?

27           A.    When I came in there, when I came in Garda Keogh had  
28           made a complaint about Garda A. So there were some  
29           supporters of Garda A and then there were supporters of

1           Garda Keogh. That's the way it was. It wasn't, I  
2           suppose, hugely prevalent, but there was an underlying  
3           tone there and I think it has been referred to in the  
4           evidence here, a particular sergeant had to be asked to  
5           desist in making comments, in the nature of that. 14:33

6 389 Q.    So the ordinary rank and file, are you saying that they  
7           were divided in their support between Nick Keogh and  
8           Garda A?

9           A.    Very few people were. Very few.

10 390 Q.    How many? Who were? What does very few mean? 14:34

11           A.    Well, I suppose people that may have worked with Garda  
12           A may have been, I suppose, you know, supportive of him  
13           and people who worked with Garda Keogh may have been  
14           supportive of him.

15 391 Q.    Garda Lyons? 14:34

16           A.    I don't know what his mindset was.

17 392 Q.    You can't help us on that?

18           A.    No.

19 393 Q.    The sergeants, were they divided?

20           A.    I didn't hear sergeants say anything to me about that, 14:34  
21           no. No one actually said anything to me about it, it  
22           was sort of an anecdotal indication that came in a  
23           general way.

24 394 Q.    Inspectors, were they divided?

25           A.    No, they were not. The inspectors were, I suppose, 14:35  
26           very experienced, had dealt with this before I arrived  
27           there and were a very valuable asset to me in making  
28           the changes I felt were needed to be made.

29 395 Q.    We then know that the support for Garda Keogh passed

1 from Sergeant Haran to Yvonne Martin. Did you see  
2 Sergeant Haran as just being too supportive of Nick  
3 Keogh?

4 A. Absolutely not. Sergeant Haran is a very honourable  
5 and decent man, who I suppose I worked very closely 14:35  
6 with as I went through my time in Athlone, particularly  
7 when he was appointed sergeant in charge. He was  
8 unflinching in his support for Garda Keogh and that has  
9 always remained the position, as far as I know.

10 396 Q. Right. Very shortly after having arrived there, you 14:36  
11 arrived in March, by the 2nd April you had sent out  
12 this letter, which we will find at volume 1, page 187,  
13 to the sergeant in charge in Athlone, where you're  
14 informing him that -- have you got it?

15 A. Yes. 14:36

16 397 Q. You're informing him that you had allocated Sergeant  
17 Martin as the liaison person for Garda Keogh, to allow  
18 him to discuss any work related issues he may have,  
19 with a view to solving any issues that may arise. Now  
20 Sergeant Martin wasn't known to Garda Keogh, was she? 14:37

21 A. No.

22 398 Q. Right.

23 A. Other than she had been there a number of months in the  
24 workplace. I don't know what interaction they may have  
25 had before that. 14:37

26 399 Q. And you record there that both Sergeant Martin and  
27 Garda Keogh had been informed of this workplace  
28 support?

29 A. Yes.

1 400 Q. Right. You then go on to say:  
2  
3 "Sergeant Moylan and in his absence Sergeant Haran will  
4 supervise unit C, to which Garda Keogh can attached."  
5 14:37  
6 Is that right?  
7 A. Yes.  
8 401 Q. What was the need to say that?  
9 A. That was the arrangement. Like I wanted to, I suppose,  
10 allow the people involved understand that this was an 14:37  
11 extra support, not to interfere with the present  
12 arrangements that were there around supervision. That  
13 this was just an additional measure to separate -- in  
14 my head, to try and separate welfare from work.  
15 402 Q. This supervision of unit C was because Garda Keogh was 14:38  
16 attached to it?  
17 A. Oh absolutely not. The supervision for unit C didn't  
18 change after I arrived from when before I arrived.  
19 403 Q. "Both those sergeants should continue to supervise the 14:38  
20 member in the normal way in relation to any work output  
21 required."  
22 A. Yes.  
23 404 Q. And so on. You then directed "Sergeant Moylan should  
24 sit down with Garda Keogh and go through his notebook,  
25 Pulse, the DPP and crime files list, and ascertain if 14:38  
26 he requires help with any ongoing cases."  
27  
28 Do you not think that was a bit humiliating?  
29 A. No. This was a private minute to the sergeant

1 concerned. when someone acknowledges to you that they  
2 are in difficulty, just with a case like that, normally  
3 from my experience there may be more than one. And the  
4 objective of that was to ensure that Garda Keogh didn't  
5 get into any further difficulties, that nothing would 14:39  
6 fall through the cracks. That was sort of supporting  
7 him, to ensure that nothing was going to cause trouble  
8 as he went on through time.

9 405 Q. Did you at the first meeting say to him, well, look,  
10 what I'm going to do is, I'm also going to get Sergeant 14:39  
11 Moylan to sit down with you to go through your  
12 notebook, Pulse, the DPP and crime files?

13 A. No, I didn't say that to him no.

14 406 Q. why not?

15 A. Because I suppose after our meeting on the 26th and 14:39  
16 after considering what he said to me, I felt it may be  
17 prudent to make sure that he was okay with everything,  
18 so as nothing would fall through the cracks that would  
19 cause him problems. That would be normal for me. I  
20 was always of a view that to try and prevent things 14:39  
21 happening was way better than trying to deal with them  
22 afterwards, where the circumstances of dealing with  
23 them would be way more traumatic for a member than  
24 trying to correct them at the start.

25 407 Q. He was a very experienced guard, wasn't he? 14:40  
26 A. He was.

27 408 Q. And there had been no problem with him before, had  
28 there?  
29 A. Not that I know of.

1 409 Q. And here you were saying to Sergeant Moylan, look, sit  
2 down and go through his notebook with him?  
3 A. Yes, but it was in the context of him telling me that  
4 he was having difficulty with an harassment case.  
5 410 Q. When Nick Keogh was cross-examined on Day 100, page 14:40  
6 101, line 20, he denied that he told you that he was in  
7 difficulty in a harassment case, rather it was just a  
8 difficult case. What he said was:  
9  
10 "Just for clarification, I never said I was in 14:40  
11 difficulty."  
12  
13 Sorry, this is line 20. It's a transcript and it's Day  
14 100, page 101, line 20.  
15 A. Yes. 14:41  
16 411 Q. Do you see that?  
17 A. Yes.  
18 412 Q. Just wait until it comes up on the screen, please. You  
19 have just gone past it, Mr. Kavanagh, there. Day 100,  
20 it's page 101, line 20. What Nicholas Keogh said: 14:41  
21  
22 "Just for clarification, I never said I was in  
23 difficulty with the harassment case, with that case. I  
24 said something along of lines of it was an awkward case  
25 because the person had previously made loads of these 14:42  
26 complaints about the partner and every time withdrew  
27 them. It wasn't that I needed help in it."  
28  
29 He wasn't saying that he needed help, he was just

1 saying it was a difficult case.

2 A. Yes. My own indicates that:

3

4 "He mentioned an assault, harassment case, he said he  
5 was neglecting. 14:42

6 413 Q. He said he was what?

7 A. Neglecting.

8 414 Q. Neglecting?

9 A. Neglecting.

10 415 Q. Well he disputes that. 14:42

11 A. Well that's what I recorded and I suppose from looking  
12 at the Tribunal documents, it does appear that Sergeant  
13 Moylan had some -- did find some harassment case. I  
14 couldn't have known at that stage that that were the  
15 case, to write this down in my note, unless he said it 14:43  
16 to me.

17 416 Q. Just looking at that letter again that you sent out on  
18 the 2nd April to the sergeants and directing that  
19 Sergeant Moylan would sit down, go through his  
20 notebook, Pulse, the DPP and so on. It's at page 187. 14:43  
21 Did you ever do that in respect of any other guard in  
22 the station?

23 A. I can't recall ever doing it in relation to -- in  
24 Athlone. But then, no other guard came to me in the  
25 circumstances that Garda Keogh did. But I have had 14:43  
26 occasion to have sergeants check members, to make sure  
27 that they weren't getting into difficulty.

28 417 Q. Do you see how Nick Keogh can take this meaning your  
29 view of him was that he was a useless guard?

1 A. I can understand now how he may have developed that  
2 perception, you know, because things had happened to  
3 him prior to my arriving that may have formed a mindset  
4 in him that people were against him. But I never found  
5 that and I certainly wasn't against him. 14:44

6 418 Q. You understand it now but it never occurred to you at  
7 the time, is that right?

8 A. No, it didn't. I felt this was a normal way to support  
9 someone. It was one of the things that was within my  
10 gift to do, to make sure that nothing fell through the 14:44  
11 cracks that he was dealing with that might cause issues  
12 for him.

13 419 Q. Are you really saying that it never occurred to you at  
14 the time that this was just humiliating?

15 A. No, and I had no intention of doing that. And, indeed, 14:44  
16 I left a copy of this document in an envelope in the  
17 post so that it would go to him in his pigeonhole  
18 privately. It reflects our discussion, you know, and  
19 what we had discussed on the 26th. I gave him a copy  
20 of it in a very open way. It wasn't that I was trying 14:45  
21 to keep this from him. I didn't see anything wrong  
22 with doing this. I felt it was a way to prevent  
23 anything further happening.

24 420 Q. Do you see it as micromanagement?

25 A. No, I see it as a prudent intervention. 14:45

26 421 Q. This is all in a very short timeframe, because you met  
27 for the first time on the 26th March and this is the  
28 2nd April?

29 A. Yes. Well, this flowed from the conversation on the

1 26th March.

2 422 Q. And it wasn't done with anybody else in the station?

3 A. Well, I hadn't encountered anybody at that stage that  
4 had the difficulties Garda Keogh had. As I said during  
5 my evidence earlier, I did speak to one female member 14:45  
6 before that and I had to move her to a different unit  
7 to have a more strict supervisory regime, and that was,  
8 I think, on the 20th March.

9 423 Q. Let's move on to issue 6. Chairman, I will take these  
10 relatively shortly because Mr. Marrinan has gone 14:46  
11 through them very thoroughly.

12 CHAIRMAN: Indeed. I think that's one of the  
13 advantages of doing it this way.

14 MR. KELLY: Absolutely.

15 CHAIRMAN: Don't think there is any conclusion because 14:46  
16 of brevity. But I do think actually, and I may as well  
17 pay a compliment to team, I said it to them privately  
18 at lunchtime and I don't mind saying it publicly, that  
19 I think their questioning of witnesses in an  
20 exploratory fashion is a model of what a Tribunal is 14:46  
21 doing, as compared with our experience in courts. So  
22 they may as well take a bow in that regard, Mr. Kelly,  
23 and thank you for giving me the opportunity of  
24 mentioning that.

25 MR. KELLY: Yes. Well, I am not seeking to be 14:46  
26 obsequious but I've actually said the same myself.

27 CHAIRMAN: Thank you very much. I am sure they  
28 appreciate it coming from you at least as much as they  
29 do it coming from me. Thank you very much.

1 424 Q. MR. KELLY: Motor tax, issue 6. We will look at your  
2 statement, volume 8, page 2042. This is the first  
3 meeting on the 6th March -- the 26th March.  
4 A. Yes.

5 425 Q. You remember we discussed this before. 14:47  
6 A. Yes.

7 426 Q. I put it to you that it was a general meeting?  
8 A. Yes.

9 427 Q. Your note, the primary objective of the meeting?  
10 A. Yes. 14:47

11 428 Q. Can we clear this up, this was just a general meeting,  
12 it covered a whole range of issues?  
13 A. Yes, but I had a file left for me, as I've said  
14 previously, by my predecessor and I needed to deal with  
15 Garda Keogh's claims. That was the main purpose of the 14:48  
16 meeting.

17 429 Q. The main purpose?  
18 A. Yes.

19 430 Q. So:  
20  
21 "The primary objective of the meeting in as far as I  
22 was concerned was to discuss with Garda Keogh the file  
23 left for me by my predecessor, Superintendent Noreen  
24 McBrien, relating to financial claims Garda Keogh had  
25 made in 2014 for travelling expenses involving the use 14:48  
26 of his personal jeep to travel to and from Galway."  
27 A. Yes.

28 431 Q. That was the primary objective?  
29 A. Yes.

1 432 Q. For a meeting which covered a range of topics, yes?  
2 A. Yes.

3 433 Q. We know from the evidence that Noreen McBrien has given  
4 that she left copies of her notes I think, was it  
5 Inspector Minnock? 14:49

6 A. She left this file with Inspector Minnock, yes.

7 434 Q. Right. So your first day is the 9th March?  
8 A. Yes.

9 435 Q. The file by that stage is in the possession of  
10 Inspector Minnock? 14:49

11 A. Yes.

12 436 Q. After the 9th March but before the 19th March, you had  
13 asked that very same Inspector Minnock to conduct  
14 inquiries about the tax situation --

15 A. Yes. 14:49

16 437 Q. -- of Nicholas Keogh's vehicles, isn't that right?  
17 A. Yes.

18 438 Q. That meeting, we know, took place between you and him  
19 on the 26th March. What did Noreen McBrien say which  
20 had ignited that issue over the Nick Keogh car tax 14:49  
21 classification? Did she tell you that?

22 A. She told me that she had been informed by Detective  
23 Superintendent Mulcahy that Garda Keogh's private  
24 vehicle was not correctly taxed. She felt that his  
25 claims for travelling expenses were in breach of 14:50  
26 financial code regulations and could not therefore be  
27 paid in those circumstances. She made me aware that  
28 Garda Keogh had been querying the nonpayment of his  
29 claims in writing, but that no one had spoken to him

1 about the matter.

2 439 Q. So did you query what this had got to do with  
3 Superintendent Mulcahy?

4 A. I didn't. All she said to me was Superintendent  
5 Mulcahy had told her about the car, that it wasn't 14:50  
6 correctly taxed and that was an impediment for her  
7 paying the claims because she felt she couldn't allow,  
8 I suppose, the State to compound what might be an  
9 offence by authorising claims, knowing that tax may not  
10 be correct. That was her problem. And I shared her 14:50  
11 view on that.

12 440 Q. So at that meeting in any event, the 26th March, you  
13 say you spoke about the car tax and you suggested that  
14 Nick Keogh should re-tax his vehicle as a private  
15 vehicle, pay the arrears and take a regulation 10 14:51  
16 caution?

17 A. Yes.

18 441 Q. You say he agreed to that?

19 A. Yes.

20 442 Q. I am suggesting to you he didn't agree to having a 14:51  
21 regulation 10 caution at all?

22 A. Well, as far as I'm concerned he did. And it offered a  
23 complete solution, an all encompassing solution to  
24 close the matter out.

25 443 Q. I will just read you this, it's volume 1, page 126. If 14:51  
26 we have it on the screen now.  
27  
28 "I met him for the first time --"  
29

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That is you, Superintendent Pat Murray.

"...for the first time on 26th March 2015, after being called into his office. He advised me that my two seater Land Rover van was taxed as commercial. He said there was a problem with my motor tax. My Land Rover van should be taxed, he claimed, as private or, as he put it, non-goods. He said had been down to the motor taxation office looking for declarations --"

14:52

14:52

Just pausing there, you dispute that?

A. Yes.

444 Q. "-- about my motor tax. I thought this was very odd. I pointed out inter alia that the NCT authorities would not process my van as private, it had been tested commercially by the Department of Environment, it had no backseats and was used for police duties and to carry dogs.

14:52

He then asked me about my sick leave. I said that I was suffering from work related stress. My stress had to do with ongoing internal investigation into Garda collusion into criminal Garda operations from Athlone Garda Station. He said that 'you are under no stress' and he repeated this for emphasis. He said that he was sending me to the chief medical officer if I wouldn't give him any other reason than work related stress for my sick leave."

14:53

14:53

1 Do you recall that?

2 A. Oh that's not a true reflection of the conversation.

3 445 Q. Well, since that is dealing with work related stress, I  
4 will come on to it later.

5 14:53

6 "He then said he was placing Sergeant Martin over me.  
7 This would be the third sergeant now supervising me.  
8 He gave me no reason."

9 A. I think the language being used "to place Sergeant  
10 Martin over me" that's is not the context in which 14:54  
11 Sergeant Martin came into the picture.

12 446 Q. "He also oddly asked me who my solicitor was."  
13

14 Did you?

15 A. No. And I can't understand this, because I would have 14:54  
16 no reason to understand why Garda Keogh would even need  
17 a solicitor.

18 447 Q. He had made protected disclosures, hadn't he?

19 A. From my experience in dealing with members of An Garda  
20 Síochána who report wrongdoing, they wouldn't need a 14:54  
21 solicitor, the organisation would deal with it.

22 448 Q. Have you a lot of experience in that?

23 A. Well, I have been involved in different cases around  
24 the country where I ended up investigating issues where  
25 members have reported wrongdoing. 14:54

26 449 Q. And then he goes on to mention, I take it, a transfer.  
27 Garda Keogh's diary entry of that, I think it's Volume  
28 47, page 13304. Just focusing on the car tax. You  
29 will see it there, it should be coming up. 13304, and

1           it's the right-hand side. You see midway down:  
2  
3           "He then said --"  
4  
5           This is the diary entry for Thursday, 26th March 2015.     14:55  
6  
7           "He then said, there is a problem with your car taxed  
8           as commercial and you're using it private. I told him  
9           I did it the same the tax last three years."  
10          CHAIRMAN: "Same way last few years."                     14:55  
11          MR. KELLY: "Same way last few years."  
12  
13          And that he wasn't the only one in the station. Do you  
14          remember that?  
15          A.     Yes, that's correct.                                     14:56  
16   450    Q.     If you would look, because you have agreed with me  
17           already that you had had Inspector Minnock get on to  
18           the tax office in Offaly in advance of this meeting?  
19          A.     Yes.  
20   451    Q.     Now, the relevant e-mail is at I think page 2200. And     14:56  
21           like all e-mails, we read it from the bottom up?  
22          A.     Yes.  
23   452    Q.     19th March 2015. This is Aidan Minnock to Tara  
24           McGinley at the motor tax office.  
25  
26   14:57  
27           "I would be obliged if you could provide me with the  
28           taxation disc for vehicle -- "  
29           It gives the number.

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--particularly covering the period June to December 2014.

I understand the vehicle is taxed as per our records. However, I am interested in the class of tax - private or commercial. If taxed as a commercial vehicle, I will be looking for a copy of the signed declaration that the vehicle is a goods vehicle and would appreciate a scanned copy of same or otherwise a copy in the post."

14:57

14:57

Do you see that?

A. Yes.

453 Q. So he is quite specific what he is looking for?

14:57

A. Yes.

454 Q. The statutory declaration?

A. Yes.

455 Q. Tara comes back:

14:57

"I have attached some scanned documents for you. One is a motor vehicle tax renewal form that was processed on 20th October 2014. The next document shows details on the vehicle and tax history.

14:57

This is a goods van taxed as own goods but we have no declaration attached to our form unfortunately."

what were you looking for the statutory declaration

1 for?

2 A. I didn't look for it at all. I merely asked Inspector  
3 Minnock to establish with the tax office what the  
4 position was in relation to Garda Keogh's tax, whether  
5 it was goods or private. 14:58

6 456 Q. So Inspector Minnock is making this request at your  
7 request, your direction?

8 A. That's all I asked Inspector Minnock to do.

9 457 Q. He is quite specific that he wants a statutory  
10 declaration? 14:58

11 A. Yes, but I didn't mention declaration to him.

12 458 Q. why would you need a statutory declaration?

13 A. I didn't look for it, I didn't need it.

14 459 Q. well, I am suggesting that in all probability you did  
15 and you were looking for it and you were hoping, no 14:58  
16 doubt, that it would show that he had signed it as a  
17 goods vehicle?

18 A. No.

19 460 Q. And you would have him for a false statutory  
20 declaration? 14:59

21 A. No, I don't agree with that. Indeed, if that were my  
22 mindset, the form that came back contained a  
23 declaration that would have allowed me to do that, and  
24 I didn't even consider that.

25 461 Q. what form was that? 14:59

26 A. The form RF100B, on page 2201. Garda Keogh makes a  
27 declaration at the very bottom of that. So I never  
28 intended treating Garda Keogh as a suspect in relation  
29 to any offence.

1 462 Q. Do you not think it is specifically seeking a statutory  
2 declaration, whether you asked for it or not?

3 A. I didn't ask for it, so, you know, it's very hard for  
4 me no comment on what Inspector Minnock's mindset was  
5 when did he that. But look, it gave us a complete 14:59  
6 picture in any event and that was good when it came to  
7 dealing with Garda Keogh because, in fairness to him,  
8 he readily admitted that he had been doing this for a  
9 number of years and he admitted the circumstances in  
10 which it came about, in an nocuous way, that he bought 15:00  
11 that jeep in that fashion and kept renewing the tax.  
12 That's what the file reflected as well.

13 463 Q. So this at this stage was an investigation into the tax  
14 status of Garda Keogh's vehicle?

15 A. All I wanted to do was establish the facts before I 15:00  
16 spoke to Garda Keogh, so I would have accurate and  
17 factual information to present to him if there was an  
18 issue.

19 464 Q. would it not have been unusual for a superintendent and  
20 inspector to be conducting this fact-finding exercise? 15:00

21 A. The file was left for me. Superintendent McBrien had  
22 dealt with it in a very confidential fashion. I think  
23 before she gave it to Inspector Minnock, he didn't even  
24 know about it. I dealt with it in that same  
25 confidential fashion. 15:00

26 465 Q. Now you say that you had this, we have been through  
27 this first meeting you had. Then on the 3rd April you  
28 say Nick Keogh approached you to show you his corrected  
29 car tax, is that right?

1 A. Yes.

2 466 Q. And you copied his documents?

3 A. Yes.

4 467 Q. why did you do that?

5 A. Because I had a file which contained financial claims 15:01  
6 and they were going for quite some time, they had been  
7 there for quite some time. Those claims were subject  
8 to audit and when they would be paid it would become  
9 apparent that a time lapse had occurred. Someone may  
10 well query that. The finance officer was dealing with 15:01  
11 that. So, for completeness, I photocopied the  
12 documents he gave me to prove that he had corrected his  
13 tax and I attached them to the complete file and I sent  
14 it to the finance officer then with a minute on the  
15 front of it, to pay them, that I had approved it. 15:01

16 468 Q. You gave him then the regulation 10 caution, didn't  
17 you?

18 A. Yes.

19 469 Q. why was it necessary to give him any caution at all?

20 A. Because that, for me, was something that formed part of 15:02  
21 the solution to this, to close it off completely, in a  
22 way that would never allow it to be unearthed or come  
23 against Garda Keogh again.

24 470 Q. And how would it come against Garda Keogh again?

25 A. Because no one could ever raise this as a disciplinary 15:02  
26 issue with him ever again.

27 471 Q. why would they, if it had been sorted out --

28 A. I don't know.

29 472 Q. -- and you as a superintendent had attended to it. why

1 would somebody come raking over it in the future?

2 A. I have no idea.

3 473 Q. There was no idea for you to do it at all, was there?

4 A. It's normal for me to use regulation 10 to deal with  
5 what I consider minor issues, to mark that and to give 15:02  
6 advice and to allow someone understand that there is, I  
7 suppose, an impact from, you know, adverse behaviour in  
8 terms of how it impacts on the workplace and the values  
9 of the organisation and your role as someone who  
10 reports on the law and the values that you have to 15:03  
11 uphold in doing that.

12 474 Q. You see, you're doing this to Nick Keogh and we know  
13 from other documents at another time that Garda Madden,  
14 you just left that to the sergeant to deal with?

15 A. That's not true, entirely true, because the 15:03  
16 circumstances of that were as a result of a general  
17 allegation Garda Keogh made to me without being  
18 specific. And I discussed that with my inspectors and  
19 decided to deal with that in a certain way, leaving the  
20 sergeants to, I suppose, deal with whatever issues 15:03  
21 might come out of that, if any, and I didn't expect  
22 many. And that's the way it occurred. And I left it  
23 to Sergeant Moylan to deal with that when it happened.  
24 I never in any way wanted to expose Garda Keogh as the  
25 source of information for that and I never discussed it 15:04  
26 with anyone other than Inspector Minnock and Inspector  
27 Farrell.

28 475 Q. I will put this and then we will move on: If Garda  
29 Madden's car tax affairs weren't in order, why, in the

1 interests of consistency, didn't you ensure that he too  
2 got a regulation 10 discipline?

3 A. When I left that to Sergeant Moylan, he had the same  
4 unfettered discretion under regulation 10 of the  
5 disciplinary regulations that I had. I understand that 15:04  
6 that Garda member's -- his case was slightly different,  
7 in that he had a part-time employment, where he felt  
8 that this type of tax might be applicable to him. So I  
9 can only -- I can't speak for Sergeant Moylan, but I  
10 can only consider that he may have taken that into 15:05  
11 account in his, I suppose, decision as to how to deal  
12 with it to a conclusion.

13 476 Q. In your note of the meeting that we're looking at, the  
14 3rd April 2015, which is at page 2194, where you said  
15 that Nick Keogh ended the meeting in this way, by thank 15:05  
16 you. "He thanked me leaving"?

17 A. Yes.

18 477 Q. So he was very thankful for all of this, was he?

19 A. That was a very open conversation after we dealt with  
20 the tax issue and we went into a lot of issues, you 15:05  
21 know, about Garda Keogh and his work and how we could  
22 help him and what we might do for him. And he seemed  
23 very happy when he was leaving, to me.

24 478 Q. Really?

25 A. Yeah. 15:06

26 479 Q. "He said earlier he realised the tax issue was left for  
27 me but felt others were getting at him.  
28  
29 I put the other side of the argument to him."

1

2

what other side of the argument and what did you put to him?

3

4

A. As I've just explained, his claims couldn't be paid

5

while this issue remained outstanding, it was

15:06

6

inhibiting payment of the claims. There wasn't any

7

sinister in it, it was a simple issue that had been

8

alerted, had been left for me and we were dealing with

9

it to conclusion now, and I was paying his claims.

10 480

Q. So this man who had done all of this, thanked you, this

15:06

11

is after you had reminded that him Sergeant Moylan and

12

Sergeant Haran would be supervising his work?

13

A. That was very normal, discuss any case difficulties

14

with him, yes, I was giving him advice, don't get any

15

difficulty with cases, keep things moving along, keep

15:07

16

the paperwork right, you know, because they're the

17

issues that cause problems.

18 481

Q. We know that after this, you had sent out on the 22nd

19

April that year, that letter, giving people in effect

20

three months to -- it's page 184. Giving two months to

15:07

21

get their stuff sorted in occasions of not having any

22

valid tax, no valid insurance, no valid NCT test. It's

23

page 184. No valid Driving Licences. Do you expect

24

there would be many guards going about with no Driving

25

Licences?

15:07

26

A. I didn't expect any.

27 482

Q. So why did you put it in?

28

A. Because I didn't know what Garda Keogh was saying to me

29

and I couldn't take a chance, I couldn't unhear what he

1 had said.

2 483 Q. And you gave them two months effectively to sort it  
3 out?

4 A. I didn't give anyone two months to sort anything out.  
5 I asked that this would happen and be dealt with and 15:08  
6 dealt with in the manner that's outlined in the  
7 document. And I did that after careful consideration  
8 and consultation with my two inspectors. And I felt it  
9 was a very prudent way to handle the general allegation  
10 Garda Keogh had made, considering that everyone of the 15:08  
11 100 or so staff was entitled to the presumption of  
12 innocence.

13 484 Q. This letter goes on the 22nd April and you are giving  
14 them:

15  
16 "In order to allay any fears that exist, I wish to 15:08  
17 advise that all members commencing 1st June 2015 I will  
18 have the necessary checks carried out as follows."

19  
20 Is that not a two-month gap? 15:08

21 A. Absolutely. But this was a voluntary, I suppose,  
22 situation, where people were being asked to voluntarily  
23 present their vehicles and Driving Licence for  
24 inspection, in a voluntary way. There was no  
25 insinuation on my part, nor could I, in the absence of 15:08  
26 information that there was anything wrong with anyone's  
27 car, other than to ask them to present in a voluntary  
28 way. And not one person in the entire district  
29 complained about the manner in which this was done.

1 485 Q. what I am not getting is this: Look, this is the 22nd  
2 April, you've listed the four things, you say you would  
3 expect all your vehicles to be in order, why was it  
4 necessary to wait two months? It's a two month  
5 amnesty, isn't it? 15:09

6 A. It was going to take that much time to make the checks,  
7 to allow people to present. People wouldn't be all  
8 there on a certain day, different units and different  
9 shifts, and it was going to take the supervisors, you  
10 know, a bit of time to gather the information and make 15:09  
11 the checks and then certify to me. And I do understand  
12 that, you know, along with every other member, that  
13 Garda Keogh was also certified correct in this process.

14 486 Q. Did you have any legal basis for saying, well, look, as  
15 of the 26th April I expect you all by the 1st June to 15:10  
16 have your vehicles taxed, NCT'd and all the rest of it?  
17 was there any legal basis for that?

18 A. Absolutely not, this was just a voluntary check on  
19 members' vehicles. If anyone had refused, well then  
20 there was very little I could do other than to perhaps 15:10  
21 arrange for them to be stopped in public place and  
22 check them in a formal manner like that. But there was  
23 no opposition to this and everyone very readily agreed  
24 to present their documents.

25 487 Q. How many people are we talking about here? 15:10

26 A. Oh, there were about 100 staff or so in the district I  
27 think at that time and maybe 75 members of An Garda  
28 Síochána or thereabouts, but I can't be exactly  
29 specific.

1 488 Q. So a total of 175, is that what we are speaking about?  
2 A. Oh, 75 members of An Garda Síochána, in or about, I  
3 believe.  
4 489 Q. Yes. So 75 people, and it would take two months to  
5 just check that they have got their motor tax in order? 15:10  
6 A. Well, I wanted to allow the supervisors a certain  
7 amount of time to do it. It was a voluntary situation  
8 that people were engaging in, you know.  
9 490 Q. How difficult is it to just bring in these documents?  
10 A. I suppose people had to be asked and maybe their 15:11  
11 vehicles had to be inspected as well. You know,  
12 supervisors did that, presented -- some of them  
13 presented photocopies, others presented lists with  
14 details on it and some just certified. So I was happy  
15 to leave it to the supervisors and I have full 15:11  
16 confidence in them and I have full confidence in their  
17 ethical ability to ensure that, you know, any member  
18 found wanting would be dealt with.  
19 491 Q. This wasn't an afterthought to just cover up targeting  
20 earlier of Nick Keogh, was it? 15:11  
21 A. Oh absolutely not. This came about as a result of what  
22 Garda Keogh told me and I couldn't unhear it.  
23 492 Q. So just to recap. By the 26th March you had had your  
24 meeting with Nick Keogh. By the 3rd April you had  
25 disciplined him, you had raised the question of a 15:12  
26 transfer, you had directed three sergeants to oversee  
27 him and you had questioned the true reason for his sick  
28 leave. Was this not just targeting?  
29 A. No. I utterly reject that.

1 493 Q. Sorry about that.

2 CHAIRMAN: That's all right.

3 494 Q. MR. KELLY: I had no idea paper could make such noise.  
4 I move on to another issue. This will probably take us  
5 up to the break, I think. Issue 7, absence without 15:12  
6 leave. This really deals with Sergeant Moylan's  
7 e-mail, which I think you produce at Volume 8, page  
8 2218. It's an e-mail from Cormac Moylan on the 14th  
9 July at 3:15 in the morning to Athlone. It is then  
10 forwarded to you by Olivia, is that Olivia Kelly? 15:13

11 A. Yes. Garda Kelly, she's the district clerk.

12 495 Q. At 9:05 the same morning. You then say that you phoned  
13 Nick Keogh on the 15th July, is that right?

14 A. Yes.

15 496 Q. And during the course of that phone call you discussed 15:14  
16 his drinking, his absence and not answering the phone  
17 to the sergeant that called; is that right?

18 A. Sorry, I didn't hear you properly.

19 497 Q. You discussed his drinking?

20 A. Yes. 15:14

21 498 Q. His absence from work?

22 A. Yes.

23 499 Q. His not answering his phone when called by the  
24 sergeant?

25 A. Yes. 15:14

26 500 Q. That's on page 2220?

27 A. Yes, I asked him why he didn't answer the sergeant.

28 501 Q. Yes. And you also asked him why he didn't return the  
29 call?

1 A. Yes. Well, he said he had no credit and put forward  
2 that argument, yes.

3 502 Q. Of course, you would accept, wouldn't you, that if he  
4 had no credit he can't return a missed call?

5 A. Yes. But the point I was making, that it wouldn't 15:14  
6 allow you not accept a call.

7 503 Q. But if you, for example, weren't in the same room as  
8 the phone, you weren't able to take the call?

9 A. Oh absolutely.

10 504 Q. So there is more than one -- it's a two-way street, 15:15  
11 isn't it?

12 A. Sorry, I don't understand the point you're making.

13 505 Q. There's not just one absolute view is there? The  
14 sergeant phoned Nick Keogh?

15 A. Yes. 15:15

16 506 Q. Nick Keogh didn't answer, you say that that's a  
17 criticism, he could have answered whether he had credit  
18 or not. That's right, isn't it?

19 A. Yeah. Well, yeah, the way he put it to me was, he  
20 didn't take the call because he had no credit and I 15:15  
21 said but sure, credit is not required to answer a call.

22 507 Q. Yeah. But you accept that credit -- I am suggesting to  
23 you that it was a missed call and what he was saying to  
24 you was he had no credit to return it?

25 A. Yes. Oh yes, absolutely. 15:15

26 508 Q. Hence why he contacted him on Facebook?

27 A. Absolutely. My point was credit is not required to  
28 answer it so...

29 509 Q. So what's the big deal? What is the point?

1 A. I didn't make any deal about it. I just merely  
2 recorded what the conversation was but there is no  
3 deal.

4 510 Q. Is it usual for a superintendent to call a guard about  
5 an absence from work? 15:16

6 A. This had been escalated to me by Sergeant Moylan and I  
7 felt it prudent, knowing Garda Keogh's history, to  
8 phone him to see where he was.

9 511 Q. Were you calling him to simply show that the matter was  
10 now with you, it was escalated and that was where it 15:16  
11 was going to say?

12 A. No, I was not.

13 512 Q. Would it not have been better to have got the sergeant  
14 to call him?

15 A. The sergeant had e-mailed me to say he had tried to 15:16  
16 call him. And that's what I knew at the time when I  
17 made the call.

18 513 Q. Yeah. But it was open to you to say to the sergeant,  
19 well, look, try and give him a bell now?

20 A. Yes, but the sergeant sent me an e-mail in the middle 15:16  
21 of the night, I got to the next day and I phoned Garda  
22 Keogh the following day.

23 514 Q. Yes.

24 A. I felt the sergeant had escalated it to me and I was  
25 going to ring Garda Keogh to see where he was. 15:16

26 515 Q. So it didn't occur to you to get on to --

27 A. No.

28 516 Q. -- Cormac Moylan and say, well look, Cormac, could you  
29 give him a call now, it will look a bit heavy handed if

1 I'm calling him?

2 A. In hindsight and knowing this is the way -- the way  
3 this has turned out, that would have been a wise move  
4 on my part, but unfortunately I felt he had escalated  
5 it to me, I felt it was my role then to make that call. 15:17

6 517 Q. What about letting the inspector do it, Inspector  
7 Minnock?

8 A. There would be no difficulty with that, but I got the  
9 e-mail and I made the call. I had spoken to Garda  
10 Keogh on the 26th March and the 3rd April, and I tried 15:17  
11 to contact him, I think, on the 21st April as well.  
12 There was no reason particularly why I did it other  
13 than I got the e-mail and I responded to that myself.

14 518 Q. Was it not just to show Nick Keogh -- to exert your  
15 authority over him? 15:17

16 A. No, absolutely not.

17 519 Q. This was man who was giving you a lot of problems, you  
18 wanted to show him who was boss?

19 A. There were no problems at that stage.

20 520 Q. You then spoke with him on the 14th July, it's at page 15:18  
21 2220, it's the one which is up on the screen. You  
22 phrase it in this way:  
23

24 "Challenged him why he didn't answer the sergeant  
25 trying to contact him over absence without leave 15:18  
26 weekend."

27 A. Yes.

28 CHAIRMAN: Sorry, this is the 15th, Mr. Kelly, isn't  
29 it?

1 MR. KELLY: The 14th.

2 CHAIRMAN: It says the 14th.

3 MR. KELLY: Yes.

4 CHAIRMAN: But we know now it's the 15th.

5 MR. KELLY: You're absolutely right. 15:18

6 CHAIRMAN: Everybody is agreed -- okay, thank you.

7 521 Q. MR. KELLY: It's the 15th. "Challenged him why he  
8 didn't answer the sergeant trying to contact him."  
9

10 what do you mean by challenged? what did you actually 15:19  
11 say to him?

12 A. My recollection is that I said, well why didn't you  
13 answer the sergeant's call?

14 522 Q. And you say his response was he had no credit?

15 A. Yes. 15:19

16 523 Q. But he told you he tried to contact him by Facebook?

17 A. He did tell me that, yes.

18 524 Q. well, isn't that saying to you, look, I wasn't ignoring  
19 him, I tried to get back to him on Facebook?

20 A. Yeah, I think the e-mail I had said calls, that the 15:19  
21 sergeant had tried to call him. I undertook it from  
22 the e-mail that he had tried a few times to call him.

23 525 Q. Do you recall Nick Keogh saying that he had tried to  
24 contact him on Facebook?

25 A. He did, he left some message on Facebook for Sergeant 15:19  
26 Moylan, yes, absolutely.

27 526 Q. where do I find that in this note?

28 A. No, that's not in the note.

29 527 Q. why is that?

1 A. I don't know, I didn't write it down, but he did say  
2 that, yeah.

3 528 Q. I don't see in there anything about you expressing  
4 concern about difficulties that Nick Keogh might have?

5 A. The difficulty I had was that a member had been absent 15:20  
6 without leave through alcohol and I found that  
7 difficult. I felt that had to be dealt with.

8 529 Q. But this was a man who had told you he was having work  
9 related stress, who, as you say, was drinking, had made  
10 protected disclosures. There was an air in Athlone 15:20  
11 station. You didn't take that into account, did you?

12 A. I took everything into account. But, nonetheless, I  
13 felt that the behaviour merited the response and the  
14 recommendation I made.

15 530 Q. And he had told you earlier, when you spoke to him, 15:20  
16 that he was worried about the presence of Garda A in  
17 the station?

18 A. Yes.

19 531 Q. You didn't take any account of that, did you?

20 A. We had a discussion about that. And I put it to him, I 15:21  
21 tried to allay his fears in that regard, that, you  
22 know, nothing had occurred since he made the  
23 allegations and nothing had occurred in all of that  
24 period. And you know -- so...

25 532 Q. You were making absolutely no attempt, were you, at all 15:21  
26 to show any empathy with Garda Keogh?

27 A. Absolutely, I was. And look, I tried my best to ensure  
28 that he was passed to medical professionals, to work  
29 with Detective Superintendent Mulcahy to have welfare

1 in the background and to do whatever I could locally to  
2 support him in the workplace, which was limited.

3 533 Q. That note we've just looked, at page 2220, your note of  
4 the meeting on the 15th July.

5 A. Yes. 15:22

6 534 Q. Do I see anything there that records you on that  
7 occasion expressing concern for Nick Keogh at all?

8 A. No, the purpose of the phone call was to discuss what  
9 occurred and why he was absent.

10 535 Q. You see, you recall that Nick Keogh's account of the 15:22  
11 first meeting you had with him was that you had said to  
12 him, you're under no stress at all, and that's page  
13 126, it's not necessary to call it up.

14 A. Yes.

15 536 Q. You recall it, yes? 15:22

16 A. Yes.

17 537 Q. That's something you dispute?

18 A. Yes.

19 538 Q. But you also then in another meeting record a degree of  
20 scepticism about it? 15:22

21 A. No, the scepticism was about the excuse, not the  
22 stress.

23 539 Q. So I am putting to you that you never really accepted  
24 he was under work related stress at all?

25 A. I did. And on the 2nd April I sent a report through 15:23  
26 the chief superintendent for the Human Resources  
27 department and the occupational health department,  
28 indicating work related stress.

29 540 Q. You see, this was the very first meeting, Nick Keogh's

1           recollection of it:  
2  
3           "He said, you're under no stress, and he repeated this  
4           for emphasis"  
5           A.    No, I did not say that. 15:23  
6 541 Q.    So you would reject any suggestion that right from the  
7           start there was a degree of hostility by you?  
8           A.    Absolutely no hostility by me. I had never met Garda  
9           Keogh before.  
10 542 Q.   And you had asked him if he was doing any work at all? 15:23  
11          A.    That came up during the course of the conversation, was  
12          he doing any work.  
13 543 Q.    Yes. I put it to you fair and square, it was your view  
14          at that time that Nick Keogh was just a troublesome  
15          drunk and he was under no stress at all? 15:24  
16          A.    No, that's not true.  
17 544 Q.    You have been through your own diary, as I have, is  
18          there any mention at all of concern for Nick Keogh's  
19          welfare?  
20          A.    I don't know. Like, did I write down my thoughts? 15:24  
21 545 Q.    Yes.  
22          A.    No. The diaries are all more or less factually based.  
23 546 Q.    Or did you ever write down, well, I asked Nick how he  
24          was getting on and understood why he was under stress  
25          and pressure? 15:24  
26          A.    Yeah, I asked him about his welfare. I have a  
27          recollection of one of the notes saying that, I don't  
28          know if it's the 30th August or the 22nd October, but I  
29          have a recollection of it being in one of them.

1 547 Q. I will return to that, but just whilst we are on the  
2 topic, if we look at page 3208. This is an e-mail  
3 exchange of 4th June 2016 with Lorraine wheatley. You  
4 will see it there. You say:

15:25

5  
6 "Yes, it's a really funny question considering he is a  
7 whistleblower and an investigation into the entire set  
8 of allegations he is making which Garda Keogh says is  
9 causing him stress -- "

10 A. Yes.

15:25

11 548 Q. "-- was carried out by DC Ó Cualáin. The reason he is  
12 prevented by the CMO from working is because of alcohol  
13 addiction. "

14 A. Yes.

15 549 Q. That was your view, wasn't it?

15:26

16 A. My view was framed by correspondence I received on the  
17 22nd January 2016, emanating from the chief medical  
18 officer, which indicated that he was off work because,  
19 as he described it, a long standing clinical condition.  
20 And I understood that, from my meeting with the CMO on  
21 the 9th December, to be alcohol related.

15:26

22 550 Q. "Don't know why Tony has copied in all those people  
23 either. "

24 A. Yes.

25 551 Q. what do you mean by that?

15:26

26 A. I don't know why, Chief Superintendent McLoughlin  
27 making the query of Chief Superintendent wheatley,  
28 decided to copy in other people into the e-mail.

29 552 Q. Just look at that first sentence again, have a look at



1 we had notified the human resource department that we  
2 weren't able to embark on any investigation and that it  
3 was bound up in the confidential reporter situation and  
4 we were also -- I was also at pains to set out the  
5 context of all that in the file I sent up so as that -- 15:28

6 556 Q. what difference does it make whether he's a  
7 whistleblower or not?

8 MR. MÍCHEÁL O' HIGGINS: Chairman, I wonder could I make  
9 an observation.

10 CHAIRMAN: Yes. 15:28

11 MR. MÍCHEÁL O' HIGGINS: The last two questions appear  
12 to have been put on a certain premise, which, I  
13 respectfully say, appears to be based upon an  
14 incomplete read of the e-mail. In other words, is the  
15 question is being asked having regard to that portion 15:28  
16 of the e-mail, where it says "considering he is a  
17 whistleblower", because we can see from the document in  
18 front of us what it says, it's:

19  
20 "Considering he is a whistleblower and an investigation 15:28  
21 into the entire set of allegations he is making, which  
22 Garda Keogh may say is causing him stress."

23  
24 So it's based upon two planks, not one. And I think  
25 that gives artificially and an unfairness to the way 15:29  
26 the questions are being put.

27 MR. KELLY: I'm entitled to -- I originally referred  
28 you to this because we were speaking about a suggestion  
29 I put to you that your view was that Garda Keogh's real

1 problem was just alcohol addiction.

2 CHAIRMAN: Yes, I don't think the question is  
3 illegitimate or improper, Mr. O'Higgins. It seems to  
4 me that you can perfectly reasonably revert to the  
5 matter in examination of your client in due course. 15:29  
6 So, if Mr. Kelly picks one which of it to emphasise, so  
7 be it, you can draw attention to the other bit. But I  
8 don't think his questions amount to an invalid or a  
9 factually unbased thing. The e-mail speaks for itself.  
10 We can see that. 15:30

11 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.

12 CHAIRMAN: Okay. So I don't propose to rule out.

13 557 Q. MR. KELLY: So right from your very first meeting, one  
14 of the points you are making is, Nick Keogh's alcohol  
15 addiction, yeah? So here we are in 2016, you're saying 15:30  
16 in the e-mail "The reason he is prevented by the CMO  
17 from working is because of alcohol addiction." So  
18 that's still around over a year later?

19 A. Yes.

20 558 Q. That was your real view, wasn't it, that he was just a 15:30  
21 drunk?

22 A. No, absolutely not. He had a problem with alcohol.  
23 That's a fact. It was a clinical condition as  
24 described by the CMO and it was long standing.

25 559 Q. Just whilst I have this open, I will just ask it. 15:30  
26  
27 "Don't know why Tony has copied in all these people  
28 either. Might be one to sort out on the phone."  
29



1 mixed messages, you know, and it's as if they didn't  
2 seem to understand what we were trying to do. That's  
3 what I meant by that.

4 566 Q. Did you mean, look, I am just fed up with this man,  
5 don't get me started on him? 15:32

6 A. No. He had been out of the workplace for a number of  
7 months then and I hadn't seen him.

8 567 Q. On this one, if we look at the next page, it's 2221.  
9 This is a report of 4th August 2015, sent by you, I  
10 think, to Lorraine wheatley; is that right? 15:33

11 A. Yes.

12 568 Q. You're setting out there -- you go through it and you  
13 say at point 6:  
14  
15 "In order to create a defence to an impossible breach 15:33  
16 of discipline, the member submitted a retrospective  
17 medical certificate dated 16th July 2015."

18 A. Yes.

19 569 Q. "This certificate indicates that he was most likely not  
20 examined by a doctor until the 16th July. In addition, 15:33  
21 he attempted to report off sick leave on the 15th July  
22 for a second time."

23 A. Yes.

24 570 Q. A very cynical view on your part, isn't there?

25 A. Not in my view. 15:33

26 571 Q. In order to create a defence to any possible charge.  
27 You wouldn't agree with my description that that's  
28 cynical?

29 A. No, I wouldn't.

1 572 Q. A retrospective medical certificate?  
2 A. Yes, that's the way I saw it, in line with the --  
3 573 Q. Can you get a prospective medical certificate?  
4 A. Sorry, I don't understand.  
5 574 Q. Well, you would normally get a medical certificate 15:34  
6 after you have been ill, wouldn't you?  
7 A. When you go to the doctor.  
8 575 Q. Yes. So what did you mean by this?  
9 A. I meant the retrospective aspect of it, in that it was  
10 covering dates which seemed to predate the date of 15:34  
11 examination.  
12 576 Q. So what, the doctor was doing something bent, was he?  
13 A. I didn't say anything about the doctor. I merely  
14 pointed out the fact to the chief superintendent.  
15 577 Q. I just don't follow that. You're saying, look, this is 15:34  
16 an attempt, he knows that there going to be discipline  
17 coming and this is an attempt for him to put up some  
18 sort of a defence, giving himself a bit of cover?  
19 A. You know, to take that in consideration with the report  
20 he had already submitted, that he was trying to explain 15:35  
21 it as a mistake.  
22 578 Q. But you say that's not a cynical view on your part?  
23 A. No, absolutely not.  
24 579 Q. Right. So this led to this event, this absence without  
25 leave led to two charges against Nick Keogh, isn't that 15:35  
26 right? Neglect of duty and discreditable conduct?  
27 A. Superintendent Alan Murray was appointed to carry out  
28 an independent and impartial inquiry by the chief  
29 superintendent under the discipline regulations.

1 580 Q. That's right.

2 A. I had no involvement in that.

3 581 Q. So you then go and serve the regulation 12 charges on  
4 Nick Keogh on Sunday, the 13th August?

5 A. Yes. 15:35

6 582 Q. At nine o'clock in the evening?

7 A. At the request of Superintendent Murray, yes.

8 583 Q. And we know that Nick Keogh at the hearing admitted  
9 charge number 1 and denied, he was not guilty, to  
10 charge number 2? 15:36

11 A. Yes.

12 584 Q. Superintendent Alan Murray recorded his explanation in  
13 writing for the penalty imposed, didn't he?

14 A. I'm sure he did.

15 585 Q. Well, we might as well look at it. I think you will 15:36  
16 find it in volume 7, 1776. Have you got it?

17 A. Yes.

18 586 Q. In the middle or just over half way down the page, the  
19 paragraph begins:

20 15:37

21 "I recorded in writing the explanation offered by Garda  
22 Keogh and this was signed by Garda Keogh. In  
23 explanation Garda Keogh stated that he had been under  
24 work related stress and had been drinking heavily. He  
25 forgot that he had contacted Sergeant McCormac to 15:37  
26 report fit for duty. Garda Keogh stated that he had  
27 admitted his mistake to Superintendent Pat Murray and  
28 why he had made it. Garda Keogh indicated that he did  
29 not understand breach 2 and in explanation said doctor

1 Bartlett was his doctor and was familiar with his  
2 medical history. Garda Keogh had to go to his doctor  
3 on that date and his doctor issued the certificate. On  
4 termination of the interview, I, as deciding officer,  
5 found that Garda Keogh was in breach in respect of 15:38  
6 breach number 1 and not in breach in respect of breach  
7 number 2."

8  
9 Do you see that?

10 A. Yes. 15:38

11 587 Q. "In mitigation, Garda Keogh stated that he suffered  
12 from work related stress and was drinking heavily. In  
13 respect of breach number 1, I fined Garda Keogh €300.  
14 Garda Keogh signed and dated form IA12.

15  
16 I completed IA13 with the record of interview and  
17 forwarded the file for the appointing officer, Chief  
18 Superintendent Wheatley.

19  
20 In correspondence dated the 9th November, Chief 15:38  
21 Superintendent Wheatley informed me that Garda Keogh  
22 had made an application for a review of my decision and  
23 Chief Superintendent Wheatley requested my rationale,  
24 my views and observations. I forwarded them to her in  
25 a report dated 11th March 2015." 15:38

26  
27 we will go on to the next one.

28  
29 "I had fined Garda Keogh €300 and my rationale was:

1           Garda Keogh was absent without leave or explanation for  
2           four days. In deciding the fine, I took into account  
3           that he had no previous disciplinary breaches and that  
4           he had pleaded guilty to the breach. In imposing a  
5           fine of €300, I took into account that Garda Keogh had 15:39  
6           a weekly pay of €840.49, which equated to €168 per day.  
7           I imposed a fine of €75 per day that Garda Keogh was  
8           absent. I did not believe that Garda Keogh should gain  
9           financially from his absence but I did not want to be  
10          harsh on him." 15:39

11

12           Do you see that?

13           A.    Yes.

14 588 Q.    "I believe that my fine was fair and just."

15           A.    Yes. 15:40

16 589 Q.    So can we agree on this: That when sentencing, the  
17           other Superintendent, Murray, took the view that he  
18           didn't believe Garda Keogh should gain financially from  
19           his absence?

20           A.    That's what he said, yeah. 15:40

21 590 Q.    Well, you don't doubt him, do you?

22           A.    Absolutely not, no. He sets out his rationale there.

23 591 Q.    Yes. He also told him, and the superintendent doesn't  
24           appear to have doubted it at all, that he had been to  
25           his doctor and had got a medical certificate? 15:40

26           A.    Yes.

27 592 Q.    Do you accept that?

28           A.    Absolutely. The medical cert was attached to the file  
29           I sent to the chief superintendent.

1 593 Q. This is the one you referred to as retrospective?

2 A. The examination appeared retrospective, yes.

3 594 Q. Chairman, I am about to move onto another topic, I  
4 wonder whether -- I doubt if I would be able to get it  
5 finished before four. It may be perhaps better when  
6 everybody is fresher in the morning.

15:41

7 CHAIRMAN: If you think that's a convenient thing.

8 MR. KELLY: Yes.

9 CHAIRMAN: I have to say, I think that it's quite a  
10 detailed examination between counsel for the Tribunal  
11 and analysis, so I think I have no problem, certainly  
12 for myself, and actually just this afternoon it happens  
13 to suit me. Anyway, thank you very much.

15:41

14 MR. KELLY: I am making progress. I am not going to be  
15 as long as I thought I was going to be.

15:41

16 CHAIRMAN: Thank you very much, Mr. Kelly, that's most  
17 helpful, to let me know that. Very good. So we will  
18 say 10:30 in the morning then. Just give me a chance  
19 to close up here. Thanks very much.

20 15:42

21 THE HEARING THEN ADJOURNED UNTIL THURSDAY, 5TH DECEMBER  
22 2019 AT 10:30AM

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