

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

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

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

HELD IN DUBLIN CASTLE
ON THURSDAY, 5TH DECEMBER 2019 - DAY 126

126

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 THURSDAY, 5TH
2 DECEMBER 2019:

3
4 CHAIRMAN: Yes.

5
6 CHIEF SUPERINTENDENT PATRICK MURRAY CONTINUED TO BE
7 CROSS-EXAMINED BY MR. KELLY, AS FOLLOWS:

8
9 1 Q. MR. KELLY: Good morning, Chairman. Good morning,
10 chief superintendent.

10:34

11 A. Good morning, Chairman.

12 2 Q. I want to look now, if I may, at issue 9, at the theft
13 at Custume Place. We know that was on the 4th July and
14 that Garda Keogh was on duty in the public office.
15 That's right, isn't it?

10:34

16 A. Yes.

17 3 Q. You were taken through that, so I won't go into that in
18 any great extent. But it's right, isn't it, that Nick
19 Keogh was in the public office. Those concerned, the
20 victims, the injured parties attended at the station,
21 he showed them the CCTV footage, they agreed there was
22 nothing of great evidential value in it and they made
23 statements, that's right, isn't it?

10:35

24 A. Yes.

25 4 Q. Nick Keogh then also passed on the information he got
26 to the patrol cars and members on duty in the area?

10:35

27 A. Yes.

28 5 Q. We see that from Volume 31, page 8889. It's not
29 necessary to call the document. It's the crime report.

1 "Additional enquiries conducted. Information passed to
2 patrol cars and members on duty in the area."

3
4 It was said that whilst there was a possible suspect,
5 that's someone who was merely in the area around the
6 time of the incident? 10:36

7 A. Well, if you read through the record that the injured
8 parties took, it gives me the impression from my
9 experience that they had more information which may not
10 have been elicited from them. 10:36

11 6 Q. This is your point about the statements of the injured
12 parties, where there is stuff crossed out, is that
13 right?

14 A. Well, all through the statements I see an opportunity
15 to elicit more information. I mean, professional 10:36
16 standards in terms of investigation is something that's
17 very important to the organisation and it has, I
18 suppose, spent considerable time since 2009 training
19 every member on investigative interviewing. And again,
20 that training effort was repeated in 2014 and '15, with 10:36
21 a view to ensuring that professional standard apply to
22 the investigation of all crime.

23 7 Q. Yes. I see all of that. It was put to you yesterday,
24 Mr. Marrinan took you through this in some considerable
25 detail and what it came down was this, you said that 10:37
26 the real criticism was that in terms of the
27 investigation, material that could have been followed
28 up but was crossed out?

29 A. Yes. Well, it appeared to me that there was

1 information there to be elicited to assist.

2 8 Q. okay. we will call up Day 124, page 62. It's Day 124,
3 page 62. Right, down there. Line 7 we will start at.
4

5 "Q. Yes, but was it the fact they had written out 10:38
6 their own statements that was the problem rather than
7 the contents of their statements?

8 A. No. It was the facts, the information that they
9 appeared to have or evidence that they appeared to have
10 wasn't being elicited from them in a proper way. 10:38
11

12 Q. What are you referring to?

13 A. I'm referring to the content of the statement,
14 particularly the second page, with the crossed out
15 writing. It appears they had more information, when I 10:38
16 read the statements.
17

18 Q. If we just go back to that."
19

20 Carry on down. 10:38
21

22 "It is page 193."
23

24 Yes, well, page 193. Yes, that was essentially saying,
25 look, there was other lines of investigation, this was 10:39
26 written out in their statements, this was crossed out,
27 I think that should have been followed up, that's a
28 criticism I have of it, is that right?

29 A. Yes, I had hoped that my prompting would allow Garda

Keogh to perhaps correct the mistake and, you know, put some effort into the investigation of the crime, but he chose to try and justify what happened rather than make the correction.

9 Q. Yes. If we can call up volume 1, page 193. Do you have that there?

10:39

A. Yes.

10 Q. Now, this was the statement that was being put to you
at the time by one of the people.

10:40

"There was a hole in my wallet, coin [something], we searched the room."

Seems to be crossed out, yeah? Then go down to page, 193, and that's the bit we're really referring to, crossed out:

10:40

"Person was suspected of stealing there has [something] entering the building and eating food on the stairs, [something]."

10:40

A. "Very conveniently" it looked like to me.

11 Q. So you think this is crucial, this would be the make or break --

A. It seems to me that there's information there to be elicited from the witness that should be explored with them if a proper investigation is to be carried out, in line with the standard that the organisation expects.

10:40

12 Q. So what would you do? Round this person up anyway?

A. No, the first point of contact here is to gather the

1 evidence. There may be evidence available from those
2 two witnesses if they were interviewed in line with the
3 training Garda Keogh received in 2009 and again in '15.

4 13 Q. And you criticised him for allowing these people to
5 write their own statements? 10:41

6 A. Well, it didn't give him an opportunity to elicit the
7 information that he may have got had he adopted the
8 procedure that he had been trained to do.

9 14 Q. So if I go into a Garda station, make a complaint that
10 I have got to tell the guard, the guard has got to 10:41
11 translate that and put it down, rather than me sitting,
12 writing my statement; is that how you see it?

13 A. We're in a legal environment here with a lot of
14 lawyers, Chairman, and everybody knows the way the
15 commencement of a criminal investigation begins, with a 10:42
16 statement from the injured party. In this case, the
17 injured party or victim was also a vital witness. And
18 that's the foundation under which An Garda Síochána may
19 take further action. And therefore it's crucial. And
20 that's why members are trained in that way and that's 10:42
21 why a standard expected. And I don't think the
22 organisation -- I wouldn't be doing the organisation or
23 the public any service if I simply allowed this to
24 slide through without question. I certainly wouldn't
25 be doing my job. 10:42

26 15 Q. You made that perfectly plain to Garda Keogh, at page
27 202, this is your letter of the 3rd September. Let's
28 see what you are saying to him there.
29

1 "The explanation given in this case for what I see as
2 laissez faire attitude towards the investigation... "

3
4 Secondly, you say:

5
6 "It's far from satisfactory. Garda Keogh appears to
7 need advice in relation to the purposes and scope of
8 interviewing witnesses and in that regard should be
9 advised in relation to existing instructions in chapter
10 3 of the Crime Investigations Manual. The manner in 10:42
11 which these statements form part of an investigation is
12 contrary to the training and ethos of members of An
13 Garda Síochána and does not allow for this organisation
14 to assure the victims in this case that the best
15 possible effort was put into investigating of crimes 10:43
16 reported.

17
18 The basis of any investigation is the injured party's
19 statement and in these cases the injured parties
20 nominate a suspect. That issue must be explored in a 10:43
21 proper fashion with them. Indeed, Garda Keogh has also
22 nominated the same suspect on the crime tacking file.
23 It is incumbent on us to ensure we explore the various
24 available options to assist in gathering evidence. The
25 case of DPP v. Reddy indicates the low threshold in 10:44
26 relation to reasonable suspicion that exists in order
27 to assist investigations. The tools available to Garda
28 Keogh to assist him with his work are not used in this
29 case. In order to bring this matter to an acceptable

1 conclusion for the victims, please address the
2 following issues.

3
4 Garda Keogh should be given formal advice regarding the
5 investigation of crime and the importance of
6 interviewing witnesses. Chapter 3 of the Crime
7 Investigation Manual is a source of reference. "

10:44

8
9 was that just designed to humiliate him?

10 A. Absolutely not. Prior to drafting that response, I
11 initially asked two simple questions. Garda Keogh
12 responded in what I felt was a way of trying to explain
13 what occurred rather than dealing with the issue. And
14 I responded in this fashion in paragraph one, setting
15 out my position clearly and in paragraph two, giving
16 guidance, advice and direction. That wasn't anything
17 to do with Garda Keogh, that was about trying to
18 investigate the crime. And it would be the same if I
19 was presented with a crime file in that fashion by any
20 other member.

10:44

10:45

10:45

21 16 Q. But I am just wondering why you choose to use this
22 flowery language; laissez faire, far from satisfactory?

23 A. I don't think it's flowery language.

24 17 Q. Okay. Then Sergeant Monaghan responds at page 207,
25 attaching a report of Garda Keogh.

10:45

26
27 "Chapter 3 of the Crime Investigations Manual has been
28 brought to the attention of Garda Keogh. Garda Keogh
29 also nominated X for these thefts but since then has

1 been unable to link him with the crime. All CCTV was
2 viewed and this gave no leads in the investigation.
3 This case cannot be progressed at this time and any
4 developments will be reported to your office as they
5 arise. "

10:46

6
7 Then you reply I think, is it?

8 A. Yes.

9 18 Q. "I note your views. The crime file has been sent to
10 the victims office, who will inform the injured parties
11 of the efforts gone into [something]. "

10:46

12
13 Can't make that out. And as a result:

14
15 "I don't expect to see a repeat of this situation with
16 the members involved. "

10:46

17 A. Yes.

18 19 Q. Who are the members involved?

19 A. Member involved.

20 20 Q. Right. So you are putting up a warning again?

10:46

21 A. I'm trying to apply a standard. I want it to take
22 effect. I had gone to great efforts to introduce
23 processes, procedures and systems to allow that
24 standard prevail. And I saw an opportunity to do that
25 in Athlone with the willing team of people I had with
26 me, who assisted me in designing a process.

10:47

27 21 Q. Tell me this, that bit that you're critical about that
28 was crossed out in the statement, did you ever say to
29 Garda Keogh, look, this is what I have in mind, you

1 shouldn't do this sort of thing?

2 A. I thought I made that clear in the report you opened

3 there at page 202.

4 22 Q. Show me where you made it clear?

5 A. well, the whole ethos of that when it's taken in 10:47

6 context, can only mean that.

7 23 Q. Can it? I see it totally different. Show me where you

8 say, look, what I am bothered about is you crossing out

9 this stuff that witnesses put in their statements?

10 A. I don't know who crossed it out, but it was there. 10:47

11 24 Q. who crossed it out?

12 A. I don't know.

13 25 Q. why didn't you put that to him?

14 A. I asked him to try -- my, I suppose, purpose was to try

15 and have him correct whatever mistake was made, so as 10:47

16 that if there was an opportunity to elicit evidence, to

17 apprehend a culprit, that that would be done.

18 26 Q. Right. I am going to move onto the theft at Dublin

19 Road. What I want to ask you about there is. You

20 wanted to know who supplied the CCTV footage, we know 10:48

21 now it was Garda footage?

22 A. Yes.

23 27 Q. You also nominated a certain family of suspects, X?

24 A. You're confusing this -- is this Mulligan's or the

25 trailer theft? 10:48

26 28 Q. The theft at Dublin Road?

27 A. Yes.

28 29 Q. On Saturday, 7th/8th?

29 A. No, I didn't nominate anyone for that. That's a

1 different -- you may be conflating the two.

2 CHAIRMAN: The one where the chief superintendent

3 nominated was malicious damage at Mulligan's.

4 MR. KELLY: Yes, okay.

5 CHAIRMAN: The other one was the trailer, where Garda 10:48

6 Keogh had made his enquiries from the other filling

7 station and it transpired that this yielded very

8 valuable information.

9 MR. KELLY: I will directly into that Mulligan's

10 Filling Station. 10:49

11 CHAIRMAN: Okay.

12 30 Q. MR. KELLY: I want you to look at Volume 1, page 62.

13 It is the statement that Garda Keogh made to the

14 Tribunal's investigators about this.

15 A. Yes, Chairman. 10:49

16 31 Q. Just to put it in context.

17

18 "I have been referred to my statement, page 16, where I

19 have stated 'my police work was again irrationally

20 scrutinised and minutely criticised by Pat Murray'. In 10:49

21 addition, I have been referred to page 18 of my

22 statement, paragraph 5, where I have stated 'again the

23 queries from Superintendent Pat Murray were oppressive

24 and irrational'. In the light of the above statements

25 made by me, I have been asked to identify what I 10:50

26 consider to be oppressive and irrational in

27 Superintendent Murray's queries and to explain why I

28 considered them so.

29 A. It is very simple. Superintendent Murray has set

1 out in the report, dated 14th August 2015, the
2 following. 'In relation to Mulligan's, it appears X
3 may be suspect. Was this put to them in any way? 'In
4 my view this is irrational because X lives on the other
5 side of Athlone, the Westmeath side of Athlone and have 10:50
6 no transport. Mulligan's garage is on the Roscommon
7 side of Athlone. Well away from where the Xs live. I
8 am still baffled as to how he suggested the Xs are
9 suspect in this crime. There is absolutely no evidence
10 to suggest it was the Xs. Separately, it is my view it 10:51
11 is oppressive in the manner that Superintendent Murray
12 is 'pie out of the sky' nominating these suspects and
13 criticising me for not nominating the Xs that live two
14 miles away and have no transport."

15
16 Do you agree with that?

17 A. No, I don't.

18 32 Q. What basis had you for nominating these people?

19 A. At the time these people were very active. They had
20 access to a house close to Mulligan's. Garda Keogh was 10:51
21 familiar with the people and had interacted with the
22 family during that summer and I dealt with an issue
23 with a solicitor on his behalf in relation to them. We
24 had a particular operation at the time that focused on
25 that family as a result of serious activity that they 10:51
26 were engaged in, in a housing estate, where they were
27 causing quite an amount of problems. And I suppose the
28 entire station party was aware of the situation with
29 them and their modus operandi fitted in with what had

1 occurred.

2 33 Q. These are Irish citizens?

3 A. These are matters that are discussed every morning.

4 34 Q. People, I suppose, to whom your presumption of
5 innocence might apply? 10:52

6 A. Absolutely.

7 35 Q. So you just stick them up for this one?

8 A. No. I mean the Garda Síochána is not in the business
9 of sticking anyone up for anything, it's about
10 establishing the facts and gathering evidence and 10:52
11 trying to give a lead or a possible avenue of enquiry.
12 It may amount to nothing. But, you know, every member
13 of An Garda Síochána is aware of the judges rules and
14 the number one rule, you know, which allows them to --
15 when they are endeavouring to discover the order of a 10:52
16 crime, they are entitled to ask questions of anyone who
17 they believe reasonable information may be obtained
18 from. That's really all the queries were about. In
19 addition to that, there was some CCTV and, you know,
20 someone may identify their stature or build. It may 10:53
21 make sense in relation to their clothing. And I
22 suppose I was hoping that a line of enquiry could be
23 developed to perhaps close this down or open up a lead
24 to gather evidence.

25 36 Q. We know that that was brought to a successful 10:53
26 conclusion?

27 A. Yes.

28 37 Q. Mainly because Garda Keogh took the initiative to go
29 around and follow it all up with the CCTV and so on?

1 A. And I was happy with that and I was able to mark the
2 incident inactive. At the time it was important for us
3 not to allow things to drag on ad infinitum. That if
4 there wasn't a lead or an avenue of inquiry, that we
5 would be able to mark it inactive so as the Garda 10:54
6 member could move on and continue with work that they,
7 I suppose, may have some success with, while leaving
8 the investigation that were amounting to -- were going
9 nowhere or where there was no leads, leave them aside
10 and marked inactive, and explain that fully to the 10:54
11 victim.

12 38 Q. Tell me this, that theft was brought, as we know, to a
13 successful conclusion, the trailer?

14 A. The trailer, yes.

15 39 Q. When things go right, do you claim the credit? 10:54

16 A. No, I am very much a team player. Credit of that kind
17 is of no benefit to me. It's about the team for me.
18 If the district is running well, I am very happy with
19 that.

20 40 Q. I am just wondering, because I am looking at your note 10:54
21 on page 222, volume 1, the handwritten note. This is
22 the 19th September. It's a letter from Sergeant
23 Monaghan, after these many queries you'd sent.

24

25 "All CCTV saved and the originals are in the possession 10:55
26 of Garda Keogh. Copies of CCTV has been forwarded to
27 Garda [blank] in Ballinasloe and Garda Keogh has been
28 in contact with this member in relation to possible
29 suspects for both cases. Another copy has been

1 forwarded to the collator in Mullingar to be updated on
2 to G Tube. Garda Keogh has put a warning on Pulse in
3 relation to the suspected offending vehicle and has
4 made contact with Gardaí in Kildare, where the car is
5 registered to. This address is false. The crime is 10:55
6 still under investigation and any further progress will
7 be reported as it arises."

8
9 You reply:

10
11 "Noted. I appreciate the additional enquiries carried
12 out of which the organisation is achieving its goals in
13 relation to the investigation of crime. Report efforts
14 on -- "

15 A. "- identification." 10:56

16 41 Q. " -- efforts on identification."

17
18 So that was all down to you, the stuff that you had
19 generated?

20 A. Absolutely not. That was a team effort, which Garda 10:56
21 Keogh played a central part in, and involved his team,
22 unit C, in Athlone at the time, led by Sergeant
23 Monaghan. And he was assisted by a number of his
24 colleagues in bringing it in his direction. I was very
25 happy to see that and I acknowledge that. 10:56

26 42 Q. Just before I leave this, by this stage we had seen
27 Garda Keogh's perspective, you had criticised his
28 attitude as laissez faire; his work was far from
29 satisfactory; that he appeared to be in need of advice;

1 that the issues he was dealing with needed to be
2 explored in a thorough fashion; that Sergeant Monaghan
3 should ensure that Garda Keogh was supervised in
4 bringing the matters to conclusion; the members
5 response was far from satisfactory; the member feels he 10:57
6 is removed from his statutory obligations, the
7 reference for that is at page 234; that there needed to
8 be a supervision of a proper investigation. Would you
9 accept that the use of those words that I have just
10 covered, humiliates and undermines Garda Keogh? 10:57

11 A. No, absolutely not. This wasn't about Garda Keogh.
12 This was about the investigation of this particular
13 crime. I feel that I ensured that supports were in
14 place to allow Garda Keogh to bring it to a conclusion.
15 Indeed, those supports remained right in place right up 10:58
16 to the arrest phase, and Garda Keogh was due to take
17 part in that, but unfortunately he didn't. And I had
18 hoped as well that perhaps being involved in that, in a
19 team based way, might reignite some spark in him to get
20 some value out of his work, because it was a 10:58
21 particularly good detection and it was nice to get to
22 the bottom of it.

23 43 Q. If he had so many failings, did you ever just sit him
24 down and say, look, Garda Keogh, here's what you need
25 to tidy up? 10:58

26 A. Garda Keogh was a difficult man to deal with and to
27 talk to and I found that out, I suppose, when I was
28 dealing with him. His sergeant was actively engaging
29 with him. His unit were supporting him. I had a

1 standard that I was trying to, I suppose, explain, that
2 needed to be met. And they were helping him out to
3 deal with this in the proper fashion. And it was
4 brought to a successful conclusion and I acknowledged
5 the work that he did in that. 10:59

6 44 Q. I am just wondering, because before this, you already
7 told me that there didn't appear to be any problem, he
8 was an experienced guard, and all this starts happening
9 when you arrive on the scene?

10 A. I was just dealing with, in relation to Garda Keogh, 10:59
11 things that came across my desk. I didn't look for any
12 of it. It came to me in the normal course of events,
13 across my desk. My role, I didn't see it to just
14 simply ignore or to rubber stamp. If I saw failings, I
15 would point them out. I didn't intend to be over 10:59
16 critical. My initial reaction would be, look it, let's
17 do this properly, let's get the team in place and let's
18 support one another with a view to providing as good a
19 possible service the public as we could. I don't think
20 the public would thank An Garda Síochána for not 10:59
21 putting in an effort to bring an investigation to a
22 conclusion where there was an obvious lead to follow.
23 I think that would be neglect on our part, if we didn't
24 see that through.

25 45 Q. Okay. If we turn now to the robbery from the person. 11:00
26 One of the problems there was, as I had understood what
27 you were saying, that as it turned out the victim
28 didn't want to pursue a complaint, is that right?

29 A. That's the way it turned out, yes.

1 46 Q. Does that automatically call a victim's credibility
2 into question, in your view?

3 A. Well, it wouldn't automatically, no, absolutely not.
4 The mere fact they didn't want to go ahead with
5 something, wouldn't call credibility into question. 11:00

6 47 Q. I am just looking at this stuff that you no doubt would
7 have had at your PAF meeting. It's volume 32, page
8 9005. Do you see at the bottom?

9 A. Yes.

10 48 Q. "Comments: For direction, credibility of victim is in 11:01
11 question and has refused to cooperate with Gardaí.
12 Recommend incident be recategorised to attention and
13 complaints. "

14 A. Yes.

15 49 Q. I am really struggling with this idea, that because 11:01
16 someone doesn't want to proceed, that their credibility
17 is called into question. What has that got to do with
18 credibility?

19 A. That entry there seems to come from a correspondence
20 tracking file and it appears it may have been 11:01
21 summarised, the contents of a report submitted by then
22 Detective Sergeant Curley may have been summarised by
23 the clerical officer who was making the entry on the
24 correspondence register.

25 50 Q. You see, you're concerned with how the Gardaí are 11:02
26 perceived by the public. How would the public perceive
27 it if, having made a complaint for whatever reason, you
28 decide you don't want to proceed with it, the guards in
29 your station are saying well, there's no credibility

1 here, they don't want to proceed?

2 A. I didn't make any comment on the credibility of the

3 injured party. That was something that came to me.

4 51 Q. well, did you correct it?

5 A. well, I mean, Detective Sergeant Curley may have had a 11:02

6 view based on the information he had. You know, there

7 had been exhausting enquiries undertaken in relation to

8 that. And we, I suppose, kept it alive as long as we

9 could to see was it possible again, despite the fact

10 that the injured mightn't have wanted to do anything 11:02

11 with it, but could we have an idea, if it happened, who

12 might have been involved. Was it connected to any

13 other crimes of a similar nature that had occurred?

14 52 Q. Okay. If Garda Curley is raising this issue of

15 credibility, did you write to him and say, look, 11:03

16 Sergeant Curley, this is simply unacceptable, when you

17 say this, that someone's credibility is called into

18 question because they don't want to proceed?

19 A. No, I didn't write to him, no.

20 53 Q. Why not? Because it's plainly wrong, isn't it? 11:03

21 A. The reports that he sent came to us at our meeting and

22 a number of us discussed it. The sergeant in charge,

23 Inspector Baker, Inspector Curley, Superintendent

24 Minnock who was there, and myself. And we had a look

25 at all of the information there at a meeting on the 11:03

26 23rd September.

27 54 Q. I think Garda Linnane and Sergeant Monaghan were

28 assisting the investigation; isn't that right?

29 A. Of?

1 55 Q. The robbery from the person?
2 A. The robbery from the person. I'm not sure.
3 56 Q. I am just wondering whether it's there on the crime
4 report, that they were assisting. I was just wondering
5 whether they were ever asked for an explanation? 11:04
6 A. I can't answer that, I'm afraid.
7 57 Q. Right. I want to move on, just quickly, a couple of
8 points on when you confined Garda Keogh to indoor duty.
9 Do you remember when Sergeant Haran gave his evidence
10 earlier this week, you were here, weren't you? 11:05
11 A. I wasn't.
12 58 Q. Oh you weren't?
13 A. No.
14 59 Q. We will call it up then. It's Day 121, page 18. If we
15 get it up on the screen. Day 121, page 18. It is 11:05
16 lines 11 to 26. I think go back. Well, look, what it
17 amounts to is this, that Sergeant Haran, we will find
18 the reference -- 80, is it. What page are we looking
19 at here? 18. 80. Page 80. Just stop there.
20 11:06
21 "Just while we're on that, the public office. That is
22 a job as I understand it that's not very popular
23 amongst guards."
24
25 This is a question from me. 11:07
26
27 "A. No, I mean, it isn't. Because for a start it's
28 unknown in its nature, in that if you take up a
29 position in the public office, by the nature of the

1 public you don't know what's coming in the door and it
2 can be a question of volume only but there could also
3 be a question of strange content coming through and
4 challenge you on a minute-by-basis along with a lot of
5 other duties, that go with the position. So it's a
6 really difficult job."

11:07

7
8 I then ask:

9
10 "So it's not a job that would be first prize at a
11 raffle?

11:07

12 A. Absolutely not

13
14 Q. It would be the last, the booby prize?

15 A. Yes."

11:07

16
17 would you agree with that?

18 A. There are, I suppose, quite an amount of roles An Garda
19 Síochána would think are stressful. The public office
20 is one of the more protected environments in my view.
21 I was at garda rank for 20 years and performed that
22 duty too many times that I care to remember. It's a
23 job where I suppose members of the public may come to
24 have forms signed or telephones may be answered
25 primarily or your colleagues may be contacting you on
26 the radio. You're in the station. Your colleagues are
27 in and out and around and there's a sergeant invariably
28 on duty. And when that occurred, there was no
29 conscious intention to put Garda Keogh under additional

11:07

11:08

1 stress other than to try and support him. And that was
2 one of the -- or the only option I had available to me
3 indoors at that time, where he could be supported in
4 some fashion, or if he felt he needed time out, that he
5 could put his hand up and Sergeant Monaghan would 11:08
6 readily ensure that he had relief or support there.
7 That was my train of thought at that time.

8 60 Q. You see, I am suggesting to you that this was one of
9 the least possible jobs amongst the Gardaí, in the
10 public office? 11:09

11 A. Well, it's the least popular because members of An
12 Garda Síochána like to be out and about, I suppose,
13 investigating, being proactive, tackling criminals.

14 61 Q. Yes.

15 A. So some people find it inhibiting be to inside. So 11:09
16 that's one of the reasons that people don't like it.

17 62 Q. Because you also assign Garda A at one point to indoor
18 duty, didn't you?

19 A. I did.

20 63 Q. And at the very time you say you were trying to 11:09
21 belittle or demean him?

22 A. No, I wasn't, it was same with Garda Keogh.

23 64 Q. So you recognise there was a possibility that by doing
24 this it could be seen as being belittling or demeaning?

25 A. I didn't see it like that. 11:09

26 65 Q. So why did you say so?

27 A. Garda A had been -- there was an additional restriction
28 on him, he had been deprived of driving patrol cars, he
29 also been returned at that time from uniform -- or from

1 plain clothes duties to indoor duties. And that arose
2 for a certain reason. I was very proactive in making
3 that decision and I made it almost immediately after
4 certain events occurred in relation to Garda A.

5 66 Q. Can we agree that this indoor duty was a stressful job? 11:10
6 A. There are quite a few jobs that are stressful in An
7 Garda Síochána.

8 67 Q. Can we agree that this is a stressful job?
9 A. Some people view it differently. There could be
10 stresses there, but there's support there at all times. 11:10
11 There are stresses out on the street. There are
12 stresses going to unknown incidents that may be
13 reported on the phone to the person in the public
14 office, that may allow for all kinds of confrontation
15 or violence, you know, or danger to members of An Garda 11:10
16 Síochána in being sent to them by the person in the
17 public office. So there's stress everywhere,
18 unfortunately, in the organisation at times. And I
19 suppose people are trained to deal with that stress.
20 And supports are in place to allow that to happen and 11:10
21 to allow them to do their job as best they can.

22 68 Q. So this stressful job, you thought it was right to
23 transfer a man suffering from work related stress into
24 it?

25 A. I didn't say it was a stressful job entirely on its 11:11
26 own. It depends, people can find it stressful because
27 of things that are happening in their life outside of
28 the organisation. They can find it stressful because
29 of the things that happen in the particular role they

1 have. Different people find it in different ways.
2 This wasn't done in any way to target Garda Keogh. It
3 was me, I suppose, dealing with a situation that
4 presented itself to me, in what I thought was the best
5 way possible to support Garda Keogh, but to also ensure 11:11
6 that, you know, there was no organisational risk.

7 69 Q. I will put it to you another way: Do you think that
8 assigning him to indoor duties would actually help
9 relieve his stress?

10 A. Look, it's a protected environment in the nature of 11:11
11 where he found himself. If there were issues in
12 relation to paperwork, he may have time to deal with
13 them. He wasn't going to be loaded with any new
14 investigations that were going to add or complicate his
15 life further and everything that you would be dealing 11:12
16 with in the public office would be dealt with at that
17 point in time or within your tour of duty and there'd
18 be no carry over, as it were, that might cause further
19 difficulties. When that happened, I contacted the
20 human resource department so as that the case 11:12
21 conference would be expedited, that day I think.

22 70 Q. Right. I am going to move on to the misrecording of
23 sick leave and reduction in salary. On 27th August
24 2015, John Barrett, who was the director of Human
25 Resources, sent a directive to each officer in respect 11:12
26 of their station about over payments policy; is that
27 right?

28 A. Sorry, could you say that again?

29 71 Q. On the 22nd August --

1 A. Sorry, yes.

2 72 Q. Look, we will call it up. Volume 8, page 2234. Have
3 you got it there?

4 A. Yes.

5 73 Q. That is a directive, we see who it is sent to, each 11:13
6 officer, inspector in the station. He explained the
7 policy about over payments which occur from time to
8 time. Yeah?

9 A. Yes.

10 74 Q. He doesn't actually say that money will be recovered, 11:13
11 rather all he is saying is that there is a legal right
12 to recover it?

13 A. Yes.

14 75 Q. And that the Human Resources will liaise in respect of
15 that. Yeah? 11:14

16 A. I suppose, lying under this document, and there is a
17 link to it on screen, you can see it underlined, the
18 actual policy is an underlying document of this. On
19 the portal where that's displayed, there's a link to
20 the policy, by pressing on that. 11:14

21 76 Q. Don't try to anticipate me.

22

23 "The Payment of Wages Act 1991 gives an employer a
24 legal right to recover any overpayment of wages,
25 allowances or expenses from the salary of employees." 11:14
26

27 That's right, isn't it?

28 A. Yes.

29 77 Q. And then:

1
2 "The management of overpayment policy formalises the
3 procedures in place in An Garda Síochána for machining
4 overpayment and the policy applies to all employees of
5 An Garda Síochána.

11:14

6
7 The overpayments management section in Human Resources
8 will liaise with employees who incur an overpayment."

9
10 The contact details of the section are then given.

11:14

11
12 Now that, we know, is the 22nd August

13 A. Yes.

14 78 Q. I think the very next day you wrote a letter, we will
15 find that at page 233. You wrote to them, instructing
16 them to recover an overpayment from the 11th to the
17 14th July 2015, that's right, isn't it?

11:15

18 A. Yes, I signed a letter just drafted by my finance clerk
19 at the time.

20 79 Q. You didn't hang about there, did you?

11:15

21 A. Well, once the circular would come on the portal, she
22 was a very, I suppose, lady that -- she was tuned into
23 all matters finance. I suppose that was her specific
24 role, to deal with financial matters. She brought it
25 to my attention and it was dealt with in that fashion.
26 It was merely advising of a possible overpayment under
27 the policy document and I think it indicates clearly
28 that unauthorised absences is one of the areas to be
29 considered and it also indicates that, you know,

11:16

1 there's no discretion in relation to public money. And
2 I think that's where she is coming from.

3 80 Q. You get the letter, the following day you write, then
4 she writes back to you, and you will find that at 2235?
5 A. Yes. 11:16

6 81 Q. "Monica Carr responded, asking about the number of days
7 Nick Keogh was absent."
8
9 where she says she thought it was one day?

10 A. Yes. She thought it was -- I think she wanted to 11:16
11 include it as a greater range of days than there were,
12 between the 11th to the 19th.

13 82 Q. Yeah. Then you reply to that?
14 A. I didn't. I corrected that, to ensure that it only
15 applied to the relevant days. 11:17

16 83 Q. well, that's I think at 2236, is your reply?
17 A. Yes.

18 84 Q. "I can clarify that the member concerned, Garda Keogh,
19 was absent without leave from the 11th July to the 14th
20 July inclusive. Therefore, any overpayment that may 11:17
21 have occurred will refer to this period only. During
22 the period 15th July to 18th July, the member availed
23 of rostered rest days."
24

25 So we have the overpayment ball rolling, is that right? 11:17
26 A. I was merely advising the overpayment section in line
27 with the policy of a possible overpayment. It was a
28 matter for them as to how they viewed or assessed that.
29 I had no involvement in the matter after that.

1 85 Q. Then Monica Carr writes back to you again, we see that
2 at 2237, the 20th October?
3 A. Yes.
4 86 Q. Directly to you, Superintendent Murray.
5
6 "I am to enquire whether you have informed the member:
7 1. That he is deemed by you to be absent without leave
8 for the period 11th July to 14th July.
9 2. That you have requested that the member shall not
10 be paid for the above period of absence without leave. 11:18
11 3. That the member's service for the above period will
12 not reckon for superannuation purposes and his
13 personnel record will reflect same.
14 4. Under which Garda Code provisions the above actions
15 are being carried out. 11:18
16
17 I am to enquire also if consideration has been given to
18 having this matter dealt with under An Garda Síochána
19 disciplinary regulations.
20 11:18
21 On receipt of this clarification from you regarding the
22 above, consideration may be given to the most
23 appropriate way to progress the matter."
24
25 Now that we see is the 20th. On the 22nd you reply. 11:19
26 You say:
27
28 "I spoke with the member regarding his absence without
29 leave on the 14th July. I subsequently sought an

1 explanation from him, which was not satisfactory. I
2 reported the matter to chief superintendent, Westmeath,
3 recommending disciplinary action. A superintendent
4 from outside the district was appointed as deciding
5 officer. That superintendent found Garda Keogh in
6 breach of discipline and the member was fined €300.

11:19

8 The member is aware that I am of the view that he was
9 overpaid during the period in question and that any
10 overpayment in that regard is ancillary to the
11 disciplinary fine imposed. The member is also aware
12 that as a natural consequence of being absent without
13 leave, both service and superannuation provisions are
14 affected.

11:19

15
16 I trust the above explanation satisfies your queries at
17 questions 1 to 3. I am not exactly sure of the point
18 you wish to deal with at question 4."

11:19

20 when did you make him aware that he was overpaid?

11:20

21 A. I think when we spoke, when I was explaining the
22 disciplinary regulations to him on the 30th August, I
23 think it came up very briefly that this circular was
24 there and we had notified at that stage, on the 28th.

25 87 Q. "And that any over payments ancillary to the
26 disciplinary fine imposed."

11:20

27
28 when did you do that?

29 A. well, when I spoke to him on the 30th August, I didn't

1 know whether there would be any disciplinary sanction
2 or not.

3 88 Q. Right.

4 A. But when I was writing this letter, I was aware that
5 there was. 11:20

6 89 Q. Where did you get that from?

7 A. Because I have a recollection of meeting Superintendent
8 Alan Murray for lunch, and I think I have a note of it,
9 where he informed me that he had fined Garda Keogh €300
10 in September of '15. 11:21

11 90 Q. You see, I can't find a note where you say to Garda
12 Keogh, look here, you know, you got this €300 fine but,
13 you know, you're going to have to pay back the wages as
14 well?

15 A. No, I didn't and that wasn't an issue. I was making no 11:21
16 decisions on that. I was merely just reporting the --
17 as I felt I was obliged to under the policy and I
18 didn't see how I was involved in that decision. I
19 don't know whether that overpayment was ever recouped
20 or not. I didn't really mind. 11:21

21 91 Q. We will come on to that in a minute?

22 A. I closed down Ms. Carr from extending it further than
23 she wished to.

24 92 Q. Hold on a minute, I am focusing on "the member is aware
25 that I am of the view that he was overpaid in the 11:21
26 period in question and that any overpayment in that
27 regard is ancillary to the disciplinary fine imposed"?
28 A. Yes.

29 93 Q. How is he aware? Where did you tell him? Where did

1 that come up?

2 A. well, I suppose --

3 94 Q. You told us about the lunch you had with the other
4 Superintendent Murray?

5 A. Yes. 11:22

6 95 Q. Tell me about where you told Garda Keogh?

7 A. I believe I told him on the 30th August, when I met
8 him. It came up as part of the explanation of the
9 regulation 14 discipline process to him. And I knew
10 that I signed the document going to the overpayments 11:22
11 section on the 28th and I mentioned it in passing
12 briefly to him, that this is also an issue, or may be
13 an issue and it's a matter for these people to deal
14 with it, in the HR department.

15 96 Q. If we have a look at your meeting -- I am just calling 11:22
16 up the meeting on the 30th August, you will find it in
17 that same volume, volume 8, 2045. Have you got it?

18 A. Yes.

19 97 Q. "On Sunday, 30th August 2015, at approximately 9pm, I
20 met Garda Keogh at my office to serve form IA12 on him 11:23
21 on behalf of and at the request of superintendent
22 Mullingar, who had been appointed by chief
23 superintendent Westmeath to enquire into Garda Keogh's
24 absence without leave under regulation 14. Garda Keogh
25 acknowledged receipt of the form. It was clear he was 11:24
26 annoyed with me. I indicated to him I had explained
27 this might happen. At his request I explained to him
28 how regulation 14 worked and that it was a way of
29 dealing with less serious breaches of discipline. He

1 was reticent to discuss his alcohol dependencies or
2 welfare with me. I discussed his work standard with
3 him, citing two theft cases and a letter from a
4 solicitor regarding the X family I had received. I
5 attach a copy of correspondence.

11:24

6
7 I indicated that if his drinking was going to continue
8 impacting on his work I might have to consider taking
9 him off outdoor duty. He said if I had any issues to
10 send them to him in writing and that in the meantime he 11:24
11 could do what he liked. I assured him he couldn't do
12 that and that professionalism and standards were
13 important in the delivery of policing. The meeting
14 then ended."

11:24

15
16 Right, where did you tell him that any finding you get
17 from this will ultimately --

18 A. No, I haven't it noted there, but it came up in an
19 ancillary way to the explanation on regulation 14. I
20 had sent the notification to the overpayments section 11:25
21 two days earlier, and it came up in that context. I
22 didn't anticipate how they were going to deal with it,
23 nor could I have known. And, in fact, I still don't
24 know how it was dealt with. I felt I was merely
25 notifying them that this occurred, an unauthorised 11:25
26 absence, as they explained it in the policy, had
27 occurred.

28 98 Q. You see, what I am going to suggest to you one of the
29 unfairnesses in this is that he had, Nick Keogh had

1 been disciplined, as we know, and was fined €300. And
2 an earlier stage, we can call it up if necessary, it's
3 what -- that Superintendent Murray said:

4
5 "I fined Garda Keogh 300 and my rationale was that 11:26
6 Garda Keogh was absent without leave or explanation for
7 four days. In deciding the fine, I took into account
8 that he had no previous discipline breaches and he had
9 pleaded guilty to the breach. In imposing a fine of
10 €300, I took into account that Garda Keogh had a weekly 11:26
11 wage of €840, which equates to 168 a day. I imposed a
12 fine of €75 a day that Garda Keogh was absent. I did
13 not believe that Garda Keogh should gain financially
14 from his absence but I didn't want to be harsh on him."

15 A. Yes. 11:26

16 99 Q. Did you bring that to the attention of him?

17 A. No, I wasn't aware of that rationale, because I had no
18 involvement in that.

19 100 Q. But you didn't look at the file, did you not?

20 A. No. 11:26

21 101 Q. So you weren't at least interested in what he might
22 have been fined or what the reasons for it were or
23 anything like that?

24 A. Superintendent Murray informed me, Alan Murray,
25 informed me what he was fined on the day he met Garda 11:27
26 Keogh, because he happened to conduct the interview in
27 Athlone Garda Station. I didn't know he was there. He
28 came into my office after and we went for lunch and he
29 informed me that he fined him €300.

1 102 Q. with the benefit of hindsight, do you think that that
2 is something that should have been brought to the
3 attention of Human Resources, when they were
4 considering any overpayment and clawing back of money?
5 A. Just to explain, Chairman, how it works. The Internal 11:27
6 Affairs section would deal with the disciplinary
7 sanction, the HR department would be dealing with the
8 overpayments section. So when the Internal Affairs
9 section would receive the sanction and the file from
10 the chief superintendent in westmeath, it would send it 11:27
11 to the human resource section in order that they would
12 engage with Killarney, where pay is arranged, the
13 financial shared services, so that the money could be
14 recouped in an incremental way on a percentage basis of
15 wages over a period of time. And so, it was all going 11:28
16 to the same department anyway. But I didn't take any
17 steps other than --

18 103 Q. CHAIRMAN: Chief superintendent, what I am
19 understanding counsel to be saying is -- and look, you
20 didn't impose the fine? 11:28
21 A. No.

22 104 Q. CHAIRMAN: But he is saying, look, actually, the fine
23 that Superintendent Alan Murray imposed was actually
24 calculated by reference to the earnings.
25 A. Yes. 11:28

26 105 Q. CHAIRMAN: So it would seem, if he was fined 300, for
27 the reasons that Superintendent Alan Murray said, and
28 the amount was fixed so as to make sure that he was
29 given a sanction, it would seem on the face of it to be

1 harsh, contrary to Alan Murray's intention, if he
2 suffered extra loss?

3 A. Yes.

4 106 Q. CHAIRMAN: I think that's counsel's point?

5 A. Yes. 11:29

6 107 Q. CHAIRMAN: Mr. Kelly's point. He will forgive me for
7 just summarising, but that's what I understand. which
8 would on the face of it seem to be a fair point.

9 A. Yes, I appreciate that and I accept that, Chairman.
10 Yes. 11:29

11 108 Q. MR. KELLY: Did it not occur to you at the time.

12 A. No, and look, there was no conscious intention on my
13 part to disenfranchise Garda Keogh in any way in
14 relation to financial affairs.

15 109 Q. But the punish just didn't end there, did it? Let's 11:29
16 look at volume 8, page 2239. Here we are, the payroll
17 services, they're looking at overpayment of salary,
18 3,200 gross to Garda Keogh.

19

20 "This overpayment arose as a result of the member 11:30
21 receiving full pay for periods of sickness."
22

23 And then they outline them.

24

25 "During these absences the member was eligible to 11:30
26 receive a reduced rate of pay only.
27

28 You will be aware that the member has been on sick
29 leave since 26th December 2015. Please inform the

1 member of the overpayment of 3,200 gross and how it
2 occurred. The member has existing overpayments, of
3 which he is aware, and when combined with the current
4 overpayment he leaves a balance of €5,440 gross to be
5 recovered. The member has an existing repayment 11:30
6 arrangement in place and the PSSC will make deductions
7 on the member's resumption to the payroll in line..."
8
9 So look what it amounts to is by then, which is
10 February '16, Nick Keogh's is nearly five and a half 11:30
11 thousand down.
12 A. Yes.
13 110 Q. That could hardly have been anything other than a
14 matter of stress for him, could it?
15 A. Oh, I can understand that, yes. 11:31
16 111 Q. Were you aware of that?
17 A. No.
18 112 Q. Had you been aware of it, what would you have done?
19 A. Well, I have no function or role in decisions in
20 relation to pay. The organisation views, I suppose, 11:31
21 public money and the accountability of it is important.
22 But I simply had no role as the superintendent in
23 Athlone in relation to it.
24 113 Q. Just on the question of investigating work related
25 stress, we will move to that now. You already 11:32
26 explained to the Chairman, we have been through it
27 before, that the first meeting you had with Garda Keogh
28 you described as a meeting to solve problems. That was
29 the 26th March, wasn't it?

1 A. Yes.

2 114 Q. That was really the first meeting you had with him?

3 A. Yes.

4 115 Q. At an early stage -- we went through that. You had a
5 meeting on the 26th March. Then you had one on the 3rd 11:32
6 April and that was about the car tax?

7 A. Yes.

8 116 Q. And the regulation 10. You next met on the 30th
9 August, when you served him with forms about being
10 absent without leave, yeah? 11:33

11 A. Yes.

12 117 Q. And then finally, on the 22nd October, when you
13 confined him to indoor duty?

14 A. Yes.

15 118 Q. Right. So the only real meeting you had there was the 11:33
16 26th March. Now, you described that as a general
17 meeting and you told the Chairman in that case was:
18
19 "The first meeting was to solve problems. I was trying
20 to pay the monies owed to him, which required his tax 11:33
21 to be dealt with."

22 A. Yes.

23 119 Q. "I offered a solution in a holistic way, which he
24 accepted."
25
26 we disagree with that. 11:33
27
28 "I tried to ascertain what I could do in relation to
29 allowing him to attend work more frequently. It was a

1 problem solving meeting as far as I was concerned. If
2 there was a problem that he wished to discuss with me,
3 I was more than happy to, I suppose, solve the problem,
4 do whatever I could or whatever was in my gift to
5 ensure that his welfare and every other consideration 11:34
6 was taken care of."
7
8 Yeah?
9 A. Yes.
10 120 Q. So, when Mr. Marrinan was asking you whether you 11:34
11 discussed Nick Keogh's performance, coping skills, the
12 difficulties in relationships in a working environment,
13 and you said you did, you must be referring to that
14 meeting?
15 A. Yes. I discussed his work with him. I asked him what 11:34
16 work he was doing. And the whole meeting was about how
17 he was coping, what I could do to support him.
18 121 Q. This is the time when Ms. McLoughlin, from Human
19 Resources --
20 A. Yes. 11:35
21 122 Q. -- was looking at this issue of work related stress.
22 And he sends an e-mail which basically said this, look,
23 Lorraine, has there been an investigation?
24 A. Yes.
25 123 Q. Tell me about it. You remember this, yeah? 11:35
26 A. Yes.
27 124 Q. So the question at that stage was: Had there been an
28 investigation?
29 A. Yes.

1 125 Q. You replied to that. You replied saying that it was
2 sent to Lorraine wheatley. Perhaps somebody would find
3 me that reference. Yes, there's a reference here,
4 volume 11, 3203:

11:36

5
6 "I refer to the above and attach documents for onward
7 transmission to the chief medical officer.

8
9 Garda Keogh wrote to the sergeant..."

10 11:36

11 Then if we look on at the next page, the one we looked
12 at there. This is an e-mail from Anthony McLoughlin to
13 Lorraine wheatley.

14
15 "Lorraine, was a work related stress investigation
16 conducted?"

11:37

17 A. Yes.

18 126 Q. Then there is another e-mail, which is from Lorraine
19 wheatley to Tony McLoughlin:

20 11:37

21 "The CMO has deemed Garda Keogh unfit for duty. He was
22 again reviewed by him about two weeks ago. I spoke
23 with the CMO's office and his reviewing doctor and he
24 has advised me that he wants to hold an early
25 conference with me and John Barrett in respect of Garda 11:37
26 Keogh before he issues advices on his suitability to
27 return to work."

28 A. Yes.

29 127 Q. "I welcome an opportunity to discuss the case with you

1 in the light of your e-mail. I understand that Garda
2 Keogh recent certificates from his own doctor had him
3 certified him unfit due to stress."

4 A. Yes.

5 128 Q. "However, in light of all the attendant issues in 11:37
6 respect of this member, I would like to discuss this
7 member's case with you in early course. Perhaps you
8 might be in a position to get an update from the CMO's
9 office in respect of this member and we can discuss on
10 Tuesday." 11:38

11

12 So, there comes a time then when you reply, and that's
13 what I am looking for. You give a report, I think, on
14 6th June 2016. I think we will find that at 11, 3267.
15 This is Lorraine wheatley 11:39

16 A. Yes, it's a report from Chief Superintendent wheatley.

17 129 Q. It's just to put this in context. Tony McLoughlin is
18 asking this direct question, the Code requires when
19 there is work related stress that there be an
20 investigation, you accept that, yeah? 11:39

21 A. Yes.

22 130 Q. Tony McLoughlin is onto this and he is saying, look,
23 Lorraine, was there an investigation. She is now
24 responding. 3267?

25 A. Yes. 11:39

26 131 Q. This is the 8th June.

27

28 "On the 26th March, Superintendent Murray met with
29 Garda Keogh at Athlone Garda Station to discuss the

1 member's frequent absences from work. Superintendent
2 Murray outlined in this report 2nd April (attached)
3 that Garda Keogh was reticent to discuss any issues
4 regarding his absence through work related stress. A
5 request was made on that date to have the member
6 reviewed by the CMO to establish if any additional
7 workplace supports could be identified to assist the
8 member locally. A member of sergeant rank was
9 appointed to liaise with Garda Keogh as a direct
10 point. "

11:40

11:40

11
12 And so on. So that is the response, she is pointing to
13 the investigation being on the 26th March 2015?

14 A. Yes.

15 132 Q. Do you agree?

11:40

16 A. Well, it depends how one would view an investigation at
17 this stage. Because an investigation by its nature --
18 I set out in a report on the 2nd April the context in
19 which Garda Keogh was being sent to the CMO. And that
20 in itself should be enough, in my view, to allow the
21 CMO carry out some type of a medical assessment based
22 on the context I set out. I suppose to investigate or
23 delve deeper wasn't an option for me. I couldn't delve
24 into that, in the circumstances in this case.

11:40

25 133 Q. What I am getting at it, look: You have one meeting at
26 this stage, one relevant meeting, the 26th March. Then
27 2016 here is Mr. McLoughlin saying, look, was there an
28 investigation. You had had a general meeting, a
29 problem solving meeting. The direct answer was, no,

11:41

1 there hasn't been an investigation, wasn't it?

2 A. By the chief superintendent?

3 134 Q. By any of you.

4 A. Well, she set out her position in a number of pages.

5 And I suppose it's important to give a bit of context 11:41

6 to it. At page 3269, in the last paragraph.

7 135 Q. Yes. What I can't understand, you see, and this is

8 back in 2016, Tony McLoughlin is asking was there an

9 investigation, you're all harking back to this one

10 meeting you had on the 26th March, recycling it. 11:41

11 That's the truth of the matter, isn't it?

12 A. The determination that Garda Keogh was looking for was

13 primarily to be made by the Chief Medical Officer.

14 136 Q. I'm sorry, chief superintendent, but that is not right.

15 The determination is to be made but investigations - 11:42

16 you accept this already when you were cross-examined

17 yesterday - are to be made by management locally?

18 A. As I explained just a moment ago, the investigation, it

19 wasn't open to me to investigate in terms of delving

20 into the causes of it, and the causes of it were 11:42

21 associated with his role as a confidential reporter.

22 That was off bounds for me. But the CMO, having that

23 as a context, would be able to press forward without

24 having to, I suppose, delve into that at all if he

25 didn't want to, and carry out the next phase, which was 11:42

26 the medical side of it. Which would make a -- bring

27 the thing on hugely.

28 137 Q. Tony McLoughlin was asking have you made an

29 investigation specifically into work related stress,

1 the correct answer was, no, we haven't, there's a lot
2 of other stuff going on. Not even then did you get on
3 to him to address it.

4 A. In fairness to the chief superintendent, and it's her
5 report, if we could go to page 3269 and the last 11:43
6 paragraph, where she says:
7

8 "However, to be clear and to avoid any doubt, I am to
9 enquire if there is a requirement to further
10 investigate Garda Keogh's absence through alleged work 11:43
11 related stress. In the event that further
12 investigation of this matter is warranted, I would
13 recommend that permission be granted to appoint an
14 inspector from outside the Westmeath division to
15 conduct same." 11:43
16

17 And I don't think she ever got a reply to that.

18 138 Q. would you agree that an investigation as envisaged by
19 the Code would involve at the very least putting Nick
20 Keogh on notice that there is an investigation? 11:43

21 A. Absolutely. Absolutely.

22 139 Q. Secondly --

23 A. And he would be centrally involved in it and he would
24 be supplying information to it.

25 140 Q. And secondly, that you would explain the purpose of the 11:44
26 investigation?

27 A. Absolutely.

28 141 Q. Thirdly, you would put him on notice of the
29 consequences of his failure to engage with the

1 investigation?

2 A. Absolutely. And I believe that the CMO had all those

3 obligations when he met him.

4 142 Q. Yeah. Nowhere at all did you actually say, look, if

5 you don't cooperate, sunshine, your pay is going to be 11:44

6 cut?

7 A. I don't think pay is associated with work related

8 stress in that fashion. It's the determination

9 relating the stress to work. And that's outside of my

10 domain completely. 11:44

11 143 Q. It is, because if it's work related stress he gets full

12 pay. If it isn't, after a time he goes on to half pay?

13 A. That's a determination to be made at Garda Headquarters

14 between the chief medical officer and the executive

15 director of HRPD, who the chief wrote to. 11:45

16 144 Q. I am suggesting to you that because this wasn't done,

17 Nick Keogh did suffer financially, his pay was cut. It

18 didn't because you, either by omission, did not

19 undertake a proper investigation, or by design did not

20 undertake a proper investigation, brought this in 11:45

21 effect about, you were the local management?

22 A. I cannot accept responsibility for any issues around

23 Garda Keogh's pay. I simply had no involvement in it.

24 I sent him to where I felt he would be best cared for,

25 in the medical department in An Garda Síochána. And 11:45

26 they had a role in relation to all of that, that was

27 outside of my boundaries and limits.

28 145 Q. Going back to your opportunity to have, on the 14th

29 July -- we will find that at 2220. This is the awol

1 incident. Now, you're familiar with the codes, aren't
2 you?

3 A. Sorry, I may have the wrong page here.

4 146 Q. 2220. I think it's is Volume 8.

5 A. Yes. 11:47

6 147 Q. Right. We have been through this lots of times, we
7 don't need to go through it again. That was your
8 opportunity, wasn't it, to start an investigation by
9 local management into the causes of the work related
10 stress? 11:47

11 A. No. Before that I had notified the occupational health
12 department through HRM. The CMO had met Garda Keogh on
13 the 19th May, prior to this. After this, I tried to
14 get a case conference.

15 148 Q. You can't shovel it all off onto the CMO. There is a 11:47
16 clear obligation on local management to investigate the
17 cause of the work related stress, do you agree?

18 A. The obligation couldn't be achieved because of the
19 circumstances that existed. I simply was inhibited.

20 149 Q. And you have a perfect opportunity here to initiate 11:48
21 such an investigation and you didn't take it?

22 A. Following this, I looked for a case conference with the
23 CMO to again move the thing forward. I made phone
24 calls to try and expedite that. I felt I did
25 everything I could. 11:48

26 150 Q. There again you are shifting it off to the CMO. What I
27 am interested in is: what did you as the local manager
28 do to investigate the cause of the work related stress?

29 A. And I have explained, I sent a report on the 2nd April,

1 so as that expert, professional and specialist care
2 could be given to Garda Keogh and all of these
3 circumstances could be explored in that vein. I don't
4 feel I could have done any more.

5 151 Q. At that meeting, Nick Keogh had told you the source was 11:49
6 work related stress, Garda A, yes?

7 A. Garda A.

8 152 Q. He tells you that he didn't like being in the same
9 station as Garda A at the same time and he found that a
10 source of stress? 11:49

11 A. Yes.

12 153 Q. why didn't you commence the investigation from there?

13 A. As I said to you, I'd already referred Garda Keogh to
14 the occupational health department for expert care and
15 I continued in that vein in a consistent way, having 11:49
16 done that early on in my time there, I continued
17 pressing forward with that, as I felt that was the best
18 course of action to take.

19 154 Q. Did you expect the CMO to investigate the causes of the
20 work related stress, which obviously it must be, in the 11:49
21 workplace?

22 A. I set out the context in which Garda Keogh had become a
23 confidential reporter for the CMO. And I expected him
24 to take that into account in terms of what
25 investigative actions he needed to take from a medical, 11:50
26 I suppose, area, to allow him to make a decision along
27 with the executive director HRPD in whatever way they
28 choose. I simply had no input or influence in that in
29 any shape or form.

1 155 Q. This is July 2015. It's before Nick Keogh's pay was
2 reduced, isn't it?

3 A. No, my understanding is that his pay was reduced in or
4 around March or April of '15 and I remember getting a
5 TRR notice around the 21st April and phoning him, he 11:50
6 didn't answer, and I sent it to Tullamore to serve on
7 him. So the pay regulations had kicked in around that
8 time I think.

9 156 Q. Well, we know from papers from Mullingar, Volume 31,
10 that Nick Keogh didn't exceed his 183 days until the 11:51
11 31st th August 2015?

12 A. I don't know.

13 157 Q. Well, it's there anyway. So what I am putting to you
14 in short is, you could have prevented your member from
15 having his pay reduced then and you didn't? 11:51

16 A. No, that's not true. I had no involvement in anything
17 to do with his pay.

18 MR. KELLY: Chairman, you will be pleased to know that
19 completes my questioning.

20 CHAIRMAN: Very good. 11:51

21 MR. KELLY: Sorry, there is just a quick matter I want
22 to cover.

23 CHAIRMAN: Certainly. Thank you very much. Is that
24 the Disclosures order you want to talk about,
25 Mr. Kelly? 11:52

26 MR. KELLY: No. It's a couple of isolated matters I
27 forgot about.

28 CHAIRMAN: Thanks very much. I am just wondering what
29 to write down. Thank you very much.

1 158 Q. MR. KELLY: It's just on that one matter I meant to put
2 to you before. If you turn up volume 53, page 14891,
3 if you would be kind enough. Have you got it?
4 A. Yes.

5 159 Q. You see there, this is June '16, but we will get the 11:53
6 date.
7 A. Yes.

8 160 Q. What I am interested in is this middle e-mail from
9 Margaret Nugent, it was sent to John Barrett, Downey,
10 Broderick, Ó Cualáin, Malone, that team and so on, and 11:53
11 Anthony McLoughlin, and Mulligan.
12 A. Yes.

13 161 Q. This is Nick Keogh.
14
15 "Hi Monica, I met Garda X this afternoon. As the 11:54
16 acting protected disclosure manager in the absence of
17 Chief Superintendent McLoughlin -- "
18 A. Yes.

19 162 Q. "-- and having considered all the circumstances in the 11:54
20 case, I am satisfied that it is essential that a
21 mechanism be found to immediately restore the member to
22 full pay in this case while the matters are being
23 investigated, as not to do so may be interpreted as
24 management not supporting and protecting the member.
25 It might also be regarded as penalisation. 11:54
26
27 I recommend the matter be reviewed again in two months
28 time.
29

1 I await your recommendation in relation to a suitable
2 process/categorisation, with due regard to the matters
3 highlighted in your report below."
4
5 Do you agree with that? 11:54
6 A. Em...
7 163 Q. In particular, do you think it could be regarded as
8 penalisation?
9 A. I don't know. I suppose I am looking at it with
10 hindsight now, having seen a letter from the Department 11:55
11 of Public Expenditure and Reform. And their view that
12 applying the regulations, work regulations, don't
13 amount to penalisation. But I don't know what context
14 Chief Superintendent Nugent, as she now is, was making
15 that point. I never had any contact with her about 11:55
16 Garda Keogh or anyone else and I didn't know anything
17 about this e-mail.
18 164 Q. Anyway, you don't see anything as victimisation or
19 targeting that we have covered, do you?
20 A. I don't. I don't. 11:55
21 165 Q. Okay.
22 A. In terms of my interaction with Garda Keogh.
23 166 Q. I want to go back to a different matter. Yesterday you
24 were asked about this incident involving Ms. B at
25 Tullamore and I want to put to you simply this: One of 11:55
26 Nick Keogh's concerns in relation to that was there was
27 some sort of investigation, you told us you were
28 sceptical as to whether Ms. B could get from Mullingar
29 over to Tullamore or not?

1 A. Yes.

2 167 Q. But the bottom line was, as Nick Keogh sees it, you
3 prefer the word of Ms. B, a drug dealer, over him, a
4 serving guard. Can you see that?

5 A. I can appreciate how he can see that, but I have quite 11:56
6 an amount of experience in the Garda Síochána and I --

7 CHAIRMAN: Is it not important, Mr. Kelly, that we
8 should say an alleged drugs dealer? Do we have a
9 conviction? Has somebody been convicted?

10 MR. KELLY: Okay, I am happy with that. I am happy 11:56
11 with that. Alleged.

12 CHAIRMAN: I mean, Garda Keogh may be utterly convinced
13 of this, but as I understand, until somebody is
14 convicted in a court, it is alleged. Anyway, there it
15 is. 11:56

16 MR. KELLY: Yes.

17 168 Q. CHAIRMAN: So what do you say to that point, that Garda
18 Keogh says, look, we know that this person was there
19 and she is an alleged drug dealer and you simply take
20 her word over his? 11:57

21 A. No, I don't agree that I took her word. I tried to
22 bottom this out as best I could and I referred it to
23 the chief superintendent so as it could be looked at
24 independently. And my concern when I saw it was, did
25 it happen, could it have happened and if it did, well 11:57
26 it was sinister and something may need to be done.

27 169 Q. MR. KELLY: You said yesterday that Nick Keogh's
28 observation may lack credibility.

29 A. That's in a report I sent, but I think the entire

1 report needs to be taken in context.

2 170 Q. You don't regard that as belittling?

3 A. No, I don't, because I was sending that forward to have
4 an independent assessment carried out on it because I
5 felt that we had an obligation, if there was any 11:57
6 suggestion that it occurred or if there was evidence to
7 support it, to put measures in place to support Garda
8 Keogh and perhaps tackle this lady, because it would
9 have been a very sensitive development.

10 171 Q. You also told us yesterday that you had concerns 11:58
11 following this incident about what steps the
12 superintendent in Tullamore would have to take in
13 respect if Nick Keogh's house was at risk?

14 A. Yes.

15 172 Q. Do you remember that? 11:58
16 A. Yes.

17 173 Q. So you were concerned that would, of course, involve
18 him having to deploy resources, I suppose?

19 A. Well nothing would be done without Garda Keogh being
20 involved in it. 11:58

21 174 Q. Yeah. Tullamore was also involved, remember Garda
22 Greene had, you told us, reported to you that Nick
23 Keogh had told him that he, Nick Keogh, had been
24 stopped at a checkpoint for drunk driving and the
25 Guards in Tullamore had rather kindly driven him home 11:59
26 and done nothing about it. Do you remember that?

27 A. Garda Greene reported that to Superintendent Minnock,
28 not to me.

29 175 Q. Right, okay.

1 A. Yes.

2 176 Q. You see, as I understand it, following that there
3 was -- Mullingar caused every police officer in the
4 Tullamore division to complete a survey as to:
5
6 11:59
7 "I wish to certify that I did not stop Garda Nick Keogh
8 while driving intoxicated at an M18 checkpoint or had
9 any dealings with Garda Keogh while he was intoxicated
10 during 2016."
11
12 11:59
13 We will turn that wonderful piece up, it's volume 24,
14 there's multiple pages but I think that gives the
15 flavour. What do you say about that
16 CHAIRMAN: What do you say about what, Mr. Kelly? What
17 exactly?
18 12:00
19 MR. KELLY: Asking every guard in Tullamore whether any
20 of you have ever stopped Nick Keogh for drunk driving.
21 CHAIRMAN: Is there anything in this, in other words?
22 MR. KELLY: Sorry?
23 CHAIRMAN: Is there anything in this? Who is putting
24 his hand up to say, I found him when he was drunk and I
25 drove him home.
26 12:00
27 177 Q. MR. KELLY: My point is this: That that does rather
28 show that on this occasion there wasn't much concern
29 about bleeding Tullamore's resources, where it might
30 suit management in Mullingar.
31 12:00
32 A. I had no involvement in that. I think it was initiated
33 -- an assistant commissioner was standing in for
34 Assistant Commissioner Fanning at the time.

1 CHAIRMAN: If he had no involvement in it, Mr. Kelly.

2 MR. KELLY: I see.

3 CHAIRMAN: Rightly or wrongly, after as many years as I
4 have been doing this and your job, I am not that
5 surprised that there wasn't any volunteer, assuming it 12:00
6 did happen. I can't express myself as astonished, that
7 nobody came forward and said, oh yes, we did it.

8 MR. KELLY: Yeah, my point is it didn't stop Mullingar
9 having a go. Thank you very much.

10
11 END OF EXAMINATION

12
13 CHAIRMAN: Thank you very much. Now, Mr. O'Higgins, I
14 should go around the houses to see if anybody else has
15 questions, so that you go second last and Mr. Marrinan 12:01
16 will complete by filling in any questions to complete
17 the matter, is that the way to do it?

18 MR. MÍCHEÁL O' HIGGINS: No difficulty with that,
19 Chairman.

20 CHAIRMAN: Very good. So, shall I head over in your 12:01
21 direction, Mr. Kane, and I will go to Mr. McGarry and
22 Ms. Gleeson, whoever has any questions. All right.

23 MR. KANE: I wonder Judge, I have just come in a couple
24 of minutes ago, I wonder if anyone else wants to go
25 before me. I may not have anything, Judge. 12:01

26 CHAIRMAN: Very good. Have you any questions,
27 Mr. McGarry. You're for Assistant Commissioner
28 Fanning; isn't that right?

29 MR. MCGARRY: Yes. I don't have any questions at the

1 moment but it may be, depending on what Mr. O'Higgins
2 elicits from the witness, there may be a need to come
3 back, I don't accept that to be the case.

4 CHAIRMAN: I'm not anticipating entertaining an
5 application, Mr. McGarry, because what I have in mind 12:02
6 is, that you go and then anybody else will go and we
7 will end up with Mr. O'Higgins plus -- now, in the
8 event of an unexpected loss in cabin pressure, okay,
9 you have liberty to apply, but I don't expect you to
10 apply, Mr. McGarry. 12:02

11 MR. McGARRY: I understand.

12 CHAIRMAN: Okay, thanks very much. I mean only in the
13 event of a serious issue. Okay.

14 MR. FERRY: In relation to Superintendent McBrien, we
15 are in similar position to Mr. McGarry, nothing arises 12:02
16 at present.

17 CHAIRMAN: The same, very good. Ms. Gleeson, what is
18 your situation?

19 MS. GLEESON: A similar position.

20 CHAIRMAN: The same. In other words, in the unlikely 12:02
21 event that something comes up affecting somebody else,
22 we can revisit the question. Okay. Okay, there we
23 are. Thanks very much, Mr. O'Higgins, are you happy to
24 proceed?

25 WITNESS: Yes. I am in your hands, yes. 12:03

26 CHAIRMAN: Very good. Okay, Mr. O'Higgins.

27
28
29

1 CHIEF SUPERINTENDENT PATRICK MURRAY WAS THEN EXAMINED
2 BY MR. MÍCHEÁL O' HIGGINS, AS FOLLOWS:
3

4 178 Q. MR. MÍCHEÁL O' HIGGINS: Just one or two matters of
5 context, first of all, chief superintendent, before we 12:03
6 delve into the themes that the issue has been broken
7 down into. Can I first of all ask you, in 2015, chief
8 superintendent, I think there were two external
9 developments that occurred, that had nothing to do
10 personally with Garda Keogh but which impacted him in a 12:03
11 significant way. I want to ask you to deal with those.
12 The first is the new practices that were brought in on
13 foot of your leadership and direction. We will come to
14 those in due course, all right?

15 A. Yes. 12:04

16 179 Q. But ahead of that, could I ask you to deal with, I
17 think it's the case that there were new regulations
18 concerning sick pay brought in, obviously not just for
19 Garda Keogh but for everybody across the public
20 service, isn't that right? 12:04

21 A. That's correct.

22 180 Q. You might just deal with those for a moment, if you
23 could. Just while I pick that document up, can I ask
24 you to deal with: Broadly speaking, what is your
25 understanding of the introduction of those new pay 12:04
26 matters?

27 A. They affected, I suppose, the existing conditions that
28 applied and they reduced everything by half in terms of
29 pay and sick leave. So what used to be 183 days became

1 92 and pay would be affected at 92 days.

2 181 Q. Yes. Could I ask you then first of all to deal with a
3 document which is at page 6189, and this is, when it
4 comes up on screen, it was the public service
5 management sick leave regulations of 2014? 12:05

6 A. Yes.

7 182 Q. You see those there, it's in volume --
8 CHAIRMAN: It used to be six months, down to three
9 months.

10 A. Yes. The organisation defended a legal challenge from 12:05
11 the garda representative association on it I think at
12 some stage.

13 183 Q. MR. MÍCHEÁL O' HIGGINS: You see in the top right-hand
14 corner, if we just scroll down a small bit, you see
15 this is HQ Directive number 43/2014. 12:05

16 A. Yes.

17 184 Q. The document is dated 29th May 2014?

18 A. Yes.

19 185 Q. In the first paragraph it records that:
20
21 "Public service management (sick leave) regulation 2014
22 (otherwise the 2014 regulation) came into effect on the
23 31st March 2014. " 12:06

24 A. Yes.

25 186 Q. That was your understanding? 12:06

26 A. Yes.

27 187 Q. It goes on:
28
29 "The 2014 regulations set out the terms of the new

1 public service sick leave scheme and applies across the
2 public service, including members of An Garda
3 Síochána. "

4
5 The new public service sick leave scheme that was 12:06
6 introduced on 31st March '14 applies to members of An
7 Garda Síochána."

8 A. Yes.

9 188 Q. Then if we move down towards the bottom of the same
10 page, at 2.2 the following is stated: 12:06

11
12 "Parts 2, 5 and 7 of the 2014 regulations provide for
13 temporary rehabilitation remuneration. "

14
15 You used the expression in your evidence TRR, that's a 12:06
16 reference to that?

17 A. Yes.

18 189 Q. It goes on to say:

19
20 "If you have exhausted 183 days paid sick leave in a 12:06
21 rolling four year period and continue absent or are
22 absent on sick leave again, you may be granted TRR for
23 a further 548 days. TRR used to be called pension rate
24 of pay and will be calculated in the same way. "

25 12:07
26 Just broadly speaking, I think you have addressed this
27 already, but just to give a flavour of it, these were
28 more strict or more onerous provisions to those that
29 applied heretofore?

1 A. Yes. 12:07

2 190 Q. In the case of Garda Keogh, obviously it was introduced
3 across the board, but broadly speaking what in fact --
4 when did it take flight for him, as you understand the
5 position? 12:07

6 A. My understanding is that in around March or April 2015
7 it began to have an effect on his pay, in that this
8 figure was reached, the number of days, 183. Then a
9 notification that he was moving onto temporary
10 rehabilitation remuneration came down in around mid 12:07
11 April of '15.

12 191 Q. Yes. All right. If I can move then, we're going to
13 deal with the second development that I mentioned in
14 the course of the themes where it's relevant, that is
15 to say the new practices, we will come back to that. 12:08
16 But if I can start now with issue 5, which is the first
17 issue with which you are directly concerned. That is
18 the allegation of micromanaging or of oppressive
19 supervision by the three sergeants.

20 A. Yes. 12:08

21 192 Q. I think you've already heard Garda Keogh in evidence
22 accept that he has no complaint to make against the
23 three sergeants, being Sergeant Yvonne Martin, sergeant
24 Cormac Moylan or sergeant Adrian Haran?

25 A. Yes. 12:08

26 193 Q. He has confirmed that he was not micromanaged or
27 excessively supervised by any of those three
28 individuals?

29 A. Yes, Chairman.

1 194 Q. If we could have page 590, please, which is Sergeant
2 Haran's statement, in Volume 3. If we go down to
3 paragraph 315. Just stop there for a second. Sergeant
4 Haran says the following at paragraph 3.15:

5
6 "In general terms I was glad to assist Garda Keogh in
7 doing files and reports. He readily admitted it was a
8 weakness on his part. On occasion I would sit with him
9 and he would literally empty out his post locker and
10 between us we would tidy it and try to put shape on his 12:09
11 correspondence and I advised him on how he might deal
12 with some files in order to clear his desk."
13

14 Broadly speaking, were you aware from your liaising
15 with Sergeant Haran that he was assisting Garda Keogh 12:09
16 in that regard?

17 A. Yes, he told me about the supports he was giving to
18 him, yeah, both on and off duty.

19 195 Q. If we could move down to 4.5, he deals with the new
20 practices that you introduced. He says the following, 12:10
21 paragraph 4.5:

22
23 "Superintendent Murray, now Chief Superintendent
24 Murray, introduced some stricter practices and systems
25 in Athlone regarding the creation of a robust crime 12:10
26 management system, including a new crime file. This
27 and other oversight systems were for all members to
28 follow and I can say that they were excellent in
29 reinforcing good practices."

1
2 Can I ask you, I take it you'd accept that adjective
3 "stricter", "these were stricter practices than
4 heretofore"
5 A. Yes. 12:10
6 196 Q. In what way were they more strict?
7 A. They were demanding that a standard be applied, and be
8 consistently applied in the different areas of policing
9 and that everyone would comply with that. And we would
10 operate in a team type based result to achieve results 12:11
11 and we were measuring ourselves then outputs and
12 outcomes, to try and measure ourselves with, I suppose,
13 a balanced approach towards what might be reactionary
14 policing with that of proactive policing, where we were
15 very active in our engagement, in our crime prevention 12:11
16 area and with stakeholders.
17 197 Q. For a lot of individuals, barristers included,
18 paperwork can be sometimes subjectively regarded as an
19 issue of oppression or a nuisance?
20 A. Yes. 12:11
21 198 Q. There is obviously good side to paperwork as well in
22 terms of record keeping and governance?
23 A. Absolutely. And in policing it's essential, because
24 there's the added element of the criminal justice
25 system, which we constantly engage in. 12:12
26 199 Q. In terms of the buy in, in the station, can you assist
27 the Chairman? As far as you're concerned was there buy
28 in, to use that colloquialism, in the station to your
29 new protocols and practices?

1 A. I would say there was complete buy in and that occurred
2 because the key people in the key areas at inspector
3 and sergeant level bought in very quickly. They
4 assisted in, I suppose, identifying the issues that
5 they saw themselves and coming with me then to design 12:12
6 and develop different processes and systems that might
7 overcome inadequacies and try and create efficiencies
8 and more effectiveness. And they were willing and very
9 able participants in that.

10 200 Q. Now just moving matters on, on 13th March of 2015 you 12:12
11 said in evidence that you met Sergeant Haran?

12 A. Yes.

13 201 Q. At the request I think of Inspector Farrell?

14 A. Yes.

15 202 Q. To do with another matter? 12:12
16 A. Yes.

17 203 Q. Sergeant Haran brought up the role of providing support
18 to Garda Keogh?

19 A. Yes.

20 204 Q. In your conversation? 12:13
21 A. Yes.

22 205 Q. I think your note of this is at page 2184, if we might
23 look at that briefly, please. 2184. So, this is the
24 13th March '15. The note says:
25
26 "He indicated he was in contact for Garda Keogh and
27 knew his mind re returning to work etcetera. Said he
28 wasn't directly involved in any of it. Asked him if
29 there was a perception he was on one side because of

1 his role."

2

3 You asked him that, is that right?

4 A. Yes.

5 206 Q. "He said there was, not totally comfortable with that. 12:13

6 Told him to consider it might be better if role passed

7 as came near end of process. He said he thought it was

8 a good idea and he would think about it."

9 A. Yes.

10 207 Q. All right. I think you spoke with him again 12:14

11 approximately a week later; is that right?

12 A. On the 20th.

13 208 Q. The 20th March?

14 A. Yes.

15 209 Q. And he confirmed his wishes, did he, that the support 12:14

16 role might pass to somebody else?

17 A. Yes, he had no issue. He came back to me to say it was

18 probably a good idea and it might be okay for him at

19 that time. He had, I suppose -- he was burdened by the

20 issue he was involved in himself, he had taken on a lot 12:14

21 in relation to Garda Keogh and my intuition kicked in

22 and I felt that that was what he was trying to tell me,

23 so I asked him the question.

24 210 Q. Yes. So, on foot of those conversations and the issue

25 being raised, you chose Sergeant Yvonne Martin for that 12:14

26 role?

27 A. I did.

28 211 Q. What was your thinking in using Yvonne Martin?

29 A. She had arrived two or three months I think before me

1 and she was new to the entire area. She hadn't been
2 involved with anyone there before, as best I could
3 establish.

4 212 Q. Yes. You met Garda Keogh, I think it was six days
5 later, was it? 12:15

6 A. Yes.

7 213 Q. On the afternoon of the 26th March. At that meeting,
8 did you mention appointing a sergeant to link in with
9 him?

10 A. Yes. 12:15

11 214 Q. I think we have seen the notes from that. But broadly
12 speaking, was Garda Keogh agreeable to that?

13 A. Yes. He just asked, why her, at one stage and I
14 explained that to him, that she was new to the area and
15 he didn't seem to have any problem with it. He didn't 12:15
16 express any concern to me.

17 215 Q. Yes. It's common case between everybody that you also
18 spoke to him about his car tax during this discussion?

19 A. Yes.

20 216 Q. And we can come back to that shortly, but staying with 12:15
21 the issue of alleged excessive supervision. Well, what
22 do you say, bluntly, to the allegation that you
23 organised things such that there would now be a
24 micromanagement of him in a manner that was directed at
25 discrediting or targeting? 12:16

26 A. It's not -- no, I utterly reject that, Chairman. I was
27 brand new to Athlone. I had no agenda coming there,
28 except my enthusiasm to provide leadership. And I
29 simply set out to, I suppose, try and support Garda

1 Keogh in the workplace. And that was my only
2 intention.

3 217 Q. I mentioned the car tax issue. This was covered in the
4 same conversation we have seen from your earlier
5 evidence. In broad terms, Garda Keogh's position, I 12:16
6 hope I am not mischaracterising it, is that it was very
7 harsh to go down the disciplinary road in relation to
8 the car tax issue, all right. Firstly can I ask you,
9 in fact is regulation 10 something that you would
10 regard as a disciplinary charge? 12:17

11 A. I suppose it's encompassed within the disciplinary
12 regulations, but it very much sits on the edge. It's
13 really an unsanctioned based advice type informal
14 resolution to deal with minor issues, so as they can be
15 concluded. 12:17

16 218 Q. Yes. In terms of the range of possible options, if you
17 take one end of the spectrum, doing nothing by way of
18 making a complaint, to the other end of the spectrum,
19 perhaps making a complaint of a revenue offence.

20 A. Yes. 12:17

21 219 Q. And letting it take that course. What was your
22 thinking in relation to that range, as to the
23 appropriate disposal?

24 A. The way Garda Keogh described it is that he had bought
25 the jeep and continued doing it. While he knew it 12:18
26 wasn't right, he just felt that, look it, I'll continue
27 doing it, and explained it in that fashion. With the
28 file I had in front of me, I was very happy that that
29 was an honest account of what had occurred and I wanted

1 to deal with it in as minor a manner as fashion --
2 fashion as possible so as it wouldn't, I suppose, upset
3 him in any way. But it would move on then and pay the
4 monies owed to him, in a very quick way.

5 220 Q. If we can have page 2201 please for a moment. This is 12:18
6 the motor tax renewal form. If we just scroll down for
7 a moment. A little further down, please, Mr. Kavanagh.
8 All right, do you see there on screen there is a
9 signature of Garda Keogh?

10 A. Yes. 12:18

11 221 Q. I think this is a document that was obtained from the
12 County Council, is that right?

13 A. Yes.

14 222 Q. And if we see in the small print to the left of that
15 signature, the following is stated: 12:19
16
17 "I declare that the particulars given on this form,
18 including details of insurance, are correct and I am
19 aware that any person making a false declaration or who
20 fails to provide correct details in relation to the 12:19
21 motor tax, insurance status or the ownership of a
22 vehicle is committing an offence and is liable to heavy
23 penalties."
24
25 There was a signed declaration there? 12:19

26 A. Yes. Under that I expect there's a signature and you
27 can see the top of it protruding over the straight
28 line.

29 223 Q. We might just scroll down a small bit, please?

1 A. If one obtained the original form, I'd imagine that is
2 the situation. There seems to be a declaration under
3 the Statutory Declarations Act.

4 224 Q. So if it was the case, as has been suggested on the
5 part of Garda Keogh's side, that management had been 12:19
6 minded to initiate -- deal with matters in a harsh way,
7 if management had been minded to initiate a prosecution
8 for a false or incorrect declaration, that was there
9 available and had been signed by Garda Keogh; is that
10 right? 12:20

11 CHAIRMAN: Mr. O'Higgins, just let me stop for a
12 second. I think just, Mr. Marrinan, I think we might
13 blackout Garda Keogh's credit card number. I just
14 realised. And his telephone number as we're at it as
15 well. If we are going to be looking at this, it has 12:20
16 only just occurred to me.

17 MR. MARRINAN: Yes.

18 CHAIRMAN: Sometimes these things aren't obvious.
19 Anyway, your question is, Mr. O'Higgins.

20 MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman, I am happy 12:20
21 if the screen stays as it is, mindful of what you said.

22 CHAIRMAN: No, no, I understand that personally.
23 Frankly, I just noticed it myself.

24 225 Q. MR. MÍCHEÁL O' HIGGINS: Yes. So my question is this:
25 If management had in fact been minded to initiate a 12:21
26 prosecution for signing or executing a false
27 declaration, that was availed because the declaration
28 appears to have been signed by Garda Keogh, if that had
29 been their intention?

1 A. It was. And in addition to that then, there was a
2 further declaration where Garda Keogh applied to use
3 his car on duty and there was a declaration associated
4 with that, that everything was correct.

5 226 Q. CHAIRMAN: Okay. 12:21

6 A. In addition to that, one could have examined previous
7 claims he made where the situation might be the same
8 and raise issues about that. But no one was ever going
9 to go there.

10 CHAIRMAN: Sorry, I am just not clear, Mr. O'Higgins. 12:21
11 What was it about the form that you say gave rise to a
12 possible investigation or a possible process? Does it
13 say, I'm only using this for goods? He says all the
14 particulars are correct, but I don't see the
15 particulars that are wrong on it? 12:22

16 MR. MÍCHEÁL O' HIGGINS: Just to answer the Chairman's
17 question, if Mr. Kavanagh can scroll up, if possible,
18 in that way that doesn't include the credit card
19 details.

20 CHAIRMAN: Yes. 12:22

21 MR. MÍCHEÁL O' HIGGINS: Just towards the top.

22 CHAIRMAN: "Own goods". "Taxation class: Own goods".

23 227 Q. MR. MÍCHEÁL O' HIGGINS: Yes, I think it records there
24 in taxation class, own good, and the make and model of
25 the vehicle and so forth is provided. Chief 12:22
26 superintendent, you were making a separate point
27 concerning the driving of the vehicle.

28 CHAIRMAN: Absolutely. Yes.

29 A. Yes. In a public place. Yeah, that was another

1 option, if one wanted to be difficult.

2 228 Q. MR. MÍCHEÁL O' HIGGINS: But you didn't go down that
3 road?

4 A. Oh absolutely not. There was never an intention to be
5 difficult with Garda Keogh. Never. 12:22

6 229 Q. You have told us that Superintendent McBrien it was who
7 had left the file as a legacy matter for you to deal
8 with?

9 A. Yes.

10 230 Q. And it related to the expenses claims of Garda Keogh 12:23
11 for his payments?

12 A. Yes.

13 231 Q. It's the case, isn't it, that payments had in fact been
14 held up because of the car tax issue?

15 A. Yes. It was clear, from what was in front of me, that 12:23
16 there were a number of months where this hadn't been
17 progressed.

18 232 Q. I think she told you in a conversation on the 4th March
19 2015, of a conversation she had had with
20 D/Superintendent Mulcahy? 12:23

21 A. She did, she mentioned that he had pointed out the
22 issue to her.

23 233 Q. Who was it that linked the issue of the payment of the
24 expense claims and the irregular car tax?

25 A. Superintendent McBrien. 12:23

26 234 Q. And she made the point that the payments couldn't be
27 processed until the tax was regularised?

28 A. Yes. I think she felt the State might be compounding
29 the situation, knowing that this was occurring and

1 still continuing to pay the money.

2 235 Q. I think she indicated that Garda Keogh had queried the
3 delay in writing?

4 A. Yes.

5 236 Q. But no one had told him what the problem was? 12:24

6 A. Yes.

7 237 Q. So it fell to you?

8 A. Yes.

9 238 Q. Now, Superintendent McBrien, it seems from the
10 materials, felt that Garda Keogh's claims for travel 12:24
11 expenses were in breach of financial code regulations?

12 A. Yes.

13 239 Q. Did you agree with that?

14 A. I did. I saw it in the same way as she did, that it
15 would be difficult to authorise the payment of public 12:24
16 funds knowing that perhaps, you know, the situation
17 arose as it did.

18 240 Q. Just developing that logic a little bit more for a
19 moment. By that logic, that would presumably have put
20 a question mark over the validity of earlier payments? 12:25

21 A. Yes.

22 241 Q. Potentially?

23 A. Yes.

24 242 Q. Earlier payments of expense claims involving the same
25 incorrectly taxed vehicle? 12:25

26 A. Yes.

27 243 Q. So, looking again at the range of possible options or
28 channels that may have been pursued, if a person was
29 minded to, as it were, throw the book at Garda Keogh,

1 they could potentially have looked at to go down the
2 channel of recouping potentially invalid payments
3 already made?

4 A. They could, or perhaps look at the declaration made on
5 the applications to use the car and initiate some type 12:25
6 of disciplinary process, if one were awkward or
7 difficult.

8 244 Q. And again obviously, that isn't something that, or is
9 it, that you countenanced?

10 A. Oh absolutely not. 12:25

11 245 Q. Superintendent Alan Murray, we have heard, who was the
12 deciding officer for the later transgression of the, to
13 use the colloquialism, AWOL aspect.

14 A. Yes.

15 246 Q. When he came to assess penalty for that, he regarded 12:26
16 Garda Keogh as having a blemish free record as a guard?

17 A. Yes.

18 247 Q. It would follow from that, would it not, that the
19 regulation 10 disposal that you decided was appropriate
20 with respect to the car tax, did not in fact count 12:26
21 against him in terms of his record?

22 CHAIRMAN: It doesn't go on his record.

23 A. It doesn't go on record, Chairman, no.

24 248 Q. CHAIRMAN: It doesn't go on his record.

25 A. No. 12:26

26 249 Q. CHAIRMAN: But at the same time, I suppose, chief
27 superintendent, in the range of possibles, a degree of
28 formality is implied or implicit --

29 A. Yes.

1 250 Q. CHAIRMAN: -- when a document is produced?
2 A. Yes.

3 251 Q. CHAIRMAN: If the advice, notice --
4 A. Yes.

5 252 Q. CHAIRMAN: -- admonish, whatever it is, is shown in 12:27
6 that way.
7 A. The caution.

8 253 Q. CHAIRMAN: The caution. It's more formal if it's in
9 writing?
10 A. Yes. 12:27

11 254 Q. CHAIRMAN: As opposed to Sergeant Moylan saying to
12 Garda Madden, look, make sure you get it right?
13 A. Yeah, and don't do that again.

14 255 Q. CHAIRMAN: Okay. Anyway, it doesn't go on the
15 disciplinary record? 12:27
16 A. Not on your sheet or formal record.

17 256 Q. CHAIRMAN: That is the whole point of regulation 10?
18 A. Yes.

19 CHAIRMAN: Okay.

20 257 Q. MR. MÍCHEÁL O' HIGGINS: Chief superintendent, could I 12:27
21 ask you just to deal with something, I might need to
22 dwell on this document for a little while just for
23 structure, your own statement. If Mr. Kavanagh could
24 bring up on screen please page 2042, which is your
25 statement. Volume 8, 2042. If we scroll down to the 12:27
26 very bottom of the page, the very last line, you say:
27
28 "I offered a solution to dealing with the matter, which
29 was that he would correct his tax and pay the arrears

1 to cover the period of his travelling claims and when
2 he showed me proof of same, I would approve his travel
3 claims and finalise the matter by way of regulation 10
4 caution."

5 A. Yes. 12:28

6 258 Q. "I explained that would conclude the matter and it
7 could never be mentioned to him again."

8 A. Yes.

9 259 Q. What did you mean by that?

10 A. I meant that once use is made of regulation 10 and the 12:28
11 disciplinary regulations in that way, it could never be
12 revisited under a discipline strand.

13 260 Q. Your statement records that he agreed to that course of
14 action?

15 A. Yes. 12:28

16 261 Q. You told us that. That is your recollection?

17 A. Yes.

18 262 Q. Are you in any doubt about that?

19 A. Absolutely not, and he went the next day, the very next
20 day and corrected his tax. 12:28

21 263 Q. You subsequently approved, we know, the payment of his
22 travel claims?

23 A. Yes.

24 264 Q. We might have page 2195, please. This is your
25 memorandum to Chief Superintendent Wheatley on 7th 12:29
26 April 2015. And you narrate the history. If we go
27 down a small bit, you say:
28
29 "Told him the claims amounted to €415.99. The claims

1 were left for me when I arrived in Athlone as district
2 officer on the 9th March. It was brought to my
3 attention that Garda Keogh may not have his vehicle
4 properly taxed. I made an enquiry with the motor tax
5 office and was provided with documentary evidence
6 indicating that Garda Keogh had taxed his vehicle as
7 goods class, when it should have been taxed private."

12:29

8
9 This is obviously in a summary for administrative
10 purposes, you didn't personally make the enquiry, is
11 that right?

12:30

12 A. No, no. Superintendent Minnock carried out the enquiry
13 on my behalf.

14 265 Q. We have seen that elsewhere in the materials. It goes
15 on:

12:30

16
17 "As a result of a loss of revenue to the State of €377
18 resulted each year."

19
20 Is that so? This was a revenue loss?

12:30

21 A. I made that calculation from the documents from the tax
22 office, yes.

23 266 Q. If we could scroll down to the next page, please. This
24 is what I want to ask you. You recount meeting Garda
25 Keogh on the 26th March '15.

12:30

26
27 "He admitted taxing his vehicle in the wrong class. I
28 gave him an opportunity to correct his tax and pay the
29 arrears due. He did so on the 27th March and provided

1 proof of same to me on the 3rd April. I then dealt
2 with him by way of regulation 10 and approved his
3 claims for payment."
4

5 Then the last sentence:

12:30

6
7 "The matter is now closed."

8 A. Yes.

9 267 Q. Was it your intention to bring finality to the matter?

10 A. Absolutely.

12:31

11 268 Q. In dealing with the regulation 10?

12 A. Absolutely, complete finality. The issue as far as I
13 was concerned was then over.

14 269 Q. If we turn to issue 7, please, which is the
15 disciplinary investigation with respect to the sick
16 leave of Garda Keogh in July 2015. Garda Keogh has in
17 evidence I think accepted as correct what Sergeant
18 Moylan said on his absence from work. I wonder could
19 we have page 607 of the materials, which is Sergeant
20 Moylan's statement. And paragraph 4.1, if we can
21 scroll down a small bit. He says, paragraph 4.2, he
22 actually he says the following:

12:31

12:31

23
24 "I was Garda Keogh's unit sergeant at the time of his
25 sick report on the 9th July '15 and subsequent call to
26 report off sick on the 10th July. However, I was on
27 annual leave on the 10th and 11th July and resting on
28 the 12th July 2015."

12:32

29 A. Yes.

1 270 Q. "I returned to work on Monday, 13th July 2015, when I
2 became aware that Garda Keogh had not shown up for duty
3 on the previous two days. I tried to call him, to no
4 avail. I subsequently reported his absence to the
5 district officer."

12:32

6
7 That's to yourself.

8 A. Yes.

9 271 Q. That was gone into in evidence. Can you assist the
10 Chairman, insofar as Garda Keogh did that and made
11 contact with the station to indicate he was then coming
12 in and then didn't turn up for work, what implications,
13 if any, did that have for the station and for his
14 colleagues?

12:32

15 A. There was obviously a resource shortfall on the night.
16 It was a weekend, a weekend, a series of weekend nights
17 that he was rostered to work. And he wasn't there any
18 of those. And they could be quite busy, taxing.
19 Particularly on members on outside duty. At that time
20 there were big budgetary implications in relation to
21 the financial crisis and the district was overspent and
22 I had to manage the, I suppose, resource issue
23 prudently and use the resources available to me as
24 effectively and as efficiently as I could, without
25 resorting to the use of payment of overtime.

12:33

12:33

12:33

26 272 Q. Yes. On foot of getting the report from Sergeant
27 Moylan about this, you made contact with Garda Keogh,
28 you told us, I think that was on Wednesday, the 15th
29 July?

1 A. Yes, that's correct.

2 273 Q. If we can look at your note, which is page 2220, again
3 volume 8. Just, you told us already that the date
4 mentioned at the top is an error on your part?

5 A. Yes. 12:34

6 274 Q. And it should be wednesday, the 15th as opposed to
7 Tuesday, the 14th?

8 A. Yes.

9 275 Q. I am just looking at this memorandum, you recorded
10 that: 12:34
11

12 "Phoned the member at 12 noon. Spoke to him until
13 12:15pm. Admitted to being AWOL. He said reported off
14 sick the pm of the 10/7 in a fit of drink, after
15 drinking for a few days and said he forgot he had 12:34
16 reported off sick, so didn't go to work."
17

18 That was the explanation he provided?

19 A. Yes.

20 276 Q. From your perspective as the superintendent in the 12:35
21 station at that point, was it acceptable for a Garda
22 member, whether a confidential reporter or not a
23 confidential reporter, to make contact with work,
24 commit to returning to work and then fail to return to
25 work? 12:35

26 A. No, Chairman. I didn't see it as appropriate behaviour
27 and didn't align with the values of the organisation,
28 in my view.

29 277 Q. If we just look down further in the note, the last

1 paragraph just there indicates that you challenged him
2 regarding why he didn't answer the sergeant who tried
3 to make contact with him over the weekend?

4 A. Yes.

5 278 Q. And the note records that he offered an explanation? 12:35

6 A. Yes.

7 279 Q. Insofar as he said he no credit?

8 A. Yes.

9 280 Q. In your view, was that a reasonable explanation?

10 A. No. I felt that if he were of a mind to, he could make 12:35
11 contact with the station and outline his problem or
12 seek to address it or inform people what had occurred
13 or what may be happening or how he was or how he could
14 deal with the absence.

15 281 Q. Garda Keogh, according to the note, appears to have 12:36
16 accepted himself that it may not have been an adequate
17 explanation?

18 A. Yes.

19 282 Q. The note records:

20 12:36
21 "Agreed credit not required to answer call."
22

23 Is that something you canvassed with him?

24 A. Yes, I did. I put that point to him, that you didn't
25 need to your phone in credit to actually answer a 12:36
26 telephone call.

27 283 Q. Yes. And what did he say in response?

28 A. He mentioned then the Facebook, that he had actually
29 contacted Sergeant Moylan by Facebook the night before.

1 284 Q. Yes. Looking at the last paragraph of your note on
2 page 2240, it records that you told him that you were
3 going to request a case conference?
4 A. Yes.
5 285 Q. Is that right? 12:37
6 A. Yes.
7 286 Q. You told him that you were considering a disciplinary
8 charge and you would seek an explanation from him in
9 writing?
10 A. Yes. 12:37
11 287 Q. I think subsequent to that, Garda Keogh provided the
12 medical certificate that Mr. Marrinan canvassed with
13 you?
14 A. Yes.
15 288 Q. We needn't go -- it's on page 2228, but I am not sure 12:37
16 it is particularly necessary. Can I ask you, in
17 relation to the medical certificate that was provided
18 by Garda Keogh, as far as you're concerned did it deal
19 with the phoning into the station to come off sick
20 leave or the failure to explain not answering the 12:38
21 sergeant's call?
22 A. No, it didn't. It didn't deal with that behaviour.
23 289 Q. We know that Superintendent Alan Murray was appointed
24 on the 10th August, I think he was from outside the
25 district? 12:38
26 A. He was.
27 290 Q. Was that intentional?
28 A. It's a requirement of the discipline regulations that
29 someone independent and impartial would make the

1 enquiries and under the regulations he was appointed as
2 what's known as the deciding officer.

3 291 Q. It's not you who appointed him, that's a function of a
4 chief superintendent?

5 A. I had no function, the rank I held then, under the 12:38
6 disciplinary regulations to initiate discipline.

7 292 Q. And it was Chief Superintendent Lorraine Wheatley who
8 appointed him?

9 A. She did. And the Commissioner has delegated authority
10 under the disciplinary regulations to not below the 12:38
11 rank of chief superintendent to initiate discipline.

12 293 Q. We know that Superintendent Murray, Alan Murray, found
13 Garda Keogh to be in breach of discipline in relation
14 to the absence without leave matter?

15 A. Yes. 12:39

16 294 Q. For the period 11th July to 14th July inclusive?

17 A. That's correct, Chairman.

18 295 Q. And he pleaded guilty, as it were, to that disciplinary
19 breach?

20 A. He did. He was honest in that, he maintained that 12:39
21 position throughout from the moment I spoke to him on
22 the 15th July.

23 296 Q. And the other more involved charge, there was a finding
24 of not guilty?

25 A. Yes. 12:39

26 297 Q. And he appealed on grounds of severity of fine only,
27 isn't that so, with respect to the breach of discipline
28 regarding being absent without leave?

29 A. I understand that's the case, Chairman, yes.

1 298 Q. Garda Keogh has stated in evidence I think - just for
2 the record, it's Day 106, page 150, but we needn't look
3 at it - that he has no complaint against Superintendent
4 Alan Murray?

5 A. Yes. 12:39

6 299 Q. In terms of the appeal, I am just doing this for
7 summary purposes, I think you're aware that Chief
8 Superintendent Wheatley dealt with the appeal?

9 A. I am, Chairman.

10 300 Q. And took the view that the behaviour was not 12:40
11 acceptable, that the consumption of alcohol didn't
12 justify the matter and that the penalty imposed was at
13 the lower end of the scale?

14 A. I have seen that in the documents, Chairman, yes.

15 301 Q. We might just very briefly call up Day 107, please, of 12:40
16 the transcript, page 15. Line 19 on page 15. The
17 question is put to Garda Keogh, to get your position on
18 this. This is Mr. Murphy's examination of Garda Keogh,
19 Mr. Murphy asks the question:

20 12:41

21 "I think she will say in her evidence that she had to
22 consider that your behaviour was not acceptable and the
23 consumption of alcohol didn't justify your behaviour
24 and that she considered, looking at all the
25 circumstances of the case, that the penalty imposed was 12:41
26 at the lower end of the scale. Would you agree with
27 that

28 A. Judge, I'm not -- I am not disputing that part of
29 it.

1 Q. And she will say that she believed that
2 Superintendent Alan Murray's rationale was sound and
3 that there had been a sanction imposed. She understood
4 that her decision was final.

5 A. Judge, on that part I'm not -- I'm not disputing. 12:41

6 Q. She will also say, if I can ask you to turn roared
7 to page..."

8
9 CHAIRMAN: Is the chief superintendent concerned with
10 any of this, Mr. O'Higgins? I mean, suppose he says, I 12:42
11 don't agree with that, suppose he says -- but what's it
12 to do with him.

13 MR. MÍCHEÁL O' HIGGINS: I take your point, Chairman,
14 but I just wanted to --

15 CHAIRMAN: I mean, we know that Garda Keogh has certain 12:42
16 complaints in respect of the appeal process, we know
17 what they were, about a statement and so on.

18 MR. MÍCHEÁL O' HIGGINS: Yes.

19 CHAIRMAN: And that's been canvassed with him in his
20 own examination. 12:42

21 MR. MÍCHEÁL O' HIGGINS: Yes.

22 CHAIRMAN: And we have to await in due course hearing
23 what the responses are. But that's nothing to do with
24 this witness, if I am understanding.

25 MR. MÍCHEÁL O' HIGGINS: If I may say, Chairman, I hear 12:42
26 what are you saying in relation to that and I propose
27 to deal with this briefly.

28 CHAIRMAN: I understand, you are probably just setting
29 a context.

1 MR. MÍCHEÁL O' HIGGINS: Exactly.

2 CHAIRMAN: For your next topic and so on. But may I

3 respectfully suggest, Mr. O'Higgins, go to the question

4 you want to ask and then we will worry about the

5 context. 12:43

6 MR. MÍCHEÁL O' HIGGINS: Thank you.

7 CHAIRMAN: If that's all right, because I think we're

8 probably pretty familiar with it.

9 MR. MÍCHEÁL O' HIGGINS: I will do that.

10 CHAIRMAN: Yes. Thanks. Sorry, it's not a criticism, 12:43

11 I am just trying to sort of move things along, if

12 that's is okay?

13 MR. MÍCHEÁL O' HIGGINS: No, no, it's helpful. I will

14 endeavour to move things along -

15 CHAIRMAN: Thanks very much. 12:43

16 MR. MÍCHEÁL O' HIGGINS: - with some dispatch.

17 302 Q. Just cutting to the chase then, in relation to the car

18 tax issue, I am mindful of what the Chairman has said,

19 this is included as one of the themes where it is

20 suggested Garda management, particularly yourself, were 12:43

21 guilty of discrediting or targeting Garda Keogh?

22 A. Yes.

23 303 Q. You've given your position in evidence, you don't

24 accept that?

25 A. No. 12:43

26 304 Q. would you have treated any other guard differently

27 arising from the car tax issue?

28 A. No. The car tax -- no, Chairman. I would adopt that

29 approach with anybody. I thought it was a prudent

1 approach, it solved the problem and it dealt with the
2 matter in a holistic way, with the minimum amount of
3 sanction that I could possibly apply, while marking the
4 behaviour at the same time.

5 305 Q. Just for reasons of moving things on with some speed, I 12:44
6 might park for a moment issue 9, which is the next in
7 chronology, which is the crime files, and move forward
8 to issue 10, which is the denial of the application to
9 cancel annual leave. All right, that's where I am
10 going next. We might return to your statement then, 12:44
11 which is at page 2047 in volume 8. 247?

12 A. Yes.

13 306 Q. I think it's the case that on 4th September '15 you
14 received correspondence seeking to have -- Garda Keogh
15 seeking to have his annual leave cancelled 12:45
16 retrospectively for a particular date, being 31st
17 August 2015?

18 A. That's correct, Chairman.

19 307 Q. We note from evidence that has already been led, that
20 you refused that in the absence of a proper 12:45
21 explanations?

22 A. That's correct, Chairman.

23 CHAIRMAN: Sorry, Mr. O'Higgins, can I just ask you,
24 are you leaving over item 9 or do you think it's been
25 sufficiently covered? Are you passing over it? Are 12:45
26 you going to come back to that?

27 MR. MÍCHEÁL O'HIGGINS: I am going to come back to
28 that.

29 CHAIRMAN: Thanks very much. No, I just want to know

1 what note I put down.

2 MR. MÍCHEÁL O' HIGGINS: I hope this is of assistance.

3 In relation to some of the themes, I take the view

4 respectfully that they are sufficiently covered.

5 CHAIRMAN: Absolutely. No, no, take your own course 12:45

6 entirely, I just wanted to know, just to get it clear

7 in my own head, that you would be coming back to it.

8 MR. MÍCHEÁL O' HIGGINS: Well, issue 9 --

9 CHAIRMAN: You are now moving on to what you think will

10 be a relatively brief issue; is that right? 12:45

11 MR. MÍCHEÁL O' HIGGINS: Yes.

12 CHAIRMAN: Thanks very much, I appreciate that.

13 MR. MÍCHEÁL O' HIGGINS: So parking 9 for the moment.

14 CHAIRMAN: Yes.

15 308 Q. MR. MÍCHEÁL O' HIGGINS: So the request from Garda Keogh 12:46

16 is on page 2262, we don't need to go to that now. But

17 I want to ask you: In terms of your response to his

18 application, was that an outright and final refusal or

19 were you open to reconsidering it if more information

20 was forwarded? 12:46

21 A. No, I left the door open to come back to me at any time

22 in relation to it. That was my intention, Chairman.

23 309 Q. Well, from the point of view of good governance and

24 perhaps an audit trail, why is it necessary for such

25 requests for leave or in this case the cancellation of 12:46

26 leave to be accompanied by supporting explanations?

27 A. I suppose, the policy documents in the organisation

28 placed clear accountability on me to account for annual

29 leave in terms of resources and then, I suppose, I in

1 turn was accountable then to ensure that I was managing
2 the use of annual leave in a proper way, to ensure that
3 an efficient and effective service always prevailed.
4 And there are limits, I suppose, on how many people can
5 get leave together and sometimes people unfortunately 12:47
6 have to be refused leave. It's about the management of
7 resources really and balancing that with people's
8 entitlement to annual leave.

9 310 Q. Were you targeting him in providing the response that
10 you provided? 12:47

11 A. No. I merely thought the response was vague in nature
12 and I didn't want to acquiesce to that vagueness. And
13 I would have hoped that, you know, some more
14 information might be provided to allow me append that
15 application to his annual leave form and record it in 12:47
16 that fashion for the purposes of anyone who wanted to
17 look at it.

18 311 Q. Thank you. The next issue, issue 11, is confinement to
19 indoor duties. Garda Keogh's position on this, I want
20 to get your response on it, is at page 68 in volume 1. 12:48
21 If we could have that, please. If we might scroll down
22 to line 978, just there. He says the following, and
23 this is his interview with the investigators:

24
25 "It was up in the superintendent's office. Sergeant 12:48
26 Monaghan said to me on the 22nd October 2015 that
27 Superintendent Murray was looking to speak with me.
28 There was nobody else present. Superintendent Murray
29 said he was putting me on as permanent on the public

1 office and he appeared to be using my sick record as
2 the reason. "
3
4 Just pause there, what do you say the allegation that
5 you told him you were putting him on as permanent on 12:48
6 the public office?
7 A. No, my recollection of it is that I was confining him
8 to indoor duties but that was one of the most likely
9 places because there were very little options for
10 indoor duty other than that position. 12:49
11 312 Q. And then if we can just read on --
12 CHAIRMAN: About the permanent, I thought you said that
13 you proposed to review it on the 1st November.
14 A. I did.
15 313 Q. CHAIRMAN: Is that right? 12:49
16 A. I did propose to review it, yes.
17 314 Q. MR. MÍCHEÁL O' HIGGINS: I think the document we will
18 look at shortly, if my memory is correct, is so
19 recorded?
20 A. Yes. 12:49
21 315 Q. Is recorded in the materials?
22 A. Yes.
23 CHAIRMAN: I am not saying that's right, I am just
24 saying that that's the evidence.
25 MR. MÍCHEÁL O' HIGGINS: I appreciate that. 12:49
26 316 Q. If we look at 981 there, if we stay on this document
27 that's on the screen. Line 980. He says:
28
29 "It is my belief that they put me into the most

1 stressful within the Garda station, which is the public
2 office. I suspect the real reason I was put on indoor
3 duties at that time was that it was just after Garda A
4 had been suspended and who was the subject of my
5 complaint in October 2015. It was a message for 12:50
6 everyone in the station (a circular was issued to every
7 sergeant in the district by Superintendent Murray) so
8 that every other guard could see they were making an
9 example of me. Everyone in the station knew that I was
10 desk bound and I believe that was a message for 12:50
11 everyone. That is my belief."

12
13 So you will see there, the case being made there is
14 quite charged and it is that your decision, insofar as
15 it concerns you, to put him on indoor duties in the 12:50
16 public office was connected with a desire to send out a
17 message and, as I read that allegation, that is
18 connected with taking sides with Garda A?

19 A. I utterly reject that, Chairman. I think at the time
20 the sergeant in charge was going on maternity leave and 12:51
21 there would have been any amount of sergeants filling
22 in in that role for a while. The duty detail in
23 relation to Garda Keogh was completed on a daily basis
24 and it was important that they knew that he had to be
25 detailed for indoor duty. And hence the circulation. 12:51

26 317 Q. Okay. We will come back to that when we deal with the
27 build up to the suspension of Garda A in due course,
28 chief superintendent. I think you played a role in
29 that?

1 A. I did.

2 318 Q. On 22nd October 2015, you have told us in evidence that
3 you met Garda Keogh to serve the papers regarding the
4 result of the disciplinary matter?

5 A. Yes, Chairman. 12:51

6 319 Q. I think that's form IA14?

7 A. It's an IA14, Internal Affairs 14.

8 320 Q. IA?

9 A. IA14, yes.

10 321 Q. Thank you. You have given evidence as to your 12:52
11 observations on Garda Keogh's condition of his hand?

12 A. Chairman, that's what I noticed.

13 322 Q. What did you notice?

14 A. I noticed that his hands were shaking when he went to
15 sign the form and he appeared to be detached completely 12:52
16 and disorientated a bit. He didn't seem to be with it.
17 And I didn't seem to be able to make a connection with
18 him.

19 323 Q. Could we have 2256, please, on the screen. 2256. I
20 think this is your note for the 22nd October. You 12:52
21 record that you met Garda Keogh to serve IA14 for the
22 chief regarding the result of the disciplinary inquiry?

23 A. Yes.

24 324 Q. The note says:

25 12:52

26 "Noticed the member's hands shaking a lot to an extent
27 he couldn't write properly. Signature reflects same.
28 Discussed his sickness with him. He said he would
29 continue going sick."

1 A. Yes.

2 325 Q. Can you just give the Chairman a flavour, what the
3 atmosphere of this conversation? Was it pleasant, was
4 it difficult, what was it?

5 A. I suppose I couldn't seem to make a connection to him. 12:53
6 There was a defiance about it, but I just couldn't seem
7 to make a connection. He seemed unwell, a little bit
8 off. And I asked him if he was well enough to be in
9 work, because I didn't think he just seemed right.

10 326 Q. Yes. Further down the note, the same paragraph, it 12:53
11 states that:
12
13 "I pointed out the incidents not dealt with properly,
14 which I have written on and other items on Sergeant
15 Monaghan's PAF list not progressed." 12:53

16 A. Yes.

17 327 Q. You recall saying that to Garda Keogh?

18 A. I do. I was talking -- a meeting had occurred a couple
19 of days beforehand on the Monday, it was Sergeant
20 Monaghan and his unit and the incidents that were live, 12:54
21 I suppose, for that unit.

22 328 Q. It goes on:
23
24 "He had no reason or excuse for same."
25
26 Is that right? Did you ask him for --

27 A. Yes, I said, you know, how are we going to deal with
28 these and there was just a blank expression, I'm not
29 sure whether he answered or not.

1 329 Q. It continues:
2
3 "I explained as per earlier conversation I now
4 considered he should be employed indoors, as in his
5 present condition I felt there was risk involved to the 12:54
6 public and/or organisation."
7 A. Yes.
8 330 Q. Can I ask you to deal with that? You explained "as per
9 earlier conversation" that's a reference to what?
10 A. To a conversation we had on 30th August 2015. 12:54
11 CHAIRMAN: When you raised the possibility --
12 A. Yes.
13 CHAIRMAN: -- of having him indoors.
14 A. Yes.
15 331 Q. MR. MÍCHEÁL O' HIGGINS: And the note continues. You 12:54
16 told him that you had informed IC to put him -- who is
17 IC?
18 A. The sergeant in charge, whoever that might be.
19 332 Q. "... to put him on indoor duty as SO." 12:55
20 A. Yes.
21 333 Q. CHAIRMAN: Station orderly.
22 A. Station orderly.
23 334 Q. MR. MÍCHEÁL O' HIGGINS: "He said okay. I asked him if
24 suspension of Garda A would allow him to come to work
25 as he used Garda A's presence..." 12:55
26
27 That's fine. When you told him you were putting him on
28 indoor duty, did he raise a protest?
29 A. No.

1 335 Q. Did he raise any protest?
2 A. He didn't raise any protest, no.
3 336 Q. You subsequently, I think, wrote to the chief
4 superintendent on the 22nd October. We might have
5 that, page 2260, please. 12:55
6 A. Yes.
7 337 Q. Garda Keogh has at some point told the Chairman that
8 being put in the public office was like being put in
9 the worst place and the most difficult job and that - I
10 hope I'm not being unfair to him here - that it was 12:56
11 essentially the end of his working career, was one
12 suggestion?
13 A. Yes.
14 338 Q. Is that how you viewed it?
15 A. No, I saw this as an opportunity for Garda Keogh to 12:56
16 make some corrections to whatever work issues there
17 were. He wasn't going to have any more attached to his
18 list, and I would hope that he would be able to manage
19 his health and make a full return to full duties,
20 outdoors and indoors and wherever the sergeant thought 12:56
21 he was best placed as the resource to be detailed to
22 him.
23 339 Q. And the document that is on screen there is your note
24 to Chief Superintendent Wheatley, it records what you
25 say about the handshaking: 12:56
26
27 "As a result of that and other issues regarding work
28 performance, I informed Garda Keogh he would be
29 employed on indoor duties at present with a review date

1 of 1st November 2015"

2 A. Yes.

3 340 Q. That's a document that the Chairman referred to?

4 A. Yes.

5 341 Q. "The member acknowledged acceptance of my decision." 12:57

6

7 Again, that is your recollection?

8 A. Yes. He didn't, you know, raise any issue.

9 342 Q. CHAIRMAN: But then it wasn't really up to him to raise

10 an issue? 12:57

11 A. No, I accept that, Chairman.

12 343 Q. CHAIRMAN: The superintendent was telling the guard,

13 here's what's happening.

14 A. Yes.

15 CHAIRMAN: So you're not actually saying, would you 12:57

16 like this, or, what do you think? Okay.

17 344 Q. MR. MÍCHEÁL O' HIGGINS: I think that was canvassed in

18 evidence I think a few days ago with Garda Keogh. You

19 accept that, do you not?

20 A. Yes. Yes. 12:57

21 CHAIRMAN: He wasn't consulting him, he was telling

22 him.

23 345 Q. MR. MÍCHEÁL O' HIGGINS: He was telling him.

24 A. Yeah, I had made my mind up.

25 346 Q. CHAIRMAN: I understand, you were telling him, you 12:57

26 weren't asking him.

27 A. No, it wasn't a democratic decision.

28 CHAIRMAN: Precisely.

29 347 Q. MR. MÍCHEÁL O' HIGGINS: But as a matter of fact he did

1 not raise protest.

2 A. No.

3 348 Q. The note concludes:

4

5 "I have recently been in contact with sickness section 12:57

6 regarding a case conference in relation to Garda

7 Keogh. "

8 A. Yes.

9 349 Q. Was that something you were anxious to achieve?

10 A. It was. I think I phoned that day, on the 22nd 12:58

11 October, and while I don't have a record of it, I think

12 there is a record in the documents I have seen, from

13 the HR department that I had been supplied with.

14 350 Q. Could I ask you to deal with a document at page 14675,

15 which is in volume 52. This is a short document. 12:58

16 CHAIRMAN: I think we will leave that over and we will

17 come back to that after lunch, Mr. O'Higgins, if that's

18 all right. Unless you are just about to finish.

19 MR. MÍCHEÁL O' HIGGINS: No.

20 CHAIRMAN: If there is a few more questions. 12:58

21 MR. MÍCHEÁL O' HIGGINS: No.

22 CHAIRMAN: Is that all right? Shall we leave it, take

23 a break there?

24 MR. MÍCHEÁL O' HIGGINS: Yes.

25 CHAIRMAN: Very good, thanks very much. Because I 12:58

26 think you possibly have a little more there. Very

27 good.

28

29

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

3
4 351 Q. MR. MÍCHEÁL O' HIGGINS: Now, chief superintendent, we
5 were dealing with issue 11, the confinement to indoor 14:02
6 duties matter, which Garda Keogh has placed some
7 emphasis on as being a significant aspect of his
8 grievance.

9 A. Yes, Chairman.

10 352 Q. And has maintained a position that this impacted him in 14:02
11 a significant way. Could I ask you to look briefly at
12 page 14675, which is a Facebook entry of Garda Keogh.
13 It has already been previously identified. It is the
14 third one down. If we go down a little bit further
15 please, Mr. Kavanagh. It is 25th October 2015? 14:02

16 A. Yes.

17 353 Q. If we go a little bit further down. It says, if you
18 stop it there, so the second one down is where the
19 screen is at, 25th October 2015, at 20:26 I think it
20 is, Garda Nick Keogh: 14:03

21
22 "Murray said he is putting me as permanent PO next
23 week. Doesn't bother me. Other than that, all quiet."

24
25 And then the person with whom he is corresponding 14:03
26 utters an expletive on the Facebook reply and then
27 says:

28
29 "That won't last forever."

1
2 The won't last forever aspect, you told us it wasn't
3 your intention that it would last forever, was it?
4 A. No. I said I would review it on the 1st November. And
5 the reason for that is there were restrictions placed 14:03
6 on other people and I had combined the entire set of
7 restrictions to review once a quarter and I brought
8 Garda Keogh's review in line with those other people
9 who were on restrictions.
10 354 Q. Yes. Thank you for that. So I am going to move now to 14:04
11 issue 12, chief superintendent, and that the
12 misrecording on SAMS of sick leave and the deduction in
13 pay of Garda Keogh. Could I start then with a document
14 at page 148?
15 CHAIRMAN: Sorry, can I just ask you, I know I have it 14:04
16 here if I scroll back, Mr. O'Higgins, can you just give
17 me the reference, the Facebook reference, it's 14
18 something or other.
19 MR. MÍCHEÁL O' HIGGINS: It's page 14675.
20 CHAIRMAN: Thank you very much. 14:04
21 MR. MÍCHEÁL O' HIGGINS: It's the 25th October.
22 CHAIRMAN: No, thanks very much. I have everything. I
23 didn't get it on time to get the number up. I know
24 it's there. But anyway, thank you very much.
25 355 Q. MR. MÍCHEÁL O' HIGGINS: So then we're starting on page 14:05
26 148, and this is Garda Keogh's letter or his
27 solicitor's letter to The Tánaiste, Minister for
28 Justice, Francis Fitzgerald, dated 14th June 2016.
29 A. Yes.

1 356 Q. We see in the second paragraph there commencing:
2
3 "On the 3rd June 2016, I met Chief Superintendent Tony
4 McLoughlin. . ."
5
6 If we skip down to the fourth line of that same
7 paragraph, the letter states the following:
8
9 "I was recorded as being out sick with flu by
10 Superintendent Pat Murray, despite my doctor's
11 certification of my condition as work related stress."
12
13 what do you say to that allegation, that was published
14 to the Tánaiste?
15 A. It's entirely untrue. As I said in my evidence, I
16 never had occasion to enter details on SAMS. 14:05
17 357 Q. Well, if we read on, the letter continues, if we can
18 scroll down a small bit, please, to read that. We
19 might just move up. Continue on, please. Sorry, you
20 might scroll down a little bit, please. Sorry, there
21 is a reference to: 14:06
22
23 "While they were deliberately recording me out sick
24 with flu. . ."
25
26 Excuse me, Mr. Kavanagh, I am just trying to locate
27 that on the page. It may have been higher up,
28 apologies.
29 A. It's on the second last paragraph, the last line on the 14:07

1 second last paragraph of the letter, or third last
2 paragraph of the letter.

3 358 Q. We might go down to the second last paragraph, please?
4 A. Page 150.

5 359 Q. It says: 14:07
6
7 "When I was given the opportunity to appeal this, Garda
8 management would not give me a copy of my statement
9 which I had requested, due to the fact that I stated
10 the distress I was under. Whilst they were 14:07
11 deliberately recording me as sick with the flu."
12

13 Now, I think we know from elsewhere in the materials
14 that the individual who has accepted that it was she
15 that made the recording on the SAMS system was Garda 14:08
16 Olivia Kelly?
17 A. Yes, Garda Olivia Kelly was my district clerk at the
18 time, Chairman.

19 360 Q. Yes. We might move to her statement just for
20 completeness, at page 3640. And if we go down to 14:08
21 halfway down that first paragraph?
22 A. Yes.

23 361 Q. Where we see "resumption section" in brackets, just
24 there?
25 A. Yes. 14:08

26 362 Q. She indicated in her statement she provided to the
27 Tribunal:
28
29 "Each sickness is recorded in the same manner. No

1 member is treated differently. Where members are on
2 long-term sick, it is requested by HRM that when a
3 member is approaching 92 days continuous absence, all
4 medical certificates are scanned from the district
5 office directly to HRM sick section and this is what I 14:08
6 do in respect of Garda Keogh. Presently, I receive his
7 medical certificates monthly and scan them into the
8 Athlone district selection mailbox and forward them
9 directly to HRM sick section for their attention to
10 ensure the member is paid accordingly. I have never 14:09
11 deviated or treated Garda Keogh's sickness any
12 differently to any other member in Athlone district.
13 Garda Keogh had reported sick and resumed on 18
14 occasions since 20th December 2014, to his current
15 absence, which commenced on 26th December 2015, and 14:09
16 none of the SR1 forms stated his sickness was due to
17 work related stress. Whilst the SR1 didn't state any
18 cause of illness, the medical certificates submitted
19 all submitted indicated work related stress."

20
21 She says:

22
23 "As previously stated, his current absence commenced on
24 26th December 2015. I received the SR1 and created the
25 entry on SAMS. The form did not indicate the reason 14:09
26 for Garda Keogh reporting sick. There was no medical
27 certificate attached at that time. I recorded the
28 sickness as ordinary illness. At the time Garda Keogh
29 reported sick and unfit for duty there was no category

1 on SAMS for work related stress."

2
3 Can we pause there. I appreciate you don't make any
4 entries on the SAMS, but is that your understanding of
5 the system?

14:10

6 A. Yes. When this became an issue in May '16, I carried
7 out some enquiries and discovered that then.

8 363 Q. When? In May of '16?

9 A. In May of 2016.

10 364 Q. Her statement continues:

14:10

11
12 "I recorded the medical certificates on SAMS as they
13 were submitted and e-mailed each medical certificate to
14 HRM sick section. Copies of all medical certificates
15 were previously disclosed. . . ."

14:10

16
17 Then she says:

18
19 "On 23rd May '16, at 16:10, I received a call at
20 Athlone district officer from Clare Regan from HRM sick 14:10
21 section. She informed me that Garda Keogh's sick was
22 recorded as flu/viral, which was incorrect, and that
23 the correct category should be mental health due to his
24 absence being work related stress. I did not initially
25 select this category due to the stigma surrounding 14:10
26 mental health and mental health was not the cause of
27 illness outlined in his medical certificates. I
28 changed the illness reason to mental health at request
29 of Clare Regan at HRM sick section. She indicated that

1 Garda Keogh had been liaising with the commissioner."

2

3 was that your understanding when this was looked at?

4 A. Chief Superintendent Wheatley had phoned me, it must

5 have coincided in or about the time Garda Kelly got 14:11

6 that telephone call, because when I went down to her

7 after speaking to the chief superintendent, she had

8 informed me she had just changed the category on SAMS.

9 365 Q. Yes. I think you subsequently sought a report?

10 A. Yes. 14:11

11 366 Q. From Olivia Kelly?

12 A. I did.

13 367 Q. That's dealt with in the balance of her statement,

14 where she says:

15

16 "On that same date Superintendent Pat Murray contacted

17 me in relation to my change of the illness category on

18 SAMS and he informed me that he requested a report in

19 respect of same. On the following day, 24th May '16, I

20 provided Superintendent Pat Murray with a report which 14:12

21 outlined the anomaly that had occurred. He duly

22 reported same to chief superintendent, Westmeath."

23

24 That use of the word "anomaly" would you agree with

25 that? 14:12

26 A. Yes. Yes it was an anomaly on the system in that there

27 was no specific category to select for work related

28 stress.

29 368 Q. Yes. I suppose you have already said this, but for the

1 avoidance of doubt, did you have any role whatsoever in
2 recording sick leave for anyone?

3 A. No, Chairman, I never had occasion to enter data on
4 SAMS in my service.

5 369 Q. Now, an issue has been raised, maybe you could assist 14:12
6 the Chairman with your position in relation to this,
7 chief superintendent, concerning -- if we leave aside
8 SAMS for a moment. The question as to the medical
9 certificates for members, in relation to members that
10 are provided by general practitioners? 14:13

11 A. Yes.

12 370 Q. And to whether they are or are not interpretive of the
13 issue of work related stress. This is a matter which I
14 think is dealt with in various different places within
15 the materials. In fairness, it's a slightly complex 14:13
16 and possibly vexed question?

17 A. Yes.

18 371 Q. Could I ask you to look at document page 4906, from
19 Dr. Oghuvbu to Assistant Commissioner Finn. That
20 references this issue. 14:13

21 A. Yes.

22 372 Q. It's the numbered paragraphs, just to set the context,
23 this is a coming from Dr. Oghuvbu, the specialist, the
24 CMO at that time, in March 2018, to assistant
25 commissioner Michael Finn, where he says in paragraph 14:14
26 2:
27
28 "Absence classification: The recording of an absence
29 as work related stress by HRPD. "

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And that's, HRPD stands for?

A. Human Resources People Development.

373 Q. People development. So:

"The recording of an absence as work related stress by Human Resources people development absence section is not exclusively based on the medical certification submitted by the member. It also involves ascertaining the work related factors or stressors being reported by the member. It is the practice of HRPD absence section to record absences as ordinary illnesses before the work related circumstances are established."

14:14

14:14

Do you see that there?

14:14

A. Yes.

374 Q. Is that your understanding or are you in a position to assist on that?

A. It is. What I can say about that is, I suppose my working knowledge of the system, in that work related stress is not -- doesn't -- there isn't an automatic entitlement to injury on duty. Medical assessments have to be carried out. And I think the final determination is made between the chief medical officer and the executive director of HRPD.

14:15

14:15

375 Q. Yes. So the context in which I was asking the question, what I am suggesting to you, there was a degree of uncertainty in the corporate position in relation to this difficult question, right. Could I

1 ask you to look at document at page 14895. This and
2 the next few documents will be dealing with the whole
3 question, not in relation to Garda Keogh specifically,
4 but at a level of principle, the issue of deduction of
5 pay for somebody on sick leave. 14:16

6 A. Okay.

7 376 Q. The document at 14895 is a communication from Tony
8 McLoughlin, then chief superintendent I think, to
9 Monica Carr and it's copied to a number of persons
10 within HR? 14:16

11 A. Yes.

12 377 Q. This I think treats of this issue. It reads:
13
14 "I am aware that the work and the definition of injury
15 on duty and occupational injury is near completion. 14:16
16 However, in the interim there is an issue emerging that
17 in my view must be addressed urgently.
18
19 In the case of Garda X and Garda Y. "
20
21 we needn't trouble ourselves with Garda Y but Garda X
22 is Garda Keogh here, all right? 14:16

23 A. Okay.

24 378 Q. "They are both out sick with work related stress, which
25 in their view is caused by the organisation and 14:17
26 management. "
27 A. Yes.

28 379 Q. This is their view. Nonetheless, it has yet to be
29 adjudicated on.

1
2 "The CMO has judged at present that both are unfit for
3 duty and their DPs are quoting work related stress as
4 the issues underlying their condition. But both of
5 them will be on reduced pay (TRR) soon.

14:17

6
7 The investigation of the work related stress
8 allegations are ongoing and are likely to be
9 complicated."

14:17

10
11 I just pause there. In your experience, can that occur
12 sometimes; that an investigation into work related
13 stress does go through a complicated and sometimes
14 unclear passage?

15 A. I'd imagine, yes, because of complicated cases in
16 relation to work related stress and I can imagine how
17 that would be the case, yes.

14:17

18 380 Q. The e-mail continues:

19
20 "I pose this question: Is it right that they go on
21 reduced pay while the investigations are ongoing and
22 while the organisation decides on a new policy? These
23 are sensitive cases and will attract considerable media
24 attention. While this can't be used as a reason for
25 change, nonetheless it will bring considerable
26 pressures."

14:17

14:18

27
28 Then he offers his own view:
29

1 "My view is that this situation needs to be reviewed as
2 a matter of urgency. It may well be the case that pay
3 should not be reduced until these matters --"
4 CHAIRMAN: Am I being a nuance, Mr. O'Higgins, but what
5 has this got to do with this witness? 14:18
6 MR. MÍCHEÁL O' HIGGINS: Quite a bit, Chairman.
7 CHAIRMAN: That's what Chief Superintendent McLoughlin
8 wrote and there's another memo then from Monica Carr.
9 MR. MÍCHEÁL O' HIGGINS: That's right.
10 CHAIRMAN: Which contains what appears to be a 14:18
11 disquisition on the subject. But what has it to do
12 with Superintendent Murray?
13 MR. MÍCHEÁL O' HIGGINS: Well, I suppose it's building
14 up -- forgive me for the length it's taking.
15 CHAIRMAN: No, the last thing I want to do is to shut 14:19
16 anybody down.
17 MR. MÍCHEÁL O' HIGGINS: Yes.
18 CHAIRMAN: But equally, we have been over this. I mean
19 surely the question is this: Did somebody get an
20 injury at work or arising out of work, an injury or a 14:19
21 condition? If I got an injury or a condition arising
22 out of my duty and my work, it's not like just being
23 ordinarily sick. In that case I'm entitled to full pay
24 all the time. That's the position, as I understand it.
25 So they are wrestling with this question, how do you 14:19
26 decide it and what's the approach. And Chief
27 Superintendent McLoughlin is saying it's unfair to
28 leave them on half pay while you're making up your mind
29 about the question. But anyway, how does that impact

1 on Superintendent Murray? What had he got to do with
2 it?

3 MR. MÍCHEÁL O' HIGGINS: Well, I suppose, there's been
4 some emphasis from Garda Keogh's side and perhaps also
5 from the Tribunal counsel's side on the role that was
6 or should have been played by management in this
7 process.

14:20

8 CHAIRMAN: That's right. Local management, as I
9 understand it. The Code or whatever it is says that
10 local management has an obligation where the question
11 may be that I got the injury at work or arising out of
12 my work, so that it's in that category. There's an
13 obligation on management to carry out an investigation.
14 And if I understand where we are, the chief
15 superintendent said, yes, I recognise that, I tried to
16 do that, I spoke to Garda Keogh, but it takes two to
17 tango, it takes two to discuss where the stress comes
18 from and if he won't tell me, there's nothing I can do.
19 So what I did was, I referred him to the CMO. And
20 Mr. Kelly debated whether that was sufficient or
21 whether it was a failure of duty and so on. That's
22 where I understand the debate to be. Correct me if I'm
23 wrong.

14:20

14:20

14:20

24 MR. MÍCHEÁL O' HIGGINS: Yes. And that is really the
25 gravamen of the questions.

14:21

26 CHAIRMAN: Okay. But what Superintendent McLoughlin
27 thought or Monica Carr thought, I can't see of any
28 relevance. Maybe I am totally wrong.

29 MR. MÍCHEÁL O' HIGGINS: Save this, Chairman --

1 CHAIRMAN: I'm sorry to waste time debating it with you
2 and it probably would have been better not to say it
3 at all. We would probably be down the road further if
4 I had hadn't intervened. I don't want to be unfair or
5 a nuisance, Mr. O'Higgins, but can you help me on this? 14:21
6 MR. MÍCHEÁL O' HIGGINS: Yes. I will endeavour to do
7 so, Chairman.
8 CHAIRMAN: Yes.
9 MR. MÍCHEÁL O' HIGGINS: I am proposing, if I may, not
10 to read out in extenso the relevant correspondence, to 14:21
11 highlight --
12 CHAIRMAN: But what I want to know is, what does it
13 matter what you highlight in relation to Chief
14 Superintendent Murray? That's my question.
15 MR. MÍCHEÁL O' HIGGINS: Because it'll enable the 14:21
16 witness deal with the issue from a full foundation.
17 CHAIRMAN: All right. Well, you know what I am
18 thinking. I am a sceptic on the relevance of the
19 particular thing, without in any way disrespect to the
20 chief superintendent or to you or to Chief 14:22
21 Superintendent McLoughlin, Monica Carr or anybody else
22 in the organisation, but they did that, they came to a
23 conclusion. Mr. Kelly, I thought, has explored that
24 ground and Mr. Marrinan explored it. What was his duty
25 as local district officer? I think that's my 14:22
26 understanding, that we have been well over that ground.
27 WITNESS: Yes, Chairman.
28 CHAIRMAN: The witness says, look, I did my best, I
29 tried to comply with this. Mr. Kelly says, no, that

1 was a failure of -- you couldn't just throw up your
2 hands -- I mean, Mr. Kelly will forgive me for not
3 accurately putting his case, but he has criticised that
4 for a failure in respect of the Code requirement on the
5 district officer.

14:23

6 MR. MÍCHEÁL O' HIGGINS: Yes.

7 CHAIRMAN: That's the issue.

8 MR. MÍCHEÁL O' HIGGINS: I will endeavour to address
9 that.

10 381 Q. So you see there, mindful of what the Chairman has
11 said, chief superintendent, you see there the position
12 of Tony McLoughlin. Briefly could I ask you to look at
13 the somewhat different view adopted by another person
14 in An Garda Síochána, that is Monica Carr, to which the
15 Chairman has made reference. That's on page 14904.
16 This is Monica Carr to a number of addressees, John
17 Barrett, Brian Downey, Fiona Broderick and to a series
18 of other persons copied. She is of the view, we won't
19 read the whole thing out, but the second line:

14:23

20
21 "I am of the opinion that all sick absences should be
22 categorised as ordinary illness pending completion of
23 whatever investigations are conducted. As I understand
24 it, GPs issue medical certs. The member is off with
25 work related stress based on the consultation between
26 the GP and the patient, similarly the CMO will only
27 have the member's version of events available to him
28 when meeting the member. He may also have a report
29 from the member's treating GP. These reports are

14:23

14:23

14:24

1 subjective and give just the member's account or
2 version of events, leading to their perception of work
3 related stress."

4
5 She says:

14:24

6
7 "However, not all work related stress absences can be
8 attributed to An Garda Síochána, a lot of the time it
9 can be down to the individual's perception of events."

10
14:24

11 She cites the example of the bullying and harassment
12 claim that might be made. And she says in second last
13 paragraph:

14
15 "From a sick leave perspective we come across members
16 suffering from work related stress as a result of a
17 disciplinary investigation. Again, I would urge
18 caution accepting this as an occupational injury as we
19 are exposing AGS to possible litigation in
20 circumstances where a member's own actions or indeed
21 inaction has precipitated the instigation of a
22 disciplinary investigation."

14:24

14:25

23
24 CHAIRMAN: Now, Mr. O'Higgins, what question are you
25 going to put to the witness arising out of that?

14:25

26 382 Q. MR. MÍCHEÁL O'HIGGINS: Arising from that debate being
27 there, I am just using the word debate for shorthand,
28 and mindful of the suggestion that there was a failing
29 at your door --

1 A. Yes.

2 383 Q. -- to investigate, it is said, the source of Garda
3 Keogh's stress.

4 A. Yes.

5 384 Q. Can you assist the Chairman in addressing that issue? 14:25
6 And I am going to ask you to deal with how you -- what
7 effort you took to address it and how you found Garda
8 Keogh in relation to reacting to those efforts?

9 A. Well, I suppose the work related stress had been an
10 issue prior to my arrival in Athlone and when I got 14:25
11 there and I realised it was there, I tried to explore
12 it with him at our first meeting on the 26th March.
13 And I've already mentioned in evidence how that went.
14 And he was reticent to discuss it. He said that he
15 couldn't discuss it because it was bound up in the more 14:26
16 or less - and I am paraphrasing - the confidential
17 reporting mechanism that he was involved in. And I
18 think he maintained that position here while giving
19 evidence, that he wasn't willing to discuss it.

20 385 Q. Yes. 14:26

21 A. And I then sent the report of the 2nd April to the CMO
22 and in the earlier paragraphs of that I set out the
23 context in which Garda Keogh was coming to him, so that
24 that could give some outline as to where this was
25 coming from. 14:26

26 386 Q. CHAIRMAN: And you say that your response complied with
27 the obligation on the district officer in respect of
28 work related injury?

29 A. In these circumstances, in the absence of being able to

1 take delve further.

2 387 Q. CHAIRMAN: Okay.

3 A. And then in my view I was handing it over to specialist

4 experts.

5 388 Q. CHAIRMAN: I am just trying to avoid an arid debate 14:27

6 that simply reads out what Monica Carr thinks or what

7 Detective Superintendent McLoughlin thinks or what

8 anybody else thinks, HR, anybody else, when we actually

9 know what the issues are, I think, Mr. O'Higgins.

10 Anyway, sorry. Okay. 14:27

11 389 Q. MR. MÍCHEÁL O' HIGGINS: And as far as you're concerned,

12 chief superintendent, what part does management play in

13 such an investigation?

14 A. I suppose the first port of call would be the person

15 who is suffering from stress, that they would give an 14:27

16 account, I suppose, of what the source of the stress

17 is. And from there then one would perhaps make a few

18 more enquiries, depending on what was said or not said,

19 and present a short report, again up to the HRPD

20 department for the information of the CMO, in order 14:28

21 that decisions may be made.

22 390 Q. Yes. Now I want to move to a general matter but which

23 has a tie in with a number of the individual themes the

24 Chairman is considering. And that is the question of

25 the supports that you and your colleagues in management 14:28

26 provided to Garda Keogh over the relevant period.

27 Could I ask you first of all to look at -- and it will

28 tie in with what we have already been looking at a

29 moment ago, with some notes with the CMO. They're at

1 page 3788. It's handwriting of the CMO, so it's not
2 clear but we will do our best with it. These record
3 his consultations with the patient himself. So on the
4 5th March 2015, looking at the left-hand margin, there
5 is a reference to Human Resources absence section,
6 e-mail of 24th February 2015. And it says:

14:29

7
8 "Member reported as performing on duty and not
9 requiring any extra supports. Member reported as not
10 indicating any issues of concern."

14:29

11
12 Do you see that there?

13 A. Yes.

14 391 Q. This obviously relates to Garda Nicholas Keogh,
15 according to the heading at the top of the document?

14:29

16 A. Yes.

17 392 Q. In the second entry down there's a note relating to,
18 just scroll down a small bit, the CMO's meeting with
19 Garda Keogh on the 17th April?

20 A. Yes.

14:30

21 393 Q. And it records:

22
23 "HRPD minute by e-mail of 2nd April 2015, noted with
24 local [something] documentation and referral."

14:30

25
26 It says:

27
28 "New district officer concerned about member's high
29 absence levels since January 2014."

1 A. Yes.

2 394 Q. "48 days. Absences falling mostly with early
3 [something]"

4 A. Tours.

5 395 Q. Yes. "...early tours and record of 34 days annual 14:30
6 leave from March 2014 taken on early tours."
7

8 And then it says:
9

10 "District officer has provided supports in the 14:30
11 workplace but referring to occupational health because
12 'the member indicated that he had not amended the CMO
13 previously' and that member would benefit from
14 occupational health input and additional supports if
15 required." 14:31
16

17 As required, perhaps. That's a reference to the input
18 from you, is it?

19 A. Yes, that appears to be my report of 2nd April 2015
20 that he is paraphrasing. 14:31

21 396 Q. Yes. What was your purpose in sending that report?

22 A. To have supports put in place for Garda Keogh. I
23 filled out a referral form with it and I ticked the
24 boxes related to the request. And I suppose I was
25 referring him, indicating in the report that he was 14:32
26 indicating in his cert citing he was suffering from
27 work related stress. I made that clear in the report
28 and I was referring him to the CMO in order that all
29 that could be dealt with.

1 397 Q. It seems from the notes that he had met the CMO the
2 previous month?

3 A. I wasn't aware of that.

4 398 Q. In fact, I think it's the case you were told something
5 by -- 14:32

6 A. Garda Keogh said that he hadn't been with the CMO
7 before, and I made a note of that at the time.

8 399 Q. Continuing with the issue of support, could I ask you
9 to look at page 2190? This is your note to Inspector
10 Farrell, relating to the assignment of Sergeant Martin. 14:32
11 It's a document of 2nd April '15. You record in it
12 that you have:
13

14 "...allocated Sergeant Martin as Liaison person for
15 Garda Keogh to allow him discuss any work related 14:33
16 issues he may be having with a view to solving any
17 issues that may arise. Both Sergeant Martin and Garda
18 Keogh have been informed of this workplace support."

19 A. Yes.

20 400 Q. Did you regard this as support? 14:33

21 A. I did, yes. I wanted to separate work and welfare and
22 allow some support for him outside of what might be
23 available in his supervisor structure.

24 401 Q. I think you dealt with the issue of support in
25 communications with the chief superintendent at this 14:33
26 time as well, in April 2015?

27 A. Yes.

28 402 Q. If you turn to page 2191, please. This is a memorandum
29 from you to Chief Superintendent Wheatley on 2nd April

1 '15.

2 A. Yes.

3 403 Q. The second paragraph commencing:

4

5 "I was transferred to Athlone as district officer..." 14:33

6

7 Four lines down, or three lines down, towards the end

8 of the line it reads:

9

10 "While Garda Keogh was reticent to discuss any issues 14:33

11 he may have with me, I nonetheless felt it prudent to

12 put an arrangement in place to Athlone to support him

13 in the work environment as he is indicating work

14 related stress as a source of his absences."

15 A. Yes. 14:34

16 404 Q. "With that in mind, I allocated a female sergeant who

17 was new to the district to act as direct point of

18 contact to the member to discuss and if possible solve

19 any workplace issues he may have and to allow him

20 attend work frequently." 14:34

21 A. Yes.

22 405 Q. It records:

23

24 "As an additional measure, I wish to have an

25 appointment with the chief medical officer arranged for 14:34

26 Garda Keogh in order that professional medical

27 expertise can advise of other workplace supports which

28 may assist the member. The member indicated that he

29 had not attended the CMO previously."

1
2 And I think that's in accordance with the evidence you
3 have just given?
4 A. Yes.
5 406 Q. Then the second page of that document, I want to ask 14:34
6 you to deal with the second last line, the last two
7 lines. You say:
8
9 "I believe both the member and the organisation would
10 benefit by referring him to the Occupational Health 14:34
11 Service at this time."
12 A. Yes.
13 407 Q. This is April of '15. why did you believe that?
14 A. Because the stress was on the medical certs when I
15 looked at it, and I believed that that was the best 14:35
16 place to refer Garda Keogh to, to assess that and to
17 have whatever interventions were necessary then to try
18 and, I suppose, support him being in the workplace, if
19 that's what he wanted.
20 408 Q. Yes. If we turn then to page 2495, there is another 14:35
21 document that deals with the issue of supports?
22 409 Q. CHAIRMAN: Sorry, could I just stop you there for a
23 second. Was he actually seen by occupational health?
24 A. On the 19th May '15, Chairman.
25 CHAIRMAN: Thank you. 14:35
26 410 Q. MR. MÍCHEÁL O' HIGGINS: Page 2495, this is a
27 communication from yourself to again Chief
28 Superintendent Wheatley, of 21st April '15.
29 A. Yes.

1 411 Q. It says:
2
3 "I am attaching for your information a report from
4 D/Sergeant Curley regarding a phone call he received
5 from Garda Keogh." 14:36
6 A. Yes.
7 412 Q. Do you recall this?
8 A. I do.
9 413 Q. And it says:
10
11 "As a result of my interaction with D/Superintendent
12 Mulcahy, I am aware that Garda Keogh has been behaving
13 in an unusual and disturbing manner and is using
14 alcohol." 14:36
15 A. Yes. 14:36
16 414 Q. "D/Superintendent Mulcahy has arranged that the member
17 meet with Garda Keogh Nick Quinn, the welfare officer."
18 A. Yes.
19 415 Q. "I understand this is acceptable to the member and a
20 meeting has been arranged to take place on 21st April 14:36
21 2015. As are you aware, I have put supports in place
22 for the member in Athlone and made a referral to the
23 CMO to explore other available supports. There are no
24 other avenues available to me to support the member."
25 14:36
26 A. Yes.
27 416 Q. What was the purpose of writing that letter?
28 A. To, I suppose, advising the CMO, as a follow on from my
29 early report of the 2nd, that Garda Keogh, I suppose,

1 had been using alcohol in a way that had interfered
2 with his behaviour.

3 417 Q. well, this is to the chief superintendent?
4 A. Yes. But, I mean, she sent that to the CMO.

5 418 Q. Yes. 14:37
6 A. That's my understanding.

7 419 Q. I see.
8 A. Yes. So that's the chain, I suppose, of command taking
9 over. She would send it to the human resource and
10 people development section, and then they would send it 14:37
11 to the occupational health section.

12 420 Q. Yes. Then if we could turn over to page 2501, please.
13 Or sorry, it's probably clearer at 2500. So this is, I
14 think, your note?

15 A. Yes. 14:37

16 421 Q. Of the case conference of 9th December 2015?
17 A. Yes.

18 422 Q. The first paragraph reads:
19
20 "Sickness and TRR, car tax reg 10, AWOL 11 to 14 July, 14:37
21 intel and Pulse created."

22 A. Yes.

23 423 Q. "Theft of trailer, crime files, IP wrote statement,
24 robbery 21st September, 22/10 shaking hands on indoor
25 duty. 28/10 incident Tullamore, paranoia re other 14:38
26 members. Alcohol sickness shaking etcetera."

27
28 obviously there is a jumble of issues there that are
29 setting context.

1 A. Yes.

2 CHAIRMAN: I thought that was you reminding --

3 A. Yes.

4 424 Q. CHAIRMAN: You're not saying these were discussed.

5 A. No. 14:38

6 425 Q. CHAIRMAN: You were just reminding yourself of issues?

7 A. Yes. It's a page, it's a loose page in my original

8 note.

9 426 Q. CHAIRMAN: Thank you.

10 A. That starts off with that and then I made the note on 14:38

11 the next page.

12 427 Q. MR. MÍCHEÁL O' HIGGINS: Sorry, that is clearer. Thank

13 you for that clarification. My error. Underneath

14 that:

15 14:38

16 "Meeting HQ 9 December 9:30am."

17 A. Yes.

18 428 Q. This I think is making a note of --

19 A. This is a noting of the meeting or starting a note of

20 the meeting. 14:39

21 429 Q. It gives the participants, Dr. Oghuvbu and a number of

22 other people?

23 A. Yes.

24 430 Q. "Doctor says he needs treatment for alcohol."

25 A. Yes. 14:39

26 431 Q. Does that accord with your recollection?

27 A. Yes. Dr. Oghuvbu was aware of him. I made the point

28 again that he hadn't -- or I believed or he had said to

29 me that he hadn't been with the CMO and Dr. Oghuvbu

1 corrected that and he was aware of and said he felt he
2 needed treatment for alcohol.

3 432 Q. Could I ask you this, was that the consensus around the
4 room?

5 A. Yes, indeed. The welfare officer, Garda Mick Quinn was 14:39
6 there, and he was also in a position to comment on
7 that.

8 433 Q. The note reads:
9

10 "He needs to engage in treatment. To arrange 14:39
11 appointment. Tell him. He has to go in himself. If
12 not, discipline will step in and take over."

13 A. Yes.

14 434 Q. Who is saying those things?

15 A. That's Dr. Oghuvbu. 14:40

16 435 Q. Just to give the Chairman just as full a picture as
17 possible, can you help, obviously these are just
18 notations, it doesn't purport to be a transcript of
19 what was said. What was the emphasis from the
20 participants at the meeting? Was the gist or the 14:40
21 consensus of what was being said?

22 A. Case conferences with the CMO are designed to support
23 people and to, I suppose, assist in their return to
24 work if they're out, or put measures or supports in
25 place that might allow them to come to work. And 14:40
26 they're very supportive. It's a supportive type
27 meeting.

28 436 Q. Yes.

29 A. Where the options available would be discussed and what

1 impact that would have on the district policing, as it
2 were, and the person's position in their policing role.

3 437 Q. Yes. And if there was one thing coming out of the
4 meeting, what was it?

5 A. It was that Garda Keogh needed, I suppose, treatment 14:41
6 for the alcoholism, and some type of inpatient
7 treatment was seen to be the favourite of Dr. Oghuvbu.

8 438 Q. All right. If we can turn to page 2499 please, just
9 the page before that. It's an e-mail from Brian Downey
10 from HRM administration. Mr. Downey, who was an 14:41
11 inspector in Human Resources, says:

12

13 "On Wednesday, 9th December, I attended a case
14 conference."

15 14:42

16 He describes the case conference and he gives the other
17 participants. He says:

18

19 "The issue presented was the number of sick days taken
20 by Garda Keogh. Garda Keogh is on TRR each time he 14:42
21 goes sick. A decision was made for Dr. Oghuvbu to
22 liaise directly with the member's GP and to work with
23 him to access addiction treatment. Depending on
24 treatment, if engaged with, a further case conference
25 will be held in January/February. It may be the case 14:42
26 that a transfer to another division/district may be of
27 assistance to the member, but this will be looked at
28 again following the next case conference.

29

1 From a HR perspective, this matter is being dealt with
2 by the sickness absence section."
3
4 Is that reasonably accurate?
5 A. Yes, absolutely. It's I suppose a paraphrase of the 14:42
6 meeting and he sent the e-mail to some of the
7 participants in the meeting immediately after it, on
8 the same day there about 12 noon. And I would agree
9 with the content of it, yes, Chairman.
10 439 Q. All right. If we can next ask you to look at page 2503 14:43
11 please. Moving now to May '16 and dealing with the
12 supports. This is a communication from you, Chief
13 Superintendent Murray, to your chief superintendent?
14 A. Yes.
15 440 Q. Regarding Garda Keogh. And you say in this 14:43
16 communication of May '16 that you're attaching
17 documents for onward transmission to the chief medical
18 officer?
19 A. Yes.
20 441 Q. "Garda Keogh wrote to his sergeant requesting an 14:43
21 advance payment or he would not be able to travel to
22 Dublin for his appointment."
23 A. Yes.
24 442 Q. And it says:
25 14:43
26 "A travel voucher has been issued for Garda Keogh and
27 posted to his home address on today's date in order for
28 him to attend this appointment."
29 A. Yes.

1 443 Q. "I have attached a copy of the letter he sent his
2 sergeant along with a copy of the train voucher that
3 has been issued to him."
4
5 was that something you did on your initiative? 14:43
6 A. Yes. When the sergeant brought it to my attention, I
7 have the ability to issue a train voucher from local
8 stocks and that would have --
9 444 Q. CHAIRMAN: He was on half pay at this stage, isn't that
10 right. 14:44
11 A. Yes, absolutely. It would allow him to get the train
12 from Tullamore to headquarters for a meeting he was to
13 have with the CMO on the 19th May, three days later. I
14 wanted to ensure he attended and didn't want any
15 blockage in that. 14:44
16 445 Q. CHAIRMAN: Of course.
17 A. I was letting the CMO know, just if he didn't attend,
18 that perhaps there was another reason for it.
19 446 Q. MR. MÍCHEÁL O' HIGGINS: All right. Just again, staying
20 in May '16, if we can turn to page 2515, please. This 14:44
21 is a communication from you to your chief
22 superintendent on the 19th May. In the second
23 paragraph down it says:
24
25 "Insofar as local management in Athlone is concerned, 14:45
26 Garda Keogh's health and welfare is of paramount
27 importance. In that regard I am aware that the senior
28 liaison person in relation to the investigation
29 conducted by members from the Western Region has put

1 certain measures in place directly with the welfare
2 service to ensure Garda Keogh's welfare is to the
3 forefront of all interactions with him."

4
5 Can I just pause there? What was that?

14:45

6 A. That happened a year before, in April '15, when
7 Detective Superintendent Mulcahy and I spoke after
8 Garda Keogh phoned Detective Superintendent Mulcahy on
9 20th April '15. And we decided at that point in time
10 that some direct involvement from the employee
11 assistance service might help the situation. And
12 Detective Superintendent Mulcahy went and arranged
13 that.

14:45

14 447 Q. CHAIRMAN: That was Mick Quinn.

15 A. It was, at that stage he came on board.

14:46

16 448 Q. CHAIRMAN: Garda Quinn was the welfare person, yes.

17 A. Detective Superintendent Mulcahy made the phone calls,
18 Garda Quinn came in.

19 449 Q. CHAIRMAN: So this is going back to an earlier time?

20 A. Yes, absolutely.

14:46

21 CHAIRMAN: Okay.

22 450 Q. MR. MÍCHEÁL O'HIGGINS: If we can turn to page 2509.

23 24th May '16. This is a communication from Chief
24 Superintendent Wheatley to the Commissioner's office.

25 A. Yes.

14:46

26 451 Q. Regarding a number of different matters but there's one
27 or two that are relevant to the support issue. On page
28 2510, over the page, she treats of the issue of the
29 sickness absence and his welfare. If we go to the next

1 page, please. I think the sickness absence there we
2 see in the box. Chairman, we have seen this
3 previously. The number of days out on sick leave,
4 which obviously increased or spiked, in the second last
5 box, 1st April '15 to 31st May '16, 156 days out. At 14:47
6 the time of writing this communication in May of '16
7 there were 55 days out in that year, of 2016?

8 A. Yes.

9 452 Q. And it says:

10
11 "Garda Keogh has been reviewed by CMO on a number of
12 occasions in recent months. His most recent
13 appointment with the CMO is scheduled for 19th May
14 2016, and the advices of the chief medical officer have
15 not been received locally in respect of the outcome of 14:47
16 his most recent review. The most recent advices
17 available indicate Garda Keogh was deemed temporarily
18 unfit to attend at work and for policing duties."

19
20 And then she deals with the issue of his welfare. I 14:47
21 want to ask you to deal with these sections here. She
22 says:

23
24 "His welfare has been a priority from his initial
25 periods of absence when his alcohol dependency became 14:48
26 known and more recently following the naming of Garda
27 Keogh as having made a disclosure under the
28 confidential reporting to Mr. Luke Flanagan TD under
29 Dáil privilege on 8th March 2014.

1
2 In the intervening two years, Garda Keogh has been
3 absent from duty for almost 250 days. While he has
4 been absent during that time, a member of sergeant rank
5 has been appointed to liaise with him to ensure that 14:48
6 his welfare and well being are enquired into. Sergeant
7 Yvonne Martin was nominated from 2nd April 2015.

8
9 In addition, Garda Keogh has been advised on several
10 occasions of the availability of the Garda employee 14:48
11 assistance service. "
12

13 she says:
14

15 "I am aware that the welfare of Garda Keogh has been a 14:48
16 priority for the team investigating the disclosures he
17 made under the confidential reporting mechanism and he
18 is engaging with the employee assistance service.
19 Prior to the conclusion of D/Superintendent Mulcahy's
20 investigation, the district officer had been informed 14:49
21 that Garda Keogh's welfare was being catered for by the
22 investigation team and that Garda Michael Quinn of the
23 Employee Assistance Service was in contact with Garda
24 Keogh. "
25

26 we have already seen that? 14:49

27 A. Yes.

28 453 Q. She indicates:
29

1 "Return to work interviews were conducted with Garda
2 Keogh upon his return from periods of absence. Garda
3 management at all levels in the division and district
4 have had district and open discussions with Garda Keogh
5 and explained to him that his welfare and wellbeing are 14:49
6 of concern. Garda Keogh has been advised that
7 assistance would be provided to ensure that the
8 necessary supports required be put in place to
9 facilitate a return to work."

10
11 She says:

12
13 "Garda Keogh has never suggested that his work
14 environment is unsafe or indicated that he has been
15 treated inappropriately in the workplace. However, 14:49
16 Garda Keogh in his most recent meeting with Chief
17 Superintendent Wheatley. . . ."

18
19 who is the author of the document.

20
21 "...indicated that he is not anxious to return to work
22 until all the matters which he has reported under the
23 confidential reporting mechanism have been brought to a
24 definitive conclusion."

25
26 Do you see that there?

27 A. Yes, Chairman.

28 454 Q. Was that your understanding at the time?

29 A. Yes, Chairman.

1 455 Q. In relation to Inspector Minnock, she says:
2
3 "Inspector Minnock met with Garda Keogh on 24th May
4 2016 at his home in Tullamore. Again informed Garda
5 Keogh of the availability of the employee assistance 14:50
6 service and Garda Keogh advised that he was in contact
7 with Garda Quinn. Inspector Minnock will maintain
8 ongoing contact to ensure the member's welfare and any
9 concerns he may have are addressed immediately."
10 14:50

11 At that point in time Garda Keogh, we know, was absent
12 through illness, is that so?

13 A. Yeah, it was in May '16.

14 456 Q. CHAIRMAN: Sorry, say that again.

15 A. It was in May 16. He been out since December. 14:50

16 457 Q. CHAIRMAN: That was May '16.

17 A. Yes.

18 458 Q. CHAIRMAN: And we get a slightly distorted figure if we
19 go from 1st April 2015 to 31st March 2016, because he
20 was out completely from 26th December 2015, isn't that 14:50
21 right?

22 A. That's right.

23 459 Q. CHAIRMAN: And hasn't been back since?

24 A. Hasn't been back, no.

25 460 Q. CHAIRMAN: So he was out all the time for 2016? 14:51

26 A. Yes.

27 461 Q. CHAIRMAN: At any date?

28 A. Yes.

29 CHAIRMAN: Okay.

1 462 Q. MR. MÍCHEÁL O' HIGGINS: Moving on the timeline then,
2 just to speed matters up, page 2519 please, which I
3 think is a note of a case conference regarding Garda
4 Keogh, July.
5 CHAIRMAN: July '16, Mr. O'Higgins? 14:51

6 463 Q. MR. MÍCHEÁL O' HIGGINS: Yes, 12th July 2016. Is this
7 your note.
8 A. This is my note, yes.

9 464 Q. Just dealing with the first paragraph. It says you
10 attended a conference with Garda Keogh in headquarters 14:51
11 with Dr. Oghuvbu, Chief Superintendent Wheatley, Chief
12 Superintendent McLoughlin and Mick Quinn, the welfare
13 member?
14 A. Yes.

15 465 Q. It says: 14:51
16
17 "Doctor to link with GP re clinical management after
18 M Quinn said he was going for assessment to Aiseiri for
19 28 days of treatment."
20
21 Do you recall this? 14:52
22 A. Yes, I do. Garda Quinn indicated that Garda Keogh was
23 interested in going for treatment but he was interested
24 in attending Aiseiri rather than some of the other
25 places that offered the treatment. 14:52

26 466 Q. Yes. Then there is reference to financial shortfall in
27 the region of 6,000?
28 A. Yes. That was discussed at the meeting. He wasn't in
29 the medical aide or he couldn't be covered by the

1 medical aide, I forget which, and that was the issue
2 for him then and we decided that we would make up that
3 shortfall.

4 467 Q. CHAIRMAN: And there's disagreement as to whether that
5 was fully made up or partly made up? 14:52

6 A. Yes.

7 468 Q. CHAIRMAN: Because Garda Keogh says no, there was a
8 balance?

9 A. Yes.

10 469 Q. CHAIRMAN: That's what he says, and so that's an issue? 14:52

11 A. Yes.

12 470 Q. MR. MÍCHEÁL O' HIGGINS: Just on the making of the
13 shortfall issue, were you a party to the decision to --

14 A. Yes, the group in the meeting were all part of the
15 decision. There were no dissenters. And there was a 14:53
16 sort of a without prejudice gesture to support him, you
17 know, on the understanding that the lack of finances
18 shouldn't be an option to prevent treatment, providing
19 he was committed to it.

20 471 Q. Yes. And the note indicates that Chief Superintendent 14:53
21 McLoughlin was to contacted medical aide regarding this
22 matter?

23 A. Yes.

24 472 Q. And all in agreement, gesture to support Garda Keogh?

25 A. Yes. 14:53

26 473 Q. "Lack of finance should not be an option to prevent
27 treatment providing he was committed to same."

28 A. Yes.

29 474 Q. If we can move matters on then to August of the same

1 year, 2016. Could I ask you to turn to page 9727?
2 This is a communication from Monica Carr on 12th August
3 '16 to the chief superintendent, Mullingar.
4 A. Yes.
5 475 Q. Regarding Garda Keogh. We see: 14:54
6
7 "The above named member's file was reviewed by the
8 chief medical officer on 21st July 2016, following a
9 case conference and receipt of updated medical
10 reports." 14:54
11 A. Yes.
12 476 Q. "The CMO advised this branch on 26th July 2016 that the
13 member was currently temporarily unfit to attend work
14 and to undertake policing duties." 14:54
15
16 As the Chairman has made clear, that is the year he is
17 out completely?
18 A. That's correct.
19 477 Q. Then: "The chief medical officer further advised as
20 follows." 14:54
21
22 There is 1, 2, 3, 4. I think number 1 addresses the
23 alcohol addiction problem; is that right?
24 A. Yes.
25 478 Q. "1. The member is now commenced appropriate care for a 14:55
26 long standing and established clinical condition which
27 has been the basis of his current absence."
28
29 Is that right?

1 A. Yes. That is the assessment of the chief medical
2 officer. I had no input into that.

3 479 Q. Yes. "2. The member, as was agreed at the case
4 conference, should continue to be confidentially
5 supported by the Garda employee assistance scheme as 14:55
6 well as receive the support of his senior local
7 management in order to foster a successful and
8 sustained return to well being and eventual
9 effectiveness. "

10 A. Yes. 14:55

11 480 Q. "3. Insofar as reasonably practicable, the member
12 should be facilitated in respect of the costs of the
13 treatment programme so that this does not become an
14 obstacle or barrier to achieving a successful return to
15 well being. " 14:55

16 A. Yes.

17 481 Q. That's a reference to making up the shortfall?

18 A. Absolutely.

19 482 Q. So just coming away from the documents then, can I ask
20 you to deal with a suggestion that has either expressly 14:56
21 or implicitly been made, that, look, this concern for
22 Garda Keogh, these supports, it's artificial, it's not
23 real, it's masking the true disposition towards him,
24 you wanted to take him taken out. What do you say to
25 that suggestion? 14:56

26 A. It's not the case. Chairman, you know, Athlone and the
27 members in it were supportive of Garda Keogh, I never
28 heard anyone speak ill of him. People there could only
29 go so far, he needed expert and specialised help and we

1 tried to put him in that direction. We made every
2 effort we do to do that. And I engaged with Detective
3 Superintendent Mulcahy, who was dealing exclusively
4 with him for a period throughout my time in '15 and
5 into about April 2016. After that time then, two
6 inspectors and the chief superintendent and I met and
7 Inspector Minnock was allocated to liaise with him from
8 a welfare perspective on behalf of the management in
9 Westmeath division, after Chief Superintendent Wheatley
10 met him on the 17th May.

14:57

14:57

11 483 Q. Yes.

12 A. I think Inspector Minnock's first visit was on the 24th
13 May, if I'm not mistaken. And that continued then
14 right throughout the period, until I left.

15 484 Q. And Chief Superintendent Wheatley, from your
16 discussions with her, was she concerned for his
17 welfare?

14:57

18 A. She was, absolutely. She visited him. She is
19 altruistic in nature, you know, and she has a long
20 history I think of providing welfare support to people
21 in the organisation.

14:57

22 485 Q. I think, just before we leave the issue of supports,
23 could have 6169, please. Sorry, going back to June
24 '16. This is a document here:

25
26 "Si ck report Garda Ni chol as Keogh. "

14:58

27
28 It's from Lorraine Wheatley, Chief Superintendent, to
29 the Human Resources people development, it's the 8th

1 June 2016.

2 A. Yes, Chairman.

3 486 Q. If we go to the second page of that, please, page 6170,
4 towards the bottom, the second last paragraph. Yes,
5 just there, thank you. She says the following: 14:59
6

7 "While Garda Keogh's absences from duty have been
8 intermittent at times, his current absence from duty
9 has been for a protracted period and now exceeds 160
10 days. While Garda Keogh has returned to work 14:59
11 occasionally, he continues to attribute his absences to
12 work related stress arising from matters being
13 investigated through the confidential reporting
14 mechanism. This was apparent during my own recent
15 meeting with Garda Keogh, when I enquired if he was 14:59
16 anxious to return to work. Garda Keogh advised me on
17 that occasion that he attributes his current absence
18 due to work related stress to his involvement in
19 investigations being progressed outside the Westmeath
20 division. Garda Keogh intimated that he would not be 14:59
21 returning to work until these matters had been
22 concluded as these matters were exacerbating his
23 condition. Details of this meeting were outlined in
24 correspondence to your office."
25 14:59

26 was that something that you were broadly speaking aware
27 of?

28 A. Yes. Chief Superintendent Wheatley would have advised
29 me of that after her visit to Garda Keogh. I suppose,

1 I think it was when we discussed the hand over and his
2 welfare from what is the Galway team, I suppose, back
3 to local management.

4 487 Q. And she continues in terms of dealing with the core of
5 matters, she says:

15:00

6
7 "Despite a number of enquiries with Garda Keogh to
8 establish the source of his alleged work related
9 stress, the members has continuously correlated his
10 involvement as a confidential reporter to his absence
11 through alleged work related stress. I am also
12 conscious that the member's continued absence was the
13 subject of a case conference in December 2015. It is
14 apparent that while the member cites alleged work
15 related stress as the reason for his continued absence,
16 addiction treatment is also required by Garda Keogh if
17 a successful return to the workplace is to be
18 accomplished. This was borne out of correspondence
19 forwarded to Superintendent Murray by inspector Downey
20 following the case conference on 9th December 2015,
21 reviewed by the chief medical officer on the 18th
22 December 2015, who determined that the member is unfit
23 to attend for work or for regular policing duties at
24 present."

15:00

15:00

15:00

15:01

25
26 Does that record with your understanding of what the
27 CMO position?

28 A. Yes. At our case conference on the 9th and then when
29 correspondence came to me after that, after he met

1 Garda Keogh on 18th December 2015, I received
2 correspondence emanating from him or from the HR
3 department on 22nd January '16 indicating that.

4 488 Q. Right. And she continues:

5
6 "While I am not receipt of the advices of the chief
7 medical officer following the member's review at the
8 Occupational Health Service on 19th May 2016, I have
9 contacted the chief medical officer on today's date --"

10
11 That's the 8th June '16

12
13 " -- and I am advised that his previous advices in
14 respect of Garda Keogh remain the same."

15 A. Yes.

16 489 Q. "The CMO also outlined that should the member be deemed
17 to fit to return to policing duties by his own medical
18 practitioner, that any return to work will only be
19 permitted following a review at the occupational health
20 service."

21
22 We will pause there. Was that your understanding, that
23 the CMO had said even if the GP certifies as fit, he is
24 not to come back to work until, in fact, there has been
25 a very view by Occupational Health Service?

26 A. Yes. And that advice is outlined by the CMO, or from
27 him, in correspondence dated the 22nd January, or that
28 arrived to me on 22nd January 2016, after the first
29 visit, let's say, in December '15. That phraseology

1 was used in that report.

2 490 Q. She indicates that she explained to the chief medical
3 officer that she was eager to have a case conference in
4 respect of Garda Keogh and advised that same was being
5 shared by the office. That was a concern that you 15:03
6 shared?

7 A. Yes, absolutely.

8 491 Q. Yes. And then the last paragraph, just to move matters
9 along. She said:
10 15:03

11 "In view of the foregoing it has not been possible to
12 conduct a full investigation into Garda Keogh's absence
13 through alleged work related stress."

14 A. Yes.

15 492 Q. "Nor do I believe will any further or specific 15:03
16 information be provided by Garda Keogh which would
17 enable the further investigation of his claim.
18 However, to be clear and to avoid any doubt, I am to
19 enquire if there is a requirement to further
20 investigation Garda Keogh's absence through alleged 15:03
21 work related stress. In the event that a further
22 investigation of this matter is warranted, I would
23 recommend that permission be granted to appoint an
24 inspector outside the Westmeath division to conduct
25 same." 15:03

26 A. Yes.

27 493 Q. Was that something that was discussed with you and that
28 you were aware of?

29 A. Yes.

1 494 Q. One matter that I omitted to ask you about was your
2 discussions with Detective Superintendent Mulcahy?
3 A. Yes.
4 495 Q. You had mentioned I think at some point discussions
5 with Detective Superintendent Mulcahy regarding Garda 15:04
6 Keogh in the context of his welfare?
7 A. Yes.
8 496 Q. What were those discussions? What was said?
9 A. So, Detective Superintendent Mulcahy and I began making
10 contact with each other on 1st April '15. And whenever 15:04
11 Detective Superintendent Mulcahy felt that he was in
12 difficulty, he would phone me to update me on, I
13 suppose, calls he would get from Garda Keogh in the
14 evening and at nighttime, where he might be inebriated.
15 We would, you know, take that into account then 15:04
16 locally.
17 497 Q. Yes.
18 A. We would speak, I suppose, on what was the best to
19 handle it and how bad was it and what needed to be
20 done. It would always refer back to, I suppose, 15:04
21 Detective Superintendent Mulcahy then making contact
22 with the employee assistance officer, Garda Quinn, and
23 advising him, advising me.
24 498 Q. I am going to move off the of supports that were
25 provided to Garda Keogh and come back to the issue that 15:05
26 I parked, that is the issue of crime files and the
27 correcting of his paperwork, Garda Keogh's paperwork.
28 This is issue 9.
29 A. Yes.

1 499 Q. We might just return to your statement, please, that
2 you provided to the Tribunal, at page 2047. If we
3 scroll down, you say that on 19th June 2015, following
4 consultation with your management team, you had sent
5 out instructions in relation to the introduction of the 15:05
6 accountability process to ensure the thoroughness of
7 the investigation process relating to reporting volume
8 crime, that it was to a high standard to allow
9 information to be communicated to all victims to
10 actively update them on the investigative efforts 15:06
11 undertaken by An Garda Síochána?

12 A. Yes.

13 500 Q. Is that right?

14 A. Yes.

15 501 Q. We might look at page 2099, please. I think this is 15:06
16 one of the documents by which you sought to introduce
17 the suite of new measures. This is dated 19th June
18 '15. We have already seen a reference to this briefly
19 at one point. It's dated the 19th June and it's
20 addressed to each sergeant in Athlone Garda Station? 15:06

21 A. Yes.

22 502 Q. And each member in Athlone district?

23 A. Yes.

24 503 Q. Is that right?

25 A. Yes, Chairman. 15:06

26 504 Q. And you say in that:

27

28 "As a result of a review of the investigation of volume
29 crime and the accountability process pertaining to

1 those investigations, including the updating of
2 victims, a new manilla folder, which is attached, is
3 being introduced, which is effective from 1st July
4 2015. "

5 A. Yes. 15:07

6 505 Q. So is that the start of the, so to speak, new rule?

7 A. Well, I suppose earlier on I had set out a kind of
8 framework in five phases that I hoped to bring in and
9 this was part of allowing that to develop.

10 506 Q. Yes. Sorry, I may it have taken it out of sequence. 15:07
11 We might stay with this one for a moment and come back
12 to that earlier one?

13 A. Yes.

14 507 Q. You might, please, by reference to the main bullet
15 points within this document, just briefly outline the 15:07
16 purpose of it and what impact it could have had in
17 terms of each members duties and paperwork obligations?

18 A. Yes. It was a precursor for something the organisation
19 was to bring in any way on the 1st November of that
20 year, but we introduced it I suppose in our own way and 15:08
21 we designed a manilla folder that would tick boxes
22 there that would allow people to indicate what
23 enquiries they had made at the scene and a range
24 information, and we have seen some of them during the
25 week while I have been giving evidence. The manilla 15:08
26 folder then was to contain, I suppose, any exhibits,
27 original statements or documentary exhibits that might
28 be there. The idea was that it would visibly
29 demonstrate what efforts were made and if there were no

1 avenues of enquiry and no suspects available, that it
2 would be submitted, I suppose, so they could be marked
3 inactive by either myself or either of the inspectors.
4 And then sent to the victims office, and that they
5 would make contact then with the victim to update them 15:08
6 properly on the efforts that had been made to bring
7 their case to conclusion and to explain to them that it
8 had drawn a blank, and to create some authenticity
9 around the process to, I suppose, ensure public trust
10 in the investigation of volume crime and how it was 15:09
11 been occurring. There had been some criticism in a
12 Garda inspectorate report in October 2014, which
13 concentrated on how volume crime was being
14 investigated. I brought in this measure, I suppose, to
15 ensure that we weren't going to be subject to criticism 15:09
16 from that point on, that we have some type of a
17 monitoring and governance process to be able to
18 determine what efforts were being made and satisfy the
19 public and the organisation that it was being all done
20 correctly. 15:09

21 508 Q. A part, a component of the new practices was the system
22 whereby effectively permission needed to be sought from
23 a supervisor if it was intended to close out a crime
24 file?

25 A. Yes, in order that it might would be marked inactive, I 15:10
26 suppose, and the garda member then wouldn't be burdened
27 with carrying that in his workload and it would maybe
28 free him up to -- he would have the support of senior
29 management then to allow him to move away from that and

1 to move on to something else. The organisation did
2 introduce a system like that then, based entirely on
3 how Pulse is managed, from the 1st November '15 in any
4 event. And it was a seamless transition for us,
5 because we actually -- 15:10

6 509 Q. CHAIRMAN: You were already doing it.

7 A. We had it in, albeit on an Excel sheet and all that.

8 510 Q. MR. MÍCHEÁL O' HIGGINS: Looking at the second last to
9 the last bullet point:
10 15:10

11 "The district officer or acting district officer will
12 then review and close off the file or return it for
13 further attention."

14 A. Yes.

15 511 Q. "If all avenues of enquiry have been exhausted and no 15:10
16 leads exists, the district officer will mark the
17 investigation of the crime inactive and send the crime
18 to the PAF administration office at the victims office
19 for filing."

20 A. Yes. 15:11

21 512 Q. And that ultimately was the objective; solve crime or
22 notify victims?

23 A. Yes.

24 513 Q. All necessary steps were taken and it wasn't solved?

25 A. If a crime was involved, the victim would be a central 15:11
26 part of that because there would be a court process and
27 there would be ongoing interaction in relation to that.
28 But if it wasn't solved there was a break down, in that
29 sometimes the victims weren't being informed what

1 happened. We wanted to try and correct that, I
2 suppose, and close that circle.

3 514 Q. Yes. Do you see the last line of the next page?
4 A. Yes.

5 515 Q. "Please bring to the attention of each member for 15:11
6 strict compliance."
7

8 It was canvassed with you, I think it was by
9 Mr. Marrinan, that perhaps the issue as to whether this
10 applied to members or whether it just applied to 15:11
11 sergeants and upwards?

12 A. It applied to everybody, yeah, yeah. Because the Garda
13 member was the investigator in most cases, and they
14 would submit the file then to their sergeant and it
15 would come up along. Obviously the inspectors or I 15:12
16 would add value to it if we could, or if we saw some
17 issue with it that we felt needed to be addressed
18 before we closed it off, we would return it to allow
19 that to happen before it went to the victims office, so
20 as that the communication could happen with the victim. 15:12
21 MR. MARRINAN: Sorry, Chairman, if I could just
22 interrupt there. I didn't canvass that in relation to
23 this document, it was the later document that I
24 canvassed the role of the sergeant in charge.

25 CHAIRMAN: I understand, Mr. Marrinan, it was the 15:12
26 question of the report.

27 MR. MARRINAN: Yes.

28 CHAIRMAN: And whose responsibility it was to put in
29 the report. But no doubt Mr. O'Higgins will get to

1 that. I am not monitoring the correctness of any
2 assertion or not assertion, Mr. Marrinan, but I haven't
3 missed that point.
4 MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman. In
5 fairness to Mr. Marrinan -- 15:13
6 CHAIRMAN: It's not a criticism.
7 MR. MÍCHEÁL O' HIGGINS: We might move to that.
8 CHAIRMAN: But it's not actually what Mr. Marrinan was
9 canvassing, he was dealing with whose responsibility is
10 it to put in the report. 15:13
11 MR. MÍCHEÁL O' HIGGINS: Yes.
12 CHAIRMAN: And he discussed that in extenso with the
13 chief superintendent.
14 MR. MÍCHEÁL O' HIGGINS: I might move to that now, so we
15 have clarity. 15:13
16 CHAIRMAN: Thank you very much.
17 MR. MÍCHEÁL O' HIGGINS: Page 2121, please. 2121. And
18 this is the document that Mr. Marrinan --
19 CHAIRMAN: Yes.
20 516 Q. MR. MÍCHEÁL O' HIGGINS: At least I think it's the 15:13
21 document Mr. Marrinan canvassed with you. It's 18th
22 August 2015. This is headed:
23
24 "Reporting of incidents other than creating Pulse
25 entries." 15:13
26
27 It says:
28
29 "All incidents of a critical or serious nature must be

1 the subject of a short and concise report in addition
2 to any entry made on Pulse. A report in addition to
3 the Pulse entry is necessary in order that the local
4 and divisional management are aware of the background
5 surrounding all critical or serious incidents either
6 reported or discovered by members. "

15:14

7
8 Do you see that there?

9 A. Yes.

10 517 Q. What was your purpose in introducing -- in sending that
11 directive out to each sergeant, each member in Athlone?

15:14

12 A. So the purpose of that was to allow, I suppose, the
13 early warning system to take over and, I suppose, the
14 passing over of the continuation of any investigation
15 that occurred, particularly during the night, and that
16 the, I suppose, mechanisms and machine that we had in
17 place would swing into action and try and make efforts
18 to gather evidence at an early a stage as possible.

15:14

19 518 Q. Yes. In the second paragraph there is a reference to
20 ensuring the reporting system is working swiftly and
21 the sergeant in duty or the sergeants, in his or her
22 absence the station orderly, will prepare a short,
23 concise report and e-mail it to district office and to
24 yourself or Inspector Farrell, D/Sergeant Curley or
25 D/Sergeant Baker?

15:15

26 A. Yes.

27 519 Q. Sergeant in charge.

28
29 "Reports are required for all Pulse category types

1 which are deemed serious and likely to generate
2 communi ty/medi a i nterest. "
3
4 That was the breadth of the direction?
5 A. Yes. 15:15
6 520 Q. Do you see over the page, there is a similar last line
7 to this document. This is what I was -- I think this
8 was canvassed possibly by Mr. Marrinan:
9
10 "Please bring to attention of each member for immediate 15:15
11 implementation and for strict compliance. "
12 A. Yes.
13 521 Q. Again, was this only to apply to sergeants and upwards
14 or was this for all guards?
15 A. It was for everyone to take note of. And I suppose 15:15
16 what was important is, that the report might come in --
17 I was trying to cater for every eventuality, I suppose,
18 in trying to pin roles to people. The objective was
19 hopefully that the report would come in and our team
20 would swing into action then. 15:16
21 522 Q. CHAIRMAN: where I think the debate was and the
22 analysis was, that clearly -- sorry, when I say
23 clearly, it seems that this memo was intended to say
24 it's not enough to have just put it on Pulse.
25 A. Yes. 15:16
26 523 Q. CHAIRMAN: You have to make a report.
27 A. Yes.
28 524 Q. CHAIRMAN: And that's going to be the basis of it. So
29 obviously somebody might previously have thought, well,

1 I have put everything on Pulse, that's okay.

2 A. Yes.

3 525 Q. CHAIRMAN: You are saying that's not okay.

4 A. Yes.

5 526 Q. CHAIRMAN: But the first paragraph appears on the face 15:16
6 of it, on one reading at least, the reading that
7 Mr. Marrinan was canvassing, it appears to say that the
8 obligation of making that report is on the sergeant?

9 A. Yes.

10 527 Q. CHAIRMAN: Now, you say, as I understand it, well, 15:16
11 where is he going to get the information?

12 A. Yes.

13 528 Q. CHAIRMAN: Except from me as I come in and report it?

14 A. Yes.

15 529 Q. CHAIRMAN: So that envisages if you like, although it 15:16
16 doesn't say it, two reports; in other words, that if I
17 am the investigating person, I come in, I put it on
18 Pulse and I make a report, the sergeant may simply
19 transmit it?

20 A. Yes. 15:17

21 530 Q. CHAIRMAN: Or the sergeant may write out something
22 different?

23 A. Yes.

24 531 Q. CHAIRMAN: But it doesn't actually say that?

25 A. No, I appreciate that. 15:17

26 532 Q. CHAIRMAN: That's the point that I think Mr. Marrinan,
27 if I am understanding correctly, was exploring?

28 A. I appreciate that, Chairman. Yeah.

29 533 Q. MR. MÍCHEÁL O' HIGGINS: And I think, chief

1 superintendent, just to fill out the picture in
2 relation to the new practices, I think in September of
3 the same year, of 2015, you also notified the station
4 members to the fact that there was to be an allocation
5 of an additional sergeant to enhance supervisory
6 structures as well as six detective aids. 15:17

7 A. Yes. That is a restructuring of the crime in the
8 detective crime unit and the drugs unit in Athlone.

9 534 Q. We might move to page 2123, just to deal with that
10 briefly. This is a document again from yourself, this 15:18
11 time to chief superintendent Westmeath, dated 9th
12 September 2015. It indicates that, it's headed:

13
14 "New structures to be implemented in Athlone districts
15 crime/drugs unit to coincide with the appointment of 15:18
16 two members as detective gardaí."

17 A. Yes.

18 535 Q. It refers to the competition to fill two existing
19 vacancies having been completed. It says:

20
21 "It is now therefore timely I believe to set out the
22 new structures I intend to introduce in the area of
23 crime/drugs policing in the district. The new
24 arrangements are essential to bring about changes to
25 personnel, work practices and supervision while 15:18
26 creating a culture of openness, transparency,
27 accountability and governance. The changes will also I
28 believe reinvigorate the crime/drugs unit and displays
29 to the district force and the public that police have a

determination to make a corrections to areas which have attracted criticism in relation to existing culture and work practices, that in turn has led to a number of serious disciplinary and criminal issues arising in the district in the very recent past."

15:19

A. Yes.

536 Q. Again, presumably this was a management initiative that was discussed with other members within management?

A. Absolutely. This was something that again the core team of people who had key positions in the district got together and designed and began to implement that. I suppose it created some opportunities for people in lateral movement, in rotation of positions within the structures of it, and that in turn then allowed operational and members who were on units to have that, I suppose, detective investigative support to them. That worked very well then in the trailer theft case, where people were able to support Garda Keogh from the detective unit in bringing that to a conclusion.

15:19

15:19

537 Q. Yes. And you say in the document:

15:20

"Major changes arrive with the allocation of an additional sergeant to enhance supervising structures."

A. Yes.

538 Q. "As well as six detective aides. Two of those members would have a direct focus on drug policing."

15:20

A. Yes.

539 Q. "The detective sergeant will have primacy in relation to the overall supervision of the unit and will be

1 assisted closely by the additional sergeant allocated
2 to the unit."

3 A. Yes.

4 540 Q. Then you say:

5

6 "To ensure and enhance and reinvigorate policing
7 services."

8

9 Then you set out a number of bullet points.

10 A. Yes.

11 541 Q. "Strict guidelines of operation encompassing the
12 organisations procedures, policies, roles and objectives
13 be put in place. Emphasised by the district officer,
14 inspected by the supervisory sergeants; quarterly
15 crime/drug policing meetings will be held in the unit." 15:21
16

17 over the page:

18

19 "A meeting will include the forward planning aspect,
20 where the unit will outline their plans to target 15:21
21 individual district criminals to the areas of crime
22 found in the district. Meetings will be minuted and
23 the areas mapped to ensure undertakings given and plans
24 made are taken to fruition; emphasis will be placed on
25 support for uniformed members on regular units to 15:21
26 ensure the specialist --."

27

28 CHAIRMAN: I am sure there is a question coming. I
29 feel it, Mr. O'Higgins.

1 542 Q. MR. MÍCHEÁL O' HIGGINS: This is a further aspect of the
2 measures that were introduced under your watch, isn't
3 that so?

4 A. Yes, that's correct, Chairman.

5 CHAIRMAN: To be fair, Mr. O'Higgins, we have four 15:21
6 cases. The case is, the superintendent, as he then
7 was, criticisms were over top or humiliating or other
8 pejorative expressions. They were unreasonable.

9 MR. MÍCHEÁL O' HIGGINS: Yes.

10 CHAIRMAN: To say the least, they were unfair, they 15:22
11 were -- and in some respects they were totally wrong,
12 because the obligation was on the thing. That's the
13 case that is made here. As I understand it, there is
14 no challenge to the regime imposed by Chief
15 Superintendent Murray. Nobody says what he did was 15:22
16 wrong or unreasonable. Unless somebody tells me I'm
17 wrong, Garda Keogh doesn't say, look, he put in these
18 ridiculously detailed obligations which nobody could
19 have complied with and I was at my wits end. Nobody
20 says that. Garda Keogh doesn't say that. He says, 15:22
21 look, in these specific cases what I did was either not
22 wrong or only slightly or there might have been some
23 criticism, that's the case that we have. Now I know
24 the answer, I know what the superintendent's answer is,
25 but I am wondering is there anything you want to 15:23
26 revisit and review about his answers in relation to the
27 four particular criticisms.

28 MR. MÍCHEÁL O' HIGGINS: I suppose, Chairman, one of the
29 reasons I have gone through these matters, and I

1 acknowledge in some degree of detail, is in an effort
2 to address one aspect of Garda Keogh's case; namely
3 that -- well, two aspects. One, prior to 2015, the
4 arrival of this witness that everything was fine for
5 him. I am paraphrasing. And with this witness's 15:23
6 arrival, it all changed, and this witness is to blame.
7 CHAIRMAN: But he doesn't say it changed because he put
8 in new regimes. That I could understand. Now, I may
9 be wrong, but if I understand it, he says, look, you
10 treated me unfairly in relation to Custume Place, the 15:23
11 trailer, Mulligan's and the robbery from the person.
12 That's what he says. And I put it in my reports, or I
13 put it on Pulse, or I did one or both or so on, and
14 your criticisms that came down were unreasonable,
15 unfair and humiliating. That's the case. 15:24
16 MR. MÍCHEÁL O' HIGGINS: Together with an allegation
17 that he was treated differently to other members in
18 relation to any frailties in their crime files. And I
19 suppose in that context it's relevant, in my respectful
20 submission. 15:24
21 CHAIRMAN: I don't think it's relevant. I may as well
22 be absolutely blunt, I don't think it's relevant what
23 measures the chief superintendent put into place
24 because nobody has suggested that he did anything
25 wrong. In fact, I think people have implicitly, if not 15:24
26 explicitly acknowledged that these were good measures.
27 Strict, was that the word you used earlier. That they
28 were strict measures. I don't think anybody challenged
29 that. Anyway. So what I would love you to do is to

1 tell me why the criticisms of the injured parties
2 writing the statement, or the trailer and so on.

3 MR. MÍCHEÁL O' HIGGINS: I, of course, accept your --

4 CHAIRMAN: It's not really a ruling. I mean, if there
5 is any relevance to it, Mr. O'Higgins -- I am sorry, if 15:25
6 there is any actual relevance to it I have no problem,
7 clearly, because it will be helpful to me.

8 MR. MÍCHEÁL O' HIGGINS: Can I just say this --

9 CHAIRMAN: But I am just appealing to you to --

10 MR. MÍCHEÁL O' HIGGINS: I will move through it quickly. 15:25
11 The reason I was raising it --

12 CHAIRMAN: -- consider my feelings; I have actually
13 been following the evidence all the time.

14 MR. MÍCHEÁL O' HIGGINS: I don't doubt that. There is a
15 complaint about how these things were implemented. 15:25

16 CHAIRMAN: Specifically, to wit, A, B, C, D, you were
17 unreasonable when I had the people, and I was busy and
18 the people came in and we looked at the video, we saw
19 the suspect and we didn't see the suspect, we saw the
20 suspect and we were satisfied that he didn't go into 15:25
21 the house at all and we all satisfied ourselves of that
22 and then we all went home and decided that there was no
23 case. Anyway.

24 543 Q. MR. MÍCHEÁL O' HIGGINS: Chief superintendent, moving
25 then, you have heard what has been said -- 15:26

26 A. Yes.

27 544 Q. -- if I can move to some of the criticisms that have
28 been made of your position. Following the introduction
29 of your initiative regarding with respect to the crime

1 files, did the crime files feature first of all as part
2 of the normal daily correspondence that you had to deal
3 with?

4 A. They did, yes.

5 545 Q. We might just take up 2047 of your statement to the 15:26
6 Tribunal.

7 A. Yes.

8 546 Q. At the bottom of 2047 you indicate that you treat of
9 the two thefts at Custume Place.

10 A. Yes. 15:26

11 547 Q. Two alleged thefts.

12 A. Yes.

13 548 Q. You reviewed those and we have seen the documentation
14 in relation to that. As I understand the gist of the
15 criticism there, in one respect it relates to your 15:27
16 criticism of, as to it being best practice for the
17 investigating member to take down the witness'
18 statement rather than the witness writing out their
19 own?

20 A. Yes. 15:27

21 549 Q. CHAIRMAN: You say it is part of the investigative
22 process --

23 A. Yes.

24 550 Q. CHAIRMAN: -- that the guard will ask questions --

25 A. Yes. 15:27

26 551 Q. CHAIRMAN: -- or the officer?

27 A. Challenge the account given from a witness, yeah.

28 552 Q. CHAIRMAN: And get details back?

29 A. Yes.

1 553 Q. MR. MÍCHEÁL O' HIGGINS: If we could briefly have up on
2 the screen, please, the transcript from Day 107.
3 CHAIRMAN: Thank you.
4 MR. MÍCHEÁL O' HIGGINS: It is page 19 of that
5 transcript. Line 22. He was being asked by 15:27
6 Mr. Murphy, Garda Keogh this is:
7
8 "Q. Well, would you agree with me that it is
9 considered best practice in relation to taking
10 statements that the investigating member takes down the 15:28
11 statement?
12 A. I don't know if I would use the term best practice.
13 It would be the normal practice. I would accept it's
14 the normal practice that a guard would take a statement
15 in the -- a guard would, in their own writing, write 15:28
16 down what someone is saying."
17
18 And he says:
19
20 "Whether it's best practice, I don't think I could go 15:28
21 that far."
22
23 And then it is canvassed with him again
24
25 "You see again, Chief Superintendent Pat Murray will 15:28
26 say that the reason it is recommended is that it is the
27 proven and tested best means of taking a statement from
28 a witness in a thorough fashion, to ensure that all
29 relevant details are gathered in the presence of the

1 investigating member.

2 A. Judge, my answer last week is the same as this one.

3 In that, over the years, how many times have people in

4 court cases said I never said that in my statement..."

5 15:29

6 CHAIRMAN: And he said it is perfectly legal, nothing

7 wrong with it.

8 MR. MÍCHEÁL O' HIGGINS: That's not -- just we might

9 stop with the reference to the transcript there, that

10 is not your position. 15:29

11 A. Oh no, absolutely not. Nor is it the organisation's

12 position.

13 CHAIRMAN: I understand.

14 A. As I said earlier, you know, considerable effort and

15 expense has been gone to, to allow everyone be trained 15:29

16 in investigative interviewing over a number of years.

17 MR. MÍCHEÁL O' HIGGINS: Yes.

18 A. I hope -- I am entrusted with the position of director

19 of training and professional development in the

20 organisation at present and I am involved in that area 15:29

21 just at this time.

22 554 Q. Now if we could look, please, at page 2048, going back

23 to your statement, this is in relation to the criminal

24 damage case file. You say:

25 15:30

26 "On the 14th August 2015, having again received

27 criminal files for review in the normal way I initiated

28 queries regarding..."

29

1 That particular Pulse incident, criminal damage.

2 A. Yes.

3 555 Q. "-- querying if Garda Keogh had taken the statements on
4 the file from the witnesses and asking if possible
5 suspects could be a local criminal family." 15:30

6

7 You had nominated a family.

8 A. Yes.

9 556 Q. And you reply Garda Keogh had dealt with the issue
10 adequately and you mark the incident inactive? 15:30

11 A. Yes.

12 557 Q. And asked that the victims office fully update the
13 victim on the unavailability of avenues of inquiry?

14 A. Yes.

15 558 Q. In raising the queries with Garda Keogh and in making 15:30
16 that request were you targeting him?

17 A. No, absolutely not. I saw it as a legitimate oversight
18 on my part to ensure that, you know, I suppose the
19 professional approach would be taken to the
20 investigation of crime and that no stone would be left 15:30
21 unturned, if possible, to bring crimes to conclusion,
22 the investigation of them.

23 559 Q. In relation to the next one you deal with, concerning
24 the theft of a trailer, that concerned the issue of the
25 CCTV footage? 15:31

26 A. Yes.

27 560 Q. You have told the Chairman in evidence that, if I
28 understand correctly, you weren't aware from the
29 documents and from your reading of the documents

1 provided to you, that the particular footage was Garda
2 footage?

3 A. No, and my minutes don't seem to indicate --
4 CHAIRMAN: That's right.

5 A. -- that I was aware of that, yeah. 15:31

6 561 Q. MR. MÍCHEÁL O' HIGGINS: And what comes to you under the
7 system that enables you -- obviously you're just doing
8 a review.

9 A. Yes, it's a paper-based review.

10 562 Q. So, what comes up to you physically? 15:31

11 A. That manilla folder with the documents that are in it,
12 supplied by the investigating member.

13 563 Q. Yes.

14 CHAIRMAN: The first one would probably just be a piece
15 of paper. 15:32

16 A. It could be. Well, the idea would be that you would,
17 if it was going nowhere and there was nothing it could
18 be just one piece of paper.

19 564 Q. CHAIRMAN: No, but before it went anywhere, it's just
20 started? 15:32

21 A. Yes.

22 565 Q. CHAIRMAN: I have just been out, I have interviewed
23 people, I get a statement.

24 A. Yes.

25 566 Q. CHAIRMAN: I might have statements from witnesses, from 15:32
26 victims --

27 A. Yes.

28 567 Q. CHAIRMAN: -- injured parties, I suppose, plus my
29 report, is that what I would have?

1 A. Yes. No, when we would request that we would give you
2 a bit of time before you had to send that up. And in
3 that period we would expect you have to developed a
4 line of inquiry, if one was available.

5 568 Q. CHAIRMAN: Okay. 15:32

6 A. And if you were wanting to, I suppose, have it marked
7 inactive you had to demonstrate then that you had
8 carried out whatever enquiries were there and support
9 that.

10 569 Q. CHAIRMAN: I follow. But that would come later. 15:32
11 whether that was marked inactive or whether we were
12 going to have a prosecution that would come later,
13 isn't that right? First we would start with a report.

14 A. But that wouldn't be required to come in until the date
15 we give you. We didn't want that immediately. 15:32

16 570 Q. CHAIRMAN: I see.

17 A. Because there'd be nothing in it to review.

18 571 Q. CHAIRMAN: I see.

19 A. It was only when some work was done that you could
20 demonstrate to, I suppose, show that there were no 15:33
21 avenues of inquiry or you had gone down a road and
22 there was nothing out of it and then we could close
23 that off.

24 572 Q. CHAIRMAN: Can you just remind me then, if a guard goes
25 out in response to a call and discovers that a crime 15:33
26 has been committed --

27 A. Yes.

28 573 Q. CHAIRMAN: -- no idea yet who has committed the crime.

29 A. Yes.

1 574 Q. CHAIRMAN: So, is that reported up to the PAF meeting?
2 A. That comes to the PAF meeting on Pulse.
3 575 Q. CHAIRMAN: And only on --
4 A. Say a normal, an assault, criminal damage, what I would
5 volume crime, theft. 15:33
6 576 Q. CHAIRMAN: Something like that, the guard puts that on
7 Pulse?
8 A. Yes.
9 577 Q. CHAIRMAN: He doesn't do anything else with it for
10 the -- 15:33
11 A. No, we pick that up on the PAF, we look for the crime
12 file.
13 578 Q. CHAIRMAN: I'm sorry, this is my own stupidity, I have
14 not been following that as the system up to now. So
15 the first thing he does is he puts it on Pulse. Once 15:33
16 he does that, so far so good?
17 A. Yes.
18 579 Q. CHAIRMAN: No criticism of him?
19 A. No, absolutely not.
20 580 Q. CHAIRMAN: No. But as time goes on he is expected to 15:34
21 advance it --
22 A. Yes.
23 581 Q. CHAIRMAN: -- or to get to a point where he says that's
24 the end --
25 A. No more. 15:34
26 582 Q. CHAIRMAN: -- we're going nowhere?
27 A. Yes.
28 583 Q. CHAIRMAN: Okay. And that's the report that you're
29 talking about?

1 A. And this just came in on the 1st July, it took
2 naturally a bit of time to bed in. And these things
3 seem to happen in that bedding in period.
4 CHAIRMAN: Okay. Thank you. I'm sorry I didn't
5 understand. I should have understood that probably but 15:34
6 I didn't understand that before.
7 A. I perhaps, Chairman, didn't explain it well enough.
8 CHAIRMAN: No, don't let's get into who will take the
9 blame. Okay.
10 584 Q. MR. MÍCHEÁL O' HIGGINS: The manilla folder you 15:34
11 mentioned, just so we get a practical sense of it, what
12 comes up?
13 A. That manilla folder with whatever documents are in it
14 to demonstrate, there might be a short report in it to
15 demonstrate, to allow the investigating member 15:34
16 demonstrate that he had taken certain action, followed
17 any lines of inquiry that he had developed and he had
18 drawn a blank and he would submit it then for it to
19 be -- some oversight of it in order that it might be
20 marked inactive. 15:35
21 CHAIRMAN: I understand.
22 A. Sent to the victims office and closed off in that way.
23 If there is a prosecution, that is a different file.
24 MR. MÍCHEÁL O' HIGGINS: Yes.
25 A. There would be a charge or perhaps an investigation 15:35
26 file submitted for direction. And that would then go
27 to the courts office. Because there would be a process
28 involved in that, that would lead to a criminal
29 prosecution.

1 CHAIRMAN: Okay.

2 585 Q. MR. MÍCHEÁL O' HIGGINS: Just tying it for a moment,
3 staying with this one, the trailer, could we look at
4 page 2300? This is a two-page document. Do you see
5 this? What do you call this document? 15:35

6 A. That is the manilla folder.

7 586 Q. So the first page of that --

8 A. It is an A4 size folder folded in two.

9 587 Q. -- Mr. Marrinan canvassed this with you at one point.
10 On the first page, it has: 15:36

11

12 "Investigating Member: Garda Nick Keogh.
13 Nominated Supervisor: Dermot Monaghan."

14 A. Yes.

15 588 Q. "Remarks of supervisor: CCTV viewed to no avail." 15:36

16 A. Yes.

17 589 Q. Over the page we have the details I think by the
18 investigating member, is it?

19 A. Yes.

20 590 Q. At the bottom of the page -- 15:36

21 A. Yes.

22 591 Q. -- section 12.

23 A. Yes.

24 592 Q. We will move down a bit.

25 A. Yes. 15:36

26 593 Q. This gives a précis of --

27 A. Yes.

28 594 Q. This gives the basis on which permission, as it were,
29 to close it out is being sought, is that right?

1 A. Yes.

2 595 Q. So is this the box you look to, to see is it right to
3 close it out?

4 A. I suppose I looked at the entire document. I read
5 through the entire document. 15:36

6 596 Q. Yes.

7 A. And then just ask the questions in relation to CCTV.

8 597 Q. And when the thing came up to you, you hadn't noticed,
9 isn't that so, that it was CCTV, Garda CCTV footage?

10 A. No, I didn't notice that on it, no. 15:37

11 598 Q. It says there:
12

13 "Garda CCTV viewed. Crime occurred at 4:31-4:34 --"

14 A. Yes.

15 599 Q. "-- 8/8/15 poor quality footage of car moving with 15:37
16 stolen trailer hitched."

17 A. Yes.

18 600 Q. "Investigating members comments: Unable to make out
19 registration number, colour or type of car."

20 A. Yes. 15:37

21 601 Q. You raised queries on foot of that application to close
22 it out, coming up to you?

23 A. Yes.

24 602 Q. As far as you were concerned, presumably they were bona
25 fide enquiries? 15:38

26 A. Yes. well, I suppose all that we had at that time was
27 CCTV and I suppose some type of direction of travel of
28 the car which may have led to other CCTV. It's of poor
29 quality. I suppose I would have considered releasing

1 financial aid to see if it could be enhanced in any way
2 or what could be done to it to develop it, if possible
3 at all, the registration of the car in order to get
4 some kind of a lead to follow. I suppose it would be
5 nice for the victim if he got his trailer back and 15:38
6 that's what we were all hoping to...

7 603 Q. Yes. Just in terms of the overall argument, moving
8 away from the specific for the moment, the overall
9 argument is that in fact the enquiries you raised in
10 relation to these matters were artificial or invented 15:38
11 and in fact were done for the purpose of humiliating
12 Garda Keogh?

13 A. No. No. Absolutely not, Chairman. They were
14 legitimate queries as far as I was concerned. I was
15 lending the benefit of my experience to the 15:39
16 investigation. I wasn't there just to rubber stamp
17 these files. I had to provide some oversight and
18 quality assurance around them. And I saw that as my
19 role, having been appointed to that role.

20 CHAIRMAN: Sorry, what date is this document? 15:39
21 MR. MÍCHEÁL O' HIGGINS: It is 11th August 2015. That
22 is what I have. It's page 2300.

23 CHAIRMAN: Thank you. This is the 11th August.

24 A. Sergeant Monaghan submitted --

25 604 Q. CHAIRMAN: The incident happened on the 8th August? 15:39
26 A. Yes, 7th and 8th, yeah.

27 605 Q. CHAIRMAN: In fact we know, unless I am going to
28 demonstrate even more ignorance, as I understand, that
29 Garda CCTV proved fruitless, but Garda Keogh had

1 actually nosed around and got an idea --

2 A. Yes.

3 606 Q. CHAIRMAN: -- I'll check out the other filling station.

4 A. Yes.

5 607 Q. CHAIRMAN: And so, while this was coming in, 15:40

6 unbeknownst to you --

7 A. Yes.

8 608 Q. CHAIRMAN: -- there was, a vital piece of gold dust was

9 actually going to come in due course.

10 A. Yes, in due course, yes. 15:40

11 609 Q. CHAIRMAN: Okay. But are you saying that he was -- he

12 knew this, so clearly, I assume this wasn't a closing

13 off, we're nowhere report, because he was still hoping,

14 now he didn't know but he was still hoping that whoever

15 was going to come in with the CCTV was going to deliver 15:40

16 it to him?

17 A. Yes. It came up to me as a closing off type situation,

18 but yeah.

19 610 Q. CHAIRMAN: Okay. Was there some room for

20 misunderstanding? Clearly he knows there's a 15:40

21 possibility --

22 A. Yes.

23 611 Q. CHAIRMAN: -- maybe a remote possibility, as it turns

24 out, as it turns out, it's the complete answer.

25 A. Yes. 15:41

26 612 Q. CHAIRMAN: It solves the crime, possibly to Garda

27 Keogh's create surprise that the fella pulled in for

28 petrol --

29 A. Yes.

1 613 Q. CHAIRMAN: -- to the filling station on the opposite
2 side of the road. But it was a good piece of work.
3 A. Absolutely.
4 614 Q. CHAIRMAN: That was a good piece of work.
5 A. Absolutely. And there was an additional burglary in 15:41
6 Ballinasloe which was connected to it as well.
7 615 Q. CHAIRMAN: And it solved --
8 A. Yes.
9 616 Q. CHAIRMAN: A lot of things came together as a result of
10 that -- 15:41
11 A. Yes.
12 617 Q. CHAIRMAN: -- which he was involved in.
13 A. Yes.
14 618 Q. CHAIRMAN: So is it a misunderstanding? I mean I am
15 just looking at this. Is there a misunderstanding 15:41
16 here? You think that he is sending this in -- maybe he
17 has written off the possibility, if you like, he
18 doesn't think there's any hope. Now obviously he can,
19 I forget exactly what he said, but he might have
20 written off the possibility, he mightn't have had any 15:41
21 great hope, but as soon as it turns up the whole case
22 turns around, isn't that right?
23 A. I am just asking the question about CCTV.
24 619 Q. CHAIRMAN: Okay.
25 A. And it comes back to me a month later then indicating 15:42
26 that there's a development in that regard.
27 620 Q. CHAIRMAN: In fact, the whole situation has changed.
28 A. Yes.
29 621 Q. CHAIRMAN: Okay.

1 A. And then we put a process in train to get moving I
2 suppose to get the culprits.

3 622 Q. MR. MÍCHEÁL O' HIGGINS: Just in relation to that, chief
4 superintendent, I think the position is that when the
5 crime file was returned on the 1st September it 15:42
6 indicated that the additional CCTV had become
7 available --

8 A. Yes.

9 623 Q. -- showing the culprits, so there was major
10 breakthrough? 15:42

11 A. Absolutely. Sergeant Monaghan was keeping an eye on
12 the whole thing, and yeah.

13 CHAIRMAN: I understand. Mr. O'Higgins, am I
14 misunderstanding in what I have said or is that --
15 broadly speaking am I correct in what I have said? 15:42

16 MR. MÍCHEÁL O' HIGGINS: Chairman, I have no difficulty
17 with that.

18 CHAIRMAN: No, that is all right. Am I broadly
19 speaking understanding this? Okay.

20 A. Yes. 15:42

21 624 Q. CHAIRMAN: The whole thing turned around --

22 A. Yes.

23 625 Q. CHAIRMAN: -- when I suppose in truth the unexpected
24 came up.

25 A. Yes. 15:42

26 626 Q. CHAIRMAN: In other words, the very sensible query made
27 by Garda Commissioner --

28 A. Yes.

29 627 Q. CHAIRMAN: -- of the other place turned out to produce

1 some gold dust.

2 A. Yes.

3 628 Q. CHAIRMAN: Okay. But in the meantime you had been
4 dealing with the information as presented here.

5 A. Yes. 15:43

6 629 Q. CHAIRMAN: And you were querying, criticising, whatever
7 way, the standard of this presentation, not knowing
8 that there's another possibility?

9 A. I just asked questions about the CCTV, if it could be
10 developed in some shape or form. 15:43

11 MR. KELLY: I suppose in fairness adding, overlooking
12 the fact that he had initiative to deploy good police
13 work which resulted in a good outcome.

14 CHAIRMAN: You may gather from my comments, Mr. Kelly,
15 that somewhere in there is an implicit recognition or 15:43
16 at least belief that anybody can make submissions
17 about, but you may take it from what I have said that I
18 think it was a pretty good piece of work. And maybe an
19 unexpected one. But just, I will check it out on the
20 off chance. And there it is. It works out very well. 15:44
21 Absolutely. But here we are. This is the state of
22 affairs. I am just trying to understand exactly where
23 we are with this. Thank you very much.

24 630 Q. MR. MÍCHEÁL O' HIGGINS: In terms of the timeline then,
25 chief superintendent, my understanding is that Garda 15:44
26 Keogh responded on the 12th September and on the 22nd
27 September you expressed --

28 A. Appreciation.

29 631 Q. -- appreciation of the additional police work that --

1 A. Yes.

2 632 Q. -- brought matters to very successful conclusion?

3 A. Yes.

4 633 Q. And I think in fact, in November you sanctioned ten
5 hours overtime, adding to road hours, to Garda Keogh to 15:44
6 enable him attend for the arrest phase of the
7 investigation?

8 A. Yes. At that stage I had allocated Garda Keogh
9 indoors. And we were supporting him in bringing this
10 to a conclusion and he was being allowed out to take 15:44
11 part of the arrest phase of the investigation. And
12 work had been done to identify the culprits and they
13 were appearing at a courthouse on other matters and we
14 were hoping to get them there and deal with that side
15 of it. 15:45

16 634 Q. So I think the alleged culprits, having been
17 identified, were due to appear in Naas District Court
18 on the 18th November?

19 A. Yes.

20 635 Q. And -- 15:45

21 CHAIRMAN: And they pleaded guilty.

22 MR. MÍCHEÁL O' HIGGINS: Pardon?

23 CHAIRMAN: And they pleaded guilty.

24 A. They did.

25 636 Q. MR. MÍCHEÁL O' HIGGINS: So there was a successful 15:45
26 conclusion on foot that not being closed out but, more
27 importantly, on foot of the good detective work by
28 Garda Keogh.

29 A. Exactly. By everybody involved, yeah. And there was a

1 considerable team work on Garda Keogh's unit in
2 relation to ensuring that G Tube was populated, that
3 alerts were placed on Pulse in relation to the car and
4 CCTV was properly exhibited.

5 637 Q. CHAIRMAN: Yes. But I suppose the crucial, the crucial 15:45
6 thing was the, maybe instinctive, call to say I will
7 just check out the thing against the possibility that
8 something would turn up?

9 A. Absolutely. That is acknowledged by me.

10 638 Q. CHAIRMAN: That is probably the key to the whole thing? 15:46

11 A. That is acknowledged by me, Chairman, yes.

12 639 Q. MR. MÍCHEÁL O' HIGGINS: As matters transpired,
13 notwithstanding making that available, it's the case,
14 is it, that Garda Keogh was unable to take up the
15 opportunity to participate in the arrest? 15:46

16 A. Yes. Unfortunately he wasn't in a position to attend.
17 Another member deputised for him.

18 640 Q. Yes. Moving to a separate matter, you'll recall that
19 it is one of Garda Keogh's complaints that you were
20 party to a wrongful reclassification of crime -- 15:46

21 A. Yes.

22 641 Q. -- in relation to one of the crime reports, crime
23 files.

24 CHAIRMAN: The robbery from the person.

25 642 Q. MR. MÍCHEÁL O' HIGGINS: Yes. And we might just look at 15:46
26 volume 3, page 495, for a moment please. This is
27 Detective Eamon Curley's note of the 15th December 2015
28 regarding this robbery from the person. Pulse
29 number... And he is attaching a report from Garda

1 Divilly.

2 A. Yes.

3 643 Q. And it says:

4

5 "The incident cannot be investigated without the 15:47

6 cooperation of the victim.

7

8 The credibility of the victim has to be questioned as

9 it is not normal that a victim would refuse to

10 cooperate and pursue a robbery complaint. Consequently 15:47

11 I recommend this incident be recategorised to attention

12 and complaints following the outcome of the interview

13 with the victim."

14 A. Yes.

15 644 Q. Am I correct that that was the view obviously of 15:48

16 Sergeant Curley but it was also the view Sergeant Baker

17 and Inspector Minnock?

18 A. To recategorise the incident, yes, absolutely. We met

19 as a group to discuss those type of issues and what we

20 would do with them, and I think we decided at that 15:48

21 meeting on three actions.

22 645 Q. And you adopted that view, did you?

23 A. Yes. And ultimately the decision was mine, taking

24 account of the crime counting rules and the balance of

25 probability to recategorise it. 15:48

26 646 Q. We needn't rehash again the rights or wrongs of the

27 conclusion as to the credibility of the victim, but

28 could I ask you, on the 15th December 2015 you were the

29 subject of a speech by Clare Daly TD in the Dáil --

1 A. Yes.

2 647 Q. -- based on what was told to her by Garda Keogh?

3 A. Yes.

4 648 Q. Is that so?

5 A. That's correct. 15:48

6 649 Q. I think the case is that the position is that Garda
7 Keogh accepted in evidence that what the deputy said on
8 this particular occasion was based upon what he had
9 told her.

10 A. Yes. 15:49

11 650 Q. He said that, we needn't look at it, but Day 107, page
12 16, line 3.

13 A. Yes.

14 651 Q. Can I ask you to look at page 2522 of the materials
15 please? This is a note of Deputy Daly's contribution 15:49
16 in the Dáil on the 15th December 2015. We might scroll
17 down slowly please if we could to find the relevant...
18 If we scroll down. There is a reference to Garda Keith
19 Harrison, which needn't detain us now. And over the
20 page then there's a reference to yourself. 15:50

21 A. Yes. Just about halfway down. It's actually marked
22 slightly on the right-hand side of the page, just at
23 that little mark there. The passage starts there "it
24 would be entirely appropriate..."

25 652 Q. It says there: 15:50

26

27 "It would be entirely appropriate for the Minister to
28 comment on the Garda Inspectorate's report which has
29 obviously shocked people. It has also vindicated

1 everything we have said - that nothing has changed
2 inside the ranks of An Garda Síochána, except the faces
3 at the top. I am surprised that people have not called
4 for the current Garda Commissioner to resign because
5 she is standing over a situation that is at least as
6 bad, if not worse, than what the former Commissioner
7 stood over. It is worse because the scale of the
8 knowledge that is in the public domain has not been
9 addressed.

15:51

10
11 The previous Garda Inspectorate's report gave a damning
12 account of gardaí massaging the crime figures, for
13 example. That resulted in the analysis of crime figures
14 having to be withdrawn for a period. It is a very
15 serious matter. We know for a fact that the massaging
16 of the figures is still continuing. In recent weeks, in
17 Superintendent Pat Murray's station in the midlands and
18 in Athlone, we have seen direct evidence of at least
19 eight cases where crimes were written down so that the
20 original crime was reclassified as a more minor matter.
21 There is clear evidence of massaging the figures - for
22 example, changing burglaries to criminal damage, which
23 is reclassification."

24
25 My question for you, chief superintendent, is: That
26 decision to organise politicians or for politicians to
27 say these things under Dáil privilege, as far as you're
28 concerned was that fair or reasonable?

15:52

29 A. Oh, it was very unfair. And I was very badly damaged

1 by that. It was a very public accusation of some type
2 of corruption against me. I was operating to a system,
3 to a policy, to a set of procedures, with a very
4 dedicated team of experienced people who assisted in
5 helping me make those decisions. We were doing the 15:52
6 right thing for the right reason in complying with
7 organisational policy in relation to data and managing
8 the classifications of crimes, and it's all laid out in
9 the organisation policy. And that role fell to me.

10 And you know, I see what is alleged here, but we 15:52
11 equally recategorised crimes from non-crime to crime.
12 And it was based on the information that was available
13 in relation to the crime, the enquiries that had been
14 carried out and what determination we made as to what
15 category it should go into. So, there was an equal 15:53
16 amount of crimes reclassified from non-crime to crime
17 and some laterally then into different crime classes,
18 as was the case with the assault on the taximan or the
19 robbery of a taximan which was originally classified as
20 an assault. And it was a very normal process, it's 15:53
21 part of our system that we operated in keeping with the
22 organisational policy.

23 MR. MÍCHEÁL O' HIGGINS: Thanks, chief superintendent.
24 Chairman, I am going to be finishing out with the crime
25 figures aspect, but there is just one matter I need to 15:53
26 check and I have a little bit more for the witness
27 under some of the earlier headings.

28 CHAIRMAN: You probably have a few more -- in other
29 words, it's not something we are going to finish in a

1 few minutes, Mr. O'Higgins.

2 MR. MÍCHEÁL O' HIGGINS: No.

3 CHAIRMAN: So, that is perfectly reasonable. If you
4 are all right for tomorrow.

5 WITNESS: Yes, Chairman.

15:54

6 CHAIRMAN: I wouldn't anticipate that you would be long
7 tomorrow.

8 MR. MÍCHEÁL O' HIGGINS: No.

9 CHAIRMAN: But equally, I want you to be comfortable to
10 take sufficient time. If it is convenient, will we
11 break there? Is that a convenient time?

15:54

12 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.

13 CHAIRMAN: Very good. Thank you very much. So we will
14 say 10:30 then in the morning. Thank you very much.

15:54

15
16 THE HEARING THEN ADJOURNED UNTIL FRIDAY, 6TH DECEMBER
17 2019 AT 10:30AM

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