

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

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

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

HELD IN DUBLIN CASTLE
ON MONDAY, 27TH JANUARY 2020 - DAY 132

132

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

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I N D E X

WITNESS	PAGE
SUPERINTENDENT ALAN MURRAY	
DIRECTLY-EXAMINED BY MS. MCGRATH	6
CROSS-EXAMINED BY MR. KELLY	41
EXAMINED BY MR. DIGNAM	47
CHIEF SUPERINTENDENT LORRAINE WHEATLEY	
DIRECTLY-EXAMINED BY MR. MCGUINNESS	55

1 THE HEARING RESUMED, AS FOLLOWS, ON MONDAY, 27TH
2 JANUARY 2020:

3
4 MS. McGRATH: Good morning, Chairman. The first
5 witness this morning is Superintendent Alan Murray. 10:32

6 CHAIRMAN: Thanks very much. Thanks, Ms. McGrath.
7

8 SUPERINTENDENT ALAN MURRAY, HAVING BEEN SWORN, WAS
9 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

10
11 THE WITNESS: Superintendent Alan Murray, Mullingar. 10:32

12 CHAIRMAN: Thanks very much. Good morning

13 superintendent. Yes, Ms. McGrath, thank you.

14 1 Q. MS. McGRATH: Now, good morning, superintendent.

15 A. Morning. 10:32

16 2 Q. Chairman, the superintendent's statement is at page
17 1775 of the books. I think, superintendent, at the
18 moment you're attached to Mullingar Garda station, is
19 that right?

20 A. That is correct, Mr. Chairman. 10:32

21 3 Q. I think you may or may not be aware, but we're asking
22 you to assist the Tribunal in relation to issue number
23 7, which is a disciplinary investigation in relation to
24 the sick leave of Garda Keogh in July 2015. I think
25 you might be aware of is that, is that right? 10:33

26 A. I am aware of that, Mr. Chairman.

27 4 Q. Now this was an investigation under I think regulation
28 14 of the Garda Síochána (Discipline) Regulations 2007,
29 is that right?

1 A. That is correct, Mr. Chairman.

2 5 Q. I think you were appointed as the deciding officer for
3 this investigation by Chief Superintendent Wheatley on
4 10th August 2015, isn't that correct?

5 A. That is correct. 10:33

6 6 Q. Now, in relation to the disciplinary regulations, if I
7 could ask Mr. Kavanagh just to bring them up on the
8 screen, they're at 7793, please, Mr. Kavanagh. If I
9 could ask you to go to 7796. If you just move down to
10 the end there. I think part 2 of the regulations deals 10:34
11 with less serious breaches of discipline, and that is
12 the regulation 14 that applied to you, is that right?

13 A. That's correct, Mr. Chairman.

14 7 Q. Okay. Now, if we just move onto the next page, (3)
15 there, so that's 14(3), these are the following 10:34
16 disciplinary actions that are open to you when you
17 carry out a regulation 14 investigation, is that right?

18 A. That is right.

19 8 Q. The first one is:
20
21 "A reduction of pay not exceeding 2 weeks' pay;
22 reprimand; warning; caution, or; advice."
23
24 Is that right

25 A. That is right. 10:35

26 9 Q. 14(4) says that if you are going to choose (3)(a),
27 which is the reduction in pay, it cannot exceed the
28 member's two weeks' pay, is that right?

29 A. That is right.

1 10 Q. And the amount deducted in any one week shall not
2 exceed 10% of the weekly pay. So it's important that
3 you are fully briefed in relation to what the correct
4 pay for the member is, is that right?
5 A. That's correct. 10:35

6 11 Q. Okay. Now, under subsection (6) there, and this is
7 just for the sake of completeness for the Chairman,
8 under (6), it outlines there on the third line, you can
9 undertake any enquiries and adopt any procedures that
10 you consider necessary, isn't that right? 10:35

11 A. That's correct.

12 12 Q. With a view to establishing the facts of the matter
13 under investigation and identifying or resolving any
14 conflicts or differences that may come to light during
15 the investigation? 10:35

16 A. That is correct.

17 13 Q. And then under subsection (7), you have the option of
18 directing a member not below the rank of superintendent
19 to undertake these enquiries, is that right?
20 A. That is right. 10:36

21 14 Q. Okay. I think is that a fair summary of the procedures
22 then that are followed for the purposes of the
23 regulation 14 investigation?
24 A. It is, yes.

25 15 Q. We also know that under the regulations -- and just to 10:36
26 summarise, I think there is a notice of interview, we
27 will come to that in a moment, then there is the
28 interview. I think you make the decision and it's
29 after that, that the report of the interview is

1 supplied to the member, is that right?

2 A. I forward the report of interview to the chief
3 superintendent.

4 16 Q. Sorry, yes, to the chief superintendent. I think it's
5 within 14 days of the interview, is that right? 10:36

6 A. Yeah. Yeah, and the chief superintendent will forward
7 it to the member concerned. I do my file for the chief
8 superintendent.

9 17 Q. Okay. Then I think if Mr. Kavanagh goes forward to
10 7800, that's section 19, I think this is the section 10:36
11 which provides for the review of your decision, is that
12 right?

13 A. That is correct. Section 18 and section 19, yes.

14 18 Q. And this is carried out by the appointing officer, and
15 in your case that was Chief Superintendent Lorraine 10:37
16 wheatley, isn't that right?

17 A. That is correct, Mr. Chairman.

18 19 Q. In particular, on the next page, subsection (5), it
19 outlines the circumstances in which your decision could
20 be reviewed, including, for example, if there was an 10:37
21 issue in relation to the facts there, at subsection (c)
22 or if there was an issue of proportionality, at
23 subsection E, isn't that right. They are the types of
24 circumstances where a decision may be reviewed by the
25 chief superintendent? 10:37

26 A. That's right.

27 20 Q. That's just an overview of regulation 14. I think you
28 were supplied with the documentation for the purposes
29 of the Regulation 14 by the appointing officer, is that

1 right? So the material comes in to you with your
2 appointment, is that right?

3 A. Yes. Whatever files the chief superintendent had, she
4 would send to me along with the I.A.11.

5 21 Q. Okay. In relation to Garda Keogh, we will come to that 10:38
6 specific material in a moment, but just again for the
7 sake of completeness, just looking at Regulation 14, I
8 think there is a HQ Directive in relation to this
9 procedure. If Mr. Kavanagh could open up page 8814
10 just for a moment. This was sent to the chief 10:38
11 superintendent by Chief Superintendent Ward at Internal
12 Affairs on 18th August 2015, and he is simply saying,
13 in the second paragraph:

14
15 "It is noted that Superintendent Murray has been 10:39
16 appointed as deciding officer in this matter, who
17 should be guided by the terms of HQ directive 159/08."

18
19 I think you would be familiar with 159/08, is that
20 right? 10:39

21 A. Yes.

22 22 Q. And 159/08 is in the book and it's at 11802. These
23 are:

24
25 "Notes on disciplinary procedures under the Garda 10:39
26 Síochána (Discipline) Regulations."

27
28 If a Regulation 14 -- if I could Mr. Kavanagh to look
29 at 11812.

1 CHAIRMAN: 11812 or 11802.

2 MS. McGRATH: I think it's 11812.

3 CHAIRMAN: Thank you.

4 23 Q. MS. McGRATH: The role of deciding officer there in
5 relation to you, chief superintendent, it says: 10:39
6
7 "A deciding must examine all the circumstances of the
8 alleged breach and is under an obligation to establish
9 the truth about a member's explanation."
10 10:39
11 Isn't that right?

12 A. That's right.

13 24 Q. Subsection (2) refers to there, where new allegation
14 materialises; subsection (3), and this is the provision
15 of assistance in respect of members; and subsection 10:40
16 (4):
17
18 "Deciding officers should make full use of Regulation
19 14(7) to obtain assistance in the conducting of the
20 investigation." 10:40
21
22 That was where we opened earlier, where you could ask
23 someone not below the rank of inspector to make
24 enquiries for you, is that right?

25 A. That is correct. 10:40

26 25 Q. Now, in relation to the provision of a penalty, if you
27 remember, one of the options available to you was a
28 reduction in pay, and I think this is dealt with in
29 this HQ Directive 11816. If you just go on down there,

1 the imposition of a penalty there at subsection (4).
2 Because I suppose I am concentrating on these because
3 this was the option that was imposed in respect of
4 Garda Keogh, isn't that right?

5 A. Sorry, can you repeat that?

10:41

6 26 Q. I am just concentrating on these provisions because
7 this was the penalty that was imposed on Garda Keogh?

8 A. Yes.

9 27 Q. Okay. And it says there at 4(a):

10

10:41

11 "Before imposing a penalty, due regard must be given to
12 the record of service, previous conduct and
13 circumstances of the member concerned and to any other
14 relevant matter and submissions may be received from
15 any person for that purpose and the member concerned
16 and any other person accompanying the member shall be
17 given an opportunity to make oral or, where
18 appropriate, written submissions with regard to such
19 matters."

10:41

20

10:41

21 Isn't that right?

22 A. That's right.

23 28 Q. Now, I think it also repeats there that it can't exceed
24 the two weeks and we have referred to that earlier.

25

10:41

26 I think that's all I want to open there with regard to
27 your founding documentation really for the
28 investigation. Is that a fair summary of your role and
29 the provisions that are applying when you are carrying

1 out this type of investigation?

2 A. Yes, Mr. Chairman.

3 29 Q. Okay. Now, as we mentioned earlier, you were appointed
4 on 10th August 2015 and you received a number of
5 documents from the chief superintendent. I just want 10:42
6 to look at those, please. In particular, you got what
7 is called a form 1.A.22, and this is at page 8811,
8 Mr. Kavanagh, please. I think the Chairman has seen
9 this before when Superintendent Pat Murray was giving
10 his evidence. It outlines the detail of the 10:42
11 superintendent, of Garda Keogh. In the middle there,
12 that's a reflection really of section 14(3), which we
13 opened, isn't it, the options that are available?

14 A. That's correct.

15 30 Q. So there's five options. Then, if you go on to the 10:42
16 next page, "brief details of the act are":
17
18 "Having reported fit to return to duty at 10:00pm on
19 10th July 2015, failed to report for duty between 11th
20 and 14th July 2015 and remained absent without leave 10:43
21 during the period without explanation or answering
22 phone calls to explain his whereabouts during that
23 time."
24
25 So I think that was the form 1.A.22 that you got, is 10:43
26 that right?

27 A. That's correct.

28 31 Q. Now, you also then got a number of documents with this.
29 If I could ask Mr. Kavanagh to look at 2221, please.

1 So that is 2221. Okay. So, we understand from Chief
2 Superintendent Murray's evidence that this was the
3 letter that was provided with this form and this came
4 from Superintendent Pat Murray at the time, it's dated
5 4th August 2015. If you look at this, superintendent, 10:43
6 please. It has a number of tabs attached to it. Tab A
7 -- and forgive me, Chairman, I know you have seen some
8 of these before with Mr. Marrinan.
9 CHAIRMAN: It's all right, don't worry.

10 32 Q. MS. McGRATH: Tab A there is the SR1 form we would have 10:44
11 seen throughout our evidence. That's for 9th July
12 2015. That's recording that he reported unfit for
13 duty, isn't that right?
14 A. That's correct.

15 33 Q. Then the next one is tab B, 2223. I think you might 10:44
16 have gone too fast, Mr. Kavanagh?
17 A. That's it there.

18 34 Q. This is resumption of duty and it's recording 10/7, is
19 that right?
20 A. That's correct. 10:44

21 35 Q. We know that he didn't report back for duty on that day
22 and hence the investigation, isn't that right?
23 A. He reported back for duty but he never turned up for
24 duty.

25 36 Q. Sorry, you are absolutely right. Now, the next 10:44
26 document is 2225, which is tab C. And again you're
27 correct, in summarising, Garda nick Keogh, this is from
28 Superintendent Murray:
29

1 "Unit C, reported fit for duty on 10th July 2015.
2 However, he failed to report for duty on either
3 Saturday the 11th July, Sunday the 12th July, Monday
4 the 13th July and Tuesday 14th July 2015.

10:45

5
6 An explanation by return is now required from the
7 member."

8
9 Isn't that right?

10 A. That's correct.

10:45

11 37 Q. Now, I think what I might do is finish with the tabs,
12 but I want to go back to Superintendent Murray's letter
13 for a moment. Tab D is 2227. This was the letter that
14 the Chairman has seen. Garda Keogh is coming back to
15 Sergeant Monaghan with the explanation. He says:

10:45

16
17 "With reference to overleaf, I made a mistake regarding
18 the reporting unfit for duty. I thought I was still on
19 sick these days. I apologise for same. Sick cert
20 attached. Forwarded for your information."

10:46

21
22 I think that is stamped, the first date stamped on that
23 is 21st July 2015.

24 A. That is correct.

25 38 Q. Now, we will come back to tab D in a moment, but tab E
26 then is at 2228. If you can just keep going down, you
27 will come to it, Mr. Kavanagh. There. And that's the
28 sick cert that you would have seen, isn't that right?

10:46

29 A. That is correct.

1 39 Q. It's recording him as being medically unfit for work
2 from 9th July to 15th July due to work related stress,
3 isn't that right?
4 A. That is correct.
5 40 Q. And it's signed 16th July 2015. Now, tab F is 2229. 10:46
6 If you see there, there's a resumption of duty on
7 15/7/2015. You received that document as well. I
8 think there's one more document I want to open.
9 Actually, I will come back to another document in a
10 moment. If we can just go back then to the letter that 10:47
11 the superintendent wrote, which, as I say, was at 2221.
12 This is the one that you would have seen dated 4th
13 August 2015, enclosing these tabs. We have opened tab
14 A, tab B, tab C, tabs E and F. You see there that that
15 it's recorded at paragraph 4, the last paragraph -- or 10:48
16 the last sentence:
17
18 "He had no excuse for not returning Sergeant Moylan's
19 calls."
20 10:48
21 The explanation from Garda Keogh, at paragraph 5, is
22 described as "vague and unacceptable" and then at
23 paragraph 6, it says:
24
25 "In order to create a defence to any possible breach of 10:48
26 discipline, the member submitted a retrospective
27 medical certificate dated 16/7."
28
29 On the next page, again the Chairman has seen this:

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"Having seen the member's history of absence and his blatant disregard for his responsibilities to the organisation, which appears to stem from overindulgence in alcohol, I respectfully recommend that the member be dealt with under Regulation 14." 10:48

As I say, that is the correspondence you received, is that right, superintendent?

A. That is correct, Mr. Chairman. 10:48

41 Q. Okay. Now, can I ask you to look at -- can I ask you first, this is the material you receive, and do you rely very much on the material that you are provided with by the appointing officer? The material that we have just opened, how instrumental is that? 10:49

A. In this case I relied on it. I am open to carry out whatever inquiries I deem necessary, but in this investigation I relied on that material.

42 Q. Can I ask you this: When we heard from Chief Superintendent Murray, we are aware that he kept diary entries and it's recorded in his diary, and perhaps just in fairness to you, we will just open the page at 2044. If you keep going down there, please, Mr. Kavanagh. This is the superintendent's record of the 15th July, which is the last day which is at issue. 10:49
There's a record there of a conversation with Garda Keogh, referencing alcohol, if you can see there in the middle of it, referencing a drink problem, you see that language?

1 A. I do, yes.

2 43 Q. Reference to drinking behaviour.

3

4 "Garda Keogh expressing a concern that Garda A and

5 Garda blank might do him harm." 10:50

6

7 would you have been aware or been made aware by any of

8 your senior officers of any of this?

9 A. No. No, Mr. Chairman, no.

10 44 Q. If you just go on, there near the end: 10:50

11

12 "I asked for an explanation as to why he didn't answer

13 Sergeant Moylan's call. He said he no credit."

14

15 would you have been made aware of that formally by your 10:50

16 appointing officer or senior officers?

17 A. No, no. There was no conversation on that.

18 45 Q. Okay. There was a reference there to Garda Keogh

19 saying he had left a message for Sergeant Moylan on

20 Facebook. Again, is that something that you knew 10:50

21 about?

22 A. No, no.

23 46 Q. Okay. On the next page, if you see there at page 9, in

24 the middle of the page there -- no, in the middle of

25 the paragraph, my mistake, Mr. Kavanagh. It's recorded 10:51

26 by the superintendent:

27

28 "I indicated to him --"

29

1 If you can see where I am. It's in the middle of the
2 paragraph, five lines down.
3
4 "I indicated to him --"
5 10:51
6 That's to Garda Keogh
7
8 " -- that I would have to look for a case conference in
9 relation to him with the chief medical office to see if
10 help could be provided to assist him to stop drinking." 10:51
11
12 would you have known about any of this background for
13 Garda Keogh?
14 A. No, Mr. Chairman.
15 47 Q. Okay. Can I ask you then, the next step in your 10:51
16 procedure is that a notice of interview is to provided
17 to the member in question, isn't that right?
18 A. That is correct, Mr. Chairman.
19 48 Q. That is form 1.A.12, is that right?
20 A. That is correct. 10:51
21 49 Q. And it's at 8834. So at 8834, 24th August 2015, the
22 notice of interview, and that's your document, is it
23 "Alan Murray, superintendent"?
24 A. That's my document, "superintendent, Athlone" yes.
25 50 Q. You asked if the attached could be served on Garda 10:52
26 Keogh personally. I think that happened a couple of
27 days later, on 30th August there. The date is hard to
28 read. But I think he was served with this
29 documentation. Can I just ask you, on the next page,

1 8835, there's a record there of the rate of pay,
2 840.49, I mean I think this is instrumental from you
3 purposes in the sense that you imposed a penalty and we
4 know from the regulations it cannot exceed two weeks'
5 pay. Where does this figure come from, superintendent? 10:52

6 A. At that time I got that from pay section, Garda pay
7 section, Killarney.

8 51 Q. Okay, all right.

9 A. That's where I got it, by informed e-mail to Killarney.

10 52 Q. Okay. I think it's this notice of interview, if you 10:53
11 look at the sections, details of interview, section B
12 is "breaches of discipline alleged" and we see there
13 one is neglect of duty and one is discreditable
14 conduct, or the next one is discreditable conduct.
15 Again, the Chairman will be aware of these. If you go 10:53
16 to 8838, I think this is where it was recorded by
17 yourself, the position of Garda Keogh. This is 8838.
18 So the breach numbers there and you have in breach and
19 fined for number 1, that's neglect of duty, isn't it?

20 A. That is correct. 10:53

21 53 Q. And 2, not in breach, and you have nil, and the fine is
22 €300, is that right?

23 A. That is correct.

24 54 Q. It's signed by both of you. So that interview took
25 place on 18th September 2015, is that right? 10:54

26 A. That is correct.

27 55 Q. If we look at 8840, it's entitled there "report of
28 interview with Garda Nicholas Keogh". Can I just ask
29 you, is this you taking his position or his evidence?

1 Is this a note that you took?

2 A. That is my note. Really at that stage I met Garda
3 Keogh, he had indicated that he was pleading guilty to
4 breach number 1.

5 56 Q. Okay. 10:54

6 A. Not guilty to breach number 2. I said, okay, tell me
7 what happened. And that's as he told me what happened.

8 57 Q. Okay. In the body of it there he talks about reporting
9 sick to Garda Buckley. He says:

10 10:54

11 "I am under a lot of work related stress and I am out
12 sick a lot since March 2015. I am on tablets for
13 anxiety and they affect memory, especially if you take
14 drink."

15 10:55

16 Then he explained the phone call to Sergeant McCormack.
17 He accepts there, he said:

18

19 "I did get a phone call from Sergeant Cormac Moylan. I
20 didn't deliberately not answer the phone to him, I 10:55
21 could have been asleep, I was drinking heavily. At
22 some my credit phone had run out, I couldn't ring
23 anybody. But I did send a message by Facebook to
24 Sergeant Moylan. I acknowledged that I missed his call
25 but I had no credit at that stage. Superintendent 10:55
26 Murray phoned me and I was honest, I told him I was
27 drunk and I did not remember phoning Sergeant McCormack
28 and reporting fit for duty. It's not fair to say I had
29 no excuse for not phoning Sergeant Moylan. Because of

1 the drink, no phone credit on my phone, I couldn't
2 phone and I didn't think of Facebook until somebody on
3 my unit told me to use it and I did send a message to
4 Sergeant Moylan, telling him I had no phone credit on
5 my phone. At that stage I knew what I had done." 10:55

6
7 Then he says in respect of the second breach, he was
8 denying it. He said:

9
10 "I was under a lot of stress and I have attended doctor 10:55
11 regularly. Really I was sick for the days specified in
12 doctor's cert. I was not fit for duty because of
13 stress, anxiety and the drink. I attended Dr. Bartlett
14 regularly. He knows my medical history and the stress
15 I am under. I was not fit for work and Dr. Bartlett 10:56
16 could see that when he examined me. I was so bad I had
17 to go to the doctors and he issued me a cert."

18
19 So that is a memo then that was read over to Garda
20 Keogh, is that right, and he signs it? 10:56

21 A. That is correct, Chairman.

22 58 Q. And you sign it?

23 A. That is correct.

24 59 Q. Can I ask you about this because it's just an issue 10:56
25 that is arising in relation to Garda Keogh's evidence.
26 He says that he asked for a copy of this particular
27 memo and that he never got it. What is the procedure
28 with regard to this memo of evidence that you take on
29 the day, is that provided to the member or not?

1 A. If he had have asked me, yes. We were sitting at a
2 table, he was opposite me. I took the memo. At no
3 stage did he ask me for a copy of it. He signed it.
4 If he had asked me for a copy of it, of course I would
5 have given it to him. 10:56

6 60 Q. Okay.

7 A. It's his statement like.

8 61 Q. And he didn't ask you for a copy of it?

9 A. No, definitely not.

10 62 Q. You record then, and it's all done on this really 10:57
11 notice of interview form, you record your outcome and,
12 as I say, you pointed out earlier that you recorded
13 breach of number 1 and you fined €300, isn't that
14 right?

15 A. That is correct, Chairman. 10:57

16 63 Q. Okay. Now, just staying with this date, I just have to
17 ask you one thing, because it arose in the course of
18 Superintendent Murray's evidence. We know from his
19 evidence that you met Superintendent Murray after this
20 interview and you told him that you had fined Garda 10:57
21 Keogh €300?

22 A. That's correct, yes.

23 64 Q. Okay.

24 A. Sorry, no, that's not correct, I told him I fined him.

25 65 Q. Okay. 10:57

26 A. At no stage would I have said how much I fined him. It
27 was a simple conversation. I went up to Pat Murray's
28 office. He was there. Are you going for a cup of
29 coffee? Yeah. What are you down here for? I was down

1 with Nick Keogh and I fined him.

2 66 Q. Well, can I show you the diary entry of the chief
3 superintendent, just to give you an opportunity to look
4 at it, superintendent?

5 A. Yes. 10:58

6 67 Q. It's 12149.

7

8 "I met Superintendent Murray for lunch. Garda Keogh
9 fined for €300 for AWOL July."

10 10:58

11 It would suggest that on the day that he was aware that
12 the €300 fine was imposed?

13 A. Yeah, that certainly suggests it, yeah. I don't
14 honestly think I did, but maybe I did, maybe I told him
15 I fined him €300 and that was it. 10:58

16 68 Q. Okay.

17 A. I can't dispute that.

18 69 Q. Can I just ask you, just again about a normal
19 conversation in relation to this issue, would you have
20 discussed the evidence of Garda Keogh or said, you 10:58
21 know, what you saw was mitigation or what you saw was
22 any difficulty for him, or why you chose to go down
23 that route of option 1 of the reduction in pay?

24 A. No. No. For want of a better word, I think we had
25 probably better things to discuss about. We were 10:59
26 heavily in debt with overtime expenditure, travel. So
27 he was harping -- no, I withdraw the word harping, he
28 was on to me continuously to me to transfer members
29 from Mullingar to Athlone. He was badly stuck for

1 manpower. I was okay. You have to remember,
2 Mr. Chairman, this was 2015, we had five years of
3 cutbacks, both in resources and manpower and also
4 budgets. Mullingar was lucky. I had maintained for
5 the time I was there good resources. Superintendent 10:59
6 Murray wasn't as lucky and he was continuously on
7 looking for resources, would I consent to sending --
8 the discipline didn't feature in the conversation at
9 all.

10 70 Q. Okay. So you didn't have any sort of detailed 10:59
11 conversation?

12 A. No, no.

13 71 Q. Okay. And was it as simple as just saying, I just
14 fined --

15 A. One line, that's it, yeah. 11:00

16 72 Q. Now, there is a report of the interview at -- actually,
17 can I ask you to look at the document at 8841? It's
18 called "report of interview, regulation 18" and there
19 is the record of your decision. It says:
20
21 "This report of interview --"
22
23 If you can just go down.
24
25 "This report of interview must be forwarded by to you 11:00
26 the member concerned."
27
28 when you are talking about that, are you speaking about
29 the document we're actually just looking at? Is that

1 what the member gets?

2 A. Yes.

3 73 Q. That's what the member gets?

4 A. Yeah, that's what I will send up to the chief, but she
5 must forward this, it must be forwarded to the member 11:00
6 concerned.

7 74 Q. But do you know the memo of evidence we just talked
8 about a moment ago?

9 A. Yeah.

10 75 Q. Where does that go? 11:01

11 A. No, that goes to the chief.

12 76 Q. As well?

13 A. I do a complete file on it, covering report, statement.

14 77 Q. Okay.

15 A. Include Garda Keogh's memo on it, the record of 11:01
16 interview and it goes back up to the chief
17 superintendent's office.

18 78 Q. Is it your understanding of the procedure that the
19 report of interview, namely this document we're looking
20 at plus the memo of the interview, goes to the member 11:01
21 or is it just this document that goes to the member?

22 A. That is purely up to the chief's office.

23 CHAIRMAN: No, he is saying it goes to the chief
24 superintendent and what happens after that --

25 MS. McGRATH: Okay. 11:01

26 79 Q. CHAIRMAN: You send it to the chief superintendent.

27 A. Yeah.

28 80 Q. CHAIRMAN: Is it out of your hands at that stage?

29 A. It is, yeah. I no longer have ownership of that

1 investigation file.

2 81 Q. CHAIRMAN: I understand.

3 A. I pass it to the chief superintendent.

4 CHAIRMAN: Okay.

5 82 Q. MS. McGRATH: So, when you're talking there about "this 11:01
6 report of interview must be forwarded by you" that's a
7 direction effectively, "must be forwarded by to you the
8 member concerned"?

9 A. Yeah. I hate giving a direction to a chief but that's
10 a preprinted form, so I just sign that. 11:02

11 83 Q. Okay, but that direction, you're saying to us, applies
12 only to this document in front of us?

13 A. This report of interview, yeah. what the chief
14 superintendent sends, I do not know.

15 84 Q. So any additional documentation such as the memo may or 11:02
16 may not move to the member?

17 A. That's the chief's office, it's not...

18 85 Q. Okay. That is dated 24th September 2015 and I think on
19 the next page is the substantive report that you drew
20 up, is that right? Do you recognise it there? 11:02

21 A. I do, yes. That's correct, Chairman.

22 86 Q. Okay. You talk at page 8842 there, just a record of
23 the facts that we know already now from your evidence
24 and from other witnesses. Can I ask you to stop there
25 just on the next page? You say: 11:02
26
27 "Garda Keogh submitted a retrospective medical
28 certificate."
29

1 Now, I think that's language which was in the
2 superintendent's letter that we looked at, the
3 reference to it being retrospective. What did you mean
4 by that?

5 A. But it was. He called sick, had reported back for 11:03
6 duty, hadn't turned up and then the Tuesday, whatever
7 day it was, he then submitted a medical certificate to
8 cover an absence where he was meant to be working. It
9 was a retrospective medical certificate.

10 87 Q. Can I ask, by you using those words, were you attaching 11:03
11 any significance to it or any kind of negative
12 connotation, by using the word "retrospective"? Did
13 you take a view on that?

14 A. I did, yes, and that was one of the breaches.

15 88 Q. CHAIRMAN: Yes, of course, that's what he was accused 11:03
16 of?

17 A. Yeah.

18 89 Q. CHAIRMAN: That was one of the charges. I mean, you
19 found him not guilty of it?

20 A. Correct. 11:03

21 90 Q. CHAIRMAN: But the charge, the allegation was, you said
22 you were well and then you produced a certificate to
23 say you weren't well. That was the retrospective
24 thing?

25 A. And he called to the doctor to get that. 11:04
26 CHAIRMAN: Yes.

27 91 Q. MS. McGRATH: Is that the sense in which you were using
28 the word "retrospective"?

29 A. Yes.

1 92 Q. Okay. The rest of that page then is just recording
2 facts, effectively. We have just gone through it. If
3 you go to the next page, please, Mr. Kavanagh. And
4 it's there on the fourth paragraph:

5
6 "Superintendent Murray recorded in writing the
7 explanation offered by Garda Keogh. In explanation,
8 Garda Keogh stated that he had been under work related
9 stress and had been drinking heavily. He forgot that
10 he had contacted Sergeant McCormack to report fit for
11 duty. Garda Keogh stated that he had admitted his
12 mistake to Superintendent P Murray and why he hadn't
13 made it. Garda Keogh indicated that he did not
14 understand breach 2 and explanation said Dr. Bartlett
15 was his doctor and was familiar with his medical
16 history. Garda Keogh had to go to his doctor on that
17 date and his doctor was issued a certificate."

18
19 I think that's a summary of the memo his evidence, is
20 that fair enough?

21 A. That's correct, Chairman.

22 93 Q. Then it records your outcome in the next paragraph.
23 The mitigation there that you applied, you say:

24
25 "In mitigation, Garda Keogh stated that he had suffered
26 from work related stress and was drinking heavily and
27 when questioned by Superintendent Murray he admitted
28 his mistake."

29

1 So that's the mitigation you took into account, is that
2 right?

3 A. That's correct.

4 94 Q. In respect of breach number 1, you fined him €300 and
5 Garda Keogh signed and dated signed the form 1.A.12? 11:05
6 CHAIRMAN: I am guessing it's Internal Affairs 12,
7 I.A.12 rather than 1.A.12. I am just guessing, it's
8 internal affairs?

9 A. That's correct, Chairman.

10 95 Q. MS. McGRATH: Thank you, Chairman. That is then the 11:06
11 report of interview. Now, as we opened earlier the
12 section in the regulations, the member then can apply
13 to review the decision and Garda Keogh applied to
14 review, isn't that right? Are you aware of that?

15 A. I'm aware of that, yes. 11:06

16 96 Q. He made an application to review, and this is at 8830.
17 Now 8830. He says:
18
19 "The grounds for review are: The decision is not
20 justified having regard to the information given by 11:06
21 me."
22

23 I am not going to ask you to comment on that because I
24 know it's the appointing officer --

25 A. I don't see that. 11:06

26 97 Q. But can I ask you this, I think, in fairness, I just
27 want to give you an opportunity to comment on number 2.
28 He says:
29

1 "Part of the sanction relates to a phone call which I
2 received from Superintendent Pat Murray. "

3
4 which he states was on 14/7/2015.

5
6 "I believe this phone call was made on 2:08 on
7 15/7/2015 and is relevant to my defence. "

8
9 Can I ask you, did this ever come up with you when you
10 -- it's not recorded on the memo of interview we
11 opened. Did this issue come up at all on the date of
12 the interview on the 18th September with you? 11:07

13 A. No. Guards are not obliged under legal compulsion to
14 answer a phone call from a superintendent. It's called
15 manners, and it's common decency and good manners to
16 answer, they're not under any obligation to answer a
17 phone call, disciplinary or other wise, from
18 superintendent. It didn't cross my mind at all. 11:07

19 98 Q. I suppose what I am asking you is: Does this ring a
20 bell with you? Was it something mentioned to you by
21 Garda Keogh? 11:07

22 A. No.

23 99 Q. Or did this drop out of the sky, is what I am asking
24 you, when you read it here on the Notice of Appeal?

25 A. I don't read that, I don't think I seen that Notice of
26 Appeal. I think I read this with the stenographer's
27 report. 11:07

28 100 Q. But the issue, the issue of the phone call --

29 A. The issue, I knew nothing about it.

1 101 Q. CHAIRMAN: Did it come up as far as you can recall?
2 A. No.

3 102 Q. CHAIRMAN: Because he pleaded guilty to number 1 and
4 presumably the focus was on number 2 and on the
5 penalty? 11:08
6 A. There wasn't too much focus on number 2, to be honest
7 with you, Chairman. Number 1 was primary offence.
8 CHAIRMAN: Okay.

9 103 Q. MS. McGRATH: He goes on to mention there, he say:
10 11:08
11 "I would be obliged if a call log could be obtained
12 regarding this."
13
14 Again, is this news to you? Had you any discussion
15 with him or heard anything about that with Garda Keogh 11:08
16 on the 18th when you sat down with him?
17 A. No, no.

18 104 Q. He says:
19
20 "I request a copy of the statement I made to 11:08
21 Superintendent Alan Murray for the purposes of legal
22 advice."
23
24 Now, I think that's the memo we talked about?
25 A. Yeah. 11:08

26 105 Q. Okay. As you say, that's a matter for the chief
27 superintendent appointing officer to deal with?
28 A. That's correct.

29 106 Q. Okay.

1 A. If he had have asked me, I would have dealt with it.
2 But I wasn't asked at any time.

3 107 Q. Now, I think at 8832, on 9th November 2015, so that is
4 8832, you're notified of the Notice of Appeal, the
5 application for a review by the chief superintendent 11:09
6 and she says:
7
8 "In order to fully consider the appeal of Garda Keogh,
9 I now require the following: A copy of the memo of
10 interview statement made by Garda Keogh when 11:09
11 interviewed by you."
12
13 So that suggests that at this stage she hadn't seen the
14 memo of interview?

15 A. It certainly suggests that and I was conscious of it 11:09
16 when I seen it, when I heard the memo didn't go.
17 Because I submitted my file in duplicate.

18 108 Q. And you think the memo was with your file?
19 A. Oh I'd be a hundred percent, yeah. It goes to HRM,
20 Internal Affairs, they're pernickety enough as well, if 11:09
21 it wasn't attached they would send it back.

22 109 Q. CHAIRMAN: The file you sent, you sent in duplicate, is
23 that right?

24 A. Yes.

25 110 Q. CHAIRMAN: And one went to -- did you send the two to 11:09
26 the --
27 A. One to the chief's office.

28 111 Q. CHAIRMAN: The chief superintendent?
29 A. The chief superintendent should send one up to Internal

1 Affairs.

2 112 Q. CHAIRMAN: Okay.

3 A. Who will also go through it.

4 113 Q. CHAIRMAN: You believe that your memo of interview was
5 included in that? 11:10

6 A. I do, yes.

7 114 Q. MS. McGRATH: Okay. Now, she goes on to say there in
8 that middle paragraph?

9

10 "And I would asks request that you forward me as 11:10
11 rationale for applying a sanction of €300 against Garda
12 Keogh in respect of the first breach discipline as set
13 out in forms Internal Affairs 12."

14

15 okay. so she asks for your rationale and you provide 11:10
16 that on the next page, on 11th November 2015, which is
17 8833. so you refer there to her correspondence and you
18 say:

19

20 "Please find attached copy of interview statement made 11:10
21 by Garda Keogh. Garda Keogh pleaded guilty."

22

23 That is just outlining what we already know. The fine.
24 You outline your rationale. Now, can I just ask you
25 just to look at that: 11:10

26

27 "Garda Keogh was absent without leave or explanation
28 for four days. In deciding a fine I took into account
29 that he had no previous disciplinary breaches and that

1 he had pleaded guilty to the breach. In imposing a
2 fine of €300, I took into account that Garda Keogh had
3 a weekly pay of €840.49, which equates to €168 per day.
4 I imposed a fine of €78 per day that Garda Keogh was
5 absent. I do not believe that Garda Keogh should gain 11:11
6 financially from his absence but I did not want to be
7 harsh on him. I believe the fine imposed was fair and
8 just."
9
10 Now, do you just want to take the Chairman through 11:11
11 that? Can I ask you, is the point of that, your main
12 point, that you didn't wish him to gain financially
13 from his absence for those days? That seems to be the
14 import of your letter.
15 A. The main point is I didn't want to be harsh on him. 11:11
16 115 Q. CHAIRMAN: Like it or not, it's pretty clear what his
17 thinking is. Like it or not, agree with it or don't
18 agree with it, it's pretty clear what the rationale
19 was?
20 A. Yeah. I was happy with it. I just did not want to be 11:11
21 harsh with him.
22 116 Q. CHAIRMAN: Okay.
23 A. At this stage we were having problems in Mullingar with
24 guards having a pay cut, in negative equity, and I'm
25 not a harsh man for discipline. But I understand the 11:12
26 importance of discipline.
27 117 Q. MS. McGRATH: But I think the plain language there is
28 that you didn't wish for him to gain financially, is
29 that right?

1 A. That's right.

2 118 Q. Okay. An issue that arose, and I just want to ask
3 whether or not you were aware of this or not, simply
4 for the purposes of assisting the Chairman. We are
5 aware from Chief Superintendent Murray's evidence that 11:12
6 he had written to the HRM in Navan on 28th August 2015,
7 now this is prior to you interviewing Garda Keogh or
8 anything, in relation to this issue of overpayment. If
9 I can just show you the letter at page 2233. So, this
10 is before you sit down with Garda Keogh at all. 11:13
11 There's a letter to the Overpayment Department and it's
12 28th August 20158:
13
14 "The above named Garda Keogh was absent without leave
15 from 11th July 2015 to 14th July 2015 inclusive (SAMS 11:13
16 updated). Please recoup any overpayment of wages from
17 this employee for the relevant dates."
18
19 Now, would you have been aware or been made aware by
20 any of your senior officers that this was something 11:13
21 that was going to be pursued in respect of Garda Keogh
22 and may be relevant to what you were going to do on the
23 18th September?
24 A. I was not aware of it, but it wasn't relevant to me
25 either. They are two separate issues. 11:13
26 119 Q. Okay. Well, if you had been aware that Garda Keogh was
27 not going to be paid wages for the period he was off,
28 then your rationale may not have arisen, if you
29 understand what I am putting to you, superintendent?

1 A. I disagree. I did not want to be harsh on him, but I
2 didn't want him to gain financially.

3 120 Q. Okay. But can I ask you then, if the overpayment
4 section were going to recoup any payment he got for
5 those days, then he wouldn't gain financially. That's 11:14
6 the logic of that?

7 A. It's the logic, but there is a lot of ifs there.

8 121 Q. Okay.

9 A. First of all, I didn't know this was going off but HRM
10 mightn't have taken. There was also the third sick 11:14
11 form.

12 122 Q. There was the, sorry?

13 A. The third SR1.

14 123 Q. Okay.

15 A. which had been submitted, which showed that he resumed 11:14
16 duty on the 15th.

17 124 Q. Okay.

18 A. So they may have accepted that he be sick at that time,
19 not absent without leave. I don't know what they did.

20 125 Q. Well, can I say that it was put, and I am paraphrasing 11:14
21 here, to Chief Superintendent Murray that this would
22 effectively have been a double financial blow on Garda
23 Keogh. The fine, plus also a recoupment of his wages.
24 would you accept or reject that?

25 A. I was dealing with a man that had gone absent from duty 11:15
26 for four days. Resources are tight in Athlone at the
27 best of times. Members on the unit, members on the
28 station communicated with him, letting him know what
29 happened, that he was absent without leave. He didn't

1 respond to that. Mr. Chairman, it is the easiest thing
2 in the world for a guard to report sick. He makes a
3 phone call, causes word to get to the member in charge.
4 That's what we have to do. And that could have been
5 done at any time when Garda Keogh was sick. Garda 11:15
6 Keogh, by his own statement to me, knew that he was
7 absent, that queries were being raised, but he did
8 nothing to sort that out. So either way there was
9 going to be a financial penalty, I felt it was
10 justified in this case. 11:15

11 126 Q. Can I ask you to look at a letter at 8825, please,
12 superintendent? This is the response of the principal
13 officer at HRM, Ms. Monica Carr. She goes back to the
14 superintendent and she makes a number of enquiries
15 about this issue of recoupment. And in particular, she 11:16
16 says:

17
18 "I am also to enquire if consideration has been given
19 to having this matter dealt with under the An Garda
20 Síochána (Discipline) regulations." 11:16
21

22 Now that might seem to suggest that it is either one or
23 the other.

24 A. I think Ms. Carr will have to answer that. I did not
25 see this letter, I did not know anything about this. 11:16

26 127 Q. Okay. I suppose then just to tie down the evidence on
27 this particular point for the Chairman, if you had
28 known that an issue was bubbling along in the
29 background about recouping wages, would you have

1 handled the fine issue differently?

2 A. No. If I can give an example, Judge, or Chairman. I
3 dealt with another breach of discipline, two guards who
4 had previously served in Mullingar, they're in another
5 station now. They report for duty, let's say, at nine 11:17
6 o'clock, I can't remember what night it was. There was
7 a Garda function on to celebrate a member's promotion
8 and transfer. They came in for an hour, then decided
9 to go to this function. There was no sergeant working
10 at the time. So they went to the function, they had 11:17
11 drink taken and they decided not to go back to work.
12 But they were unlucky in that an official car at that
13 time was involved in an accident, so a sergeant was
14 called in. The sergeant called in to find two members
15 missing from duty. I was appointed as the deciding 11:17
16 officer in that case. I fined the members €85 and €80
17 respectively. That was for one night, where they
18 turned up, where --

19 128 Q. CHAIRMAN: I understand?

20 A. So I believe I was more than fair -- 11:18

21 129 Q. CHAIRMAN: I understand.

22 A. -- in my penalty.

23 130 Q. CHAIRMAN: But I mean, it seems to follow logically
24 that if Garda Keogh's pay was removed, if he wasn't
25 paid at all for the four days, and he had to pay the 11:18
26 300, that would be a double penalty in a sense, but it
27 has nothing to do with you.

28 A. It has nothing to do with me.

29 131 Q. CHAIRMAN: At least as I see it, it has nothing to do

1 with you. That's exactly what Ms. Carr was on about,
2 what's the story about the discipline? well,
3 presumably Garda Keogh would have said, look, this is
4 unfair, I'm being done twice.

5 A. And that would be up to Garda Keogh to say. 11:18

6 132 Q. CHAIRMAN: But as far as it went, your assumption was
7 that he was being paid for the time and that was the
8 basis of your fine?

9 A. Yeah.

10 CHAIRMAN: Okay. 11:19

11 133 Q. MS. McGRATH: Can I ask you, superintendent, just in
12 relation to, as I say, it seems to be central for your
13 role that you know about his wages and you had put in
14 the figure for his pay, isn't that right?

15 A. Yeah. 11:19

16 134 Q. would you have known about his record of sick leave up
17 to that point in time or the fact that he was gone on
18 what's called a temporary remuneration rate? would you
19 have known any of that, about how his pay was being
20 affected? 11:19

21 A. No, Mr. Chairman.

22 135 Q. Okay. Can I just ask you then, just finally, in
23 relation to the regulations as we saw and the HQ
24 Directive, the full possession of the facts, I think
25 it's your evidence that you weren't aware of this work 11:19
26 related stress background or the case conferences
27 issues that were arising or any of that when you were
28 dealing with Garda Keogh in September, is that right?

29 A. Only when he told me in his memo.

1 136 Q. Okay.

2 A. Yeah.

3 MS. McGRATH: Thank you, superintendent, I wonder if
4 you could answer any questions.

5

11:20

6 END OF EXAMINATION

7

8 CHAIRMAN: Thank you very much. Now, yes, Mr. Kelly.

9

10 SUPERINTENDENT ALAN MURRAY WAS CROSS-EXAMINED BY MR.

11:20

11 KELLY AS FOLLOWS:

12

13 137 Q. MR. KELLY: Good morning, chief superintendent?

14 A. Good morning.

15 138 Q. What you are saying, as I understand it, is, look, I
16 have met with this guard, I listened to what he had got
17 to say, pleaded guilty to one charge, not guilty to
18 another, I accepted that, I found him not guilty of
19 charge 2, I tried then to impose, as I saw it, the
20 fairest possible penalty I could; is that a fair
21 summation?

11:20

11:20

22 A. That's a fair summation.

23 139 Q. As for any double financial impact it might have had,
24 that formed no part of your thinking or reasoning?

25 A. That is correct.

11:20

26 140 Q. Someone else was recommending to the pay section of
27 this sum should be recovered, had nothing to do with
28 you?

29 A. That is correct.

1 141 Q. As you say fairly, you were trying to construct a
2 situation where merely Garda Keogh didn't gain
3 financially, but equally, he wasn't made hurt for it,
4 is that right?
5 A. That's correct. 11:21

6 142 Q. One of the things I was wondering about with that -- by
7 the way, I should say that the request for a note of
8 the interview, that was made to Chief Superintendent
9 wheatley, as I understand it, it wasn't being made to
10 you, so we can leave that. No one is criticising you 11:21
11 of that.
12 A. Thank you.

13 143 Q. But you made a note of what Garda Keogh had said to
14 you. I have seen it in the papers, I think it's at --
15 it's handwritten, it doesn't have to be called up, but 11:21
16 it is around about page 8847?
17 CHAIRMAN: 8840/1. That's the memo that Garda Keogh
18 signed. That's the one you're talking about,
19 Mr. Kelly?
20 MR. KELLY: No, I am talking about -- look, I will hold 11:22
21 it up -- it's not actually crucial.
22 CHAIRMAN: No, but what is it, Mr. Kelly?
23 MR. KELLY: It's that one [INDICATING].
24 A. That's the memo of interview I recorded.
25 CHAIRMAN: The memo of interview, yes. 11:22

26 144 Q. MR. KELLY: I think it's at 8847, 8848. I am simply
27 saying that so it's on the transcript, so when people
28 are looking at it later they know where it is. As far
29 as you were concerned there was absolutely no reason

1 why Garda Keogh shouldn't have that memo, isn't that
2 right?

3 A. If he had asked me, I would have certainly given it to
4 him.

5 145 Q. Moreover, when you said, as I understood what you were 11:22
6 saying, look, when I had finished this whole interview
7 there was a file containing these documents we have
8 been through and I submitted that, if I had understood,
9 you correctly, you said in duplicate, is that right?

10 A. That's correct. 11:23

11 146 Q. Up to Chief Superintendent Wheatley; is that correct?

12 A. Yes.

13 147 Q. And amongst that file would have been the document
14 you've been taken through, together your memo of what
15 Garda Keogh had said to you? 11:23

16 A. And the rest of the correspondence.

17 148 Q. Yes. Everything?

18 A. Yeah.

19 149 Q. So Chief Superintendent Wheatley ought to have had that
20 in the file? 11:23

21 A. That's correct.

22 150 Q. Because you put it in it a file and sent it up?

23 A. That's correct.

24 151 Q. I see. Just looking at one of the things here in the
25 regulations, Regulation 10, it's at volume 27, page 11:23
26 7797, if that could be called up, Mr. Kavanagh. We're
27 looking at -- you have been taken through Regulation 10
28 there and sub-regulation (14), where it identifies the
29 circumstances and the fines re serious breaches of

1 discipline. This is what you were dealing with,
2 superintendent, is that right?

3 A. That is correct, Chairman.

4 152 Q. Then sub-regulation (2), you appointment (3), and then
5 the five possible sanctions you can impose, is that 11:24
6 right?

7 A. That's right.

8 153 Q. Then I'm looking at this one, subsection (4):
9
10 "A reduction in pay under paragraph 3(a) shall not, in 11:24
11 respect of any breaches of discipline arising out of
12 the same set of circumstances, exceeds 2 weeks' pay and
13 the amount deducted in any one week shall not exceed
14 10% of weekly pay."
15 11:24

16 I was wondering how that fact remained with the penalty
17 imposed?

18 154 Q. CHAIRMAN: The 300 isn't taken out in a particular
19 week?

20 A. It's taken over gradually. Actually it's taken -- he 11:25
21 doesn't pay tax on it.

22 155 Q. CHAIRMAN: That's what I mean?

23 A. It means that --

24 156 Q. CHAIRMAN: No more than 10% a week. So you don't take
25 the 300 or whatever it is out of one week? 11:25
26 A. In one sum.

27 157 Q. CHAIRMAN: Because that would be more than 10%?

28 A. So he has to be left with 90% of his wages each week.

29 CHAIRMAN: Yes, I understand.

1 158 Q. MR. KELLY: I asked for an explanation.
2 CHAIRMAN: I am sorry, Mr. Kelly.

3 159 Q. MR. KELLY: I asked for an explanation, you have given
4 it to me. You say that the 300 that I fined, that will
5 be deducted from his wages, but not in one big go. It 11:25
6 will be on a weekly basis, no more than 10%?

7 A. Yeah. I think Killarney talk to the guard involved and
8 they say, well, okay, when can we do this one.

9 160 Q. Yes. Okay, I just wanted to ask you. One moment. If
10 I am to ask you this, have you ever sought -- you have 11:26
11 conducted these discipline hearings before, in the
12 past, as I have understood you, is that right?

13 A. Yeah, yeah.

14 161 Q. Have you ever, as part of a sanction, directed that
15 wages should be included? 11:26

16 A. No, it does not form part of the discipline aspect.

17 162 Q. Because there is no provision for it in there, is
18 there?

19 A. No. I impose a penalty, it's totally separate.

20 163 Q. Have you yourself ever, when perhaps one of your 11:26
21 members been disciplined, written off to Navan asking
22 that the wages be reviewed?

23 A. I am lucky, that hasn't arisen in Mullingar district.

24 164 Q. Okay. Thank you very much.

25 A. But I would have had to, I would say. 11:27

26 165 Q. Sorry?

27 A. I would have had to probably if it had have happened,
28 but it hasn't happened.

29 CHAIRMAN: I'm sorry, I'm not following you.

1 A. I would have had to notify HRM about it.

2 166 Q. CHAIRMAN: Sorry?

3 A. If that happened, where I was in that case, where I had

4 a guard that went sick or didn't turn up for four or

5 five days. 11:27

6 167 Q. CHAIRMAN: Yes.

7 A. I would have had to notify HRM about it.

8 168 Q. CHAIRMAN: Yes, you would notify HRM about it?

9 A. Yeah.

10 169 Q. CHAIRMAN: But there are two separate -- there is the 11:27

11 disciplinary matter that you do and there is any other

12 thing to do with HRM?

13 A. Yeah, when I say that, I say that as being the district

14 officer, not being the deciding officer.

15 170 Q. CHAIRMAN: No, of course. 11:27

16 A. Yeah.

17 171 Q. CHAIRMAN: If you were the superintendent -- I know.

18 The function of the superintendent as the district

19 officer is different from the superintendent, if that's

20 the way it works, as a deciding officer under 11:27

21 discipline?

22 A. That's correct, Chairman.

23 CHAIRMAN: Okay, thank you.

24

25 END OF EXAMINATION 11:27

26

27 CHAIRMAN: Thanks very much. Now, who else wants to

28 ask? Where are we going? Yes, Mr. Dignam.

29 MR. DIGNAM: Yes, Chairman, I have a few questions I

1 want to cover with Superintendent Murray.

2 CHAIRMAN: Yes.

3

4 SUPERINTENDENT ALAN MURRAY WAS EXAMINED BY MR. DIGNAM,
5 AS FOLLOWS:

11:28

6

7 172 Q. MR. DIGNAM: Superintendent, I suppose just to put some
8 of my questions in context, I think you're aware from
9 having followed the proceedings that Garda Keogh has
10 indicated that he has no issue with how you conducted 11:28
11 your business and makes no complaint about you, is that
12 right?

13 A. So I understand, Chairman.

14 173 Q. Just for completeness sake, can I ask you,
15 Superintendent Murray, did anybody at any stage seek to 11:28
16 involve themselves in your investigation or your
17 inquiry or interfere or influence the outcome of it?

18 A. Definitely not, no.

19 174 Q. In relation to the formulation of charges, I think you
20 as deciding officer, you are responsible for 11:28
21 formulating specific charges, is that correct?

22 A. Yeah, I have to take responsibility for that, including
23 the way how I did the second charge. It was totally
24 me. I accept that.

25 175 Q. I accept that, Superintendent Murray, but the process 11:28
26 is that the deciding officer formulates a charge, isn't
27 that correct?

28 A. It's my baby only.

29 176 Q. And that's what occurred in this case?

1 A. Yeah, yeah.

2 177 Q. Just turning to some of the documentation,
3 superintendent. If I could ask you to turn to page
4 8841, and we have looked at most of these documents
5 already this morning, so I don't propose to go through 11:29
6 them in any great detail. 8841 is the report of
7 interview document. That's the I.A.13. If I could
8 just ask you, you will see there is a section
9 immediately under the box in the middle of the page,
10 where it says: 11:29
11
12 "Reasons for your decision. Any additional
13 information/breaches may be entered on a separate page
14 and attached to this form."
15 11:29
16 If I could then ask you to turn over the next page, to
17 page 8842. That seems to be a report which you
18 prepared on 24th September 2015, and was addressed to
19 the chief superintendent in Mullingar.

20 A. That is the covering report of the file that I returned 11:30
21 to the chief.

22 178 Q. Sorry?

23 A. That's the covering report I did for the file.

24 179 Q. Yes.

25 A. And returned that to the chief. 11:30

26 180 Q. Yes. So can we take it from that, that report on the
27 24th September accompanied the report of interview
28 document on 8841?

29 A. Yes.

1 181 Q. So both of those would have gone to Chief
2 Superintendent wheatley?
3 A. Yes.
4 182 Q. The appointing officer?
5 A. Yes. 11:30
6 183 Q. If I can just ask you to turn to the third page of your
7 report, 24th September 2015, just page 8844 in the
8 book. You will see at the very bottom of that page
9 there's a paragraph beginning:
10
11 "Please find attached..." 11:30
12
13 And then a number of items are listed. Number 1 and 2
14 are on that page, and over on to 8845, and they run up
15 to 11 items or documents. 11:31
16 A. That is correct.
17 184 Q. Can we take it from that, chief superintendent --
18 sorry, superintendent, that they were attached to the
19 report of interview document and this report when they
20 were sent to Chief Superintendent wheatley? 11:31
21 A. That is correct.
22 185 Q. Can we take from the inclusion of item 10 on that list,
23 the memo of interview with Garda Keogh, that that memo
24 was sent to Chief Superintendent wheatley?
25 A. That is correct. 11:31
26 186 Q. Now, you will be aware, I think, or you may be aware
27 from following the proceedings that Garda Keogh, on Day
28 101, page 48, accepted that when he received
29 documentation from the chief superintendent he did

1 receive a number of documents and says the memo of
2 interview wasn't included.

3 A. I'm aware of that.

4 187 Q. But as far as you're concerned, when that was sent to
5 the chief superintendent it included the memo?

11:32

6 A. Yes.

7 188 Q. Yes. Now, if I could then ask you to look at page
8 8844, which is the body of your report of the 24th
9 September. You see the middle paragraph begins:

10

11:32

11 "Superintendent Murray recorded in writing the
12 explanation offered by Garda Keogh. In explanation,
13 Garda Keogh stated that he had been under work related
14 stress and had been drinking heavily."

15

11:32

16 And he continues on:

17

18 "He forgot that he had contacted Sergeant McCormack to
19 report fit for duty. Garda Keogh stated that he
20 admitted his mistake to Superintendent P Murray and why
21 he had made it. Garda Keogh indicated that he did not
22 understand breach 2 and in explanation said
23 Dr. Bartlett was his doctor and was familiar with the
24 medical history. Garda Keogh had to go to his doctor
25 on that date and his doctor issued the certificate."

11:32

26

11:32

27 Then if skip a paragraph, the next paragraph reads:

28

29 "In mitigation, Garda Keogh stated that he suffered

1 from work related stress, was drinking heavily and when
2 questioned by Superintendent Murray he admitted his
3 mistake. "

4
5 Now, can we take it, can the Chairman take it that your 11:33
6 references to work related stress and alcohol
7 dependency etcetera, came from your interview with
8 Garda Keogh, is that right?

9 A. Solely.

10 189 Q. Yes. And that's to be found at page 8846, which is the 11:33
11 typed version of the handwritten note of the interview.
12 You see from that, Chairman, that the first main
13 paragraph, it begins:

14
15 "I reported sick on 9th July 2015 to Garda Paul 11:33
16 Buckley. I am under a lot of work related stress and I
17 am out sick a lot since March 2015. "

18
19 And then again, in the next paragraph:

20 11:33
21 "In respect of the second breach, I am denying this.
22 As I have said, I am under a lot of stress and I had
23 attended the doctor regularly. "

24
25 They are the references to stress which informed your 11:33
26 report and the references to work related stress in
27 your report, is that right?

28 A. That is correct, Mr. Chairman.

29 190 Q. So, it's obviously a matter for the Chairman, but from

1 your point of view is it correct to say that you had
2 regard and full account of what Garda Keogh told you
3 during the interview?

4 A. Definitely. I think that can be seconded by how I
5 treated the two other guards for doing the same thing 11:34
6 really, except they were going to work one night and
7 had worked one hour.

8 191 Q. So as a matter of fact, you were aware of Garda Keogh's
9 account of the role that the stress played in the
10 events on the 14th and 15th July? 11:34

11 A. I found him very decent to deal with, he was
12 respectful, he was kind. I find him -- yeah, I liked
13 him, I found him decent to deal with. I found him
14 decent to deal with, so I wasn't going to be harsh with
15 him. 11:34

16 192 Q. And that you specifically referenced his work related
17 stress as a matter of mitigation, isn't that correct?

18 A. As included in the covering report.

19 193 Q. Yes. This report was sent to the chief superintendent,
20 so the chief superintendent was aware of the fact that 11:35
21 Garda Keogh had told you all of this in your interview
22 and you had taken account of it, isn't that right?

23 A. It was in my report that was sent to the chief
24 superintendent, I had to assume that she got it.

25 194 Q. Can I just then ask you in conclusion, superintendent, 11:35
26 in relation to the figure for pay that you had inserted
27 on the original notification that had gone to Garda
28 Keogh, I think it was €840 that had been filled in, and
29 you got that from central pay in Killarney, is that

1 right?

2 A. That is correct.

3 195 Q. That document has to be served on the member, in this
4 case Garda Keogh, at least 14 days before the
5 interview, isn't that right? 11:35

6 A. Before the date of my interview with him, yes.

7 196 Q. Now, did Garda Keogh take any issue with that figure
8 when you met him?

9 A. No. No.

10 197 Q. Could I ask you then just briefly to put your district 11:35
11 officer hat on rather than your deciding officer, in
12 the event that is member doesn't turn up for work,
13 would you expect that member to be paid for that day?

14 A. No.

15 198 Q. Thanks. 11:36

16 A. But can I just add --

17 CHAIRMAN: If you want to say something, you are here
18 to give your view, give your evidence, if you want to
19 say anything, say anything.

20 A. Chairman, this was 2015. I appreciate I have said 11:36
21 this, but as district officers we were under severe
22 stress.

23 199 Q. CHAIRMAN: I understand.

24 A. As a district officer in Mullingar, I had to have a
25 minimum policing presence of four members working. If 11:36
26 only three turned up that night, I then required guards
27 on overtime, which was going to cause me further
28 problems when I next met the chief at our meetings.
29 Over time was to be minded. We did not have the

1 resources.

2 200 Q. CHAIRMAN: I understand.

3 A. Athlone was in a worse state than I, I hate to admit
4 that, but they were.

5 201 Q. CHAIRMAN: In other words, it was a critical thing, if 11:36
6 somebody didn't show up for work, that was an important
7 event?

8 A. I have to be able to go to bed at night thinking my
9 guards are out.

10 202 Q. CHAIRMAN: Yes. 11:37

11 A. And if they are not working, it causes problems for me,
12 the community, but also causes problems on the unit
13 they are working on. Because guards are all watching
14 each other, and if they see one guard getting off with
15 not coming in for a few hours, they're going to expect 11:37
16 it.

17 203 Q. CHAIRMAN: I understand.

18 A. That was my feelings on it, Mr. Chairman.

19 204 Q. CHAIRMAN: So if somebody didn't show up for work,
20 let's say, for a number of days. 11:37

21 A. Yeah.

22 205 Q. CHAIRMAN: would you write to HRM about that?

23 A. I would, yes. Yes. But I'd also write to the chief
24 superintendent in respect of discipline.

25 206 Q. CHAIRMAN: Of course. So writing to the chief 11:37
26 superintendent, there might be a disciplinary issue?

27 A. Yeah.

28 207 Q. CHAIRMAN: And there would also be a HRM issue?

29 A. Yeah.

1 CHAIRMAN: Okay. Very good. Anybody want to ask
2 anything arising out of that?

3
4

END OF EXAMINATION

5
6

CHAIRMAN: Very good. Any more questions from anybody?

11:38

7
8

MS. O'ROURKE: I have no questions.

CHAIRMAN: Now, Ms. McGrath, any questions.

9
10

MS. McGRATH: Nothing arising.

CHAIRMAN: Thank you very much, superintendent.

11:38

11
12

THE WITNESS: Thanks.

13
14

THE WITNESS THEN WITHDREW

15
16

MR. McGUINESS: Chairman, the next witness is CHIEF
Superintendent wheatley.

11:38

17
18

CHAIRMAN: Thank you very much.

19
20

CHIEF SUPERINTENDENT LORRAINE WHEATLEY, HAVING BEEN
SWORN, WAS DIRECTLY-EXAMINED BY MR. McGUINESS, AS
FOLLOWS:

11:38

21
22
23

THE WITNESS: Chief Superintendent Lorraine wheatley.

24
25

CHAIRMAN: Thanks very much. Good morning, Chief
Superintendent wheatley.

11:38

26
27
28
29

MR. McGUINESS: Chairman, Chief Superintendent
wheatley's original statement to the Tribunal and its
appendices are to be found in volume 11, from page 3153
onwards. And her statement to the Tribunal

1 investigators is to be found in volume 20, page 6076
2 onwards.

3 CHAIRMAN: Thank you very much.

4 208 Q. MR. MCGUINNESS: Chief Superintendent Wheatley, I think
5 you joined An Garda Síochána in 1985 originally? 11:39

6 A. That's correct, yes.

7 209 Q. I think you were sent to Store Street at that stage?

8 A. Yes.

9 210 Q. Was that following your attestation?

10 A. That's right, yeah. 11:39

11 211 Q. So you have been in the force effectively almost 35
12 years.

13 A. 35 years.

14 212 Q. In 1987 you were assigned to community relations in
15 Harcourt Square in Dublin, and then in 1989 you were 11:39
16 assigned to the area office in Harcourt Square Dublin.
17 What duties did you have there?

18 A. I was the clerk to the assistant commissioner, I worked
19 in an office there. I was studying a degree in
20 computer science at the time. So I was given task of 11:39
21 developing sort of an IT solution, because he was
22 interested in crime figures and that sort of stuff.
23 That was one of my roles. But I was a clerk with
24 various duties.

25 213 Q. Yes. 1990 you went to crime branch then in Garda 11:40
26 Headquarters?

27 A. Yes.

28 214 Q. You spent two years there I think, would that be
29 correct?

1 A. That's correct, yes.

2 215 Q. You were promoted to sergeant in 1992. From 1992 to
3 1995 you were in the operations section of Garda
4 Headquarters?

5 A. Yes. I was working for the deputy commissioner, 11:40
6 operations, as a sergeant.

7 216 Q. Who was that at the time?

8 A. It was Tom O'Reilly.

9 217 Q. I think in 1995 you went and you were assigned for
10 operational experience to Harcourt Terrace station in 11:40
11 1997, is that right?

12 A. From 1995 to 1997.

13 218 Q. I think you were then assigned to the finance
14 directorate in Garda Headquarters subsequent to that?

15 A. Yeah. I think because I had completed a degree in 11:40
16 computer science and there had been an issue with the
17 underuse of the IT system up there, they asked me to
18 come back, would I basically project manage sort of a
19 new IT system.

20 219 Q. Okay. I think you were promoted to inspector in the 11:41
21 year 2000?

22 A. Yeah. I spent, I suppose, from then till to 2007, I
23 spent three, I suppose grades in the finance
24 directorate. I subsequently got another project to
25 manage. So I went through three ranks in finance 11:41
26 directorate. I had a couple of years then when I was
27 head of procurement for the organisation.

28 220 Q. Yes. I think you were promoted to superintendent in
29 2005 after 20 years service?

1 A. That's right, yeah.

2 221 Q. In 2007 you were assigned to Terenure Garda station, is
3 that correct?

4 A. That's correct, yes.

5 222 Q. As the superintendent? 11:41

6 A. Yes.

7 223 Q. You stayed there for six years, is that correct?

8 A. Nearly six years, yeah.

9 224 Q. In 2013 you transferred to Donnybrook and you were
10 there for two years, is that correct? 11:41

11 A. Yes, that's correct.

12 225 Q. Then in 2015, on promotion you were then assigned to
13 the Westmeath division, that we are concerned about,
14 isn't that correct?

15 A. Yes. 11:42

16 226 Q. I think you were there for approximately 15 months,
17 between early March 2015 until August of 2016?

18 A. That's correct, yes.

19 227 Q. I think you were then assigned to the Dublin
20 metropolitan region west division for two years and 11:42
21 since July 2018 you have been in charge of the Dublin
22 metropolitan region south central division, based in
23 Kevin Street?

24 A. Yes.

25 228 Q. The new headquarters there? 11:42

26 A. That's right, and I'm still there.

27 229 Q. That takes in quite an area of the south central city,
28 isn't that right?

29 A. Yes, it does. It's Donnybrook, Irishtown, Pearse

1 Street, Kevin Street and Kilmainham. So the south
2 central city.

3 230 Q. On transfer to Westmeath division, the divisional
4 headquarters is in Mullingar, of course, and there is a
5 superintendent in each of the district offices, Athlone 11:42
6 and Mullingar?

7 A. That's correct, yes.

8 231 Q. At the time of your transfer, Superintendent McBrien
9 was being replaced in Athlone by Superintendent Murray?

10 A. Yes. 11:43

11 232 Q. Superintendent Alan Murray, the last witness, was being
12 assigned to Mullingar, isn't that correct?

13 A. That's correct, yes.

14 233 Q. So there was a clean sweep, as it were?

15 A. Yeah. I think, I suppose there had been very little 11:43
16 promotion for a number of years and then two lists came
17 out, a supers lists and a chiefs list came out
18 together. So I people had been down the country for a
19 long time. So I think there was about 60 moves at that
20 time. There was a major reshuffle done in the context 11:43
21 of, I suppose, the two new lists that had been
22 published.

23 234 Q. Yes. Well, as we know, Chief Superintendent Curran was
24 leaving?

25 A. That's right. 11:43

26 235 Q. Did you have a hand over briefing meeting with him?

27 A. I did, yeah. I went down to see Mark Curran and we had
28 a conversation.

29 236 Q. Is it the practice that these things are done orally or

1 is there any set of papers or memoranda prepared in
2 relation to issues?

3 A. There are hand over documents to do with finance and
4 there's a template that's done there, that's usually
5 prepared by the divisional clerk. I suppose this 11:44
6 meeting, it's not done in that structured way. I
7 suppose it has evolved, but you're not taking over -- I
8 wasn't taking over, I suppose, Mark's job, I was taking
9 over the division, if you like.

10 237 Q. Yes. 11:44

11 A. So you're taking over his practice, if you like. So
12 you have access to the IT system, you have access to
13 the management information, the financial information
14 and then the files there's there, they're all available
15 to you. So you don't go into detail of all the 11:44
16 different files and all that sort of stuff, because
17 they would present themselves as was required. So I
18 suppose, in terms of -- there's certain matters you'd
19 sort of just want to be flagged. You would flag --
20 your office, I suppose really the clerk there was 11:44
21 particularly good. So matters, let's say, that would
22 be presenting over the weeks, the system, you know,
23 produces them to you. So I suppose my -- I never
24 worked in the country, I suppose I was ten years a
25 super. So, I was a newly promoted super. So I suppose 11:45
26 the purpose of the visit was really I suppose for me to
27 get a general sense of what it was like, you know,
28 working in the country, being a chief. And the couple
29 of new -- then there was a couple of particular issues

1 that Mark thought were important and we had a
2 conversation about it. There was a couple of changes
3 in relation to a number of sergeants that were taking
4 place. I asked him about welfare. You don't go into
5 the nitty gritty of the files and that, that's not, you 11:45
6 know, necessary.

7 238 Q. Yes.

8 A. Yeah.

9 239 Q. But as I understand it, as you told our investigators,
10 you did receive a call from the Commissioner at the 11:45
11 time I think?

12 A. Yes.

13 240 Q. Was it informing you of your promotion?

14 A. Yeah, that was the practice then, that when you were
15 getting your allocation the Commissioner would ring you 11:45
16 and say where you were going.

17 241 Q. Yes. And the Commissioner herself told you, you're
18 going on promotion down to Westmeath?

19 A. Yes.

20 242 Q. And you will be taking over from Chief Superintendent 11:46
21 Curran?

22 A. Yes.

23 243 Q. Was there any discussion of any of the issues that you
24 would be facing down there?

25 A. She did say to me, you know, make sure you're fully 11:46
26 briefed. There had been -- I'm sort of mindful that
27 everything I say is a matter of public record. There
28 had been -- I suppose, there were new arrangements
29 being put in place in relation to another person that

1 had made a protected disclosure, really a change in
2 role in that, and so, she just said, make sure you're
3 fully aware of those changes. And actually, that was
4 probably the nub of the conversation with
5 Superintendent Murray. 11:46

6 244 Q. Okay. I mean, but did the Commissioner tell that a
7 protected disclosures manager had been appointed or new
8 procedures --

9 A. There was no arrangements in place. I think there was
10 a liaison person appointed. There was actually a 11:46
11 number of moves, people were moved, for a number of
12 reasons. There was a move. People were getting
13 different jobs and people were moving out of jobs. So,
14 I suppose, there was new arrangements being put in
15 place in respect of the roles that people were going to 11:47
16 play.

17 245 Q. Did you know Chief Superintendent McLoughlin?

18 A. Oh, I met Chief Superintendent McLoughlin, I knew that
19 he had been given -- he had been liaising with him and
20 I think I actually met Chief Superintendent McLoughlin 11:47
21 prior to even going down to Westmeath.

22 246 Q. Yes.

23 A. Yeah.

24 247 Q. In what context was that?

25 A. It was in the context of, I suppose, giving me some bit 11:47
26 of a background in relation to, I suppose, the liaison
27 person that had been appointed in the context of
28 another person.

29 248 Q. Yes, I see. And did that discussion touch upon Garda

1 Keogh's position?

2 A. No.

3 249 Q. Had Commissioner O'Sullivan referred in any way to
4 Garda Keogh?

5 A. No. 11:47

6 250 Q. Did she refer to any investigation that she had set in
7 progress?

8 A. No.

9 251 Q. As a result of a protected disclosure --

10 A. No. 11:48

11 252 Q. -- made by Garda Keogh?

12 A. No.

13 253 Q. Were you aware prior to meeting Chief Superintendent
14 Curran that Assistant Commissioner Ó Cualáin had been
15 appointed to investigate allegations made in a 11:48
16 protected disclosure?

17 A. I was aware that had been -- there was a protected
18 disclosure in connection with Athlone. I don't think a
19 morning went by when the whole issue of, I suppose, the
20 whistleblowing, I suppose, issue wasn't on the radio or 11:48
21 wasn't on the news in that period. So I didn't know
22 much about it but I had an awareness of it.

23 254 Q. Yes. But did you know that it related to alleged
24 involvement of guards in connection with the drugs
25 issue and that Assistant Commissioner Ó Cualáin had 11:48
26 been appointed to investigate that?

27 A. I'm not certain that I knew that. I suppose it was a
28 country matter and I'm not certain that I knew. I
29 certainly was aware that in the public domain there was

1 a person who had made a protected disclosure, you know,
2 that had raised issues and that it was being
3 investigated. I didn't -- I suppose, it was down the
4 country. I didn't have a huge knowledge of it really,
5 no.

11:49

6 255 Q. Yes. But did you know that Garda Keogh was the person
7 who had made the disclosure and that you were now in
8 charge of the division and the district effectively,
9 where he was stationed?

10 A. Yeah, I mean, the name was in the public domain, yes.
11 So I would have -- I did know, yes.

11:49

12 256 Q. Well, when you met with Chief Superintendent Curran,
13 was there any discussion in relation to Garda Keogh?

14 A. We touched upon it, I would say. I was asking him
15 really in the context of welfare, really, and if there
16 was any issues. I mean, in terms of the investigation
17 that was taking place, I had no role in that and, you
18 know, I wasn't going to be required to be involved in
19 it, so I mean I really had no interest in it. We all
20 do investigations all the time and we don't discuss
21 them with other people. So I had no role in it, no
22 interest in it.

11:49

11:50

23 257 Q. Yes.

24 A. He did say that the previous superintendent, Noreen
25 McBrien, who I had known, who was my inspector actually
26 in Terenure, that she had been dealing with him from a
27 sort of, welfare point of view. I may have asked, had
28 he got a welfare officer? That was really the extent
29 of the conversation; that Superintendent McBrien had

11:50

1 been dealing with the welfare aspect of it.

2 258 Q. Did you have any questions for Chief Superintendent
3 Curran about Garda Keogh or did he tell you anything
4 further about him?

5 A. No, he didn't. I suppose, you know, this was ten 11:50
6 months in. The investigation was taking place over
7 there and as happens all the time in divisions, there's
8 investigations going on for different matters. I had
9 no role, I had no -- in it, and really, no, it
10 wasn't -- the welfare piece was there. It wasn't 11:50
11 something -- there was certainly no need for me to go
12 and do anything, that I believed, you know,
13 immediately. There was other people that were being
14 moved around and it was important that I oversaw that
15 that actually was followed through. But there was 11:51
16 nothing -- there was no live issues that I believed or
17 he believed that I needed to address sort of any time
18 soon.

19 259 Q. Okay. So there were no concerns brought to your
20 attention about any particular issue concerning Garda 11:51
21 Keogh?

22 A. No. No.

23 260 Q. Did you formally take over on the 9th March?

24 A. Yes.

25 261 Q. Did you have any meeting with the new Superintendent 11:51
26 Murray who was in Athlone at that stage?

27 A. Yeah, I think I might have been in [inaudible] for a
28 couple of days after that, but I would have met
29 certainly after -- we would have had my PAF and would

1 have called the two supers in, you know, and we would
2 have had a meeting, you know what I mean.

3 262 Q. Just in terms of the overall position, obviously the
4 issue of whistleblowers had been topical in the press,
5 in the Dáil and in the public mind, and the 11:52
6 Commissioner who had taken over that had been seen
7 publicly to be anxious to support whistleblowers, isn't
8 that correct?

9 A. Yes.

10 263 Q. Did you think it appropriate or not to meet Garda Keogh 11:52
11 and personally speak to him?

12 A. No, I didn't. I didn't think at that time, you know,
13 that -- I suppose we were ten months into it, the
14 welfare piece was being looked at before I arrived. I
15 didn't think there was actually a need, you know, to go 11:52
16 and meet him when I arrived in. I suppose you
17 wouldn't -- I just didn't think that was actually
18 necessary. I'd say I was sort of settling into the
19 division. I didn't think it was certainly -- actually,
20 you know, I didn't really think it was necessary, 11:53
21 certainly initially. There was no particular reason.
22 The thing was well established. The investigation was
23 ongoing. There was no sort of immediate issues. And
24 did I think -- actually, I really didn't think, I was
25 taking it straight back, going forward and I suppose if 11:53
26 issues present, then I would deal with them.

27 264 Q. Yes.

28 A. But I didn't think, nor do I think now, that a
29 connection at that stage was required. I suppose there

1 is three layers between me and Garda Keogh, of
2 management.

3 265 Q. Yes.

4 A. So, I didn't really over think it. But certainly
5 subsequently I would have been talking to both
6 superintendents in relation to, I suppose, how are
7 things going and that sort of stuff.

11:53

8 266 Q. We will come to it in due course, but you did I think
9 ultimately in May of 2016 call to Garda Keogh?

10 A. Yes, I did, yes.

11:53

11 267 Q. He was out on sick leave at the time. Was that the
12 first time had you met him?

13 A. Yes, it was, yes.

14 268 Q. We will come to that in due course. In any event,
15 Superintendent Murray reported to you on the 2nd April
16 in a report. Perhaps we will just look at that, at
17 page 6149, volume 20. This is the 2nd April. It is a
18 two-page report. It refers to the utterings in Dáil
19 Éireann in the first paragraph. It then refers to his
20 transfer in the second paragraph and first meeting
21 Garda Keogh on the 26th March. He says:

11:54

11:54

22
23 "One of the issues that arose in my discussion with him
24 was his sick absences, which appeared to be occurring
25 frequently and in a haphazard fashion. While Garda
26 Keogh was reticent to discuss any issues he may have
27 with me, I nonetheless felt it prudent to put an
28 arrangement in place in Athlone to support him in the
29 work environment as he is indicating work related

11:55

1 stress as a source of his absence. With that in mind,
2 I have allocated a female sergeant who is new to the
3 district to act as a point of contact for the member to
4 discuss and if possible solve any workplace issues he
5 may have in Athlone in order to allow him attend work 11:55
6 more frequently."

7
8 Presumably that meeting that Superintendent Murray had
9 with him, you hadn't directed Superintendent Murray at
10 that stage to conduct any investigation in relation to 11:55
11 work related stress?

12 A. No, this was -- Superintendent Murray met with Garda
13 Keogh.

14 269 Q. Yes.

15 A. I suppose prior to meeting him, he established that the 11:56
16 member had reported intermittently with work related
17 stress.

18 270 Q. Yes.

19 A. So this was -- he subsequently sent a report up the
20 line. 11:56

21 271 Q. Yes.

22 A. You know, and he highlighted this to me, yeah.

23 272 Q. Obviously we will come to the provisions that are
24 relevant in terms of the Code etcetera, but just --
25 CHAIRMAN: Mr. McGuinness, could I interrupt you for a 11:56
26 moment, please.

27 MR. MCGUINNESS: Yes, of course.

28 CHAIRMAN: I anticipate that you are going to be some
29 time with Chief Superintendent Wheatley.

1 MR. McGUI NNESS: Yes.

2 CHAIRMAN: I am thinking of other witnesses who may
3 wish to know where they stand.

4 MR. McGUI NNESS: Yes.

5 CHAIRMAN: So, am I right that they are unlikely to be 11:56
6 needed.

7 MR. McGUI NNESS: I think certainly, Chairman, yes, I
8 think it is appropriate to say that anticipate I will
9 be dealing Chief Superintendent wheatley's evidence for
10 the whole of today and into tomorrow. 11:57

11 CHAIRMAN: Okay. So that any other witnesses are
12 perfectly free and more than welcome to stay but
13 they're not under any obligation to do so and if they
14 wish then they can keep in touch with the Tribunal.
15 But not before tomorrow for any other witnesses. 11:57

16 MR. McGUI NNESS: Thank you, Chairman.

17 MR. MURPHY: Thank you, Chairman.

18 CHAIRMAN: Just so people will understand.

19 273 Q. MR. McGUI NNESS: Chief Superintendent wheatley, I am
20 just trying to establish that had you not given 11:57
21 Superintendent Murray any instruction or direction to
22 interview --

23 A. No.

24 274 Q. -- Garda Keogh in relation to work related stress or
25 anything else? 11:57

26 A. No. Superintendent Murray in the course of, I suppose,
27 his role there.

28 275 Q. Yes?

29 A. As, I suppose, issues came to attention, he was doing

1 his own work locally and arising out of that clearly he
2 decided to meet with the member.

3 276 Q. Yes. He also goes on to say:

4
5 "As an additional measure, I wish to have an 11:58
6 appointment with the Chief Medical Officer arranged for
7 Garda Keogh in order that professional medical
8 expertise can advise other workplace supports which may
9 assist the member. The member indicated he had not
10 attended the CMO previously." 11:58

11
12 Then it goes on the next page:

13
14 "The member had total of 184 sick days in the past four
15 years. 48% of those occurred since January 2014, with 11:58
16 52% occurring in early tours of duty. The member has
17 availed of 34 days annual leave from 1st March 2014 to
18 31st March 2015, with 92% of leave taken on early tours
19 alone.

20 11:58
21 I believe both the member and the organisation would
22 benefit by referring him to the Occupational Health
23 Service at this time.

24
25 Forwarded for your information please and for onward 11:58
26 transmission."

27
28 Now, I think you also received memos, we don't need to
29 see them, I think, at this stage, that Superintendent

1 Murray sent you in relation to finalising an issue
2 about Garda Keogh's car tax.

3 A. Yes.

4 277 Q. And travelling expenses?

5 A. Yes. 11:59

6 278 Q. I think just to deal with that. You had no involvement
7 directly or otherwise in relation to that, other than
8 being informed of the outcome of it?

9 A. That's correct.

10 279 Q. Isn't that correct? You do say at page 3148, which is 11:59
11 part of your original statement, that you agreed with
12 that?

13 A. Yes.

14 280 Q. Perhaps we will just look at the bottom of that page.
15 It's the last paragraph there. It's really the last 11:59
16 few lines?

17 A. Yeah.

18 281 Q.
19 "Even though there was a revenue offence involved here,
20 he was given an opportunity to address the issue. The 11:59
21 matter dealt with as a minor breach of discipline. A
22 minor breach of discipline does not go on a member's
23 personal file. It was not within Superintendent
24 Murray's gift to permit payment from public funds
25 outside of financial regulations. I believe this was a 11:59
26 very fair and balanced intervention."

27 A. Yeah.

28 282 Q. Did Superintendent Murray tell you that he had had a
29 conversation with Detective Superintendent Mulcahy and

1 Assistant Commissioner Ó Cualáin around this period of
2 the 2nd or 3rd April, about utterances in the Dáil by
3 Deputy Wallace?

4 A. Yeah, he would have. He would have made me aware of
5 it, yeah. 12:00

6 283 Q. But did you understand that it was a grievance of Garda
7 Keogh that this had been dealt with in this way?

8 A. I suppose I didn't, I didn't really have a view on it.
9 I suppose in terms of -- my view was that the objective
10 here was to pay Garda Keogh, you know what I mean. And 12:00
11 Superintendent Murray was trying to solve a problem and
12 I suppose in terms of -- I suppose to backtrack.

13 284 Q. Yes?

14 A. I took a straight back line all the time in relation to
15 things. Of course I was alive to the context and what 12:01
16 was going on in the public domain, and you have to
17 separate that out and deal with -- I suppose deal with
18 behaviours, as did Superintendent Murray. You know,
19 was I aware of it? Yes, that that had happened. But
20 my point of view, I was still of the view we have to be 12:01
21 impartial and we have to do the right thing for the
22 right certainly. And certainly -- actually, to be
23 honest with you, I am actually -- it astounds me that
24 Garda Keogh could have any issue with this. Because,
25 you know, this was the fairest intervention I believe. 12:01
26 You know, the claims were there and Superintendent
27 Murray was trying to find a solution to solve -- you
28 know in the -- we are public sector, I mean we work
29 within guidelines and procedures. So we can't operate

1 outside those. So Superintendent Murray was given --
2 corrected the issue, moved it on and then the claims
3 were paid. And that was the objective here; was to
4 ensure that Garda Keogh was paid.

5 285 Q. Yes. You saw nothing either unusual or improper in 12:02
6 what Superintendent Murray had done and was consistent
7 with the regulations?

8 A. I actually thought he was quite lenient really. And
9 you know, I know we all use the term, you know, he was
10 disciplined, or I know we probably say it ourselves 12:02
11 sometimes, but actually the definition in the
12 discipline regulations, at Regulation 10 it says --
13 there's nothing in these regulations that prevents any
14 -- you know, any supervisor from dealing with matters
15 by way of informal resolution. So this was an informal 12:02
16 resolution, as to how Superintendent Murray dealt with
17 this. That's the least intervention. I know it was
18 captured on the form and that probably gives level of
19 formalisation to things.

20 286 Q. Yes. 12:02

21 A. But like, we are a big organisation, forms are for
22 efficiency and consistency. It captures stuff, I
23 suppose. You know, there is nothing divisive here or
24 underhand. In terms of what my view was, Garda Keogh
25 was given the opportunity to get the tax right, it's 12:03
26 public money, when you sign for your claims you are
27 certifying that everything is in order. You know, we
28 were trying to -- Pat Murray was trying to, you know,
29 pay Garda Keogh. Like we are all audited down the

1 road. And so, when everything was right, then the
2 doors were free for Superintendent Murray to pay the
3 claims. Now, I know, was it necessary to go the next
4 extra step, to do the -- you know, to do the informal
5 resolution? I believe it was. I think, you know, it 12:03
6 just records it. It doesn't go on the personal file.
7 But we are a public sector organisation, we're a big
8 organisation. Advice was given. And this is the form
9 we use to capture the advice. And that was -- and the
10 fact, you know, you can be audited down the road and I 12:03
11 suppose the fact it was connected with, I suppose, a
12 revenue issue, I would have thought it was an
13 appropriate, professional way to deal with the thing in
14 a minor way.

15 287 Q. Okay. We have seen obviously that it gave rise to an 12:04
16 instruction issued by Superintendent Murray in relation
17 to the inspection of other members' compliance?

18 A. Yes.

19 288 Q. Was that something that you were consulted about or
20 that you would have had a problem with in any way? 12:04

21 A. No. I wasn't consulted about that, that was a matter
22 for local management.

23 289 Q. Okay. In the context of the report from Superintendent
24 Murray in which he refers to the issue of work related
25 stress by Garda Keogh, did you see it as your function 12:04
26 or duty to initiate an inquiry into that, as to what
27 was causing it at that point in time?

28 A. I mean, in Superintendent Murray's report he indicated
29 he was reticent to deal with it, because of the fact

1 that Garda Keogh -- Garda Keogh's position was, he had
2 made a protected disclosure, he was dealing with the
3 people in Galway. And to be honest with you, that's
4 completely understandable, that he didn't want to
5 operate outside that, I suppose, bubble. And, you 12:05
6 know, because this was unusual, if you like, or new, we
7 referred it up the line to say that, you know, the
8 reason -- when the person reports sick, when a person
9 is absent, absent with work related stress, you know,
10 the instruction is, you have to investigate to 12:05
11 establish what is the cause of that stress. Garda
12 Keogh clearly, and very understandably, you know, said
13 he was stressed because all matters around to do with
14 the protected disclosure and wasn't to go any further.
15 I suppose that was quite understandable. 12:05

16 290 Q. Yes.

17 A. And so, my view was that, you know, if you want the
18 complaint you can't go forward. I believed that that's
19 -- you know, that's as far as we could bring it. But I
20 felt that was enough. We were given a context, we were 12:06
21 given -- then the next step in this is for the CMO to
22 make a clinical, I suppose, determination.

23 291 Q. We will come to that, indeed. Perhaps it is a
24 convenient point to look at just the Management of
25 Sickness Absence Directive 139/10, was issued on 1st 12:06
26 December 2010 by the assistant commissioner for the
27 Eastern Region, Commissioner Fanning, I think who I
28 think it was at that time. That is to be found at page
29 8202, which is in Volume 28. At the bottom of the page

1 there at 8202, it obviously refers to the Chief Medical
2 officer, as we've referred to. It says:

3
4 "The CMO advises the Garda Commissioner on member's
5 medical fitness for policing duties. In forming a 12:07
6 medical opinion, the CMO takes into account all medical
7 information available at the time. When the CMO
8 advises that a member is fit for full/light/restricted
9 police duties, the member will resume duty immediately
10 on being notified of the same by the member's district 12:07
11 officer/superintendent."

12
13 Then it goes on to consider what happens when he is
14 considered fit for duty. But in terms of work related
15 stress, if we go to page 8204, this is under the 12:07
16 general heading "injury on duty classification". The
17 first paragraph says:

18
19 "Where there is any doubt that an injury on duty
20 occurred, divisional officer should refer to the matter 12:08
21 to the assistant commissioner HRM, who will seek
22 advices of the CMO. The CMO will take into account all
23 relevant information in arriving at his/her advices."

24
25 Now, do I take it that when you saw Superintendent 12:08
26 Murray's letter, you didn't think this fell into
27 classification of an injury on duty as such?

28 A. well, I suppose that's not within my gift, to make that
29 determination.

1 292 Q. Yes. 12:08
2 A. You know what I mean.
3 293 Q. I understand that.
4 A. Yeah.
5 294 Q. It wasn't being reported up to you as an injury on duty 12:08
6 issue, or am I wrong?
7 A. No, it wasn't. The member's doctor had certified him
8 with stress, which was quite understandable in the
9 circumstances. And when -- I suppose our instructions
10 is, when a person reports sick with work related 12:09
11 stress, you have to assert the cause of that stress.
12 This is really, I suppose, about giving background
13 information to the CMO so he can have a conversation
14 with the person to some degree.
15 295 Q. Yes. 12:09
16 A. So in line with the policy, as soon as Superintendent
17 Murray became aware from the certificates and I
18 suppose -- you know, the certificates and from the
19 conversation with Garda Keogh, you know, as is right.
20 296 Q. Yes. 12:09
21 A. At the earliest he reported it up the line, you know,
22 and Garda Keogh was reluctant to sort of go into the
23 ins and outs of it.
24 297 Q. Yes. We will come to it in due course obviously, but
25 just looking at this, the last paragraph there, it 12:09
26 says:
27
28 "Ordinary illness/injury on duty."
29

1 Where there is a doubt that the member's sickness is
2 due to ordinary illness or an injury on duty, the
3 member's absence will be treated as ordinary illness
4 pending a decision on the classification of the injury
5 and in particular the CMO's advice. "

12:09

6
7 Now, it doesn't sort of consign that decision to the
8 CMO as such?

9 A. Well, it does actually.

10 298 Q. Does it?

12:10

11 A. In terms of psychological injuries, I mean -- I suppose
12 maybe I will just explain this. As a chief
13 superintendent you can issue what's called an 1137,
14 which is basically saying, I'm happy that my member has
15 been injured on duty, it's not due to willful neglect,
16 you know, of the member. Like in my busy division or
17 after a weekend you might have a couple of punches and
18 a couple of -- you know, maybe someone kicked or
19 something like that, and the person reports it up the
20 line to me and I look at it and the sergeant supports
21 it by sort of a report. So, based on what's reported to
22 me, I am saying, yeah, clearly this happened, clearly
23 they had the injury. And that is within my gift, to
24 issue an 1137, which is saying, this is an issue on
25 duty.

12:10

12:10

12:10

26 299 Q. Okay.

27 A. In relation to stress or psychological issues, I mean a
28 subsequent directive came out that where we are
29 precluded from issuing -- I am precluded from issuing

1 an 1137 in respect of work related stress. That there
2 is a whole process around that.

3 300 Q. That wasn't issued at the time, isn't that correct?
4 A. Well, it wasn't within my gift to issue that.

5 301 Q. Well, you're talking about a later directive, isn't 12:11
6 that correct?
7 A. Yeah, after this. This is ten years old.

8 302 Q. Yes.
9 A. The one that was --

10 303 Q. I understand but this is what was applicable at the 12:11
11 time?
12 A. No.

13 304 Q. In 2015?
14 A. No, I don't -- sorry, I have the number there. There's
15 a -- 12:11

16 305 Q. Perhaps we will come to that?
17 A. Yeah.

18 306 Q. I was just going to ask you about the next paragraph,
19 the next page "investigation", because it says:
20 12:11
21 "Where a member reports non-effective for duty as a
22 result of an injury on duty or work related stress, a
23 thorough investigation shall be carried out immediately
24 and the outcome reported to assistant commissioner HRM
25 for the attention of the CMO. The member concerned 12:11
26 shall be advised of the employee assistance scheme,
27 peer support and any other support deemed necessary.
28 Local management shall address the issues causing the
29 member's stress."

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Now, is it your view that this was not applicable at the time?

A. No, I'm not saying that. What I am saying is, it was always the position that you had to establish the cause of a member's stress, you know what I mean. And I suppose even now, if there's anything unusual you refer it up to HRM. But for simple, straightforward injuries on duty, I have authority to issue an 1137. If it had been the case then and if there was a subsequent sort of clarification around it, if a person reports sick with work related stress, if a person is absent with work related stress, you know, the local management have to establish the source of that stress and then notify the CMO. 12:12

307 Q. Yes. I am just posing the question in a very direct way now: On receipt of Superintendent Murray's report, did you not, in fact, conceive it as your responsibility at that stage to investigate the work related stress and the causes of it and report on that up? 12:12

A. Garda Keogh made it very clear, crystal clear, that he wasn't willing to -- because -- and it's very understandable, because he was dealing with the Galway investigation team and, indeed, they were looking after his welfare as well at that time, he made it crystal clear that he wasn't going to go into any more detail. I suppose the whole thing were inextricably linked, the stress and the investigation. So this was unusual, I 12:13

1 suppose. And I suppose the whole protected disclosures
2 issue was unusual as well. So I was saying, listen, I
3 brought it up, I said, this is as far as I can bring it
4 really. He is saying it's connected with that. I mean
5 he wasn't going to say what it because he made it, was 12:13
6 it because people reacted to him. So his position was
7 quite clear, which is very understandable. So I was
8 saying, look, this is what he has given us, this is the
9 context, and bring it no further.

10 308 Q. Was it not clear to you that it doesn't appear to have 12:14
11 been the case that Garda Keogh was informed that this
12 interview on the 26th March was an interview into his
13 work related stress and the causes of it and that it
14 would or might have consequences for the classification
15 of his sickness absence and therefore possible 12:14
16 ramifications for his pay. I mean, he wasn't informed
17 of those things, is that not clear?

18 A. There's a whole process around getting an injury on
19 duty categorisation, classification for work related
20 stress. It's actually quite -- you have to establish 12:14
21 the cause of the stress, the CMO does an assessment and
22 in my experience when you refer a person, that the CMO
23 has a view and he might send him to independent
24 specialist, HRM have a role in it, the executive
25 directors has a role in it and there can be -- there's 12:15
26 a whole -- there's many variables in the equation.

27 309 Q. Yes.

28 A. So of itself -- in terms of -- I mean Garda Keogh
29 reported sick with work related stress. Of itself, I

1 mean, there's not an automatic entitlement that that
2 would turn into injury on duty.

3 310 Q. Yes.

4 A. There is a whole layer of stuff there. When he report
5 with work related stress, Superintendent Murray didn't 12:15
6 go into that conversation with him at that time.

7 311 Q. Yes.

8 A. I sent it up the line.

9 312 Q. Yes.

10 A. I said, I am sending it to HRM, and we were saying, we 12:15
11 can't bring this any further. He was also at that time
12 under the care of HRM, I suppose the welfare person.

13 313 Q. Perhaps we will deal with it sequentially. You
14 received a letter back from Mr. Mulligan, the director
15 of HR on 14th April 2015. If we could look at page 12:16
16 6166. Because Superintendent Murray had reported up
17 the period of absences, this triggered then the
18 reaction of headquarters and you received that, isn't
19 that correct?

20 A. Yes. 12:16

21 314 Q. You wrote back on the 27th April, if we look at 6142.
22 In particular, you were looking to have an expedition
23 of the review by the CMO at that point in time?

24 A. Yes.

25 315 Q. Is that correct? The reason that you were seeking that 12:17
26 was the report referred to in the letter which
27 Superintendent Murray sent to you on the 21st April, at
28 page 6143, isn't that correct?

29 A. Yes.

1 316 Q. That ultimately seems to have led to the instruction at
2 page 6144. That's again from Mr. Mulligan to you:

3

4 "Re sick report.

5

12:18

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

9

10 And those certificates had been sent in by Garda Keogh
11 for that period?

12:18

12 A. Yes.

13 317 Q. And were further sent on up, is that correct?

14 A. Yes.

15 318 Q. It says:

12:18

16

17 "You should now interview this member in order to
18 establish the source of the member's stress and if it
19 is being suggested as work related, a full
20 investigation should be carried out.

12:18

21

22 This branch requires a full report, referral form and
23 medical certificates in accordance with Garda Code
24 11.34 relating to the above named member's absence. "

25

12:18

26 Did you see that as casting the responsibility on
27 you, it says "you should now interview this member"?
28 You knew that Superintendent Murray had been, as it
29 were, unable in his meeting with Garda Keogh on the

1 26th March to delve into the issue, did you see this as
2 casting the duty on you as the divisional officer?
3 A. I didn't actually, no. That correspondence would have
4 gone down to Superintendent Murray and, you know, the
5 position was, I mean, Garda Keogh had made his position 12:19
6 clear, that he wasn't -- you know, that he couldn't go
7 into -- this was connected with the protected
8 disclosure, that he wasn't in a position, you know, to
9 go into any more detail.

10 319 Q. Yes. 12:19
11 A. And we had to accept that, you know.

12 320 Q. Yes. But if we look at Superintendent Murray's report,
13 you sought the report that the branch wanted there,
14 isn't that right?
15 A. Yes, yes. 12:19

16 321 Q. If we look at Superintendent Murray's report to you
17 then of the 20th May, that commences at 6146; isn't
18 that correct?
19 A. Yes.

20 322 Q. If we just look at that report. He refers to your 12:20
21 correspondence of the 12th May and that of HR people
22 development dated 7th May.
23

24 "In addition, I attach a copy of my correspondence to
25 you dated 2nd April." 12:20
26

27 That was the original sick report, isn't that correct?
28 A. Yes.

29 323 Q. "As I indicated, Garda Keogh is providing information

1 under the Garda reporting regulations. When I met the
2 member on 26th March 2015, I discussed his work
3 absences including the fact that his medical
4 certificates were indicating he was suffering from work
5 related stress. The member was quick to point out that 12:20
6 he was a confidential reporter and had certain
7 protections in that role. He indicated that the
8 assistant commissioner Western Region was investigating
9 reports and allegations that he has made to the
10 confidential recipient. Outside of disclosing that the 12:21
11 member was reticent to discuss the work related stress
12 he indicates he is suffering from, relying instead on
13 the protections he has in the confidential reporting
14 legislation.

15
16 In these circumstances, I cannot further explore the
17 situation with the member. I am aware anecdotally that
18 a full investigation is being carried out into the
19 member's claims of corruption and malpractice. I have
20 no further information in relation to that 12:21
21 investigation. I understand that the member is
22 engaging with the welfare service via the investigation
23 he is involved in. I did, however, advise him of its
24 benefit to him.

25
26 I attach your responsibility of the 12th May,
27 correspondence from HR and People Development 7th May,
28 my report of the 2nd April, referral form CMO dated 2nd
29 April 2015, member's medical certificates."

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Now, just in the light of that, did you pick up that Superintendent Murray hadn't gone back to the member to further discuss the issue?

A. I did, yeah. I think he had made it very clear, Garda Keogh had made it very clear and it was very understandable, that we -- that he wasn't going to -- he wasn't going to discuss this. 12:22

324 Q. Yes.

A. So we sent that back up the line then. 12:22

325 Q. Obviously he is reiterating his position that he can't explore it further, but in the context of the instruction to you of the 7th May, did you not think maybe that you should intervene and try and do what the superintendent had been unable to do, to explore it with the member? 12:22

A. I didn't think there was any point doing that.

326 Q. Okay.

A. I mean, he had made his position clear in relation to -- that he -- that, you know, he was in another context at the moment. 12:23

327 Q. Okay.

A. So I believed that it wouldn't have been even -- and you need -- to start any investigation, people have to, you know, make an allegation and be specific. And actually, I really felt that it may have even been perceived as heavy handed. We were saying, this is as far as we can bring this. 12:23

328 Q. Yes.

1 A. And in light of -- I suppose it quite unusual or I
2 suppose our new context and his position --

3 329 Q. Yes.

4 A. -- you know, we were saying, listen, we don't think we
5 can bring this any further here. You know, and I 12:23
6 suppose when you reflect on it, realistically it's
7 because it was so late.

8 330 Q. I mean, I don't want to overlook and I probably
9 shouldn't have passed by it in terms of chronology, you
10 had instructed the superintendent on the 12th May to 12:23
11 arrange an interview with the member. If you look at
12 page 6148. So this is what went down to the
13 superintendent after you got Mr. Mulligan's letter of
14 the 7th May. You then received back the
15 superintendent's report. So, I mean, it was clear 12:24
16 beyond doubt that he had not done what you had, as it
17 were, instructed him to do?

18 A. Well, I think in his professional opinion he had met
19 with Garda Keogh in March.

20 331 Q. Yes. You knew that? 12:24

21 A. Yeah.

22 332 Q. There was no point in saying to him, send me your note
23 again of what happened on the 6th March. You clearly
24 envisaged an interview with Garda Keogh to establish
25 the stress. He didn't do it and I am not criticising 12:24
26 him in any way at all, but from the point of view of
27 coming back to you, you knew that and you knew that he
28 was telling you he couldn't establish the source, and
29 then I am suggesting that you should have realised it

1 was your duty to do it then before reporting further?
2 A. I believed -- I believed that his position was very
3 clear. You know, I think, as I reiterate, restate, you
4 know, it was -- you know, he was dealing with this
5 other matter, it was connected, he was giving 12:25
6 specifics. We were saying, I don't think we can take
7 this any further at this stage.
8 333 Q. Okay. Superintendent Murray had sent the material up.
9 Perhaps we will just look at that, volume 33, 9392. Do
10 you recall seeing that at the time that he had sent it 12:25
11 up?
12 A. Yes.
13 334 Q. If we scroll down. He gives all the details required
14 on the form there. If we just keep going. It goes on
15 to the next page then as well. It says: 12:26
16
17 "I confirm I have contacted the member and advised the
18 member of this referral to the Garda Occupational
19 Health Service and its purpose."
20 12:26
21 You had seen that as one of the tranches of
22 correspondence of the 2nd April, isn't that right?
23 A. Yes.
24 335 Q. You reported in any event then, if we go back to page
25 6145, up to Human Resources by letter dated 26th May 12:26
26 2015. As far as you were concerned, it would seem then
27 it was a matter for headquarters to try and progress
28 the matter and review Garda Keogh's position?
29 A. Yeah. I suppose just to come back to the -- the

1 purpose of investigating it is to establish the source
2 of the member's stress. We did establish that it was
3 connected -- surrounding all of those matters. The
4 nuances of that he wasn't prepared to go into, which
5 was absolutely understandable. So the source of his 12:27
6 stress, I suppose in a macro sense had been established
7 and we could, I didn't believe -- we respected his
8 position and we could bring it no further. And in
9 terms of -- I mean, basically a person can report sick
10 with work related stress, it may not be anything to do 12:28
11 with the job, but the fact whether a person is
12 medically stressed is a decision for someone else.

13 336 Q. Yes.

14 A. It's for the CMO, or whoever he refers the person to.

15 337 Q. Yes. In any event, Superintendent Murray reported to 12:28
16 you further on the 28th May. If we look at page 9449
17 in volume 33. You were aware then of the issue. Did
18 you receive any report back from the CMO's office to
19 your office about any review?

20 A. Not from the May -- not -- we didn't get -- my 12:29
21 recollection is we didn't get advices back. You know,
22 sometimes when you send -- we didn't get advices back
23 in May.

24 338 Q. Yes.

25 A. After the May one. 12:29

26 339 Q. Yes.

27 A. I suppose in the interim period, I suppose we sent --
28 not in the interim, subsequently we sent I suppose
29 another request up for it to be reviewed. No. And I

1 suppose when you send -- when you send a person to the
2 CMO, you're saying, you know, is this person fit to
3 work or are they not or under what -- you know, he may
4 give advices about the hours they work or who they are
5 working with and that. So when we referred him up, the 12:29
6 CMO made his advices. So there was no -- they weren't
7 coming back to us saying, yes, this member is stressed.
8 It's evident, I suppose, it's important, that the CMO
9 at that point deemed him fit to work.

10 340 Q. Yes. Well, you did pursue the issue of a conference. 12:30
11 I think you wrote up to HR again in July, on the 24th
12 July, if we look at page 6163. I think the cause, it
13 would seem, was Superintendent Murray's report referred
14 to there, which relates to the July absences --

15 A. Yes. 12:30

16 341 Q. -- that led to the discipline. But you're reporting it
17 up for a different purpose really. The second
18 paragraph:

19
20 "The district officer Athlone has requested a case 12:30
21 conference to be called in respect of Garda Keogh to
22 discuss Garda Keogh's persistent absence through
23 illness. It is evident from the report of
24 Superintendent Murray that Garda Keogh has significant
25 personal difficulties which exacerbate his propensity 12:30
26 to avail of sick leave.

27
28 The most recent absence without leave highlights issues
29 which must be addressed immediately. Accordingly, I

1 agree with Superintendent Murray's recommendation that
2 a case conference be called in respect of Garda Keogh
3 to discuss his frequent periods of absence.

4

5

Forwarded for your information please."

12:31

6

7

Do you recollect getting a reply to that at that time
8 or subsequently?

8

9

A. My recollection is we had to -- Superintendent Murray
10 had to sort of follow up in October to sort of -- I
11 suppose push the issue, really.

12:31

10

11

12

342 Q. Yes. We know a case conference was held on the 9th
13 December of that year.

13

14

A. That's right.

15

343 Q. Did you know of any particular reason why it had taken
16 that period of time?

12:31

16

17

A. The CMO will give their own evidence here. Like,
18 they're not a hospital.

18

19

344 Q. Yes.

20

A. Do you know what I mean. They don't treat people. You
21 send a person -- the whole idea of the occupational
22 health I suppose is to keep people in work and they
23 assess whether a person is fit to work or, I suppose,
24 they refer them to other people. So I suppose they can
25 speak -- you know, in terms of -- I suppose we were
26 looking for a reference point as to the person's
27 fitness to work.

12:32

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28

345 Q. Yes.

29

A. I suppose, the person themselves has to take

1 responsibility to go and get treated.

2 346 Q. Yes.

3 A. You know, that wouldn't be a responsibility of our
4 organisation.

5 347 Q. Yes. I am not casting blame at all on anyone, I am 12:32
6 just wondering if you have any insight into the period
7 of time passed?

8 A. I am speculating here. He had been seen in May and I
9 suppose he had been deemed fit then and that's, you
10 know -- there's a lot of people going up there. 12:32

11 348 Q. Yes. There are notes relating to that at page 2499,
12 perhaps we will just look at those. These are
13 Mr. Downey's note on foot of that. I think you weren't
14 at that case conference, is that correct?

15 A. That's correct, yeah. 12:33

16 349 Q. Did you receive any report yourself of the outcome of
17 that at that time?

18 A. The advices would have come down. Actually, they came
19 down -- in relation to after he subsequently saw the
20 CMO, Garda Keogh -- 12:33

21 350 Q. He did?

22 A. -- he saw him on the 18th, and it was after Christmas
23 actually, it was January, when we got the advices down
24 that he had deemed him unfit for duty.

25 351 Q. Yes. Perhaps we will look at that, at page 6172. This 12:33
26 is Ms. Carr reporting down to you; isn't that correct?

27 A. Yes, yes.

28 352 Q. Okay. Did you know of any issue that had arisen about
29 any conflict at that stage between how Garda Keogh's

1 absences were being recorded on SAMS?
2 A. No, I didn't. No, I wasn't aware of that.
3 353 Q. Okay. But certainly from your point of view, you knew
4 that insofar as certificates had been sent in by his
5 doctor, they were all recording the same reason, as 12:34
6 work related stress?
7 A. In terms of the first time I became aware, and Garda
8 Keogh himself raised it with me, in relation to how his
9 certs were being recorded on the local SAMS system,
10 when I spoke to him in May 2016. But I suppose just in 12:35
11 terms of -- Garda Keogh, I suppose, was pay affected at
12 that stage, because new sickness regulations had come
13 in. So the policy was, when a person is -- you know,
14 when a person who has reported sick is pay affected, to
15 prevent overpayment the policy is that the cert would 12:35
16 be communicated up the line. So the information
17 contained on the cert was communicated right up the
18 line.
19 354 Q. Yes. You do make the observation at page 6116, in
20 relation to the doctor, perhaps we will just look at 12:36
21 that, if we can?
22 CHAIRMAN: I'm sorry, what page was that,
23 Mr. McGuinness.
24 MR. MCGUINNESS: 6616.
25 CHAIRMAN: 6116. 12:36
26 MR. MCGUINNESS: 6116, I beg your pardon.
27 CHAIRMAN: Thank you very much. I am sorry to be slow.
28 355 Q. MR. MCGUINNESS: You're asked a question about the
29 issue of what he was being certified as there. The

1 question at line 621 is:

2

3 "I have been asked in the context of the above extract
4 to comment on the veracity or otherwise of the
5 allegations as they refer to me."

12:36

6

7 This is about the misrecording.

8

9 "A. Garda Keogh was removed by the CMO on 18th
10 December 2015. The CMO then issued advices stating
11 Garda Keogh was unfit for duty. He qualified this by
12 stating that if the member's own doctor deemed him fit
13 for duty, we were required to bring that to his
14 attention for further consideration. No other matters
15 in relation to Garda Keogh were alerted to us by the
16 CMO at that time, including how he was recorded on the
17 SAMS system."

12:37

12:37

18

19 Is that something that you would have expected to be
20 told about?

12:37

21 A. Yeah. Well, the CMO -- when people go and see the CMO
22 and they raise issues with him, you know, when the
23 advices come back, they would raise that, I would
24 expect they would raise that. It wouldn't be -- that's
25 a regular thing, you know, where people might go up and
26 they might want to work different hours or they might
27 feel there is an issue, they would write back and
28 advise that perhaps we should look at this or perhaps
29 we should look at that or perhaps we should look at

12:37

1 that. So in my experience where people have raised
2 issues with the CMO, you know, absolutely he would
3 write down to us and say the member has brought this to
4 his attention, can you have a look at it. But that
5 wasn't the case in this case.

12:38

6 356 Q. Yes. I referred a few minutes ago to the minutes of
7 the meeting of the 9th December, perhaps we will just
8 look at those, at 6165. Did you receive these minutes
9 at the time or would that be normal practice?

10 A. No, it wouldn't be normal practice.

12:38

11 357 Q. Obviously we see that Superintendent Murray is there on
12 behalf of local management and there's also the EAS
13 officer, Mr. Nick Quinn. The local management
14 observations there. Had you had any discussion with
15 Superintendent Murray before he went up as to what
16 approach would be taken or did you discuss it with him
17 at all?

12:38

18 A. Yeah. We would have spoken about it, yes. And we had
19 concerns about Garda Keogh at that time and we would
20 have spoke. It would have come up. It certainly would
21 have come up in conversations.

12:39

22 358 Q. The first observation relates to:

23
24 "Through management relaying that there are serious
25 concerns over the member's obvious misuse of alcohol
26 which is adversely affecting his ability to do his job
27 and his physical presentation, high level of short term
28 sickness absences and record. The EAS officer
29 observation is that member needs to decide for himself

12:39

1 that he needs help and make a concerted effort to
2 access services to address the issue.

3
4 Management suggesting in the medium to long-term
5 support would be given for a transfer out of Athlone in 12:39
6 view of events that had transpired there, if it is
7 considered to be beneficial for the member's sustained
8 well being and effectiveness after he would have come
9 through an appropriate treatment programme."

10 12:39
11 was the issue of a transfer or a potential transfer in
12 circumstances one that was discussed between you and
13 Superintendent Murray?

14 A. No. No.

15 359 Q. Okay. In the context of the Ó Cualáin investigation, 12:40
16 were any concerns brought to your attention about
17 tension in the station between members under
18 investigation or their presence there or Garda Keogh's
19 presence?

20 A. No. 12:40

21 360 Q. And in relation to the issue of Assistant Commissioner
22 Ó Cualáin conducting interviews in the station at any
23 stage, was that brought to your attention?

24 A. Well that had stopped after I arrived, that had
25 stopped. 12:40

26 361 Q. You weren't aware of any concerns --

27 A. No.

28 362 Q. -- after you came into your position?

29 A. No.

1 363 Q. Is that right? Just before I move on from December
2 2015, the CMO has provided a statement, at Volume 13,
3 if we look at page 3644. If we go down the page there.
4 He refers to different issues arising from Garda
5 Keogh's statement. He says he doesn't have a role in 12:41
6 receiving or processing information?

7 A. Yes.

8 364 Q. And I think that's technically correct, in terms of the
9 recording. If we just go down to the next page.
10 Sorry, if we go back, back up. And sorry, back up to 12:42
11 the top there. If we just stop at the top of that
12 page. In relation to the issue of classification he
13 says there:

14
15 "It is my understanding that the acceptance and 12:42
16 classification of a period of absence as work related
17 stress by Garda HRPD absence section is not exclusively
18 based on the information provided in medical
19 certification submitted by the member. It involves
20 HRPD absence section and local management ascertaining 12:42
21 the work related factors or stressors being reported by
22 the member. I understand that it is the practice of
23 HRPD Absence Section to record absences as ordinary
24 illness prior to work related circumstances being
25 established." 12:43

26
27 So he seems to be expressing the view that you do need
28 to establish those circumstances before an issue of
29 classification can be addressed. would you agree with

1 that?

2 A. well, I think it goes beyond. Circumstances are one
3 aspect of it, but the fact that a person is clinically
4 stressed as well, would have to come together. You
5 know, there's three real -- I suppose the way I look at 12:43
6 it: HRM have a view, the clinical obviously issue is
7 clearly important, that a person has that injury, if
8 you like, and then the circumstances around it. So my
9 understanding of the process is that the three pieces
10 come together. Like in some cases the issue can be 12:43
11 quite simple and the CMO can make a determination, send
12 an person to an external expert. He makes a clinical
13 determination that a person is actually stressed. And
14 you know, if it's no one's fault, you know, you can be
15 stressed but the job may have caused it, the job could 12:44
16 be stressing you but there has to be, I suppose -- so
17 there's a number of factors in coming to this
18 occupational classification, you know, when a person is
19 clinically being diagnosed as being stressed and it can
20 be attributed to what's happened in the workplace. 12:44

21 365 Q. But you certainly regard it as his function to come to
22 a decision, is that right?

23 A. I think to get -- I think in terms of the end game
24 objective here was I suppose to put Garda Keogh in the
25 space where he was getting -- he was getting 12:44
26 occupational injury. You know, it's not linear, as I
27 say, the process. The CMO could -- you know, he can
28 give his own evidence, could make a determination in
29 relation to the stress piece, HRM could have a view and

1 then in terms of we're saying, well, this is really the
2 context, we feel this has happened here. So, you know,
3 people come together then and make a decision. You
4 know, that's how it comes together. I suppose the fact
5 we had -- given the context, we had brought it so far, 12:45
6 I don't believe any -- I don't believe the CMO for one
7 minute wouldn't make his own determination in the
8 absence of not having a full investigation. That's not
9 my understanding of how the system works.

10 366 Q. Yes. I mean, I suppose I am just asking you to look at 12:45
11 it from the position of the CMO. He hasn't been given
12 anything really, other than the standard form of a
13 referral with the certified certs and other information
14 accompanying it. But he hasn't actually got any actual
15 information beyond that, or had he, to your knowledge? 12:46

16 A. Well, the reality of it is, and I suppose, you know,
17 what Garda Keogh was going through in this context --

18 367 Q. Yes.

19 A. -- clearly was challenging, you know, he had made a
20 protected disclosure, it was in the public domain. 12:46
21 Like I said, I'm not a medical person. But from a
22 reasonable person's point of view, you could see that
23 this wouldn't be easy. And you know, I don't know to
24 what degree -- I mean, I referred -- sent him up, I
25 don't know what the clinical, I suppose, precise -- and 12:46
26 nor should I, view that the CMO took in relation to the
27 member. He deemed him fit actually in May. You know,
28 I don't -- the cause, let's say, the nuances and the
29 actual pieces of what actual interactions or behaviours

1 before or during the investigation, or people around
2 him, Garda Keogh wasn't going to go into all that with
3 us and that was absolutely understandable. But I don't
4 believe -- in my opinion, if the CMO is of the view,
5 that I can't make any determination here because you 12:47
6 haven't given me enough information, that would have
7 been referenced back.

8 368 Q. Yes. Just going forward in time then to May 2016, I
9 think you had occasion to visit Garda Keogh, was it the
10 16th May or 17th May? 12:47

11 A. 16th. The 17th.

12 369 Q. You describe that in your statement originally made to
13 the Tribunal, at page 3145. If we perhaps just look at
14 that. You're quoting a portion of Garda Keogh's
15 statement there. 12:48

16
17 "Chief Superintendent Wheatley arrived at my house with
18 Sergeant Paddy Guinan at 12:30 and asked would I go
19 back to work. She said she had a conversation with me
20 about work related stress on that date. Those words 12:48
21 were never used."

22
23 You go on to say:

24
25 "I was always mindful that supports were in place for 12:48
26 Garda Keogh, especially since he had been deemed unfit
27 for duty by the CMO in December 2015. I regularly
28 linked in with his assigned welfare officer, Garda
29 Michael Quinn, to see how he was doing."

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And you attach a record of these contacts.

"I intended to visit Garda Keogh, which I mentioned to Garda Quinn in a phone conversation in April. However, when carrying out inspections in the Athlone sub-district on 16th May 2016, I heard Mick Wallace TD on the radio. He was talking about his concerns with Garda Keogh. I was with my divisional clerk at the time, he knew Garda Keogh. I decided I would call to see him. During the visit we had a cup of tea, had a general conversation, how he felt about being out of work. My recollection was that he did not want to return to work until matters were finalised. Garda Keogh brought up the issue of his pay and the recording of his absences on the Sickness Absence Management System. He stated being made aware his absences were being incorrectly recorded. He stated that instead of work related stress being recorded, his absences were being recorded as flu/viral. This was the first time I heard of this. I made enquiries in relation to the recording of his absences on SAMS. The matter was explained and rectified within a week. I advised executive director HRM of the visit.

It should be noted there is no mention of this visit by Garda Keogh in his complaint under Garda Síochána on harassment, sexual harassment and bullying in the workplace."

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Firstly there, was that the first occasion upon which any complaint was brought to your attention about the recording of his illnesses?

A. Yes. 12:50

370 Q. Secondly, he raises an issue there about whether there was any mention of work related stress at all in those terms on that date. Now, I think you took a note of your visit, isn't that correct?

A. I did, yeah. 12:50

371 Q. Could you just explain the context in which -- or describe the meeting in relation to that issue?

A. I was dropping in to how he was. I was conscious, it just triggered, I suppose, in terms of what was being said in the Dáil about how he was feeling. And, I 12:50
suppose I had been sort of testing the water with the welfare person, would a visit be welcome. I suppose up until April he had been under the care of the people in Galway. That's the way it just worked. We dropped in. Just really it was a safe and welfare check, I suppose. 12:51
We had a chat. I asked him -- I suppose the new pay regulations, I suppose, had a huge effect on Garda Keogh. I suppose it was unfortunate that they came into place at the time he had made the protected disclosure, because up until then members could go sick 12:51
or six months every year and not be pay affected, but these regulations were really harsh because you could only go sick for three months in a year --three months in a four-year period and it wasn't sort of from that

1 day, it was retrospective. So I suppose from -- and
2 indeed, lots of members -- every day he went sick, you
3 know, coincided with our time as well, he was pay
4 affected. So this was very difficult.

5
6 I mean, I asked him how is he fixed for a few bob, was
7 he okay for money. He gave me the two amounts, I think
8 he was getting, it might be social welfare, another
9 amount. At that stage his pay had gone probably
10 from -- you get half pay for three months and then you 12:52
11 go on what is auld TRR, which is basically pension rate
12 of pay. And so, he said -- my recollection is he said
13 he was okay for money. And then he brought the issue
14 up of it being misrecorded on the system, that he
15 should have been down as stress and not flu/viral. I 12:52
16 said, God, I'll have a look at that.

17
18 So, you know, he's right in a sense we didn't have a
19 big conversation about investigation or anything like
20 that, but he brought the issue up of him not being 12:52
21 recorded as stress, you know, stress. And that was his
22 issue. So the take away from that was, you know, I did
23 a few enquiries on the system and he was going to see
24 the CMO, actually the doctor, on the 19th. The take
25 away I took from that, I wrote up then, and his view 12:53
26 then was he was very sort of anxious that he would --
27 that he was certified as being stressed and that's the
28 reason he was out. Then, when I wrote to the CMO, I
29 referenced the visit, or HRM, and you know, I outlined

1 in my report that he said he wasn't going to come back
2 to work, you know, when everything was all over he
3 would come back. And I stated in it, because I suppose
4 he was very much of the view that he was stressed, I
5 said, when he returned to work, after he returned to 12:53
6 work that I would commence an investigation into work
7 related stress. Because clearly that was something we
8 were never going to be able to do until the whole thing
9 was all over.

10 372 Q. Yes. Well, just a number of points arise from your 12:54
11 answer there. You made reference to the regulations,
12 they were the Public Service Management (Sick Leave)
13 Regulations of 2014?

14 A. Yes.

15 373 Q. They had been applying to his absences since they had 12:54
16 come into force?

17 A. Yes.

18 374 Q. The TRR period of absences, that had kicked in, as
19 Superintendent Murray had reported back to you, as from
20 April 2015? 12:54

21 A. Yes. It drops again then.

22 375 Q. Yes. Depending on the amount of absences, isn't that
23 correct, and the period?

24 A. It depends on your service as well.

25 376 Q. Yes. 12:54

26 A. You get three months at half -- you know, at full pay
27 and then you go on halfway and then you go on TRR.
28 Now, I know, I suppose, it has evolved slightly, but if
29 you had very little service, Garda Keogh had 15 years

1 service, it's quite a drop. You're on your pension
2 rate, but if you have only put 15 years into your
3 pension, clearly it's quite a drop. That's topped up
4 by social welfare as well.

5 377 Q. Okay. So it gets reduced down to pension rate of pay 12:55
6 really.

7 A. Yes.

8 378 Q. As it had been under the old remuneration regulations,
9 is that right?

10 A. Yes, just particular -- 12:55

11 379 Q. Yes. You made a note in any event in your diary,
12 perhaps we will look at that before lunch, page 3201?
13 CHAIRMAN: Sorry.

14 MR. McGUI NNESS: Page 3201.

15 CHAIRMAN: Thanks very much. 12:55

16 380 Q. MR. McGUI NNESS: You have noted there in relation to
17 the 17th:
18
19 "Garda Ni ck Keogh vi si t notes. Not keen to return to
20 work. Investigati on stressful. Not drinking much at 12:55
21 present. Payment 188 plus 110. Sick classi fi cati on
22 not down as work related stress. I undertook to
23 revi ew. "
24
25 Then there is other comments. Then it says: 12:56
26
27 "Do report up, clari fy SAMS, arrange case conference."
28
29 So that was your take away from the meeting.

1 A. I think, yes, I was very -- when I -- I think Garda
2 Keogh had been deemed unfit from the December, and then
3 this was April, and clearly I wouldn't be privy to what
4 sort of interventions other than the support welfare
5 was available. But when I met Garda Keogh, like that, 12:56
6 very pleasant, very agreeable manner of person I found
7 him. He talked a little bit about his drinking and I
8 actually just found it quite upsetting, because, you
9 know, he has his own house, car, I felt he was very
10 disconnected really. And so, that was a concern for 12:56
11 me. So actually, what I did the next day is, I rang --
12 he had seen the doctor on the 19th.

13 381 Q. Yes.

14 A. So on the 20th I phoned Dr. Quigley, because I did have
15 concerns and I felt we had to do something. Now, 12:57
16 Dr. Quigley, clearly that was his assessment as well.
17 But that was the take away there in connection with
18 that. Dr. Quigley told me on the phone that the
19 conference would be organised with the executive
20 director HRM and local management and that he was 12:57
21 dealing with his doctor, I think, at that stage or
22 something like that. They were examining something.
23 So that happened. But the take away for me was that we
24 needed something more here because he needed -- and as
25 I said, on the 20th I had a conversation with 12:57
26 Dr. Quigley in relation to that.

27
28 In relation to the SAMS piece, it's something I said I
29 would have a look at as well.

1 382 Q. Yes. What did you do then?
2 A. What I did was, I mean -- and I suppose I wasn't aware
3 until I suppose now, Garda Keogh had met with Chief
4 Superintendent Tony McLoughlin on the 20th May and he
5 had raised the same issue with him. So I said I would 12:58
6 have a look at it. I think it was probably the Monday
7 or whatever I had a look at the system. Like I said, I
8 am familiar with the system, I logged into it and I
9 could see then that he was down as flu/viral and not
10 work related stress. The SAMS system is a really 12:58
11 simple system. It's a small, little database, really a
12 very simple system, with a couple of screens. So
13 there's not a lot of detail in it. So I rang Pat, I
14 rang Superintendent Murray and I said, you know, can
15 you check SAMS there because, I said, Garda Keogh is 12:58
16 down as "flu/viral" and not down as "work related
17 stress". Now, Superintendent Murray I don't think had
18 gone into SAMS before, so he wasn't really sure how to
19 get into it, so I talked him through it on the system.

20 383 Q. Yes. 12:59
21 A. As it transpired, Chief Superintendent McLoughlin was
22 making enquiries at the same time as well. When I
23 looked at the screen it was "flu/viral" and I spoke to
24 Superintendent Murray about it and I think he contacted
25 Olivia O'Neill [sic], or Olivia, the clerk, and she 12:59
26 advised him that she had received instruction from HRM
27 to change the classification. The reason why I
28 couldn't see it on the screen was because it runs
29 overnight and it's only reflected on the screen the

1 next day.

2 384 Q. The next day, yes?

3 A. I suppose there's two lines of enquiries and it took a
4 couple of days. That's is that.

5 385 Q. Chief Superintendent McLoughlin describes in his 12:59
6 statement the contacts with Garda Keogh on the 20th and
7 23rd May?

8 A. Yes.

9 386 Q. Did you have any contact with Chief Superintendent
10 McLoughlin at that point in time or was it a little bit 13:00
11 later?

12 A. I know he says -- and maybe we did have a conversation.

13 387 Q. Yes.

14 A. I can't -- if he says we did, we did, but in relation
15 to the classification, but I can't be sure. What I do 13:00
16 know is that it is a task I said I would undertake and
17 I would check the conversation.

18 388 Q. Yes.

19 A. Whether I checked it after he had a conversation with
20 me or of my own volition, it happened at the same time, 13:00
21 I really can't be certain.

22 389 Q. Yes?

23 A. But I think Chief Superintendent McLoughlin is of the
24 view we had a conversation about it. So I suppose
25 essentially the thing was sorted. Chief Superintendent 13:00
26 McLoughlin had the authority to, I suppose, give that
27 instruction to us.

28 CHAIRMAN: I think we will call a halt to it there.
29 Thanks very much. Very good.

1
2 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS
3 FOLLOWS:
4

5 390 Q. MR. MCGUINNESS: Good afternoon, chief superintendent. 14:03

6 We had got to the middle of May 2016. You had been out
7 to visit Garda Keogh. I just want to be clear how you
8 viewed that meeting in terms of the consequences. The
9 issue of his pay was an issue he raised?

10 A. I don't know whether he raised it or I asked him how 14:03
11 was he fixed financially, do you know what I mean.

12 391 Q. Yes. You certainly understood that he had and was
13 being affected by the TRR issue?

14 A. Yes, absolutely.

15 392 Q. Yes. 14:03

16 A. Yeah.

17 393 Q. And you knew obviously yourself that if something were
18 to be classified as an injury on duty, that that would
19 get him -- properly certified as such, would get him
20 onto a full rate? 14:04

21 A. Yes.

22 394 Q. You refer to the Code there, 11.37, isn't that right?

23 A. Yes.

24 395 Q. That's a certificate that issues by you?

25 A. That's right. 14:04

26 396 Q. Isn't that right? So, is it correct to say, as you do
27 in your statement, that it's really the CMO who decides
28 the classification that's recorded and then
29 consequences of the classification. The CMO only gives

1 advices really, wasn't making that decision.

2 A. I suppose it's useful to reference a page there, I
3 suppose there was a subsequent sort of instruction to
4 each divisional officer in respect of work related
5 stress. 14:04

6 397 Q. Yes.

7 A. It is 3167.

8 398 Q. Yes.

9 A. Or 3197, sorry.

10 399 Q. 3167. 14:04

11 A. I probably have the wrong reference there.

12 400 Q. Yes. That is Assistant Commissioner Fanning's letter
13 to you?

14 A. Essentially -- maybe I will it out, will I?

15 401 Q. Yes, if you have it there? 14:05

16 A. Yes, I do.

17 402 Q. What date is that, just to be clear?

18 A. I have no date on it.

19 CHAIRMAN: This is 3167.

20 403 Q. MR. McGUI NNESS: No, this is a different document, is 14:05
21 that right.

22 A. Yes. This is an instruction that came out from the
23 executive director in relation to work related stress.

24 404 Q. Yes.

25 A. It has been disclosed. 14:05

26 405 Q. What date is that now?

27 A. I don't have a date on it.

28 406 Q. Okay.

29 CHAIRMAN: You better tell us a bit more about it

1 before -- we can forget Commissioner Fanning's 9th
2 November.

3 A. Yeah, do.

4 407 Q. CHAIRMAN: That's okay, there's no problem about that.
5 So the document, chief superintendent, that you 14:05
6 referring to, who does it come from?

7 A. It comes from the executive director of HRM.

8 408 Q. CHAIRMAN: who is Mr. Mulligan?

9 A. Mr. Barrett, at the time.

10 409 Q. CHAIRMAN: Mr. Barrett, okay. How did it come to you? 14:06
11 Tell us something more about it. why is it relevant,
12 why do you think it is relevant?

13 A. Because I suppose it clarifies -- I suppose it
14 clarifies that a divisional officer cannot make --
15 cannot issue an 11.37 adjudication in their own right 14:06
16 for a work related stress issue.

17 410 Q. CHAIRMAN: I see. In normal circumstances, if I am
18 understanding, where the chief superintendent in the
19 area, i.e. the divisional officer, is satisfied that
20 the injury or condition is work caused, caused by work, 14:06
21 let's say, the chief superintendent can issue an 11.37,
22 is that correct?

23 A. Yeah. I suppose and where there is any doubt or you
24 have any -- you refer it up the line.

25 411 Q. CHAIRMAN: Let's assume there's no doubt? 14:07
26 A. Yes.

27 412 Q. CHAIRMAN: Somebody has been attacked on duty?

28 A. Yes.

29 413 Q. CHAIRMAN: Has been stricken and he's in hospital, has

1 come out on crutches and blah, blah, blah, gradually
2 made a recovery but is still being certified, the chief
3 superintendent can clearly say this is 11.37, I have no
4 doubt about it, no problems?

5 A. Yes. 14:07

6 414 Q. CHAIRMAN: Okay. But you're drawing a distinction
7 between that and someone where there is more
8 complication about it, is that right?

9 A. Yes.

10 415 Q. CHAIRMAN: Okay. 14:07

11 A. I suppose specifically I suppose it's work related
12 stress, the executive, you know, issued a clarification
13 around that matter.

14 416 Q. CHAIRMAN: And this clarification was issued and you
15 think this clarification was issued at some time that 14:07
16 is relevant to the issues that we're discussing?

17 A. Yes.

18 417 Q. CHAIRMAN: And in due course we will be able to find
19 out the exact date?

20 A. Yes. 14:08

21 418 Q. CHAIRMAN: And circumstances?

22 A. Yes.

23 419 Q. CHAIRMAN: Is that it?

24 A. Yes.

25 CHAIRMAN: Okay. Thanks very much. So it is from 14:08
26 Mr. Barrett. Okay, what does he say?

27 420 Q. MR. MCGUINNESS: would you like to read that just to be
28 clear?

29 A. Yes.

1
2 "Re certificates 11.37. Where a member is certified
3 unfit for work by their GP due to work related stress,
4 the divisional officer should conduct an investigation
5 into the cause of the stress. The investigation report 14:08
6 should be submitted to the head of HR director, who
7 should provide their report to the CMO for
8 consideration in order to perform appropriate clinical
9 advices. The head of HR director may seek the advices
10 of the office of the Garda Chief Medical Officer in 14:08
11 determining the category of the occupational
12 injury/illness. The HR director may commission
13 additional investigations and reports as it deems
14 necessary. The divisional officer should not consider
15 issuing an 11.37 until investigations, including 14:08
16 appeals, regarding the matter have been fully
17 completed. the minutes should be read in
18 conjunction with 11.37."

19 421 Q. Now, you did refer to this earlier this morning and I
20 thought you had agreed with me that that came out 14:09
21 subsequent to the events that we are talking about in
22 2016, am I wrong in that?

23 A. No. My understanding is that 159/10 is a directive
24 that came out in 2010.

25 422 Q. Yes. 14:09

26 A. You know. It's my understanding that when it came to
27 work related stress, because of the complexities around
28 it, I suppose, the view was that, you know, we
29 shouldn't issue one in relation to that matter, I

1 suppose based on our own evaluation. I mean, as I
2 said, if a person gets a kick and they report it, I am
3 comfortable that he has -- you know, based on his own
4 medical doctor's report, a report from his doctor.

5 423 Q. Yes. 14:10

6 A. But I suppose as an organisation, I suppose as things
7 evolve and mental health issues, it's really complex.
8 I suppose, when issuing an 11.37, I suppose a person is
9 on the full pay then, you know.

10 424 Q. Yes. 14:10

11 A. So my understanding was that I wasn't qualified to make
12 a determination around work related stress. It's a
13 complex issue, it's a serious issue.

14 425 Q. Yes.

15 A. So that it was sort of -- like, I know from having 14:10
16 conversations with the CMO in relation to other people,
17 you know, that he has to make the determination, he has
18 to link it to the actual, I suppose, issues that arose
19 locally and he also refers it back to HRM. Because
20 it's complex. 14:10

21 426 Q. Can I just take it in two stages?

22 A. Mm-hmm.

23 427 Q. Obviously the first stage envisaged in that letter is
24 that a doctor's certificate, from the member's own
25 doctor, comes in saying work related stress? 14:10

26 A. Yes.

27 428 Q. Obviously you wouldn't be entitled to issue an 11.37
28 yourself simply on foot of that?

29 A. No.

1 429 Q. what is to happen next is an investigation into it.
2 A. Yes.

3 430 Q. Following which there is a referral up to the CMO,
4 there may be further consultations and advices and then
5 the CMO could give his advice. That doesn't deal with 14:11
6 the situation, it seems to me, perhaps I am wrong,
7 doesn't deal with the situation where the CMO has
8 seisin of it and certifies or offers advices that it's
9 related to work related stress and is an injury in
10 work. Does it not then go back to you to properly 14:11
11 issue the 11.37 at that stage?

12 A. That's my precise point, really, that that wasn't his
13 view, that it didn't come back that I should issue an
14 11.37 for a psychological injury.

15 431 Q. CHAIRMAN: Chief superintendent, could I ask you this? 14:11
16 A. Yes.

17 432 Q. CHAIRMAN: Leaving aside what memos or notes were in
18 effect or not in effect, what did you understand had to
19 happen before Garda Keogh got an 11.37 and was on full
20 pay? what did you understand had to happen? 14:12

21 A. Yes, I suppose, I mean, we had to establish the cause.
22 And you know, the causes at a high level was
23 established. When -- in my experience, in terms of
24 clinical, I suppose, assessment, that this person is
25 indeed suffering from stress, you have to have that 14:12
26 piece in any case. In my experience when people are
27 referred up in this regard, sometimes the CMO might
28 say, you're not stressed actually, you're stressed but
29 you're not stressed enough to stay off work. In most

1 cases the CMO -- I don't think he makes a determination
2 on his own, I mean he can speak to that, that he maybe
3 sends a person to an independent consultant or whatever
4 he does, I suppose that's a matter for his office. But
5 he will make a determination. We have cases where it 14:13
6 could like be a conversation or something quite minor
7 that happens to a person.

8 433 Q. CHAIRMAN: Could I stop you for one second?
9 A. Yes.

10 434 Q. CHAIRMAN: I'm sorry to interrupt. 14:13
11 A. Yes.

12 435 Q. CHAIRMAN: But we have a situation where Garda Keogh's
13 GP was certifying him as work related stress. So far
14 we know what the situation was. What did you think had
15 to happen? 14:13
16 A. Well, what I thought, when you send a person up, even
17 for another reason that you have a doubt about, let's
18 say, the CMO will make a clinical determination and
19 he'd say, this person is injured, either
20 psychologically or otherwise, whatever process he goes 14:13
21 through.

22 436 Q. CHAIRMAN:
23 A. He sends it back then saying, I am satisfied that this
24 is linked to the workplace --

25 437 Q. CHAIRMAN: You thought it should go to the CMO; is that 14:13
26 right?
27 A. I'm compelled to send it to the CMO.

28 438 Q. CHAIRMAN: Okay, you're compelled. Your understanding
29 was that you were obliged to refer the matter to the

1 CMO?

2 A. It's always been the case where something is not --

3 well, other than a simple -- you know, I suppose --

4 439 Q. CHAIRMAN: I absolutely understand. Nothing I am 14:14

5 saying is suggesting that it's simple or that there was

6 anything wrong?

7 A. Yes.

8 440 Q. CHAIRMAN: Nothing I am indicating or implying, I just

9 want to get to know what your understanding was as to

10 what had to happen? 14:14

11 A. My understanding was that you make the referral.

12 441 Q. CHAIRMAN: You refer to the CMO?

13 A. Through -- via the executive director of HRM.

14 442 Q. CHAIRMAN: Absolutely. But one way or the other,

15 directly or indirectly, you said this man has to be 14:14

16 seen or should be seen by the CMO?

17 A. Yes.

18 443 Q. CHAIRMAN: That was your understanding of the process?

19 A. Yes.

20 444 Q. CHAIRMAN: And the CMO would examine the patient, the 14:14

21 man, the person, in this case Garda Keogh?

22 A. Yes.

23 445 Q. CHAIRMAN: And would issue a diagnosis?

24 A. Yes.

25 446 Q. CHAIRMAN: Advices. 14:14

26 A. Advices, yeah.

27 447 Q. CHAIRMAN: And what advice would you be expecting from

28 him? Either yes, it is work related stress, or, no, it

29 is not work related stress. Is that what you would

1 expect him to do?

2 A. Yes, yes.

3 448 Q. CHAIRMAN: Okay. If he said, yes, it is work related
4 stress, no problem, you have your justification, your
5 rationale, I should say, for 11.37, is that correct? 14:15

6 A. Yes. What he has to say is that this is linked to the
7 workplace.

8 449 Q. CHAIRMAN: Of course.

9 A. You know, you could be stressed for external, I
10 suppose, reasons. 14:15

11 450 Q. CHAIRMAN: But if he says, yes, this man is under
12 stress and it's related to his work, related, caused,
13 whatever words are used.

14 A. Yes.

15 451 Q. CHAIRMAN: If he says, yeah, that's it. 14:15

16 A. You issue a 11.37.

17 452 Q. CHAIRMAN: You issue. And if he says something that
18 indicates not agreement with that, you don't issue an
19 11.37, is that the position?

20 A. No. Yes. 14:15

21 453 Q. CHAIRMAN:
22 CHAIRMAN: Okay. I am sorry, thanks for clarifying
23 that.

24 454 Q. MR. McGUINNESS: So it would seem then on the basis of
25 principle that the CMO is relied upon for an assessment 14:15
26 and advices following which the Gardaí make the
27 decision as to classification?

28 A. Yes. I suppose if you are dealing with a medical
29 issue.

1 455 Q. Yes.
2 A. The medical opinion obviously informs us, you know.
3 456 Q. Yes. Now, just going back to the meeting, if I may,
4 with Garda Keogh. You obviously undertook to look into
5 the misrecording issue? 14:16
6 A. Yes.
7 457 Q. The SAMS issue. But did you leave Garda Keogh with an
8 expectation that you would have his classification
9 changed or that you would do something which would
10 affect his pay rate in a beneficial way? 14:16
11 A. I left him -- I undertook to change the clarification,
12 you know, to have a look at it and to change it.
13 458 Q. Yes.
14 A. I didn't leave him with that impression because that
15 wasn't the case. 14:16
16 459 Q. Okay.
17 A. I can understand, because obviously it's complex that
18 he's out.
19 460 Q. Yes.
20 A. That he may have had the view or someone may have 14:16
21 advised him that when you're out with work related
22 stress you're entitled to occupational injury. He
23 clearly took that, understood that. So the
24 conversation -- and I was -- you know, it was a drop in
25 call. 14:17
26 461 Q. Yes.
27 A. A cup of tea. But it wasn't even in my mind that this
28 was the issue. The issue here -- because I suppose I
29 understood that there wasn't an automatic thing. But

1 my take away from the meeting was that it was really
2 important to Garda Keogh that, you know, his doctor had
3 certified him with work related stress. That's
4 important in our organisation, to have full sight of
5 that. Indeed, they had, but they weren't relying on 14:17
6 the SAMS. When he became aware that the SAMS was
7 incorrect, this was important to him.

8 462 Q. Yes.
9 A. What I took away from that was, and that's when I wrote
10 up to HRM, that, you know, he's saying he is stressed 14:17
11 and this is connected with the whole investigation and
12 that when this is all over, when he returns to work, I
13 will then commence an investigation into work related
14 stress, because that's his position, or revisit it, if
15 you like. 14:17

16 463 Q. Yes. Obviously you spoke to Superintendent Murray, as
17 you have told us, and we know Olivia Kelly spoke to
18 Clare Egan I think and the entry was changed?

19 A. Yes.

20 464 Q. Were you told that it had been changed to mental 14:18
21 health?

22 A. Yes, I think it was, yeah, yeah.

23 465 Q. Okay. Did you make any enquiry or was there any
24 discussion with Superintendent Murray as to whether
25 that would affect his pay in any way, or was it just 14:18
26 fixing the classification issue?

27 A. It was just fixing the classification. I am very
28 familiar, I have an IT background, I am very familiar
29 with the system, I'm familiar with the policy.

1 466 Q. Yes.

2 A. So it was never a question in my head or my mind that
3 this was going to, you know, put him into occupational
4 injury.

5 467 Q. You do in your statement express a very clear view that 14:18
6 an ordinary illness categorisation puts you -- it's a
7 presumptive classification unless it's displaced really
8 by a different occupational injury diagnosis, isn't
9 that right?

10 A. Yeah, and I suppose the other one is -- I suppose it's 14:18
11 not relevant here, but critical illness is one that
12 clearly you wouldn't adjudicate on. The CMO has to --
13 there is a whole protocol around that, the CMO is the
14 one that says to me, this is critical illness. There's
15 different rules around critical illness as well. 14:19

16 468 Q. In any event, you did write up on the 17th, if we look
17 at page 3203, to the executive director HR: The second
18 paragraph:
19

20 "I have also on today's date visited the member at his 14:19
21 home to enquire into his welfare and welling. I
22 enquired as to the probability of him returning to work
23 in the future and was advised by Garda Keogh that his
24 current absence is attributable to work related stress
25 arising from his involvement in investigations being 14:19
26 progressed outside the Westmeath division. Garda Keogh
27 intimated that he would not be returning to until these
28 matters had been concluded as these matters were
29 exacerbating his condition.

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Garda Keogh stated that he would be attending the scheduled appointment. . . "

Etcetera, etcetera. Then the final sentence is of some significance: 14:19

"Upon Garda Keogh's resumption to duty, I will ensure that a full investigation is conducted to establish the source of the member's alleged work related stress and if same can be attributed to his absence." 14:20

In a sense you had made some head road yourself down that, because he had told you that the investigation was exacerbating his condition. Did you know anything more about the investigation at that point in time? 14:20

A. No, he didn't really discuss it with me.

469 Q. I think the day after you received then a letter from the Commissioner's office, if we look at page 6175. This came from Superintendent Frank Walsh, whom you probably knew, on the 18th May. You are asked by the Commissioner to do some enquiries into Garda Keogh and his current status. 14:21

"This office has been informed that the file submitted by DC, SCM to the DPP has been returned with a direction of no prosecution. A disciplinary investigation under AC Nolan is ongoing. 14:21

1 In terms of his current position and welfare, the
2 Commissioner asked me to touch base with you to get an
3 up-to-date report. This should cover, inter alia:
4 Current status, contacts with Garda management, work
5 position, discipline issues, complaints, welfare 14:21
6 supports offered/received, any other issues relevant.

7
8 Please treat as urgent."

9
10 I think you put that in train and you got reports from 14:21
11 Superintendent Murray, at page 6182, dated the 19th
12 May. He address a number of the issues there. You, I
13 think, prepared a report then and you replied to
14 Superintendent Walsh's letter on the 24th May, if we go
15 to 6176. That's a four-page report with an appendices. 14:22
16 Just touching on a couple of issues there. There is a
17 reference to Olivia O'Neill, you had no involvement in
18 that whatsoever at any stage obviously?

19 A. No, Superintendent Murray had spoken to her about it.

20 470 Q. Nor the Liam McHugh issue? 14:23

21 A. No.

22 471 Q. You make reference to Inspector Minnock, this is at the
23 top of page 6178, having visited him on the 24th?

24 A. Yes.

25 472 Q. Had you received a report from Inspector Minnock about 14:23
26 the call to the house?

27 A. Probably not at that stage.

28 473 Q. Yes.

29 A. I mean this information would have been -- it was

1 pulled together, I suppose, in conjunction with the
2 divisional clerk and he was getting information in, in
3 relation to that. Now I had -- so, in terms of --
4 Garda Keogh came back in to, I suppose, our world when
5 Galway had completed their job and I suppose also
6 following from my meeting locally, a decision was mad
7 to appoint a new person to be the liaison person. That
8 was only a couple of days later. So it may have been a
9 phone call, I don't know if there was a report or not,
10 commencing the --

14:24

14:24

11 474 Q. That was Inspector Minnock's first visit to him, and we
12 have seen his note at page 782 to 783 of his notes,
13 where he details comments made against the
14 Commissioner. Were you informed of that at that point
15 in time, do you remember?

14:24

16 A. I don't know. I'm not sure.

17 475 Q. In any event you, addressed each of the headings there
18 and you concluded on page 6179 that you're satisfied
19 that the welfare of Garda Keogh is being attended to
20 within the division at every level.

14:25

21
22 "He has been referred to the Chief Medical Officer for
23 review and the advices of the Chief Medical Officer
24 indicated the member is unfit to attend for work or for
25 regular policing duties at present. Garda Keogh has
26 informed me he is not anxious to return to work until
27 all matters he has reported under the confidential
28 reporting mechanism are concluded in their entirety.
29

14:25

1 While Garda Keogh remains absent through illness, there
2 will be ongoing communication from Inspector Minnock,
3 Athlone, and upon his resumption to duty the necessary
4 supports to facilitate a return to work will be put in
5 place. "

14:25

6
7 Now, there doesn't appear to be any mention of the
8 classification issue.

9 A. Yeah, and it's not actually, and I don't think it's in
10 a subsequent report that I did.

14:25

11 476 Q. Is there any reason why?

12 A. Yeah. I suppose, I probably didn't think it was -- I
13 suppose it had been corrected and I think because
14 nothing turned on it and it may be that mightn't have
15 been even addressed at that stage, so there was no
16 particular reason why it was excluded. I suppose, and
17 it's only my sense, I think it was in and around the
18 same -- this request came in on the 18th and we would
19 be pulling the thing together then. My recollection
20 is, this is the night I phoned Pat, I had checked it,
21 and could I have not checked it at that stage or could
22 I have checked it and not thought that it was relevant,
23 I really can't distinguish that in my head, to be
24 honest with you. So it wasn't something that was being
25 left out to be refused or anything like that, it was
26 something that I must have believed wasn't relevant.

14:26

14:26

14:26

27 477 Q. Yes.

28 A. Because nothing turned on it.

29 478 Q. Okay. But certainly as I understand it, nothing

1 further had changed in relation to Garda Keogh's pay,
2 the classification from "flu/viral" to "mental health"
3 hadn't affected his pay, so he was still in his view
4 sort of being adversely affected by, as he saw, the
5 classification? 14:27

6 A. Yes.

7 479 Q. All right. At the time you wrote this letter, had you
8 consulted with Chief McLoughlin at all, or do you
9 recall?

10 A. Not at that stage, no. 14:27

11 480 Q. We know obviously Chief McLoughlin met Garda Keogh on
12 the 3rd June. But I think he then e-mailed you on the
13 4th June?

14 A. That's right.

15 481 Q. If we look at page 3206, we can see an e-mail there 14:27
16 asking if an investigation was carried out into the
17 work related stress and the outcome of it?

18 A. Yes.

19 482 Q. There was also an enquiry from Assistant Commissioner 14:28
20 Fanning as to whether it was the CMO that had him out,
21 isn't that right?

22 A. Well, I think the comment -- they e-mail would have
23 gone to a number of number of people. I think
24 Assistant Commissioner Fanning commented "is it the CMO
25 that has him out?" Oh yeah. You know. 14:28

26 483 Q. We've previously seen some e-mails from Chief
27 McLoughlin to Monica Carr and Mr. Nugent in and around
28 this period?

29 A. Yes.

1 484 Q. I would just like your observations on them, as to
2 whether you were being made aware of any of the
3 discussion?
4 A. No, I wasn't. That whole conversation around the pay.
5 485 Q. Yes. 14:29
6 A. We weren't privy to that.
7 486 Q. It's just that it's in the period immediately preceding
8 the conference, isn't that correct?
9 A. Yes, with the timeframe, the conference was in July.
10 487 Q. Yes. 14:29
11 A. Yeah.
12 488 Q. Chief McLoughlin seemed to be taking a very clear view
13 that the member shouldn't be on reduced pay until it
14 was proved there wasn't a causal link between the
15 reasons for absence and work related stress, and there 14:29
16 was a change of mindset required there. Ms. Carr was
17 giving advice in the way that we have seen?
18 A. No.
19 489 Q. You weren't privy to any of that?
20 A. No. 14:30
21 490 Q. Do you think it surprising, perhaps, that being the
22 chief of the division you weren't being asked for your
23 opinion on those matters, particularly where you hadn't
24 been able to find out the causes of stress?
25 A. I think it might have been useful to bring us all 14:30
26 around the table together and have a conversation.
27 Like I said, it's only in the disclosure that we see
28 that conversation. But I suppose ultimately pay, it's
29 a matter for HRM and I suppose pay is underpinned by

1 regulations and I suppose public money.

2 491 Q. Yes.

3 A. So it wasn't within anyone's gift, I suppose, to
4 operate outside those. But the whole issue, I have no
5 authority to instruct Killarney to pay people or 14:30
6 otherwise. So that's a matter for HRM.

7 492 Q. Yes. You sent Chief McLoughlin's enquiry on to
8 Superintendent Murray I think?

9 A. Yes.

10 493 Q. He seems to have asked or queried whether he, Chief 14:31
11 McLoughlin, hadn't got the CMO letter. There is a
12 reply from him to you, if we look at page 3209. If we
13 just look at that, his question, just going down the
14 page slightly, he said:

15 14:31

16 "Didn't get the CMO letter."

17

18 You say:

19

20 "I agree. Bit smart. Will write to him on Monday." 14:31

21

22 Then he replies:

23

24 "It's a really funny question considering he is a
25 whistleblower and an investigation into the entire set 14:32
26 of allegations he is making, which Garda Keogh may say
27 was causing him stress, was carried out by DC
28 Ó Cualáin."

29

1 Did you understand that Superintendent Murray seemed to
2 think that Ó Cualáin had some investigative function in
3 related to the stress, or was it just in related to the
4 allegations?

5 A. My interpretation of that was, and I suppose we had 14:32
6 written up, we had sort of written up on two occasions
7 and then I had written up on the 17th May to HRM to say
8 -- you know, initially we wrote up, you know, the first
9 referral and said he could bring -- you know, that this
10 is the context but we couldn't bring it any further. 14:32
11 And then we sort of restated that. When I had visited
12 Garda Keogh -- I suppose when I visited Garda Keogh, I
13 think in May, he was very strongly of the view that I'm
14 out with work related stress, I have a doctor's cert
15 for work related stress, it should be on the system as 14:32
16 that, I am out with stress. And so, I wrote then to
17 HRM and said that this is his position, you know, and
18 that, you know, when this is all -- when everything is
19 bottomed out, then I will advance it. So, I can't --
20 Tony may not have seen that when he wrote this e-mail. 14:33

21 494 Q. Yes. Well, you wrote your letter up on the 8th June
22 then.

23 A. Yes.

24 495 Q. A couple of days after this exchange, dealing directly 14:33
25 with the issue that Chief Superintendent McLoughlin had
26 raised. If we look at that, it's at 6169 to 6171?

27 A. I mean, there had been, I suppose, a trail of
28 correspondence up and down, so I felt it would be
29 useful to pull everything together, in light, I

1 suppose, of the request in the e-mail, I asked him in
2 quite clear terms to be clear and to point out, are you
3 asking us that we need to do this.

4 496 Q. Yes. It's a three-page letter. I am not going to
5 obviously read it. But you refer in the second 14:34
6 paragraph to the alleged work related stress,
7 Superintendent Murray's meeting on the 26th March, the
8 events of May '15 and the reports that were sent up
9 that we have seen already. And then, at the bottom of
10 6170, you say: 14:34
11

12 "Despite a number of enquiries with Garda Keogh to
13 establish the source of his alleged work related
14 stress, the member is continuously correlated his
15 involvement as confidential reporter to his absence of 14:34
16 alleged work related stress."
17

18 Now, the number of enquiries, I take it you are relying
19 principally on Superintendent Murray's meeting with him
20 on 26th March '15 and your own meeting? 14:34

21 A. Yes.

22 497 Q. Which was a recent one, obviously.

23 A. I think, you know, in my professional opinion it
24 wouldn't have been appropriate, Garda Keogh had, you
25 know, clearly, when I took up the position, that he 14:35
26 couldn't go into this in too much detail.

27 498 Q. Yes.

28 A. Certainly we weren't going to -- we couldn't roll out a
29 team to start an investigation, we didn't have a

1 complaint.

2 499 Q. Yes.

3 A. I suppose this was all very new, and I think
4 realistically even as an investigator myself, that they
5 were so inextricably linked, as alleged, that 14:35
6 realistically the whole -- you know, you had to come
7 out the other end of it, you know.

8 500 Q. Yes.

9 A. The other piece of the jigsaw is, you know, obviously
10 the conversation between Garda Keogh and the CMO is a 14:35
11 matter for him, his evidence, you know, I don't know
12 what determination the CMO made about the nature of his
13 illness, but it certainly wasn't flagged down to
14 ourselves that this person is actually clinically, you
15 know, distressed. 14:36

16 501 Q. Yes.

17 A. But I mean, from my point of view we had brought it so
18 far.

19 502 Q. Yes.

20 A. You know. 14:36

21 503 Q. Just looking at the top of page 6171, eight lines down
22 there, it's saying:
23
24 "While I am not in receipt of the advices of the Chief
25 Medical Officer following the member's review at 14:36
26 Occupational Health Service on the 19th May 2016, I
27 have contacted the Chief Medical Officer on today's
28 date and I am advised that his previous advice in
29 respect of Garda Keogh remain the same. The Chief

1 Medical Officer also outlined that should the member be
2 deemed to be determined fit to return to policing
3 duties by his own medical practitioner. But any return
4 to work would only be permitted following a review at
5 Occupational Health Service. I explained to the Chief 14:36
6 Medical Officer I was eager to have a case conference
7 in respect of Garda Keogh and was advised that same is
8 being arranged by his office."

9
10 So that was a new development then, was it? 14:37

11 A. Yeah, clearly the medical assessment was that we needed
12 to bring people together now, you know, to look at
13 Garda Keogh's case.

14 504 Q. Just going back to the previous year, you obviously
15 took the step of phoning at this time, but is there any 14:37
16 reason why you chose or maybe just didn't decide to
17 phone earlier the previous year? Was there some added
18 urgency, do you think, at this time?

19 A. Yes, there was some added urgency. I mean, I suppose
20 we all have our roles to play in the organisation. 14:37

21 505 Q. Yes.

22 A. When you make a referral to the CMO and he deems a
23 person fit for duty, he's back on my team, I suppose,
24 then really and there was no -- and I suppose, just to
25 reference the view, the comments in the notes, you 14:38
26 know, the conference, that he had deteriorated since
27 May. So clearly, the CMO or whoever reviewed him was
28 of the view that he was fit to work. So, you know, I
29 mean we all have our roles and we all have our

1 expertise and at that time he was intermittently out
2 with work related stress. His doctor had seemed him
3 fit on many occasions to return to work.

4 506 Q. Yes.

5 A. So that's the space we were in. 14:38

6 507 Q. In the final two paragraphs of this letter, if we just
7 look at them, you're addressing very directly Chief
8 McLoughlin's concerns here?

9 A. Yes.

10 508 Q. "Garda Keogh has never intimated that there were any 14:38
11 incidents which occurred in the workplace in Athlone
12 Garda Station which were causing his alleged work
13 related stress. Garda Keogh has never made any report
14 which warranted investigation in accordance with the
15 Garda Síochána grievance procedure or the Garda policy 14:39
16 for dealing with harassment, sexual harassment and
17 bullying in the workplace. Indeed, all possible
18 supports to facilitate a return to work by Garda Keogh
19 have been put in place by the district management team
20 in Athlone and his welfare has been prioritised through 14:39
21 ongoing enquiries to ensure the member is aware and
22 availing of employee assistance service.

23
24 In view of the foregoing, it has not been possible to
25 conduct a full investigation into Garda Keogh's absence 14:39
26 through alleged work related stress, nor do I believe
27 will any further or specific information be provided by
28 Garda Keogh which would enable the further
29 investigation of this claim. However, to be clear and

1 to avoid any doubt, I am to enquire if there is any
2 requirement to further investigate Garda Keogh's
3 absence through alleged work related stress. In the
4 event that the further investigation of this matter is
5 warranted, I would recommend that permission be granted 14:39
6 to appoint an inspector outside the Westmeath division
7 to conduct the same."

8
9 Now, that last suggestion, why did you include that as
10 the final word, as it were, in the letter? 14:40

11 A. I suppose, I mean, we had brought it to a level, he
12 wasn't -- Garda Keogh -- you know, to a level. I
13 suppose we had said, you know, on two occasions that we
14 addressed it and we couldn't advance it. When I saw
15 him he obviously raised the issue now that he was 14:40
16 medically certified by his own doctor as stressed. I
17 took the view that, yeah, when this is all over, when
18 he's back in work we can advance this. I suppose in
19 response to Chief Superintendent McLoughlin's e-mails,
20 you know, asking the question, I suppose my view was, 14:40
21 do you want us to push this at this stage,
22 notwithstanding I suppose the complexities around the
23 issue. And so, just I suppose by way of sort of -- my
24 view was, well, if you are going to go ahead with this
25 it probably would be better to have someone else do it 14:41
26 outside of the division. I sent a subsequent reminder
27 I think six weeks later.

28 509 Q. Yes.

29 A. In relation to that meeting.

1 510 Q. Were you getting any sense that Garda Keogh regarded
2 management within the division as being a difficulty
3 for him or that he had complaints against
4 Superintendent Murray or grievances, whether real or
5 imagined? Is there any sense that that was in your 14:41
6 mind when you are writing this?

7 A. Well, I suppose this issue -- I mean, Garda Keogh -- I
8 suppose the issue, the substantive issue, I'm not going
9 to go into it, is connected with Athlone, do you know
10 what I mean, and it was being investigated elsewhere. 14:41
11 I just thought it would be a level of independence. I
12 could have appointed an inspector to it in the division
13 as well. I just thought it might be better to have it
14 outside the division.

15 511 Q. Okay. I mean, obviously in the context of your reply 14:42
16 to the Commissioner, through Superintendent Walsh, you
17 had drawn attention to the disciplinary issues that had
18 arisen.

19 A. Yes.

20 512 Q. The reference to the other files and the reference to 14:42
21 him being confined to indoor duties?

22 A. Yes.

23 513 Q. Did it cross your mind that part of the stress from
24 Garda Keogh's perspective would be the local management
25 and how he was being treated? 14:42

26 A. My understanding is that I think Garda Keogh met Chief
27 Superintendent Murray on a small number of occasions.

28 514 Q. Yes.

29 A. Did it cross my mind? I suppose even if it did cross

1 my mind, the issue here was in terms of how could this
2 be explored? He had made his position quite clear and,
3 I suppose, absolutely. I think even -- even really --
4 so I was saying, you're saying to do this, how far do
5 you want us to go with this? And honestly, and I have 14:43
6 thought so much about this, if we were saying we can
7 only bring it so far --

8 515 Q. Yes?

9 A. -- if the CMO had come back to ourselves and said, this
10 member is suffering from stress, he is medically 14:43
11 stressed, it's connected with the workplace, would that
12 have triggered us off to do it maybe with more urgency?
13 But he made his position clear. We were looking for
14 guidance from HRM and my view was, when the person is
15 back to work, this whole thing is over, I think it 14:43
16 would be very difficult for Garda Keogh to talk about
17 the stress elements of it if it's all tied up with the
18 protected disclosures. And that was his position all
19 the time. If he had written up a complaint or if he
20 had said a particular issue, that this was causing him 14:43
21 stress, indeed, that could have been investigated.

22 516 Q. Yes. As it turns out obviously, to date no
23 investigation has ever yet commenced?

24 A. No, I sent a reminder six weeks later. I suppose I
25 moved on. But there has never been investigated, as I 14:44
26 am aware.

27 517 Q. Yes. The conference then took place on the 12th July.
28 We have notes of that at page 6167, which you probably
29 didn't see at the time?

1 A. No.

2 518 Q. But you have seen them obviously in this context. Do
3 they fairly represent the mood of the meeting, if I can
4 put it that way?

5 A. They do substantially. I was surprised when I saw 14:44
6 them, the local management observations. I suppose we
7 didn't have actions arising out of it, because that was
8 a matter for HRM, but I am still surprised at local
9 management observations. I suppose if you look at the
10 minutes, sometimes minutes are about actions 14:45
11 afterwards.

12 519 Q. Yes.

13 A. Which you can see.

14 520 Q. Yes.

15 A. But certainly, essentially everything else, this was 14:45
16 the conversation, we were -- it was all about getting
17 support and help for Garda Keogh.

18 521 Q. Yes. I think Garda Quinn made it clear that his view
19 had been and it was expressed to Inspector Minnock and
20 others, that Garda Keogh would want to deal with the 14:45
21 obviously the alcohol side of it, isn't that right?

22 A. Yes.

23 522 Q. And had expressed a willingness to do so?

24 A. Yes.

25 523 Q. You were there obviously, can you recollect how you 14:45
26 expressed any local management concerns there, whether
27 they are recorded there or not?

28 A. Well, I am conscious, you know, I was very much of the
29 view -- that's when I went to see him and I spoke to

1 the doctor. I was very much of the view that we needed
2 to help this person. I understand there's limits in
3 the medical aid, I suppose they'll only pay for
4 treatment once or -- so, there is an issue that he may
5 not need it.

14:46

6 524 Q. Yes.

7 A. They won't give it to you a second time.

8 525 Q. Yes.

9 A. So my position was, and I don't want to be unkind,
10 that, you know, from the conversations I was having,
11 had had a brief conversation with Garda Keogh, you
12 know, he spoke, that he was drinking, he was continuing
13 to drink, he was drinking on his own. I think he may
14 have said he used to drink in the woods or something
15 like that, I have a clear recollection of that. So my
16 view was that we needed to help this person.

14:46

14:46

17 526 Q. You were supportive of the proposition?

18 A. Absolutely.

19 527 Q. Was there any voice or anyone who didn't favour this at
20 the meeting?

14:46

21 A. No. There was full support here for Garda Keogh. This
22 was about -- this was a man, as I saw, a young man and,
23 you know, there seemed to be an element of chaos and,
24 you know, I suppose drink was a factor. I am not
25 obviously a medical person or a psychologist, but I
26 mean, I am in the Guards 35 years, I have a good
27 understanding of life, my view was, you know what,
28 you're out -- I know he was under his doctor and they
29 were linking in, I just thought, you know, we need to

14:46

1 get this sorted. I suppose unfortunately, I do
2 understand addiction. I believe get the money and try
3 and let him get treatment and that. I mean, I wasn't
4 the only voice, that was the voice -- and the executive
5 director, Superintendent Murray, Chief Superintendent 14:47
6 McLoughlin, and indeed everyone around the table, and
7 the medical people there, we were -- you know, we have
8 to look after our people and our job was to support
9 Garda Keogh, I suppose, get back on his feet again.

10 528 Q. Yes. We've seen that the doctor reported as of 21st 14:47
11 July 2016 that Garda Keogh was an inpatient. If we
12 could look at that briefly, 9722. It's addressed by
13 the doctor to Mr. Barrett. He refers to a minute and
14 case conference there.

15 14:48
16 "I have received relevant update in respect of the
17 above member's clinical management and progress. Based
18 on the information now available to me, I offer opinion
19 as follows.

20 1. The member has now accessed and commenced 14:48
21 appropriate inpatient care for a longstanding and
22 established clinical condition, which has been a
23 clinical basis for his current absence.

24 2. The members agreed that the case conference should
25 continue to be confidentially supported by the Garda 14:48
26 Employee Assistant Service as well as receive the
27 support of his senior local management in order to
28 foster a successful and sustained return to wellbeing
29 and eventual effectiveness.

1 3. Insofar as it is reasonably practicable, the member
2 should be facilitated in respect of the costs of the
3 treatment programme so that this does not become an
4 obstacle or barrier to achieving a successful return to
5 wellbeing. This is without prejudice to the issues 14:49
6 that form background in the case.

7 4. The member is currently temporarily unfit to return
8 to work and to undertake policing duties. Further
9 review at this service will be necessary at such time
10 as the clinical updates indicate that returning to work 14:49
11 is now feasible. Arrangements shall be communicated
12 accordingly.

13
14 Thank you for facilitating the necessary
15 communications. " 14:49
16

17 I think you then receive a report from the CMO, was it?
18 I'm sorry, from the executive director, is that
19 correct? If you go to page 6173, from Ms. Carr on
20 behalf of the HR director. 6173 14:50

21 A. Yes.

22 529 Q. Points 1 to 4 are repeated there. There was then a
23 question:

24
25 "Please inform the member accordingly and ensure they 14:50
26 are notified of the confidential supports (e.g. peer
27 support, employee assistance scheme) available to Garda
28 members and to avail of same if required.
29

1 He should ensure the provisions of code 1139 are
2 strictly adhered to. Please ensure that all sickness
3 absences are recorded on SAMS."
4
5 So that was to preserve the reporting and collation of 14:50
6 medical certificates entries on SAMS, etcetera,
7 etcetera, isn't that right?
8 A. Yes. And at this point I would have gone on transfer,
9 I transferred in early August but...
10 530 Q. That's what I was going to ask you. Did you see the 14:50
11 letter of the 12th August that Ms. Carr sent?
12 A. I don't think so.
13 531 Q. Addressed to you?
14 A. I wouldn't have. It would have went -- it goes to the
15 division. I transferred on the 9th August. 14:51
16 532 Q. Yes. It's at 9727?
17 A. I do see it there, yeah.
18 533 Q. 9727. Sorry, the 12th August there, 6173?
19 A. Yes.
20 534 Q. You were gone from there? 14:51
21 A. I was, yes.
22 535 Q. 6173. You had left the division then?
23 A. Transferred.
24 536 Q. So you had no further dealings then in any context in
25 relation to the management issues then arising at any 14:52
26 stage?
27 A. No,.
28 537 Q. We can pass on from that. Just going back to a
29 slightly different issue: As part of your reporting

1 upwards in response to Superintendent Frank Walsh on
2 24th May 2016, you included a schedule relating to the
3 Pulse entry created by Garda Keogh, isn't that correct?
4 A. That's right, yeah.
5 538 Q. Just in terms of sequence, you had previously reported 14:52
6 on that, if we go to page 6184, isn't that correct?
7 A. Yeah.
8 539 Q. That's a letter of 19th August 2015, addressed to the
9 assistant commissioner, Eastern Region?
10 A. Yes. 14:53
11 540 Q. Commissioner Fanning, isn't that correct?
12 A. Yes.
13 541 Q. You recite in the first paragraph:
14
15 "I am now viewing this file for the first time." 14:53
16 A. Yes.
17 542 Q. "I have been advised that the matter was being
18 addressed through assistant commissioner Crime and
19 Security and that further clarification had been sought
20 as there was an absence of a clear policy to deal with 14:53
21 this matter."
22
23 You then detail a number of facts there, which we don't
24 need to go through, they're facts we have heard about
25 so far. Under the heading "stakeholders", you say: 14:53
26
27 "Chief superintendent, Westmeath, district office,
28 Athlone. Intelligence created by a member in Athlone
29 and involves a possible front to the right to dignity

1 at work of Garda A as the intelligence is visible to
2 all Garda members."

3
4 That's obviously in the light of your knowledge of the
5 complaint that Garda A had made, isn't that right?

14:54

6 A. Yes.

7 543 Q. The other stakeholders:

8
9 "Assistant commissioner, organisation development and
10 strategic planning responsibility for data protection
11 issues within An Garda Síochána. Previous
12 correspondence from this office concluded there was no
13 breach of the Data Protection Act as the information
14 had not been disseminated outside the organisation.

14:54

15
16 Assistant commissioner, Crime and Security,
17 responsibility for criminal intelligence on Pulse."

14:54

18
19 And then you're offering a view on the current
20 situation as you saw it at that point in time.
21 Firstly:

14:54

22
23 "It remains unclear if there is a source for the
24 intelligence created.

14:54

25
26 No further enquiry can be progressed in respect of the
27 source within this division until such time as
28 Assistant Commissioner Ó Cualáin concludes his enquiry.
29

1 What breaches exists in each instance:

- 2 1. If there is no source.
- 3 2. If there is a source.
- 4 3. If there is a credible source.

5 14:55

6 Is the breach criminal, discipline civil.

7

8 Responsibility for the investigation process owner.

9

10 Obligations to complainant (Garda A under the Data 14:55
11 Protection Act - must be some enquiry or facts
12 established).

13

14 I have on this date requested the district officer,
15 Athlone, Superintendent Murray to speak with Garda to 14:55
16 outline the difficulties in progressing his complaint
17 pending the outcome of enquiry of Assistant
18 Commissioner Ó Cualáin. I have requested the district
19 officer Athlone to advise Garda A of the welfare
20 supports available to him and to inform him that his 14:55
21 complaint is still the subject of attention.

22

23 I have brought the contents of this report to the
24 attention of Superintendent Murray and discussed with
25 him the matters requiring clarification and attention 14:55
26 as outlined above.

27

28 I understand that Assistant Commissioner Ó Cualáin's
29 investigation has been ongoing since this item of

1 intelligence was created. In light of the current
2 situation reflected above, it does not appear to be
3 possible to progress the complaint of Garda A or to
4 give consideration to any breach of discipline in
5 respect of the creation of this item of intelligence at 14:56
6 this time.

7
8 Forwarded for your information."

9
10 And you cc'd that to Superintendent Murray. Now, I 14:56
11 suppose that could be described as a where are we now,
12 as of August '15. Did you cause enquiries to have been
13 made later with Garda A as to whether he wished to
14 proceed further with a complaint or to have any action
15 taken? 14:56

16 A. It refers to -- I am referring to correspondence that
17 obviously emanated assistant commissioner, Eastern
18 Region, in relation to the matter. It might have been
19 -- I don't see, I haven't got it here, but I think this
20 could have been -- it could have been in the system and 14:56
21 it came down as an update or a reminder, but I didn't
22 cause any enquiries in relation to the matter, I was
23 responding to --

24 544 Q. Just following on from that, is it the case then that
25 as of the time you left, you had taken, other than the 14:56
26 report we will come to in a moment now, May, you had
27 taken no further step yourself to progress this issue
28 in any way?

29 A. No. No.

1 545 Q. All right. Just the final line of that letter seems to
2 obviously clearly envisage the possibility of breach of
3 discipline being raised in respect of the creation of
4 it by Garda Keogh, is that right?

5 A. Yes. 14:57

6 546 Q. Obviously that would be dependent, presumably, on an
7 investigation finding a number of different facts which
8 would warrant a breach?

9 A. I suppose the member had made a complaint.

10 547 Q. Yes. 14:57

11 A. And I suppose because of the complexity, you know, I
12 suppose the sensitivity around the whole issue, I
13 suppose we weren't aware either that -- in my view,
14 let's just park this until we come out the end of the
15 other thing, of investigation. That I didn't think it 14:57
16 was -- so that's the position I took. And that was it,
17 I mean, I think all the way up the line people -- no
18 one was making -- people -- the decision was made not
19 to take this off the system or whatever. So it went
20 right up to the top of the organisation. 14:58

21 548 Q. Yes.

22 A. So I think my -- I set out what triggered this, it
23 probably came up through the filing system and, I
24 suppose, because of the foregoing, I took -- in my
25 opinion, that I just said, let's get to -- this is not 14:58
26 the time to push this. Let's, you know --

27 549 Q. Yes.

28 A. Let's wait until other matters have bottomed out and
29 then we can visit that.

1 550 Q. The Tribunal has seen a lot of differing views
2 expressed over the differing periods of time, but it
3 would appear that no action was taken in relation to
4 the actual entry, which is still there?
5 A. That's right, yeah, that's my understanding. 14:58
6 551 Q. Nor in relation to Garda Keogh insofar as either the
7 source of the information or the creation of the entry?
8 A. That's my understanding, yes.
9 552 Q. In your report up to the Commissioner in May 2016, you
10 do attach an appendix which deals with this Pulse issue 14:59
11 also. Was that put in as sort of another relevant
12 file?
13 A. Well, I suppose it was relevant and, you know, the
14 office and ourselves were pulling this together. So I
15 suppose it was clearly the creation of a Pulse entry 14:59
16 and, I suppose, those issues, it was all connected
17 really.
18 553 Q. Right, okay. Could we just turn then to the
19 disciplinary investigation in July, that commenced in
20 July 2015. We saw before lunch, in a letter or a 14:59
21 report to you of the 19th July, that Superintendent
22 Murray, when reporting on the sickness absences, made
23 reference a possible disciplinary reference as well,
24 isn't that right?
25 A. That's right, yeah. 15:00
26 554 Q. I think that came to you, if we look at page 8807 in
27 volume 31. That's a report which concludes after the
28 six paragraphs set out therein. Do you recall getting
29 that?

1 A. Yeah.

2 555 Q. Okay. There is a slightly different version of it at
3 page 2221, if we could just ask you to comment on that.

4 A. The other version?

5 556 Q. Yes. 15:01

6 A. Including the recommendation?

7 557 Q. Yes.

8 A. Yes.

9 558 Q. They're both signed and dated and if I am correct, they
10 do appear to have been sent, is that right? 15:01

11 A. Well, my understanding and certainly what followed
12 through, is that -- and what actually ended up in
13 Internal Affairs, the piece I received and it's stamped
14 there, was the one with the recommendation.

15 559 Q. Yes. 15:02

16 A. Yes.

17 560 Q. I was wondering, did the first version come to your
18 office and was it sent back perhaps because it didn't
19 have a recommendation in it?

20 A. No. No. I am very clear about that, yeah. 15:02

21 561 Q. Okay. You wrote to Internal Affairs then and informed
22 them of that, if we look at page 8810.

23 A. I have it here.

24 562 Q. That's the standard form, is it?

25 A. It is, yeah. 15:02

26 563 Q. 10th August?

27 A. When you make an appointment under discipline
28 regulations, you notify Internal Affairs.

29 564 Q. Yes. At page 8812, you specify the brief details not

1 as a charge but the matter to be enquired into, is that
2 right?

3 A. Yes. The policy is really to have the whole thing
4 quite general.

5 565 Q. Yes. 15:03

6 A. The deciding officer will decide on the breaches. You
7 know, he defines them. So you keep it quite general
8 really, look into all the circumstances here.

9 566 Q. Yes.

10 A. Yeah. 15:03

11 567 Q. So it was entirely Superintendent Alan Murray's
12 decision as to how he was to break it down --

13 A. Yes.

14 568 Q. -- into any alleged breaches of discipline --

15 A. Yes. 15:03

16 569 Q. -- if he thought there was grounds for preferring
17 any --

18 A. Yes.

19 570 Q. -- isn't that right?

20 A. Yes. 15:03

21 571 Q. I don't think we need to go through any of the formal
22 letters to and forth. I think you were reminded by
23 Internal Affairs, at page 8814, that the deciding
24 officer should provide reasons in writing for the
25 outcome determined? 15:04

26 A. Yes.

27 572 Q. That's following a Supreme Court case there referred to
28 in the second last paragraph.

29 A. Yes.

1 573 Q. There was an issue of the overpayment of wages, were
2 you aware of that?

3 A. Yeah, with Garda Keogh, yeah, I would have had an
4 awareness of that.

5 574 Q. Yes. Would that be standard? 15:04

6 A. Just to put it in context, when the new regulations
7 came in, you know, people were automatically -- people
8 were pay affected straightaway that had, I suppose, 92
9 days sick in a four-year period. So when the new
10 regulations came in, I suppose our organisation was a 15:04
11 still bit on the back foot in the sense that because it
12 takes a couple of weeks, I suppose, for the cert to go
13 up to HRM and HRM to tell Killarney, it resulted in I
14 suppose a number of people being overpaid. In fact,
15 HRM set up an overpayment section. 15:05

16 575 Q. Yes.

17 A. So people, you know, anyone that was in that category,
18 certainly until things -- things have improved
19 significantly now, they were -- so people that had a
20 history of sickness, they would be pay affected when -- 15:05
21 you get paid when you go to work.

22 576 Q. Yes.

23 A. It's just the days that you don't go to work, you know
24 what I mean.

25 577 Q. Yes. 15:05

26 A. Like once you're in work you get your full pay,
27 regardless of your history of sickness.

28 578 Q. Yes. The notification to the overpayments section from
29 Superintendent Murray at 8815, is that something that

1 would have been sent to you as well?

2 A. No, this was a financial -- I suppose this came from
3 the finance office.

4 579 Q. Yes.

5 A. This was an instruction. And the whole object of this 15:05
6 was to prevent people being overpaid. We had people
7 that owed thousands and we had to claw it back. So for
8 them to be sort of ahead of themselves. Once people
9 were out sick and were within that category, we were
10 obliged to put them on notice so that people were -- 15:06
11 you don't not get paid, you just get paid at a lower
12 rate.

13 580 Q. Yes. You got notification from Ms. Carr, if we look at
14 page 8816, that in respect of this particular period,
15 it had tipped Garda Keogh, as it were, over the edge? 15:06

16 A. Yes.

17 581 Q. There in the first line, isn't that right?

18 A. Yes.

19 582 Q. So obviously that's something you knew then when you
20 were coming to do the review? 15:06

21 A. Yes.

22 583 Q. At page 8821, on the 8th October, you wrote informing
23 Chief Superintendent Murray, Internal Affairs, that the
24 discipline enquiry had been concluded and that you had
25 forwarded a notice to be served on Garda Keogh? 15:07

26 A. Yes.

27 584 Q. You sent, also on the 8th October, notification to
28 Superintendent Murray of the result of the outcome of
29 the decision-making process, isn't that right?

1 A. Yes.

2 585 Q. Conveying the fine in respect of the first breach and
3 not in breach on the second one. You then wrote to
4 Garda Keogh, if we turn to page 8826. Sorry, this was
5 the notice that Garda Keogh signed acknowledging the 15:08
6 receipt of the report of the appointing officer?

7 A. Yes.

8 586 Q. At this stage did you understand that the report of the
9 appointing officer included Garda Keogh's own statement
10 or did you address that issue? 15:08

11 A. Yes. Well, I suppose, I did a report to the appointing
12 officer. The deciding officer sends up his report of
13 the interview and the two go up together. The report
14 that Superintendent Alan Murray sent up, the memo of
15 interview was attached to it. That was my 15:08
16 understanding. And these were all to be served on
17 Garda Keogh.

18 587 Q. Yes. Well in any event, you got a notice of
19 application for a review to you, which is at page 8830,
20 isn't that correct? We see there, if we go down the 15:09
21 page, the handwritten, he was requesting a call log for
22 a phone call and then a copy of the statement that he
23 made to Superintendent Murray. You replied I think by
24 letter dated the 9th November to him, isn't that right?

25 A. Yes. 15:09

26 588 Q. You do address the issue of the call by questioning its
27 relevance. You don't seem to address the issue of the
28 request for the statement?

29 A. No, I don't. I don't. I think when the two -- when, I

1 suppose, his appeal came in, his application for appeal
2 came in, I suppose it may have been taken on face value
3 and I may not have kept a copy of it, but I felt -- you
4 know, I sent it back to him, I was saying, you're not
5 guilty on one, you've pleaded guilty on the second, why 15:10
6 are you appealing this, and if you have any other
7 information you can offer. I got the information back
8 from Superintendent Alan Murray in relation to the
9 rationale --

10 589 Q. Yes. 15:10

11 A. -- because your review is not a rehearing, I was
12 confining it to that.

13 590 Q. Yes.

14 A. I didn't reference it. I mean, I had no reason not to
15 give this to Garda Keogh, this was something he had in 15:10
16 the sense that it was his information, it was his
17 account, so I had no reason not to disadvantage him by
18 not giving it to him.

19 591 Q. Yes.

20 A. Certainly it was my understanding he got the memo of 15:10
21 the interview.

22 592 Q. Okay.

23 A. I didn't reference it when I wrote back to him.
24 whether that was a conscious thing or not, I don't
25 know. 15:11

26 593 Q. well, you do appear to have had it in your mind when
27 you wrote on the same day to Superintendent Murray,
28 Alan Murray, at page 8832, where you are asking for his
29 views and observations in respect of the appeal but you

1 are also asking him for a copy of the memo of the
2 interview?

3 A. Yes.

4 594 Q. So it may be that you had it in your mind. You may
5 have considered that you didn't have it or that you 15:11
6 should get it for him, or for you as well?

7 A. Yes, I mean I -- I mean, certainly, yeah.

8 595 Q. Superintendent Murray replies on the 11th, explaining
9 his rationale. I don't think we need to really look at
10 that. The interview with Garda Keogh is included in 15:11
11 the papers here. Do you recall reading that at the
12 time when you were doing your review?

13 A. I do, yes. Garda Keogh, in his sort of -- when he
14 replied back, he essentially, I suppose, reiterated
15 essentially the same information. 15:12

16 596 Q. Yes. You send notice of the outcome up to Internal
17 Affairs and you had notice sent to Garda Keogh, isn't
18 that correct?

19 A. Yes.

20 597 Q. He had written in on the 2nd November in relation to 15:12
21 the appeal or the review?

22 A. Yes.

23 598 Q. That's at page 8854, isn't that correct? And you
24 received that before you made a decision on your
25 review? 15:12

26 A. Yes.

27 599 Q. Your decision then is 8852, where you notify
28 Superintendent Patrick Murray of it there?

29 A. Yes.

1 600 Q. You require that the form I.A.16 be served on him?
2 A. Yes.

3 601 Q. Which conveyed the decision of the outcome of the
4 review under the regulations. I think that ended the
5 disciplinary matter, except in a formal sense, there 15:13
6 were various outcomes put on files and on your file and
7 Internal Affairs?
8 A. Yes. You communicate that up to Internal Affairs.
9 Internal Affairs then liaise with HRM and they actually
10 deal with the matter of applying the penalty. Now, I 15:13
11 am aware that certainly when Garda Keogh was on TRR
12 they didn't apply the penalty. They just put it in
13 abeyance.

14 602 Q. Okay. Now, you have been the subject of a complaint in
15 relation to bullying and harassment and targeting and 15:14
16 discrediting arising out of your involvement and
17 behaviour and decision-making in relation to this
18 process. What would you like to say to the Tribunal in
19 answer to that?
20 A. In November 2017 I got an e-mail, it was a Saturday, 15:14
21 from Assistant Commissioner Fanning, notifying me that
22 I was being investigated under the bullying and
23 harassment policy. That was the first time in my
24 service, I have to say. The allegation was
25 inappropriate interference I think, undermining a 15:14
26 person's self-confidence. I was astounded, absolutely.
27 I couldn't see how any reasonable person could derive
28 those allegations from the facts at hand, you know.
29 Very disappointing. I mean, clearly I am a public

1 servant, as a guard, all guards have to go through
2 processes and have to explain themselves and absolutely
3 I respect that and I engaged in the process. But, do
4 you know what, I just can't rationalise it really. I
5 just cannot rationalise how that could be derived from, 15:15
6 you know -- you know, I'm not perfect. But, I mean, I
7 just couldn't see on what basis. I have done a lot of
8 investigations myself under the various policies and
9 procedures and, you know, to me -- and you know, I
10 suppose my values at which I live my life, and honesty 15:16
11 is very important to me but supporting people is very
12 important to me as well. You know, when I was in -- I
13 was just, I suppose, was very disappointed. I was
14 surprised. You know, certainly the feedback I got from
15 Assistant Commissioner Fanning, you know, 360 feedback, 15:16
16 but glowing and he even highlighted how supportive I
17 was of people. So I was just very disappointed. It
18 was a tough year, 2017, for another particular reason.
19 And I just -- I just was -- I just felt -- I just
20 couldn't rationalise it and I still can't rationalise 15:16
21 it.

22 603 Q. You were, I think, notified by Assistant Commissioner
23 Fanning in November of 2017?

24 A. Yes.

25 604 Q. That a statement had been made in March 2017 and an 15:16
26 addendum to the statement in which you were accused of
27 bullying?

28 A. Yes.

29 605 Q. I think you made a protest in the delay in notifying

1 you of that?

2 A. Yes.

3 606 Q. Assistant Commissioner Fanning, as we have seen,
4 proceeded to enquire from Garda Keogh whether he was
5 prepared to opt for mediation for whether he was ruling 15:17
6 out mediation. I think that having been done, you got
7 a similar letter, which I think meant that it was going
8 to be enquired into by an officer appointed to enquire
9 into that?

10 A. That's right. 15:17

11 607 Q. And Assistant Commissioner Finn?

12 A. Finn.

13 608 Q. As you know, was appointed to enquire into that. I am
14 sure you have seen Assistant Commissioner Finn's notes
15 of an interview that he had with Garda Keogh, I think 15:17
16 in the presence of a solicitor, where you are nominated
17 as one of the three officers and you are made the
18 object of the accusation. You have seen that note,
19 haven't you?

20 A. I have, yes. 15:18

21 609 Q. You were given the opportunity to reply and I think you
22 sent in a reply, is it at page 8876? I think this is
23 dated, is this dated in June, this one? Am I wrong
24 about that? If we just go back up to the top of the
25 page. Sorry, February? 15:18

26 A. February, yes.

27 610 Q. The 7th February, yes.

28 CHAIRMAN: I'm sorry, what number is this,
29 Mr. McGuinness?

1 MR. McGUI NNESS: This is 8876.

2 CHAIRMAN: I'm sorry, I just didn't hear that, thank
3 you.

4 611 Q. MR. McGUI NNESS: I think Assistant Commissioner Finn
5 had previously written to you suggesting that he would 15:18
6 meet you to make you aware of the allegations?

7 A. Yes.

8 612 Q. Did you obtain a copy of the statement made by Garda
9 Keogh or an extract from it at that stage?

10 A. I think when we -- like we certainly got it by e-mail. 15:19

11 613 Q. Yes.

12 A. I think we had it before.

13 614 Q. Yes.

14 A. I think I had it. Yeah, I think it came with the
15 e-mail. 15:19

16 615 Q. Did you meet with Assistant Commissioner Finn or some
17 of his other investigators at this point?

18 A. No, I told Assistant Commissioner Finn that I would
19 deal with him directly.

20 616 Q. Yes. 15:19

21 A. That was my preferred choice.

22 617 Q. So you did so on the basis of preparing your own
23 response?

24 A. Yes.

25 618 Q. Is that right? Okay. Is this the response and the 15:19
26 only response that you put in?

27 A. Yes.

28 619 Q. Okay. If we scroll down there. You reviewed your
29 original investigation file into the breaches of

1 discipline?

2 A. Yes.

3 620 Q. If we go on to the next page, you describe the process
4 there?

5 A. Yes. 15:20

6 621 Q. Is there anything you would like to add to that?

7 A. In terms of the discipline?

8 622 Q. Yes, or any other comment?

9 A. Yes. I mean, my --

10 CHAIRMAN: I'm sorry, forgive me for being stupid 15:20
11 because I missed it a moment ago, the date of this is
12 February?

13 MR. MCGUINNESS: 7th February 2018.

14 CHAIRMAN: That's what I thought, thank you. Sorry
15 about that. 15:20

16 A. Sorry, maybe you might repeat the question.

17 623 Q. MR. MCGUINNESS: I was just asking you, is there
18 anything else you would like to add or any further
19 comment you want to make in relation to the response
20 that you had included here to Assistant Commissioner 15:20
21 Finn?

22 A. No.

23 624 Q. Okay. If we go further down the page. That was the
24 only matter you responded to there, isn't that right?

25 A. Yes. 15:20

26 625 Q. Insofar as the issue of misrecording Garda Keogh's sick
27 record or sickness classification, did you have any
28 hand, act or role, direct or indirect, in how it was
29 recorded, either initially or subsequently?

1 A. No.

2 626 Q. Apart from the correction you have told us about?

3 A. No.

4 627 Q. Okay. In terms of taking any action relating to his
5 pay in order to disadvantage him, did you take any step 15:21
6 in that regard?

7 A. No, I don't -- I don't have the authority to make --
8 you know, to instruct the payment or otherwise for
9 Garda Keogh.

10 628 Q. Yes. I think you were informed of the ultimate outcome 15:21
11 of the consideration of Assistant Commissioner Finn's
12 investigation by Assistant Commissioner O'Brien. If we
13 could look at page 3150.

14 A. Sorry, yes.

15 629 Q. I think this conveys the correspondence from the 15:22
16 executive director of the 8th January?

17 A. Yes.

18 630 Q. Whereby he was nominated to complete the issue. I
19 think that recites different matters there. The
20 concluding paragraph on the next page then details this 15:22
21 issue concerning the misreporting of sick leave and the
22 disciplinary inquiry. On the third page it presents
23 the findings there in relation to you. Do you have any
24 comment to make upon the fairness of the process that
25 Assistant Commissioner Finn engaged in or Assistant 15:23
26 Commissioner O'Brien?

27 A. No. I mean, I did push to have the matter expedited.
28 I know from doing these investigations myself, they can
29 be quite protracted and that's sometimes no one's

1 fault, it goes through a sort of iterative process.
2 But I was very anxious to have this matter finalised.
3 I had come to the end of my service and, you know,
4 opportunities that can present, they would have been
5 lot on me, because, you know, this investigation was 15:23
6 hanging over me. So I was very anxious that it would
7 progress. But, you know, the investigation of itself,
8 I mean it probably took longer than I would have liked,
9 but I suppose that can just happen, for a variety of
10 reasons. 15:23

11 631 Q. Yes. Have you any evidence to give of any targeting or
12 discrediting of Garda Keogh by virtue of his having
13 made a protected disclosure?

14 A. Absolutely not. I mean, I have -- I mean people bring
15 things to people's attention all the time and, you 15:24
16 know, there may be investigations kick off. Garda
17 Keogh had made a protected disclosure and I had no -- I
18 don't believe I was the subject of it. I am very clear
19 in my mind, I mean, I am very proud of being a member
20 of An Garda Síochána and, you know, I deal -- I 15:24
21 chase -- my job is to make decisions and to do things
22 right. Honesty is my most important value. It is
23 really important to me I am honest with myself in how I
24 deal with people and how I go about my business. I
25 mean, I just think it's, I won't say absurd, it's 15:24
26 probably too strong a word. Like what possible
27 motivation could I have had? A newly appointed chief
28 going down to the country, I didn't discredit -- no
29 way -- my objective was to police the division, to keep

1 people safe, bring my team with him. And I had a
2 lovely -- the team were lovely in the division and I
3 think we did a lovely job. I suppose I like welfare, I
4 like supporting people, it's one of the things I do. I
5 just think -- I just find it's hard to credit how 15:25
6 anyone could think that I would go out and set my
7 sights on an individual. I absolutely respect people
8 that stand up and are counted, I think it's very
9 admirable. I understand when people take a position
10 and that's fine. I am really clear in my mind, I 15:25
11 always have, I worked everywhere, 35 years in the
12 Guards, in the roughest place, the best place, I deal
13 with behaviours, I don't judge people. And absolutely,
14 how could I do that to another person and what reason
15 could I possibly have? Discredit? I didn't disbelieve 15:26
16 Garda Keogh. We didn't say that what he was saying
17 wasn't true. I'm not talking about the substantive
18 investigation, in terms of the interactions that I had
19 with him. Absolutely, I actually think at every
20 juncture under my stewardship, indeed, I suppose, lots 15:26
21 of stuff were initiated by Superintendent Murray, at
22 every juncture we made decisions, we sort of referenced
23 Garda Keogh to the relevant supports. We had a welfare
24 service in place. There was nothing -- you know, we
25 were trying to steer the ship, to do the job. People, 15:26
26 we support people, our confidential support service,
27 they're there to do that. We have a job to do as well.
28 You have to do the business and sometimes you have to
29 deal with people under certain processes, it happens

1 all the time. I just object strongly, what reason
2 could I have? How could I do that? I think it's
3 evident that supports were in place. I know it was a
4 difficult time. There wasn't a policy, there isn't a
5 policy now about a person that makes a protected 15:27
6 disclosure, wasn't pay affected, that wasn't something
7 within my control. And I just -- you know, I have a
8 big interest in welfare and one of the initiatives that
9 I run, you know, that were embraced down in westmeath,
10 indeed I carried to my two divisions, is that my little 15:27
11 things campaign, which is about mental health and it's
12 about wellbeing and I have carried that through in all
13 the divisions I am in. I have 900 staff now, I had 700
14 staff in my previous division. I have never in all --
15 I have dealt with people, you know, before the courts, 15:27
16 people that you're letting go, and I have never had any
17 issue in all my service. So I reject it, absolutely.
18 632 Q. A couple of matters to help me conclude my examination
19 of you. In relation to the Ó Cualáin investigation,
20 you weren't ever asked to provide a statement for that. 15:28
21 A. No.
22 633 Q. You had no involvement with it good, bad or
23 indifferent, isn't that correct?
24 A. Yes.
25 634 Q. Were you ever contacted by the Ó Cualáin team in any 15:28
26 respect in relation to Garda Keogh?
27 A. No.
28 635 Q. Okay. Insofar as your appointment to the division, the
29 westmeath division, and Superintendent Murray's

1 appointment, had they anything to do with -- or were
2 they intended in any way to influence the view of Garda
3 Keogh and his protected disclosure in any negative way?
4 A. I can't see how that can be deduced. I mean, it's
5 common practice that your first posting when you get 15:28
6 promoted to chief superintendent, you go down the
7 country. They're easier. You mightn't think that but
8 they're not as probably busy as Dublin divisions.
9 Superintendent Murray had been looking for a transfer
10 for a long time. I suppose I was number three on the 15:29
11 chief's list, so I probably --
12 636 Q. CHAIRMAN: I think what Mr. McGuinness is referencing,
13 you're probably aware, is a suggestion or an allegation
14 that Superintendent Murray might have been put in place
15 in order to get him? 15:29
16 A. Yeah, okay.
17 637 Q. CHAIRMAN: I mean that's what Garda Keogh has said?
18 A. Yeah.
19 638 Q. CHAIRMAN: In some shape or form?
20 A. Okay. 15:29
21 639 Q. CHAIRMAN: I hope I am not misrepresenting him.
22 A. No, I'm sorry.
23 640 Q. CHAIRMAN: He says, look, he was uncomfortable and I
24 think that's what Mr. McGuinness is referencing?
25 A. Sorry. 15:29
26 CHAIRMAN: Is that right, Mr. McGuinness?
27 MR. MCGUINNESS: Yes, I suppose I should have put it
28 more clearly.
29 A. I suppose the view you have is depending on where

1 you're standing. In that event, I can't second guess
2 Garda Keogh's view. I just think it's incredulous, you
3 know. To be honest with you, only listening to the
4 evidence over the last couple of weeks, and people use
5 different terms, so I'm not going to read too much into 15:30
6 it, but he referred to both us as the fresh dogs
7 coming, you know, and that's the view he had. But I
8 think it's absolute -- I mean, my view, you know, there
9 was other complex issues going on at the same time and
10 I remember meeting the superintendents and my language 15:30
11 was, let's keep a straight back, let's move the
12 business forward, you know what, I never look back, I
13 always look forward. It was a nice division,
14 Westmeath. I mean, there was nothing covert about any
15 of my interventions or subversive. There was a full 15:30
16 line of sight all the way up the line. So, I just
17 think it doesn't make any sense that he -- it doesn't
18 make sense that that would be the case. In fact, I
19 think this -- I suppose, sorry, I'm going on a bit
20 much. In fact, I think the -- you know, I always 15:30
21 think, you know, you have to have everyone on the pitch
22 to reach your goals and you have to bring -- you can't
23 let someone just sit there and not be part of your
24 team. And I believe that, you know, we were energetic,
25 we were enthusiastic, but you know, there was never -- 15:31
26 even the safeguards, I mean the safeguards were put in
27 place to guide and support Garda Keogh. There was
28 never any -- I don't think there's any evidence that we
29 didn't want -- he wanted back on the team, back part of

1 it. And he was supported in doing that. You know, I
2 just struggle. As I said, as chief you have to deal
3 with standards and behaviours and part of your role is
4 dealing with discipline. You know, you have a duty to
5 the public. But just in relation to the disciplines, I 15:31
6 was very clear that, you know, you have to deal with
7 the behaviours. But equally, I didn't want to enable
8 the behaviour. That wasn't lost on my mind either. So
9 absolutely, I can't -- it's illogical to me, it doesn't
10 make sense. How could -- I just don't understand how 15:32
11 he can even deduce that.

12 CHAIRMAN: Okay.

13 641 Q. MR. MCGUINNESS: You have presumably worked with many
14 superintendents, both under them, at the same level and
15 then with you over them as a chief superintendent, you 15:32
16 were asked by the Tribunal investigators to describe
17 Superintendent Murray's leadership and management style
18 from your experience and I think you provided an answer
19 to that at page 6105, which is page 30 of your
20 interview with the investigators. You describe him in 15:32
21 the following way:

22
23 "He has a huge capacity to deal with complex issues and
24 bring matters to a conclusion. He brought a lot of
25 change to Athlone in terms of restructuring. His 15:32
26 district flourished under his stewardship. He moved
27 the business forward in a positive and constructive
28 way. He is very highly regarded in the community. I
29 was hugely impressed by his knowledge of law,

1 legislation and procedures. He is very committed to
2 his job and was a huge support to me. He is competent,
3 capable and sensitive to various situations and very
4 support to his team in terms of development and
5 welfare. "

15:33

6
7 I presume that's your opinion of him today, is that
8 correct?

9 A. Absolutely. Yes.

10 642 Q. The Tribunal has heard, from the evidence obviously,
11 that from his arrival there was a significant sort of
12 number of issues which appear to arise that he dealt
13 with, in relation to Garda Keogh, the car tax, the
14 expenses, the Regulation 10 discipline, the interaction
15 with the CMO, the issue of the classification of his
16 sickness and the later disciplinary inquiries and the
17 crime files. Do any of those issues, including
18 obviously the confining of him to indoor duties, do any
19 of those issues, having considered them, affect this
20 view that you have expressed here?

15:33

15:33

15:34

21 A. In terms of the car tax, I suppose I have given my view
22 on that. Absolutely, he was very lenient, that's my
23 view. The chief superintendent is the person who is
24 responsible for dealing with discipline in her division
25 or his division. It's not a matter for a
26 superintendent. If matters are brought to my
27 attention, I am obliged to enquire into them. I, on my
28 consideration of the file in relation to I suppose the
29 AWOL, I was firmly of the view that this was a matter

15:34

1 that I needed to enquire into. You know, no one said
2 that Garda Keogh wasn't telling the truth, he was quite
3 honest, but the issue at hand, in my opinion, merited
4 an inquiry. I believe superintendent -- doing nothing
5 is not an option. You know, you can't turn a blind 15:34
6 eye. Was it lost, I suppose, on us all that there was
7 a glare out there in the public domain, but we're
8 impartial, we're independent. You know, people get
9 into lots of bother from time to time. We support them
10 through the bother, if you like, but we can't erase it. 15:35
11 So we have to deal with that. We have to think of --
12 and it's all about -- I always think, you know,
13 discipline is about learning and it's about -- just
14 marks it and it's about moving on.

15 643 Q. But Garda Keogh has obviously given in evidence that 15:35
16 shortly after that meeting he went to Deputy Wallace
17 and there were a number of comments made in public then
18 relating to Superintendent Murray thereafter, including
19 some which related to his promotion. You had no
20 involvement in promotion process in relation to 15:35
21 Superintendent Murray at all, isn't that correct?

22 A. Well, I suppose in terms of involvement, when I was
23 there, in 2006 actually, just I suppose in terms of the
24 dates, May, there was a lot happening May actually. On
25 the 25th May the list came out for chief 15:35
26 superintendents.

27 644 Q. Yes, in '16?

28 A. '16. The old system, I suppose, and under the old
29 system you would certainly write a recommendation, the

1 board pick the superintendents and I don't know how
2 much weight goes on at that -- but certainly I would
3 have endorsed his competence. But, I mean, I don't --
4 I wasn't picked by him, the board pick him.

5 645 Q. Obviously the later dealings or interaction of Garda 15:36
6 headquarters with the Policing Authority had nothing to
7 do with you, isn't that right?

8 A. Yes.

9 646 Q. Okay. Obviously you had no involvement in Assistant 15:36
10 Commissioner McMahon's disciplinary investigation in
11 relation to other members?

12 A. No.

13 MR. MCGUINNESS: Chairman, that concludes my
14 examination of the witness.

15 15:36

16 END OF EXAMINATION

17

18 CHAIRMAN: Thank you very much.

19 MR. MCGUINNESS: I had earlier represented to you and
20 the others that I would probably take the whole day. 15:36

21 CHAIRMAN: Yes, that's not a problem.

22 MR. MCGUINNESS: I had told my Friends that they were
23 unlikely to be required.

24 CHAIRMAN: I was going to ask. Mr. Kelly, there is no
25 question, you're under the assumption that you would be 15:37
26 cross-examining tomorrow, that stands unless you would
27 like to get started today. So that's fine. I think
28 it's probably not satisfactory, unless you ask me to do
29 it, to ask anybody else do they want to cross-examine.

1 I think you really should go first, or your side. Is
2 that reasonable, Mr. Kelly? If you were happy to do
3 it, I will ask Mr. Murphy and any of the other counsel
4 if they want to cross-examine at this point. But I am
5 comfortable either way, it doesn't matter, it's been a 15:37
6 long enough day and I am quite happy to abandon affairs
7 here.

8 MR. KELLY: Okay.

9 CHAIRMAN: So that is probably the best thing to do.

10 MR. KELLY: Yes, that's fine. 15:37

11 CHAIRMAN: All right. Thank you very much.

12 MR. KELLY: I don't, in fact, have an issue with
13 anybody else going first, but looking at the time. So
14 I think it's a sensible course.

15 CHAIRMAN: Thanks very much. I take it we can assure 15:38
16 the chief superintendent that she will be finished
17 tomorrow.

18 MR. KELLY: Yes, I think we can.

19 MR. MURPHY: Yes.

20 CHAIRMAN: Okay. Thanks very much. So we will see you 15:38
21 tomorrow and tomorrow will be your last day. Thank you
22 very much.

23

24 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 28TH JANUARY
25 2020 AT 10:30AM 15:38

26

27

28

29

	84:21, 85:26, 87:10, 136:27, 141:11, 141:18 13 ^[3] - 2:31, 3:8, 97:2 132 ^[1] - 1:18 139/10 ^[1] - 75:25 13th ^[1] - 15:4 14 ^[13] - 3:9, 6:28, 7:12, 7:17, 8:23, 9:5, 9:27, 9:29, 10:7, 10:28, 17:6, 43:28, 53:4 14(3) ^[2] - 7:15, 13:12 14(4) ^[1] - 7:26 14(7) ^[1] - 11:19 14(7/2015) ^[1] - 31:4 14th ^[5] - 13:20, 15:4, 36:15, 52:10, 82:15 15 ^[4] - 3:9, 58:16, 104:29, 105:2 15/7/2015 ^[2] - 16:7, 31:7 159/08 ^[3] - 10:17, 10:19, 10:22 159/10 ^[1] - 113:23 15th ^[4] - 16:2, 17:25, 37:16, 52:10 16 ^[2] - 1:5, 3:10 16/7 ^[1] - 16:27 16th ^[4] - 16:5, 100:10, 100:11, 101:7 17 ^[2] - 1:9, 3:10 1775 ^[1] - 6:17 17th ^[5] - 100:10, 100:11, 105:17, 121:16, 129:7 18 ^[3] - 3:11, 9:13, 25:18 184 ^[1] - 70:14 188 ^[1] - 105:21 18th ^[9] - 10:12, 20:25, 31:12, 32:16, 36:23, 92:22, 94:9, 122:21, 125:18 19 ^[3] - 3:11, 9:10, 9:13 1921 ^[1] - 1:9 1985 ^[1] - 56:5 1987 ^[1] - 56:14 1989 ^[1] - 56:15 1990 ^[1] - 56:25 1992 ^[2] - 57:2 1995 ^[3] - 57:3, 57:9, 57:12 1997 ^[2] - 57:11, 57:12 19th ^[6] - 103:24, 106:12, 123:11,	131:26, 142:8, 147:21 1st ^[2] - 70:17, 75:25	2 2 ^[19] - 2:32, 3:3, 4:9, 7:10, 7:21, 11:13, 20:21, 21:6, 29:14, 30:27, 32:4, 32:6, 41:19, 44:4, 44:12, 49:13, 50:22, 139:24, 144:3 20 ^[4] - 3:12, 56:1, 57:29, 67:17 2000 ^[1] - 57:21 2005 ^[1] - 57:29 2006 ^[1] - 168:23 2007 ^[3] - 6:28, 57:22, 58:2 2010 ^[2] - 75:26, 113:24 2013 ^[1] - 58:9 2014 ^[4] - 1:3, 70:15, 70:17, 104:13 2015 ^[44] - 6:24, 7:4, 10:12, 13:4, 13:19, 13:20, 14:5, 14:12, 15:1, 15:4, 15:23, 16:5, 16:13, 19:21, 20:25, 21:12, 25:2, 27:18, 33:3, 34:16, 36:6, 36:15, 48:18, 49:7, 51:15, 51:17, 53:20, 58:12, 58:17, 70:18, 79:13, 82:15, 83:7, 85:2, 85:29, 88:26, 94:10, 97:2, 100:27, 104:20, 142:8, 147:20 2015H ^[1] - 36:12 2016 ^[11] - 58:17, 67:9, 93:10, 100:8, 101:7, 109:6, 113:22, 131:26, 139:11, 142:2, 147:9 2017 ^[6] - 1:5, 1:9, 155:20, 156:18, 156:23, 156:25 2018 ^[3] - 1:9, 58:21, 159:13 2020 ^[3] - 1:18, 6:2, 170:25 2044 ^[1] - 17:23 20th ^[6] - 83:7, 84:17, 106:14, 106:25, 107:4, 108:6 21 ^[1] - 3:12 21st ^[3] - 15:23, 82:27, 139:10	22 ^[1] - 3:13 2221 ^[4] - 13:29, 14:1, 16:11, 148:3 2223 ^[1] - 14:15 2225 ^[1] - 14:26 2227 ^[1] - 15:13 2228 ^[1] - 15:26 2229 ^[1] - 16:5 2233 ^[1] - 36:9 23 ^[1] - 3:13 23rd ^[1] - 108:7 24 ^[1] - 3:14 2499 ^[1] - 92:11 24th ^[10] - 19:21, 27:18, 48:18, 48:27, 49:7, 50:8, 90:11, 123:14, 123:23, 142:2 25 ^[1] - 3:14 25th ^[2] - 83:7, 168:25 26 ^[1] - 3:15 26th ^[7] - 67:21, 81:12, 84:1, 85:2, 88:25, 130:7, 130:20 27 ^[2] - 3:15, 43:25 27th ^[1] - 82:21 27TH ^[2] - 1:18, 6:1 28 ^[2] - 3:16, 75:29 28TH ^[1] - 170:24 28th ^[3] - 36:6, 36:12, 89:16 29 ^[1] - 3:17 2:08 ^[1] - 31:6 2nd ^[8] - 67:15, 67:17, 72:2, 84:25, 85:28, 88:22, 154:20	3 3 ^[6] - 3:3, 7:14, 11:14, 44:4, 140:1, 144:4 3(a) ^[1] - 44:10 3)(a) ^[1] - 7:26 30 ^[2] - 3:17, 166:19 300 ^[4] - 39:26, 44:18, 44:25, 45:4 30th ^[1] - 19:27 31 ^[2] - 3:18, 147:27 3145 ^[1] - 100:13 3148 ^[1] - 71:10 3150 ^[1] - 160:13 3153 ^[1] - 55:28 3167 ^[3] - 110:7, 110:10, 110:19 3197 ^[1] - 110:9 31st ^[1] - 70:18 32 ^[2] - 2:24, 3:18 3201 ^[2] - 105:12,	105:14 3203 ^[1] - 121:17 3206 ^[1] - 126:15 3209 ^[1] - 128:12 33 ^[3] - 3:19, 88:9, 89:17 33-34 ^[1] - 4:12 34 ^[2] - 3:19, 70:17 35 ^[5] - 3:20, 56:11, 56:13, 138:26, 162:11 36 ^[1] - 3:20 360 ^[1] - 156:15 3644 ^[1] - 97:3 37 ^[1] - 3:21 38 ^[1] - 3:21 39 ^[1] - 3:22 3rd ^[2] - 72:2, 126:12	4 4 ^[7] - 2:19, 3:4, 11:16, 16:15, 44:8, 140:7, 140:22 4(a) ^[1] - 12:9 4) ^[1] - 12:1 41 ^[1] - 5:6 47 ^[1] - 5:7 48 ^[1] - 49:28 48% ^[1] - 70:15 4th ^[3] - 14:5, 16:12, 126:13	5 5 ^[3] - 3:4, 9:18, 16:21 51 ^[1] - 2:18 52% ^[1] - 70:16 55 ^[1] - 5:11	6 6 ^[5] - 3:5, 5:5, 8:6, 8:8, 16:23 60 ^[1] - 59:19 6076 ^[1] - 56:1 6105 ^[1] - 166:19 6116 ^[3] - 93:19, 93:25, 93:26 6142 ^[1] - 82:21 6143 ^[1] - 82:28 6144 ^[1] - 83:2 6145 ^[1] - 88:25 6146 ^[1] - 84:17 6148 ^[1] - 87:12 6149 ^[1] - 67:17 6163 ^[1] - 90:12
--	--	---	---	--	--	---	--	---	--

<p>6165 [1] - 95:8 6166 [1] - 82:16 6167 [1] - 136:28 6169 [1] - 129:26 6170 [1] - 130:10 6171 [2] - 129:26, 131:21 6172 [1] - 92:25 6173 [4] - 140:19, 140:20, 141:18, 141:22 6175 [1] - 122:19 6176 [1] - 123:15 6178 [1] - 123:23 6179 [1] - 124:18 6182 [1] - 123:11 6184 [1] - 142:6 621 [1] - 94:1 6616 [1] - 93:24 6th [1] - 87:23</p>	<p>8834 [2] - 19:21 8835 [1] - 20:1 8838 [2] - 20:16, 20:17 8840 [1] - 20:27 8840/1 [1] - 42:17 8841 [4] - 25:17, 48:4, 48:6, 48:28 8842 [2] - 27:22, 48:17 8844 [2] - 49:7, 50:8 8845 [1] - 49:14 8846 [1] - 51:10 8847 [2] - 42:16, 42:26 8848 [1] - 42:26 8852 [1] - 154:27 8854 [1] - 154:23 8876 [2] - 157:22, 158:1 8th [4] - 129:21, 151:22, 151:27, 160:16</p>	<p>127:15, 130:15, 133:25, 134:3, 139:23, 142:20 Absence [3] - 75:25, 97:23, 101:16 absences [16] - 67:24, 82:17, 85:3, 90:14, 93:1, 95:28, 97:23, 101:16, 101:17, 101:19, 101:22, 104:15, 104:18, 104:22, 141:3, 147:22 absent [12] - 13:20, 34:27, 35:5, 36:14, 37:19, 37:25, 37:29, 38:7, 75:9, 80:12, 125:1 absolute [1] - 165:8 absolutely [20] - 14:25, 42:29, 89:5, 95:2, 100:3, 109:14, 117:4, 117:14, 136:3, 138:18, 155:26, 156:2, 161:14, 162:7, 162:13, 162:19, 163:17, 166:9, 167:9, 167:22 absurd [1] - 161:25 AC [1] - 122:28 accept [4] - 37:24, 47:24, 47:25, 84:11 acceptance [1] - 97:15 accepted [3] - 37:18, 41:18, 49:28 accepts [1] - 21:17 access [3] - 60:12, 96:2 accessed [1] - 139:20 accident [1] - 39:13 accompanied [1] - 48:27 accompanying [2] - 12:16, 99:14 accordance [2] - 83:23, 133:14 accordingly [3] - 90:29, 140:12, 140:25 account [9] - 30:1, 34:28, 35:2, 52:2, 52:9, 52:22, 76:6, 76:22, 153:17 accusation [1] - 157:18 accused [2] - 28:15, 156:26 achieving [1] - 140:4 acknowledged [1] -</p>	<p>21:24 acknowledging [1] - 152:5 ACT [2] - 1:3, 1:8 Act [2] - 143:13, 144:11 act [3] - 13:16, 68:3, 159:28 ACTING [2] - 3:7, 3:13 action [4] - 1:27, 145:14, 147:3, 160:4 actions [3] - 7:16, 137:7, 137:10 actual [5] - 99:14, 99:29, 114:18, 147:4 add [3] - 53:16, 159:6, 159:18 added [2] - 132:17, 132:19 addendum [1] - 156:26 addiction [1] - 139:2 addition [1] - 84:24 additional [4] - 27:15, 48:12, 70:5, 113:13 address [8] - 65:17, 71:20, 79:28, 96:2, 123:12, 152:10, 152:26, 152:27 addressed [10] - 48:18, 90:29, 97:29, 124:17, 125:15, 134:14, 139:12, 141:13, 142:8, 142:18 addressing [1] - 133:7 adhered [1] - 141:2 ADJOURNED [2] - 109:2, 170:24 adjudicate [1] - 121:12 adjudication [1] - 111:15 ADMINISTRATIVE [1] - 3:14 admirable [1] - 162:9 admit [1] - 54:3 admitted [4] - 29:11, 29:27, 50:20, 51:2 adopt [1] - 8:9 advance [3] - 129:19, 134:14, 134:18 adversely [2] - 95:26, 126:4 advice [9] - 7:22, 32:22, 74:8, 74:9, 78:5, 115:5, 117:27,</p>	<p>127:17, 131:28 advices [20] - 76:22, 76:23, 89:21, 89:22, 90:4, 90:6, 92:18, 92:23, 94:10, 94:23, 110:1, 113:9, 115:4, 115:8, 117:25, 117:26, 118:26, 124:23, 131:24 advise [4] - 70:8, 85:23, 94:28, 144:19 advised [9] - 79:26, 88:17, 101:24, 107:26, 119:21, 121:23, 131:28, 132:7, 142:17 advises [2] - 76:4, 76:8 Affairs [14] - 10:12, 30:6, 33:20, 34:1, 34:13, 148:13, 148:21, 148:28, 149:23, 151:23, 154:17, 155:7, 155:8, 155:9 affairs [2] - 30:8, 170:6 affect [4] - 21:13, 119:10, 120:25, 167:19 affected [11] - 40:20, 93:11, 93:14, 102:26, 103:4, 109:13, 126:3, 126:4, 150:8, 150:20, 163:6 affecting [1] - 95:26 afternoon [1] - 109:5 afterwards [1] - 137:11 ago [3] - 26:8, 95:6, 159:11 agree [5] - 35:17, 35:18, 91:1, 97:29, 128:20 agreeable [1] - 106:6 agreed [3] - 71:11, 113:20, 139:24 agreement [1] - 118:18 AGSI [1] - 4:4 ahead [2] - 134:24, 151:8 aid [1] - 138:3 AIDAN [2] - 3:9, 4:6 AISLING [2] - 2:11, 3:21 Alan [9] - 6:5, 6:11, 19:23, 32:21, 59:11, 149:11, 152:14, 153:8, 153:28</p>
7				
<p>7 [6] - 1:9, 2:25, 3:5, 4:13, 6:23, 8:17 700 [1] - 163:13 7793 [1] - 7:8 7796 [1] - 7:9 7797 [1] - 43:26 7800 [1] - 9:10 782 [1] - 124:12 783 [1] - 124:12 7th [6] - 84:22, 85:27, 86:13, 87:14, 157:27, 159:13</p>	9			
	<p>9 [2] - 3:6, 18:23 90% [1] - 44:28 900 [1] - 163:13 92 [1] - 150:8 92% [1] - 70:18 9392 [1] - 88:9 9449 [1] - 89:16 9722 [1] - 139:12 9727 [2] - 141:16, 141:18 9th [10] - 14:11, 16:2, 33:3, 51:15, 65:23, 91:12, 95:7, 111:1, 141:15, 152:24</p>			
8				
<p>8 [2] - 3:6, 3:28 8202 [2] - 75:29, 76:1 8204 [1] - 76:15 840.49 [1] - 20:2 8807 [1] - 147:26 8810 [1] - 148:22 8811 [1] - 13:7 8812 [1] - 148:29 8814 [2] - 10:9, 149:23 8815 [1] - 150:29 8816 [1] - 151:14 8821 [1] - 151:22 8825 [1] - 38:11 8826 [1] - 152:4 8830 [3] - 30:16, 30:17, 152:19 8832 [3] - 33:3, 33:4, 153:28 8833 [1] - 34:17</p>	A			
	<p>abandon [1] - 170:6 abeyance [1] - 155:13 ability [1] - 95:26 able [4] - 54:8, 104:8, 112:18, 127:24 above-named [1] - 1:26 absence [24] - 17:2, 28:8, 35:6, 35:13, 68:1, 78:3, 81:15, 83:6, 83:24, 90:22, 90:28, 91:3, 97:16, 97:17, 97:20, 99:8, 121:24, 122:11,</p>			

<p>ALAN [6] - 3:9, 3:13, 5:3, 6:8, 41:10, 47:4</p> <p>alcohol [5] - 17:5, 17:27, 51:6, 95:25, 137:21</p> <p>alerted [1] - 94:15</p> <p>alia [1] - 123:3</p> <p>ALISON [1] - 3:26</p> <p>alive [1] - 72:15</p> <p>allegation [5] - 11:13, 28:21, 86:25, 155:24, 164:13</p> <p>allegations [7] - 63:15, 85:9, 94:5, 128:26, 129:4, 155:28, 158:6</p> <p>alleged [12] - 11:8, 20:12, 63:23, 122:10, 130:6, 130:13, 130:16, 131:5, 133:12, 133:26, 134:3, 149:14</p> <p>allocated [1] - 68:2</p> <p>allocation [1] - 61:15</p> <p>allow [1] - 68:5</p> <p>almost [1] - 56:11</p> <p>alone [1] - 70:19</p> <p>AMENDED [1] - 1:9</p> <p>amount [4] - 8:1, 44:13, 103:9, 104:22</p> <p>amounts [1] - 103:7</p> <p>AN [1] - 3:2</p> <p>AND [5] - 1:3, 1:4, 1:8, 3:15, 109:2</p> <p>ANDREW [2] - 2:22, 4:5</p> <p>anecdotaly [1] - 85:17</p> <p>ANNE [2] - 3:8, 3:17</p> <p>annual [1] - 70:17</p> <p>answer [10] - 18:12, 21:20, 31:14, 31:16, 38:24, 41:4, 104:11, 155:19, 166:18</p> <p>answering [1] - 13:21</p> <p>ANTHONY [1] - 3:6</p> <p>anticipate [2] - 68:28, 69:8</p> <p>anxiety [2] - 21:13, 22:13</p> <p>anxious [5] - 66:7, 103:26, 124:26, 161:2, 161:6</p> <p>apart [1] - 160:2</p> <p>apologise [1] - 15:19</p> <p>Appeal [3] - 31:24, 31:26, 33:4</p> <p>APPEAL [2] - 1:13, 2:3</p>	<p>appeal [5] - 33:8, 153:1, 153:29, 154:21</p> <p>appealing [1] - 153:6</p> <p>appeals [1] - 113:16</p> <p>appear [7] - 81:10, 125:7, 145:2, 147:3, 148:10, 153:26, 167:12</p> <p>APPEARANCES [1] - 2:1</p> <p>appeared [1] - 67:24</p> <p>appendices [2] - 55:28, 123:15</p> <p>appendix [1] - 147:10</p> <p>applicable [2] - 79:10, 80:2</p> <p>application [4] - 30:16, 33:5, 152:19, 153:1</p> <p>applied [3] - 7:12, 29:23, 30:13</p> <p>applies [1] - 27:11</p> <p>apply [2] - 30:12, 155:12</p> <p>applying [4] - 12:29, 34:11, 104:15, 155:10</p> <p>appoint [2] - 124:7, 134:6</p> <p>appointed [13] - 7:2, 10:16, 13:3, 39:15, 62:7, 62:10, 62:27, 63:15, 63:26, 135:12, 157:8, 157:13, 161:27</p> <p>appointing [10] - 9:14, 9:29, 17:14, 18:16, 30:24, 32:27, 49:4, 152:6, 152:9, 152:11</p> <p>appointment [6] - 10:2, 44:4, 70:6, 148:27, 163:28, 164:1</p> <p>appointment.. [1] - 122:3</p> <p>appreciate [1] - 53:20</p> <p>approach [1] - 95:16</p> <p>appropriate [8] - 12:18, 66:10, 69:8, 74:13, 96:9, 113:8, 130:24, 139:21</p> <p>April [16] - 67:15, 67:17, 72:2, 82:15, 82:21, 82:27, 83:7, 84:25, 85:28, 85:29, 88:22, 101:5, 102:18, 104:20, 106:3</p> <p>area [3] - 56:16, 58:27, 111:19</p> <p>arise [2] - 104:10,</p>	<p>167:12</p> <p>arisen [4] - 36:28, 45:23, 92:28, 135:18</p> <p>arising [11] - 22:25, 40:27, 44:11, 55:2, 55:9, 70:1, 97:4, 121:25, 137:7, 141:25, 155:16</p> <p>arose [4] - 23:17, 36:2, 67:23, 114:18</p> <p>ARRAN [2] - 2:24, 4:12</p> <p>arrange [2] - 87:11, 105:27</p> <p>arranged [2] - 70:6, 132:8</p> <p>arrangement [1] - 67:28</p> <p>arrangements [4] - 61:28, 62:9, 62:14, 140:11</p> <p>arrival [1] - 167:11</p> <p>arrived [4] - 66:14, 66:16, 96:24, 100:17</p> <p>arriving [1] - 76:23</p> <p>AS [7] - 1:9, 6:1, 6:9, 41:11, 47:5, 55:20, 109:2</p> <p>ascertaining [1] - 97:20</p> <p>aside [1] - 115:17</p> <p>asleep [1] - 21:21</p> <p>aspect [3] - 45:16, 65:1, 98:3</p> <p>assert [1] - 77:11</p> <p>assessment [5] - 81:21, 106:16, 115:24, 118:25, 132:11</p> <p>assigned [9] - 56:14, 56:16, 57:9, 57:13, 58:2, 58:12, 58:19, 59:12, 100:28</p> <p>assist [3] - 6:22, 19:10, 70:9</p> <p>assistance [5] - 11:15, 11:19, 79:26, 133:22, 140:27</p> <p>ASSISTANT [6] - 2:20, 3:5, 3:6, 3:8, 3:18, 3:20</p> <p>Assistant [26] - 63:14, 63:25, 72:1, 96:21, 110:12, 126:19, 126:24, 139:26, 143:28, 144:17, 144:28, 155:21, 156:15, 156:22, 157:3,</p>	<p>157:11, 157:14, 158:4, 158:16, 158:18, 159:20, 160:11, 160:12, 160:25, 169:9</p> <p>assistant [10] - 56:18, 75:26, 76:21, 79:24, 85:8, 142:9, 142:18, 143:9, 143:16, 145:17</p> <p>assisting [1] - 36:4</p> <p>assume [2] - 52:24, 111:25</p> <p>assumption [2] - 40:6, 169:25</p> <p>assure [1] - 170:15</p> <p>astounded [1] - 155:26</p> <p>astounds [1] - 72:23</p> <p>AT [1] - 170:25</p> <p>Athlone [22] - 19:24, 24:29, 37:26, 54:3, 59:5, 59:9, 63:18, 65:26, 67:28, 68:5, 90:20, 96:5, 101:6, 125:3, 133:11, 133:20, 135:9, 142:28, 144:15, 144:19, 166:25</p> <p>ATHLONE [1] - 4:3</p> <p>attach [4] - 84:24, 85:26, 101:2, 147:10</p> <p>attached [9] - 6:18, 14:6, 15:20, 19:25, 33:21, 34:20, 48:14, 49:18, 152:15</p> <p>attached.. [1] - 49:11</p> <p>attaching [1] - 28:10</p> <p>attacked [1] - 111:27</p> <p>attend [2] - 68:5, 124:24</p> <p>attended [5] - 22:10, 22:13, 51:23, 70:10, 124:19</p> <p>attending [1] - 122:2</p> <p>attention [14] - 65:20, 69:29, 79:25, 94:14, 95:4, 96:16, 96:23, 102:3, 135:17, 144:21, 144:24, 144:25, 161:15, 167:27</p> <p>attestation [1] - 56:9</p> <p>attributable [1] - 121:24</p> <p>attributed [2] - 98:20, 122:11</p> <p>audited [2] - 73:29, 74:10</p> <p>August [17] - 7:4,</p>	<p>10:12, 13:4, 14:5, 16:13, 19:21, 19:27, 36:6, 36:12, 58:17, 141:9, 141:11, 141:15, 141:18, 142:8, 145:12, 148:26</p> <p>auld [1] - 103:11</p> <p>Authority [1] - 169:6</p> <p>authority [4] - 80:9, 108:26, 128:5, 160:7</p> <p>automatic [2] - 82:1, 119:29</p> <p>automatically [1] - 150:7</p> <p>avail [2] - 90:26, 140:28</p> <p>available [8] - 11:27, 13:13, 60:14, 76:7, 106:5, 139:18, 140:27, 144:20</p> <p>availed [1] - 70:17</p> <p>availing [1] - 133:22</p> <p>avoid [1] - 134:1</p> <p>aware [47] - 6:21, 6:25, 6:26, 17:20, 18:7, 18:15, 20:15, 24:11, 30:14, 30:15, 36:3, 36:5, 36:19, 36:24, 36:26, 40:25, 47:8, 49:26, 50:3, 52:8, 52:20, 62:3, 63:13, 63:17, 63:29, 72:4, 72:19, 77:17, 85:17, 89:17, 93:2, 93:7, 96:26, 101:17, 107:2, 120:6, 127:2, 133:21, 136:26, 146:13, 150:2, 155:11, 158:6, 164:13</p> <p>awareness [2] - 63:22, 150:4</p> <p>AWOL [2] - 24:9, 167:29</p>
B				
<p>baby [1] - 47:28</p> <p>background [7] - 19:12, 38:29, 40:26, 62:26, 77:12, 120:28, 140:6</p> <p>backtrack [1] - 72:12</p> <p>bad [2] - 22:16, 163:22</p> <p>badly [1] - 24:29</p> <p>balanced [1] - 71:26</p> <p>BAR [1] - 2:31</p> <p>Barrett [4] - 111:9, 111:10, 112:26,</p>				

<p>139:13 barrier [1] - 140:4 Bartlett [4] - 22:13, 22:15, 29:14, 50:23 base [1] - 123:2 based [6] - 58:22, 78:21, 97:18, 114:1, 114:3, 139:17 basis [6] - 40:8, 45:6, 118:24, 139:23, 156:7, 158:22 BASTION [1] - 4:2 became [3] - 77:17, 93:7, 120:6 become [1] - 140:3 bed [1] - 54:8 BEEN [2] - 6:8, 55:19 beg [1] - 93:26 beginning [1] - 49:9 begins [2] - 50:9, 51:13 behalf [2] - 95:12, 140:20 behaviour [3] - 18:2, 155:17, 166:8 behaviours [5] - 72:18, 99:29, 162:13, 166:3, 166:7 bell [1] - 31:20 below [2] - 8:18, 11:23 beneficial [2] - 96:7, 119:10 benefit [2] - 70:22, 85:24 best [3] - 37:27, 162:12, 170:9 better [5] - 24:24, 24:25, 110:29, 134:25, 135:13 between [9] - 13:19, 58:17, 67:1, 92:29, 96:12, 96:17, 112:7, 127:14, 131:10 beyond [3] - 87:16, 98:2, 99:15 big [5] - 45:5, 73:21, 74:7, 103:19, 163:8 bit [7] - 62:25, 106:7, 108:10, 110:29, 128:20, 150:11, 165:19 BL [13] - 2:7, 2:10, 2:11, 2:16, 2:21, 2:28, 2:29, 3:24, 3:25, 3:25, 4:1, 4:7, 4:10 blah [3] - 112:1 blame [1] - 92:5 blank [1] - 18:5 blatant [1] - 17:3</p>	<p>blind [1] - 168:5 blow [1] - 37:22 board [2] - 169:1, 169:4 bob [1] - 103:6 body [2] - 21:8, 50:8 book [2] - 10:22, 49:8 books [1] - 6:17 bother [2] - 168:9, 168:10 bottom [4] - 49:8, 71:14, 75:29, 130:9 bottomed [2] - 129:19, 146:28 box [1] - 48:9 branch [3] - 56:25, 83:22, 84:13 breach [25] - 11:8, 16:25, 20:18, 20:21, 21:4, 21:6, 22:7, 23:13, 29:14, 30:4, 34:12, 35:1, 39:3, 50:22, 51:21, 71:21, 71:22, 143:13, 144:6, 145:4, 146:2, 146:8, 152:2, 152:3 breaches [10] - 7:11, 20:12, 28:14, 34:29, 43:29, 44:11, 144:1, 149:6, 149:14, 158:29 break [1] - 149:12 BRIAN [2] - 3:15, 3:16 brief [3] - 13:16, 138:11, 148:29 briefed [2] - 8:3, 61:26 briefing [1] - 59:26 briefly [2] - 53:10, 139:12 bring [18] - 7:7, 75:19, 81:3, 81:9, 82:11, 86:28, 87:5, 89:8, 94:13, 127:25, 129:9, 129:10, 132:12, 136:7, 161:14, 162:1, 165:22, 166:24 brought [15] - 65:19, 81:3, 95:3, 96:16, 96:23, 99:5, 101:15, 102:3, 103:13, 103:20, 131:17, 134:11, 144:23, 166:24, 167:26 bubble [1] - 75:5 bubbling [1] - 38:28 Buckley [2] - 21:9, 51:16</p>	<p>budgets [1] - 25:4 bullying [5] - 101:28, 133:17, 155:15, 155:22, 156:27 BURKE [1] - 4:11 business [5] - 47:11, 161:24, 162:28, 165:12, 166:27 busy [2] - 78:16, 164:8 but.. [1] - 141:9 BY [19] - 1:4, 1:7, 2:11, 2:17, 2:22, 2:29, 3:26, 4:1, 4:8, 4:10, 5:5, 5:6, 5:7, 5:11, 6:9, 41:10, 47:4, 55:20</p>	<p>81:11, 90:20, 91:2, 91:12, 92:14, 95:5, 105:27, 115:26, 117:2, 117:21, 119:15, 132:6, 132:13, 139:14, 139:24, 140:6, 145:24, 149:27, 165:18 cases [3] - 98:10, 116:1, 116:5 casting [3] - 83:26, 84:2, 92:5 CASTLE [1] - 1:17 categorisation [2] - 81:19, 121:6 category [3] - 113:11, 150:17, 151:9 causal [1] - 127:14 caused [4] - 98:15, 111:20, 118:12 causes [7] - 38:3, 54:11, 54:12, 80:20, 81:13, 115:22, 127:24 causing [5] - 74:27, 79:28, 128:27, 133:12, 136:20 caution [1] - 7:22 cc'd [1] - 145:10 celebrate [1] - 39:7 central [5] - 40:12, 52:29, 58:22, 58:27, 59:2 cert [8] - 15:19, 15:28, 22:12, 22:17, 93:15, 93:17, 129:14, 150:12 CERTAIN [1] - 1:3 certain [6] - 60:18, 63:27, 63:28, 85:6, 108:21, 162:29 certainly [29] - 24:13, 33:15, 43:3, 63:29, 65:11, 65:29, 66:19, 66:21, 67:4, 69:7, 72:22, 93:3, 95:20, 98:21, 109:12, 125:29, 130:28, 131:13, 137:15, 148:11, 150:18, 153:20, 154:7, 155:11, 156:14, 158:10, 168:29, 169:2 certificate [9] - 16:27, 27:28, 28:7, 28:9, 28:22, 29:17, 50:25, 109:24, 114:24 certificates [9] - 77:17, 77:18, 83:10, 83:23, 85:4, 85:29,</p>	<p>93:4, 113:2, 141:6 certification [1] - 97:19 certified [9] - 77:7, 93:29, 99:13, 103:27, 109:19, 112:2, 113:2, 120:3, 134:16 certifies [1] - 115:8 certify [1] - 1:24 certifying [2] - 73:27, 116:13 certs [2] - 93:9, 99:13 CHAIRMAN [139] - 1:12, 6:6, 6:12, 11:1, 11:3, 14:9, 26:23, 26:26, 26:28, 27:2, 27:4, 28:15, 28:18, 28:21, 28:26, 30:6, 32:1, 32:3, 32:8, 33:22, 33:25, 33:28, 34:2, 34:4, 35:16, 35:22, 39:19, 39:21, 39:23, 39:29, 40:6, 40:10, 41:8, 42:17, 42:22, 42:25, 44:18, 44:22, 44:24, 44:27, 44:29, 45:2, 45:29, 46:2, 46:6, 46:8, 46:10, 46:15, 46:17, 46:23, 46:27, 47:2, 53:17, 53:23, 54:2, 54:5, 54:10, 54:17, 54:19, 54:22, 54:25, 54:28, 55:1, 55:6, 55:8, 55:10, 55:17, 55:24, 56:3, 68:25, 68:28, 69:2, 69:5, 69:11, 69:18, 93:22, 93:25, 93:27, 105:13, 105:15, 108:28, 110:19, 110:29, 111:4, 111:8, 111:10, 111:17, 111:25, 111:27, 111:29, 112:6, 112:10, 112:14, 112:18, 112:21, 112:23, 112:25, 115:15, 115:17, 116:8, 116:10, 116:12, 116:22, 116:25, 116:28, 117:4, 117:8, 117:12, 117:14, 117:18, 117:20, 117:23, 117:25, 117:27, 118:3, 118:8, 118:11, 118:15, 118:17, 118:21, 118:22, 157:28,</p>
C				
<p>CAGNEY [1] - 3:17 campaign [1] - 163:11 cannot [6] - 7:27, 20:4, 85:16, 111:14, 111:15, 156:5 capable [1] - 167:3 capacity [1] - 166:23 capture [1] - 74:9 captured [1] - 73:18 captures [1] - 73:22 car [5] - 39:12, 71:2, 106:9, 167:13, 167:21 care [3] - 82:12, 102:18, 139:21 CARR [1] - 3:15 Carr [9] - 38:13, 38:24, 40:1, 92:26, 126:27, 127:16, 140:19, 141:11, 151:13 CARRICK [1] - 2:13 CARRICK-ON-SHANNON [1] - 2:13 carried [8] - 9:14, 79:23, 83:20, 85:18, 126:16, 128:27, 163:10, 163:12 CARROLL [1] - 2:16 carry [2] - 7:17, 17:16 carrying [2] - 12:29, 101:6 CARTHAGE [1] - 2:17 case [30] - 9:15, 17:16, 19:8, 38:10, 39:16, 40:26, 46:3, 47:29, 53:4, 80:10,</p>				

<p>158:2, 159:10, 159:14, 164:12, 164:17, 164:19, 164:21, 164:23, 164:26, 166:12, 169:18, 169:21, 169:24, 170:9, 170:11, 170:15, 170:20</p> <p>Chairman [48] - 6:4, 6:16, 6:20, 6:26, 7:1, 7:13, 8:7, 9:17, 13:2, 13:8, 14:7, 15:14, 16:29, 17:10, 18:9, 19:14, 19:18, 20:15, 22:21, 23:15, 25:2, 27:21, 29:21, 30:9, 30:10, 32:7, 35:10, 36:4, 38:1, 38:27, 39:2, 40:21, 44:3, 46:22, 46:29, 47:13, 51:5, 51:12, 51:28, 51:29, 53:20, 54:18, 55:15, 55:26, 69:7, 69:16, 69:17, 169:13</p> <p>challenging [1] - 99:19</p> <p>change [6] - 62:1, 107:27, 119:11, 119:12, 127:16, 166:25</p> <p>changed [4] - 119:9, 120:18, 120:20, 126:1</p> <p>changes [2] - 61:2, 62:3</p> <p>chaos [1] - 138:23</p> <p>charge [9] - 28:21, 38:3, 41:17, 41:19, 47:23, 47:26, 58:21, 64:8, 149:1</p> <p>charges [3] - 28:18, 47:19, 47:21</p> <p>CHARLTON [1] - 4:8</p> <p>chase [1] - 161:21</p> <p>chat [1] - 102:21</p> <p>CHEALLACHÁIN [1] - 2:30</p> <p>check [3] - 102:20, 107:15, 108:17</p> <p>checked [4] - 108:19, 125:20, 125:21, 125:22</p> <p>chief [60] - 9:2, 9:4, 9:6, 9:7, 9:25, 10:3, 10:10, 11:5, 13:5, 14:1, 17:19, 19:9, 24:2, 26:4, 26:11, 26:16, 26:23, 26:26, 27:3, 27:9, 27:13, 32:26, 33:5, 33:28,</p>	<p>33:29, 36:5, 37:21, 41:13, 48:19, 48:21, 48:25, 49:17, 49:29, 50:5, 52:19, 52:20, 52:23, 53:28, 54:23, 54:25, 60:28, 78:12, 109:5, 111:5, 111:18, 111:21, 112:2, 115:15, 127:12, 127:22, 135:26, 142:27, 151:23, 161:27, 164:6, 166:2, 166:15, 167:23, 168:25, 170:16</p> <p>Chief [49] - 7:3, 9:15, 10:11, 42:8, 43:11, 43:19, 49:1, 49:20, 49:24, 55:23, 55:24, 55:26, 56:4, 59:23, 61:20, 62:17, 62:18, 62:20, 63:13, 64:12, 65:2, 68:29, 69:9, 69:19, 70:6, 76:1, 100:17, 107:3, 107:21, 108:5, 108:9, 108:23, 108:25, 113:10, 124:22, 124:23, 126:8, 126:11, 126:26, 128:7, 128:10, 129:25, 131:24, 131:27, 131:29, 132:5, 133:7, 134:19, 139:5</p> <p>CHIEF [17] - 3:3, 3:3, 3:4, 3:6, 3:8, 3:11, 3:13, 3:14, 3:14, 3:17, 3:19, 3:19, 3:21, 3:27, 5:9, 55:15, 55:19</p> <p>chief's [4] - 26:22, 27:17, 33:27, 164:11</p> <p>chiefs [1] - 59:17</p> <p>choice [1] - 158:21</p> <p>choose [1] - 7:26</p> <p>chose [2] - 24:22, 132:16</p> <p>Christmas [1] - 92:22</p> <p>chronology [1] - 87:9</p> <p>circumstances [16] - 9:19, 9:24, 11:7, 12:13, 43:29, 44:12, 77:9, 85:16, 96:12, 97:24, 97:28, 98:2, 98:8, 111:17, 112:21, 149:8</p> <p>city [2] - 58:27, 59:2</p> <p>civil [1] - 144:6</p> <p>claim [1] - 133:29</p>	<p>claims [5] - 72:26, 73:2, 73:26, 74:3, 85:19</p> <p>Clare [1] - 120:18</p> <p>clarification [7] - 80:11, 112:12, 112:14, 112:15, 119:11, 142:19, 144:25</p> <p>clarifies [2] - 111:13, 111:14</p> <p>clarify [1] - 105:27</p> <p>clarifying [1] - 118:22</p> <p>classification [23] - 76:27, 78:4, 81:14, 81:19, 97:12, 97:16, 97:29, 98:18, 105:21, 107:27, 108:15, 109:28, 109:29, 118:27, 119:8, 120:26, 120:27, 121:7, 125:8, 126:2, 126:5, 159:27, 167:15</p> <p>classification" [1] - 76:16</p> <p>classified [1] - 109:18</p> <p>claw [1] - 151:7</p> <p>clean [1] - 59:14</p> <p>clear [31] - 35:16, 35:18, 80:22, 80:27, 81:7, 81:10, 81:17, 84:6, 86:5, 86:6, 86:19, 87:15, 88:3, 109:7, 110:17, 112:28, 121:5, 127:12, 130:2, 133:29, 136:2, 136:13, 137:18, 138:15, 142:20, 148:20, 161:18, 162:10, 166:6</p> <p>clearly [21] - 70:1, 75:12, 78:22, 87:23, 98:7, 99:19, 104:7, 105:3, 106:3, 106:16, 112:3, 119:23, 121:12, 130:25, 132:11, 132:27, 146:2, 147:15, 155:29, 164:28</p> <p>clerk [7] - 56:18, 56:23, 60:5, 60:20, 101:9, 107:25, 124:2</p> <p>clinical [11] - 75:22, 98:6, 98:12, 99:25, 113:8, 115:24, 116:18, 139:17, 139:22, 139:23,</p>	<p>140:10</p> <p>clinically [3] - 98:3, 98:19, 131:14</p> <p>CMO [67] - 70:10, 75:21, 76:4, 76:6, 76:7, 76:22, 77:13, 78:8, 79:25, 80:15, 81:21, 81:22, 82:23, 85:28, 89:14, 90:2, 90:6, 90:8, 91:17, 92:20, 94:9, 94:10, 94:16, 94:21, 95:2, 97:2, 98:11, 98:27, 99:6, 99:11, 99:26, 100:4, 100:27, 103:24, 103:28, 109:27, 109:29, 113:7, 114:16, 115:3, 115:5, 115:7, 115:27, 116:1, 116:18, 116:25, 116:27, 117:1, 117:12, 117:16, 117:20, 118:25, 121:12, 121:13, 126:20, 126:24, 128:11, 128:16, 131:10, 131:12, 132:22, 132:27, 136:9, 140:17, 167:15</p> <p>CMO's [2] - 78:5, 89:18</p> <p>CO [2] - 2:13, 4:4</p> <p>code [1] - 141:1</p> <p>Code [3] - 68:24, 83:23, 109:22</p> <p>coffee [1] - 23:29</p> <p>coincided [1] - 103:3</p> <p>collation [1] - 141:5</p> <p>comfortable [2] - 114:3, 170:5</p> <p>coming [7] - 15:14, 54:15, 87:27, 90:7, 98:17, 151:20, 165:7</p> <p>commence [2] - 104:6, 120:13</p> <p>commenced [3] - 136:23, 139:20, 147:19</p> <p>commences [1] - 84:17</p> <p>commencing [1] - 124:10</p> <p>comment [8] - 30:23, 30:27, 94:4, 126:22, 148:3, 159:8, 159:19, 160:24</p> <p>commented [1] - 126:24</p> <p>comments [4] -</p>	<p>105:25, 124:13, 132:25, 168:17</p> <p>commission [1] - 113:12</p> <p>COMMISSIONER [9] - 2:20, 3:2, 3:5, 3:6, 3:7, 3:7, 3:8, 3:18, 3:20</p> <p>Commissioner [40] - 61:10, 61:15, 61:17, 62:6, 63:3, 63:14, 63:25, 66:6, 72:1, 75:27, 76:4, 96:21, 110:12, 111:1, 122:22, 123:2, 124:14, 126:19, 126:24, 135:16, 142:11, 143:28, 144:18, 144:28, 147:9, 155:21, 156:15, 156:22, 157:3, 157:11, 157:14, 158:4, 158:16, 158:18, 159:20, 160:11, 160:12, 160:25, 160:26, 169:10</p> <p>commissioner [11] - 56:18, 57:5, 75:26, 76:21, 79:24, 85:8, 142:9, 142:18, 143:9, 143:16, 145:17</p> <p>Commissioner's [1] - 122:19</p> <p>committed [1] - 167:1</p> <p>common [2] - 31:15, 164:5</p> <p>communicate [1] - 155:8</p> <p>communicated [4] - 37:28, 93:16, 93:17, 140:11</p> <p>communication [1] - 125:2</p> <p>communications [1] - 140:15</p> <p>community [3] - 54:12, 56:14, 166:28</p> <p>COMPANY [1] - 2:22</p> <p>compelled [2] - 116:27, 116:28</p> <p>competence [1] - 169:3</p> <p>competent [1] - 167:2</p> <p>complainant [1] - 144:10</p> <p>complaint [13] - 47:11, 75:18, 101:27,</p>
---	---	---	--	--

<p>102:3, 131:1, 136:19, 143:5, 144:16, 144:21, 145:3, 145:14, 146:9, 155:14</p> <p>complaints [2] - 123:5, 135:3</p> <p>complete [2] - 26:13, 160:18</p> <p>completed [2] - 57:15, 124:5</p> <p>completed.....the [1] - 113:17</p> <p>completely [1] - 75:4</p> <p>completeness [3] - 8:7, 10:7, 47:14</p> <p>complex [6] - 114:7, 114:13, 114:20, 119:17, 165:9, 166:23</p> <p>complexities [2] - 113:27, 134:22</p> <p>complexity [1] - 146:11</p> <p>compliance [1] - 74:17</p> <p>complication [1] - 112:8</p> <p>compulsion [1] - 31:13</p> <p>computer [2] - 56:20, 57:16</p> <p>conceive [1] - 80:18</p> <p>concentrating [2] - 12:2, 12:6</p> <p>concern [2] - 18:4, 106:10</p> <p>concerned [11] - 9:7, 12:13, 12:15, 25:26, 26:6, 27:8, 42:29, 50:4, 58:13, 79:25, 88:26</p> <p>concerning [2] - 65:20, 160:21</p> <p>concerns [9] - 65:19, 95:19, 95:25, 96:16, 96:26, 101:8, 106:15, 133:8, 137:26</p> <p>concerted [1] - 96:1</p> <p>conclude [1] - 163:18</p> <p>concluded [5] - 121:28, 124:18, 124:28, 143:12, 151:24</p> <p>concludes [3] - 143:28, 147:27, 169:13</p> <p>concluding [1] - 160:20</p> <p>conclusion [2] - 52:25, 166:24</p>	<p>condition [4] - 111:20, 121:29, 122:15, 139:22</p> <p>conduct [7] - 12:12, 20:14, 68:10, 113:4, 133:25, 134:7</p> <p>conducted [3] - 45:11, 47:10, 122:9</p> <p>conducting [2] - 11:19, 96:22</p> <p>conference [15] - 19:8, 90:10, 90:21, 91:2, 91:12, 92:14, 105:27, 106:19, 127:8, 127:9, 132:6, 132:26, 136:27, 139:14, 139:24</p> <p>conferences [1] - 40:26</p> <p>confidence [1] - 155:26</p> <p>confidential [7] - 85:6, 85:10, 85:13, 124:27, 130:15, 140:26, 162:26</p> <p>confidentially [1] - 139:25</p> <p>confined [1] - 135:21</p> <p>confining [2] - 153:12, 167:18</p> <p>confirm [1] - 88:17</p> <p>conflict [1] - 92:29</p> <p>conflicts [1] - 8:14</p> <p>conjunction [2] - 113:18, 124:1</p> <p>CONLON [1] - 2:17</p> <p>CONNAUGHT [1] - 4:3</p> <p>connected [9] - 74:11, 81:4, 84:7, 88:5, 89:3, 120:11, 135:9, 136:11, 147:16</p> <p>connection [4] - 63:18, 63:24, 66:29, 106:17</p> <p>CONNELLAN [2] - 4:1, 4:1</p> <p>connotation [1] - 28:12</p> <p>CONOR [1] - 3:24</p> <p>conscious [4] - 33:15, 102:13, 137:28, 153:24</p> <p>consent [1] - 25:7</p> <p>consequences [3] - 81:14, 109:8, 109:29</p> <p>consider [4] - 8:10, 33:8, 76:13, 113:14</p> <p>consideration [6] - 38:18, 94:14, 113:8,</p>	<p>145:4, 160:11, 167:28</p> <p>considered [4] - 76:14, 96:7, 154:5, 167:19</p> <p>considering [1] - 128:24</p> <p>consign [1] - 78:7</p> <p>consistency [1] - 73:22</p> <p>consistent [1] - 73:6</p> <p>construct [1] - 42:1</p> <p>constructive [1] - 166:27</p> <p>consultant [1] - 116:3</p> <p>consultations [1] - 115:4</p> <p>consulted [3] - 74:19, 74:21, 126:8</p> <p>contact [2] - 68:3, 108:9</p> <p>contacted [6] - 29:10, 50:18, 88:17, 107:24, 131:27, 163:25</p> <p>contacts [3] - 101:2, 108:6, 123:4</p> <p>contained [1] - 93:17</p> <p>containing [1] - 43:7</p> <p>contents [1] - 144:23</p> <p>context [24] - 47:8, 59:20, 62:24, 62:25, 62:27, 64:15, 72:15, 74:23, 75:20, 81:9, 86:12, 86:21, 87:2, 94:3, 96:15, 99:2, 99:5, 99:17, 102:11, 129:10, 135:15, 137:2, 141:24, 150:6</p> <p>continue [1] - 139:25</p> <p>continues [1] - 50:16</p> <p>continuing [1] - 138:12</p> <p>continuously [3] - 24:28, 25:6, 130:14</p> <p>control [1] - 163:7</p> <p>convenient [1] - 75:24</p> <p>conversation [31] - 17:26, 18:17, 23:27, 24:19, 25:8, 25:11, 59:28, 61:2, 62:4, 64:29, 71:29, 77:13, 77:19, 82:6, 100:19, 101:5, 101:12, 103:19, 106:25, 108:12, 108:17, 108:19, 108:24, 116:6, 119:24, 127:4, 127:26, 127:28,</p>	<p>131:10, 137:16, 138:11</p> <p>conversations [3] - 95:21, 114:16, 138:10</p> <p>conveyed [1] - 155:3</p> <p>conveying [1] - 152:2</p> <p>conveys [1] - 160:15</p> <p>COPPINGER [1] - 3:4</p> <p>copy [12] - 22:26, 23:3, 23:4, 23:8, 32:20, 33:9, 34:20, 84:24, 152:22, 153:3, 154:1, 158:8</p> <p>Cormac [1] - 21:19</p> <p>correct [101] - 6:20, 7:1, 7:4, 7:5, 7:13, 8:3, 8:5, 8:11, 8:16, 9:13, 9:17, 11:25, 13:14, 13:27, 14:14, 14:20, 14:27, 15:10, 15:24, 15:29, 16:4, 17:10, 19:18, 19:20, 20:20, 20:23, 20:26, 22:21, 22:23, 23:15, 23:22, 23:24, 27:21, 28:20, 29:21, 30:3, 30:9, 32:28, 41:25, 41:29, 42:5, 43:10, 43:11, 43:21, 43:23, 44:3, 46:22, 47:21, 47:27, 49:16, 49:21, 49:25, 51:28, 52:1, 52:17, 53:2, 56:6, 56:29, 57:1, 58:3, 58:4, 58:7, 58:10, 58:11, 58:14, 58:18, 59:7, 59:12, 59:13, 66:8, 71:9, 71:10, 79:3, 79:6, 82:19, 82:25, 82:28, 83:13, 84:18, 84:27, 92:14, 92:15, 92:26, 97:8, 102:9, 104:23, 109:26, 111:22, 118:5, 127:8, 140:19, 142:3, 142:6, 142:11, 148:9, 152:20, 154:18, 154:23, 163:23, 167:8, 168:21</p> <p>corrected [2] - 73:2, 125:13</p> <p>correction [1] - 160:2</p> <p>correctly [1] - 43:9</p> <p>correlated [1] - 130:14</p> <p>correspondence [12] - 17:8, 34:17, 43:16,</p>	<p>84:3, 84:21, 84:24, 85:27, 88:22, 129:28, 143:12, 145:16, 160:15</p> <p>corruption [1] - 85:19</p> <p>COSTELLO [1] - 2:22</p> <p>costs [1] - 140:2</p> <p>counsel [1] - 170:3</p> <p>counted [1] - 162:8</p> <p>country [7] - 59:18, 60:24, 60:28, 63:28, 64:4, 161:28, 164:7</p> <p>couple [16] - 19:26, 57:26, 60:28, 60:29, 61:2, 65:28, 78:17, 78:18, 107:12, 108:4, 123:16, 124:8, 129:24, 150:12, 163:18, 165:4</p> <p>course [15] - 23:4, 23:17, 28:15, 46:15, 54:25, 59:4, 67:8, 67:14, 68:27, 69:26, 72:15, 77:24, 112:18, 118:8, 170:14</p> <p>Court [1] - 149:27</p> <p>COURT [3] - 1:13, 2:3, 4:2</p> <p>courts [1] - 163:15</p> <p>cover [3] - 28:8, 47:1, 123:3</p> <p>covering [4] - 26:13, 48:20, 48:23, 52:18</p> <p>covert [1] - 165:14</p> <p>create [1] - 16:25</p> <p>created [4] - 142:3, 142:28, 143:24, 145:1</p> <p>creation [4] - 145:5, 146:3, 147:7, 147:15</p> <p>credible [1] - 144:4</p> <p>credit [6] - 18:13, 21:22, 21:25, 22:1, 22:4, 162:5</p> <p>crime [3] - 56:22, 56:25, 167:17</p> <p>Crime [2] - 142:18, 143:16</p> <p>criminal [2] - 143:17, 144:6</p> <p>critical [4] - 54:5, 121:11, 121:14, 121:15</p> <p>criticising [2] - 42:10, 87:25</p> <p>CROSS [2] - 5:6, 41:10</p> <p>cross [7] - 31:18, 135:23, 135:29,</p>
--	--	--	---	--

<p>169:26, 169:29, 170:4 cross-examine [2] - 169:29, 170:4 CROSS-EXAMINED [2] - 5:6, 41:10 cross-examining [1] - 169:26 crucial [1] - 42:21 crutches [1] - 112:1 crystal [2] - 80:22, 80:26 CUALÁIN [1] - 3:7 Cualáin [11] - 63:14, 63:25, 72:1, 96:15, 96:22, 128:28, 129:2, 143:28, 144:18, 163:19, 163:25 Cualáin's [1] - 144:28 CULLEN [1] - 2:11 cup [3] - 23:28, 101:11, 119:27 CURLEY [1] - 3:10 CURRAN [1] - 3:3 Curran [6] - 59:23, 59:27, 61:21, 63:14, 64:12, 65:3 current [7] - 121:24, 122:23, 123:1, 123:4, 139:23, 143:19, 145:1 cut [1] - 35:24 cutbacks [1] - 25:3</p>	<p>DAY [1] - 1:18 days [20] - 9:5, 15:19, 19:27, 22:11, 34:28, 35:13, 37:5, 37:26, 39:25, 46:5, 53:4, 54:20, 65:28, 70:14, 70:17, 108:4, 124:8, 129:24, 150:9, 150:23 DC [2] - 122:26, 128:27 deal [25] - 32:27, 52:11, 52:13, 52:14, 66:26, 71:6, 72:17, 74:13, 74:29, 82:13, 115:5, 115:7, 137:20, 142:20, 155:10, 158:19, 161:20, 161:24, 162:12, 162:29, 166:2, 166:6, 166:23, 168:11 dealing [16] - 37:25, 40:28, 44:1, 64:26, 65:1, 69:9, 73:14, 75:2, 80:24, 88:4, 106:21, 118:28, 129:24, 133:16, 166:4, 167:24 dealings [2] - 141:24, 169:5 deals [2] - 7:10, 147:10 dealt [10] - 11:28, 17:6, 33:1, 38:19, 39:3, 71:21, 72:7, 73:16, 163:15, 167:12 debt [1] - 24:26 December [7] - 75:26, 91:13, 94:10, 95:7, 97:1, 100:27, 106:2 DECEMBER [1] - 1:9 decency [1] - 31:15 decent [3] - 52:11, 52:13, 52:14 decide [3] - 95:29, 132:16, 149:6 decided [4] - 39:8, 39:11, 70:2, 101:10 decides [1] - 109:27 deciding [15] - 7:2, 10:16, 11:4, 11:7, 11:18, 34:28, 39:15, 46:14, 46:20, 47:20, 47:26, 53:11, 149:6, 149:23, 152:12 decision [23] - 8:28, 9:11, 9:19, 9:24, 25:19, 30:13, 30:19, 48:12, 78:4, 78:7,</p>	<p>89:12, 98:22, 99:3, 110:1, 118:27, 124:6, 146:18, 149:12, 151:29, 154:24, 154:27, 155:3, 155:17 decision-making [2] - 151:29, 155:17 decisions [2] - 161:21, 162:22 DECLAN [1] - 3:5 deduce [1] - 166:11 deduced [1] - 164:4 deducted [3] - 8:1, 44:13, 45:5 deem [1] - 17:17 deemed [9] - 79:27, 90:9, 92:9, 92:24, 94:12, 99:27, 100:26, 106:2, 132:2 deems [2] - 113:13, 132:22 defence [2] - 16:25, 31:7 defines [1] - 149:7 definitely [3] - 23:9, 47:18, 52:4 definition [1] - 73:11 degree [4] - 56:19, 57:15, 77:14, 99:24 delay [1] - 156:29 deliberately [1] - 21:20 delve [1] - 84:1 denying [2] - 22:8, 51:21 Department [1] - 36:11 dependency [1] - 51:7 dependent [1] - 146:6 Deputy [2] - 72:3, 168:16 deputy [1] - 57:5 derive [1] - 155:27 derived [1] - 156:5 describe [5] - 100:12, 102:12, 159:3, 166:16, 166:20 described [2] - 16:22, 145:11 describes [1] - 108:5 DESMOND [1] - 4:6 despite [1] - 130:12 detail [8] - 13:10, 48:6, 60:15, 80:27, 84:9, 107:13, 130:26, 142:23 detailed [1] - 25:10 details [6] - 13:16,</p>	<p>20:11, 88:13, 124:13, 148:29, 160:20 DETECTIVE [5] - 3:4, 3:5, 3:12, 3:13, 3:17 Detective [1] - 71:29 deteriorated [1] - 132:26 determination [13] - 75:22, 76:29, 98:11, 98:13, 98:28, 99:7, 100:5, 114:12, 114:17, 116:1, 116:5, 116:18, 131:12 determined [2] - 132:2, 149:25 determining [1] - 113:11 developing [1] - 56:21 DEVELOPMENT [1] - 3:16 Development [1] - 85:27 development [4] - 84:22, 132:10, 143:9, 167:4 diagnosed [1] - 98:19 diagnosis [2] - 117:23, 121:8 DIARMAID [1] - 2:6 diary [4] - 17:20, 17:21, 24:2, 105:11 differences [1] - 8:14 different [15] - 46:19, 60:16, 62:13, 65:8, 90:17, 94:26, 97:4, 110:20, 121:8, 121:15, 141:29, 146:7, 148:2, 160:19, 165:5 differently [1] - 39:1 differing [2] - 147:1, 147:2 difficult [3] - 103:4, 136:16, 163:4 difficulties [2] - 90:25, 144:16 difficulty [2] - 24:22, 135:2 DIGNAM [5] - 3:24, 5:7, 46:29, 47:4, 47:7 dignam [1] - 46:28 dignity [1] - 142:29 direct [2] - 80:16, 159:28 directed [2] - 45:14, 68:9 directing [1] - 8:18 direction [5] - 27:7,</p>	<p>27:9, 27:11, 69:21, 122:27 Directive [4] - 10:8, 11:29, 40:24, 75:25 directive [4] - 10:17, 78:28, 79:5, 113:23 DIRECTLY [4] - 5:5, 5:11, 6:9, 55:20 directly [5] - 71:7, 117:15, 129:24, 133:7, 158:19 DIRECTLY-EXAMINED [4] - 5:5, 5:11, 6:9, 55:20 DIRECTOR [1] - 3:13 director [14] - 82:14, 101:24, 106:20, 110:23, 111:7, 113:6, 113:9, 113:12, 117:13, 121:17, 139:5, 140:18, 140:20, 160:16 directorate [3] - 57:14, 57:24, 57:26 DIRECTORATE [1] - 3:15 directors [1] - 81:25 disadvantage [2] - 153:17, 160:5 disagree [1] - 37:1 disappointed [2] - 156:13, 156:17 disappointing [1] - 155:29 disbelieve [1] - 162:15 disciplinary [16] - 6:23, 7:6, 7:16, 10:25, 31:17, 34:29, 46:11, 54:26, 122:27, 135:17, 147:19, 147:23, 155:5, 160:22, 167:16, 169:10 Discipline [3] - 6:28, 10:26, 38:20 discipline [32] - 7:11, 16:26, 20:12, 25:8, 34:12, 35:25, 35:26, 39:3, 40:2, 44:1, 44:11, 45:11, 45:16, 46:21, 54:24, 71:21, 71:22, 73:12, 90:16, 123:5, 144:6, 145:4, 146:3, 148:27, 149:14, 151:24, 159:1, 159:7, 166:4, 167:14, 167:24, 168:13 disciplined [2] -</p>
D				
<p>data [1] - 143:10 Data [2] - 143:13, 144:10 database [1] - 107:11 date [20] - 15:22, 19:27, 23:16, 29:17, 31:11, 50:25, 53:6, 100:20, 102:8, 110:17, 110:18, 110:26, 110:27, 112:19, 121:20, 123:3, 131:28, 136:22, 144:14, 159:11 dated [14] - 14:4, 16:12, 16:27, 27:18, 30:5, 84:22, 84:25, 85:28, 88:25, 123:11, 148:9, 152:24, 157:23 dates [2] - 36:17, 168:24 DAVID [2] - 2:28, 3:18</p>				

<p>45:21, 73:10 disciplines [1] - 166:5 disclosed [1] - 110:25 disclosing [1] - 85:10 disclosure [16] - 62:1, 63:9, 63:16, 63:18, 64:1, 64:7, 75:2, 75:14, 84:8, 99:20, 102:25, 127:27, 161:13, 161:17, 163:6, 164:3 DISCLOSURES [2] - 1:2, 1:3 disclosures [3] - 62:7, 81:1, 136:18 disconnected [1] - 106:10 discredit [2] - 161:28, 162:15 discreditable [2] - 20:13, 20:14 discrediting [2] - 155:16, 161:12 discuss [11] - 24:25, 64:20, 67:26, 68:4, 85:11, 86:4, 86:8, 90:22, 91:3, 95:16, 122:17 discussed [4] - 24:20, 85:2, 96:12, 144:24 discussing [1] - 112:16 discussion [8] - 32:14, 61:23, 62:29, 64:13, 67:23, 95:14, 120:24, 127:3 displaced [1] - 121:7 dispute [1] - 24:17 disregard [1] - 17:3 disseminated [1] - 143:14 distinction [1] - 112:6 distinguish [1] - 125:23 distressed [1] - 131:15 district [17] - 45:23, 46:13, 46:18, 53:10, 53:21, 53:24, 59:5, 64:8, 68:3, 76:10, 90:20, 101:7, 133:19, 142:27, 144:14, 144:18, 166:26 DIVISION [1] - 1:12 division [27] - 58:13,</p>	<p>58:20, 58:22, 59:3, 60:9, 64:8, 66:19, 78:16, 121:26, 124:20, 127:22, 134:6, 134:26, 135:2, 135:12, 135:14, 141:15, 141:22, 143:27, 161:29, 162:2, 163:14, 163:28, 163:29, 165:13, 167:24, 167:25 divisional [11] - 59:3, 60:5, 76:20, 84:2, 101:9, 110:4, 111:14, 111:19, 113:4, 113:14, 124:2 divisions [4] - 65:7, 163:10, 163:13, 164:8 divisive [1] - 73:23 DOCKERY [1] - 4:6 doctor [25] - 22:10, 28:25, 29:15, 29:16, 29:17, 50:23, 50:24, 50:25, 51:23, 77:7, 93:5, 93:20, 94:12, 103:24, 106:12, 106:21, 114:4, 114:25, 120:2, 133:2, 134:16, 138:1, 138:28, 139:10, 139:13 doctor's [4] - 22:12, 114:4, 114:24, 129:14 doctors [1] - 22:17 document [18] - 14:26, 16:7, 16:8, 16:9, 19:22, 19:24, 25:17, 25:29, 26:19, 26:21, 27:12, 43:13, 48:7, 48:28, 49:19, 53:3, 110:20, 111:5 documentation [6] - 9:28, 12:27, 19:29, 27:15, 48:2, 49:29 documents [7] - 13:5, 13:28, 43:7, 48:4, 49:15, 50:1, 60:3 dogs [1] - 165:6 domain [5] - 63:29, 64:10, 72:16, 99:20, 168:7 DONAL [2] - 3:7, 3:24 done [12] - 22:5, 23:10, 38:5, 40:4, 59:20, 59:29, 60:4, 60:6, 73:6, 87:16, 156:7, 157:6</p>	<p>Donnybrook [2] - 58:9, 58:29 doors [1] - 74:2 double [3] - 37:22, 39:26, 41:23 doubt [8] - 76:19, 78:1, 87:16, 111:23, 111:25, 112:4, 116:17, 134:1 down [49] - 7:9, 11:29, 15:26, 17:23, 19:2, 23:29, 24:22, 25:23, 32:16, 36:10, 38:26, 59:18, 59:27, 61:18, 61:24, 62:21, 64:3, 73:29, 74:10, 84:4, 87:12, 88:13, 92:18, 92:19, 92:23, 92:26, 95:3, 97:3, 97:9, 103:15, 105:5, 105:22, 107:9, 107:16, 122:13, 128:13, 129:28, 131:13, 131:21, 145:21, 149:12, 152:20, 158:28, 159:23, 161:28, 163:9, 164:6 DOWNEY [2] - 3:15, 3:20 Downey's [1] - 92:13 DPP [1] - 122:26 DR [1] - 3:11 Dr [8] - 22:13, 22:15, 29:14, 50:23, 106:14, 106:16, 106:18, 106:26 drawing [1] - 112:6 drawn [1] - 135:17 drew [1] - 27:19 drink [8] - 17:28, 21:14, 22:1, 22:13, 39:11, 138:13, 138:14, 138:24 drinking [11] - 18:2, 19:10, 21:21, 29:9, 29:26, 50:14, 51:1, 105:20, 106:7, 138:12, 138:13 drop [4] - 31:23, 105:1, 105:3, 119:24 dropped [1] - 102:19 dropping [1] - 102:13 drops [1] - 104:21 drugs [1] - 63:24 drunk [1] - 21:27 DUBLIN [7] - 1:17, 2:19, 2:25, 2:32, 3:28, 4:9, 4:13</p>	<p>Dublin [5] - 56:15, 56:16, 58:19, 58:21, 164:8 due [9] - 12:11, 16:2, 67:8, 67:14, 77:24, 78:2, 78:15, 112:18, 113:3 duplicate [3] - 33:17, 33:22, 43:9 during [6] - 8:14, 13:21, 13:22, 52:3, 100:1, 101:11 duties [9] - 56:17, 56:24, 76:5, 76:9, 124:25, 132:3, 135:21, 140:8, 167:18 duty [51] - 13:18, 13:19, 14:13, 14:18, 14:21, 14:23, 14:24, 15:1, 15:2, 15:18, 16:6, 20:13, 20:19, 21:28, 22:12, 28:6, 29:11, 37:16, 37:25, 39:5, 39:15, 50:19, 70:16, 74:26, 76:9, 76:14, 76:16, 76:19, 76:27, 77:5, 77:28, 78:2, 78:15, 78:25, 79:21, 79:22, 80:9, 81:19, 82:2, 84:2, 88:1, 92:24, 94:11, 94:13, 100:27, 109:18, 111:27, 122:8, 125:3, 132:23, 166:4 DÁIL [1] - 1:4 Dáil [4] - 66:5, 67:18, 72:2, 102:15</p>	<p>Eastern [3] - 75:27, 142:9, 145:17 easy [1] - 99:23 edge [1] - 151:15 effect [3] - 102:22, 115:18 effective [1] - 79:21 effectively [5] - 27:7, 29:2, 37:22, 56:11, 64:8 effectiveness [2] - 96:8, 139:29 efficiency [1] - 73:22 effort [1] - 96:1 Egan [1] - 120:18 EGAN [1] - 3:25 eight [1] - 131:21 either [12] - 15:2, 36:25, 38:8, 38:22, 73:5, 116:19, 117:28, 146:13, 147:6, 159:29, 166:8, 170:5 element [1] - 138:23 elements [1] - 136:17 ELIZABETH [1] - 2:29 elsewhere [1] - 135:10 emanated [1] - 145:17 embraced [1] - 163:9 EMMA [1] - 3:26 Employee [1] - 139:26 employee [4] - 36:17, 79:26, 133:22, 140:27 enable [2] - 133:28, 166:7 enclosing [1] - 16:13 END [4] - 41:6, 46:25, 55:4, 169:16 end [6] - 7:10, 18:10, 98:23, 131:7, 146:14, 161:3 ended [2] - 148:12, 155:4 endorsed [1] - 169:3 energetic [1] - 165:24 engaged [2] - 156:3, 160:25 engaging [1] - 85:22 enquire [8] - 38:18, 121:21, 134:1, 157:4, 157:8, 157:13, 167:27, 168:1 enquired [3] - 121:22, 149:1, 157:8</p>
E				
<p>e-mail [8] - 20:9, 126:15, 126:22, 129:20, 130:1, 155:20, 158:10, 158:15 e-mailed [1] - 126:12 e-mails [2] - 126:26, 134:19 e.g [1] - 140:26 eager [1] - 132:6 EAMON [1] - 3:10 earliest [1] - 77:21 early [4] - 58:17, 70:16, 70:18, 141:9 EAS [2] - 95:12, 95:28 easier [1] - 164:7 easiest [1] - 38:1</p>				

<p>enquiries ^[14] - 8:9, 8:19, 11:24, 38:14, 101:22, 103:23, 107:22, 108:3, 122:22, 130:12, 130:18, 133:21, 145:12, 145:22</p> <p>enquiry ^[8] - 120:23, 126:19, 128:7, 143:26, 143:28, 144:11, 144:17, 151:24</p> <p>ensure ^[6] - 73:4, 122:8, 133:21, 140:25, 141:1, 141:2</p> <p>entered ^[1] - 48:13</p> <p>enthusiastic ^[1] - 165:25</p> <p>entire ^[1] - 128:25</p> <p>entirely ^[1] - 149:11</p> <p>entirety ^[1] - 124:28</p> <p>entitled ^[3] - 20:27, 114:27, 119:22</p> <p>entitlement ^[1] - 82:1</p> <p>entries ^[2] - 17:21, 141:6</p> <p>entry ^[6] - 24:2, 120:18, 142:3, 147:4, 147:7, 147:15</p> <p>environment ^[1] - 67:29</p> <p>envisage ^[1] - 146:2</p> <p>envisaged ^[2] - 87:24, 114:23</p> <p>EOIN ^[1] - 2:29</p> <p>EQUALITY ^[1] - 1:8</p> <p>equally ^[2] - 42:3, 166:7</p> <p>equates ^[1] - 35:3</p> <p>equation ^[1] - 81:26</p> <p>equity ^[1] - 35:24</p> <p>erase ^[1] - 168:10</p> <p>especially ^[2] - 21:13, 100:26</p> <p>essentially ^[5] - 108:25, 110:14, 137:15, 154:14, 154:15</p> <p>establish ^[15] - 11:8, 69:20, 75:11, 80:5, 80:14, 81:20, 83:18, 87:24, 87:28, 89:1, 89:2, 97:28, 115:21, 122:9, 130:13</p> <p>established ^[6] - 66:22, 68:15, 89:6, 97:25, 115:23, 139:22</p> <p>ESTABLISHED ^[1] - 1:7</p> <p>established ^[1] -</p>	<p>144:12</p> <p>establishing ^[1] - 8:12</p> <p>etcetera ^[6] - 51:7, 68:24, 122:5, 141:6, 141:7</p> <p>evaluation ^[1] - 114:1</p> <p>event ^[11] - 53:12, 54:7, 67:14, 88:24, 89:15, 105:11, 121:16, 124:17, 134:4, 152:18, 165:1</p> <p>events ^[4] - 52:10, 96:6, 113:21, 130:8</p> <p>eventual ^[1] - 139:29</p> <p>everywhere ^[1] - 162:11</p> <p>evidence ^[25] - 13:10, 14:2, 14:11, 20:29, 22:25, 22:28, 23:18, 23:19, 24:20, 26:7, 27:23, 29:19, 36:5, 38:26, 40:25, 53:18, 69:9, 91:17, 98:28, 131:11, 161:11, 165:4, 165:28, 167:10, 168:15</p> <p>EVIDENCE ^[1] - 1:8</p> <p>evident ^[3] - 90:8, 90:23, 163:3</p> <p>evolve ^[1] - 114:7</p> <p>evolved ^[2] - 60:7, 104:28</p> <p>exacerbate ^[1] - 90:25</p> <p>exacerbating ^[2] - 121:29, 122:15</p> <p>exact ^[1] - 112:19</p> <p>exactly ^[1] - 40:1</p> <p>examination ^[2] - 163:18, 169:14</p> <p>EXAMINATION ^[4] - 41:6, 46:25, 55:4, 169:16</p> <p>examine ^[4] - 11:7, 117:20, 169:29, 170:4</p> <p>examined ^[1] - 22:16</p> <p>EXAMINED ^[8] - 5:5, 5:6, 5:7, 5:11, 6:9, 41:10, 47:4, 55:20</p> <p>examining ^[2] - 106:22, 169:26</p> <p>example ^[2] - 9:20, 39:2</p> <p>exceed ^[5] - 7:27, 8:2, 12:23, 20:4, 44:13</p> <p>exceeding ^[1] - 7:21</p>	<p>exceeds ^[1] - 44:12</p> <p>except ^[2] - 52:6, 155:5</p> <p>exchange ^[1] - 129:24</p> <p>excluded ^[1] - 125:16</p> <p>exclusively ^[1] - 97:17</p> <p>excuse ^[2] - 16:18, 21:29</p> <p>executive ^[11] - 81:24, 101:24, 106:19, 110:23, 111:7, 112:12, 117:13, 121:17, 139:4, 140:18, 160:16</p> <p>EXECUTIVE ^[1] - 3:13</p> <p>exists ^[1] - 144:1</p> <p>expect ^[4] - 53:13, 54:15, 94:24, 118:1</p> <p>expectation ^[1] - 119:8</p> <p>expected ^[1] - 94:19</p> <p>expecting ^[1] - 117:27</p> <p>expedited ^[1] - 160:27</p> <p>expedition ^[1] - 82:22</p> <p>expenditure ^[1] - 24:26</p> <p>expenses ^[2] - 71:4, 167:14</p> <p>experience ^[6] - 57:10, 81:22, 95:1, 115:23, 115:26, 166:18</p> <p>expert ^[1] - 98:12</p> <p>expertise ^[2] - 70:8, 133:1</p> <p>explain ^[4] - 13:22, 78:12, 102:11, 156:2</p> <p>explained ^[3] - 21:16, 101:23, 132:5</p> <p>explaining ^[1] - 154:8</p> <p>explanation ^[15] - 11:9, 13:21, 15:6, 15:15, 16:21, 18:12, 29:7, 29:14, 34:27, 45:1, 45:3, 50:12, 50:22</p> <p>explore ^[3] - 85:16, 86:12, 86:15</p> <p>explored ^[1] - 136:2</p> <p>express ^[1] - 121:5</p> <p>expressed ^[5] - 137:19, 137:23,</p>	<p>137:26, 147:2, 167:20</p> <p>expressing ^[2] - 18:4, 97:27</p> <p>extent ^[1] - 64:28</p> <p>external ^[2] - 98:12, 118:9</p> <p>extra ^[1] - 74:4</p> <p>extract ^[2] - 94:3, 158:9</p> <p>eye ^[1] - 168:6</p>	<p>far ^[14] - 32:1, 40:6, 42:28, 50:4, 75:19, 81:3, 86:28, 88:26, 99:5, 116:13, 131:18, 136:4, 136:7, 142:25</p> <p>FARRELL ^[1] - 4:5</p> <p>fashion ^[1] - 67:25</p> <p>fast ^[1] - 14:16</p> <p>fault ^[2] - 98:14, 161:1</p> <p>favour ^[1] - 138:19</p> <p>feasible ^[1] - 140:11</p> <p>feature ^[1] - 25:8</p> <p>February ^[5] - 157:25, 157:26, 157:27, 159:12, 159:13</p> <p>FEBRUARY ^[2] - 1:5, 1:9</p> <p>feedback ^[2] - 156:14, 156:15</p> <p>feelings ^[1] - 54:18</p> <p>feet ^[1] - 139:9</p> <p>fell ^[1] - 76:26</p> <p>felt ^[10] - 38:9, 67:27, 75:20, 86:26, 101:12, 106:9, 106:15, 129:28, 153:3, 156:19</p> <p>female ^[1] - 68:2</p> <p>FERGAL ^[1] - 2:27</p> <p>FERRY ^[1] - 2:16</p> <p>few ^[6] - 46:29, 54:15, 71:16, 95:6, 103:6, 103:23</p> <p>figure ^[4] - 20:5, 40:14, 52:26, 53:7</p> <p>figures ^[1] - 56:22</p> <p>file ^[20] - 9:7, 26:13, 27:1, 33:17, 33:18, 33:22, 43:7, 43:13, 43:20, 43:22, 48:20, 48:23, 71:23, 74:6, 122:25, 142:15, 147:12, 155:6, 158:29, 167:28</p> <p>files ^[7] - 10:3, 60:14, 60:16, 61:5, 135:20, 155:6, 167:17</p> <p>filing ^[1] - 146:23</p> <p>filled ^[1] - 52:28</p> <p>final ^[4] - 122:5, 133:6, 134:10, 146:1</p> <p>finalised ^[2] - 101:14, 161:2</p> <p>finalising ^[1] - 71:1</p> <p>finally ^[1] - 40:22</p> <p>finance ^[5] - 57:13, 57:23, 57:25, 60:3, 151:3</p> <p>financial ^[6] - 37:22,</p>
F				
<p>face ^[1] - 153:2</p> <p>Facebook ^[3] - 18:20, 21:23, 22:2</p> <p>facilitate ^[2] - 125:4, 133:18</p> <p>facilitated ^[1] - 140:2</p> <p>facilitating ^[1] - 140:14</p> <p>facing ^[1] - 61:24</p> <p>fact ^[16] - 40:17, 44:16, 52:8, 52:20, 74:10, 74:11, 74:29, 80:18, 85:3, 89:11, 98:3, 99:4, 150:14, 165:18, 165:20, 170:12</p> <p>factor ^[1] - 138:24</p> <p>factors ^[2] - 97:21, 98:17</p> <p>facts ^[10] - 8:12, 9:21, 27:23, 29:2, 40:24, 142:23, 142:24, 144:11, 146:7, 155:28</p> <p>failed ^[2] - 13:19, 15:2</p> <p>fair ^[9] - 8:21, 12:28, 21:28, 29:20, 35:7, 39:20, 41:20, 41:22, 71:26</p> <p>fairest ^[2] - 41:20, 72:25</p> <p>fairly ^[2] - 42:1, 137:3</p> <p>fairness ^[3] - 17:22, 30:26, 160:24</p> <p>familiar ^[7] - 10:19, 29:15, 50:23, 107:8, 120:28, 120:29</p> <p>FANNING ^[1] - 2:21</p> <p>Fanning ^[8] - 75:27, 126:20, 126:24, 142:11, 155:21, 156:15, 156:23, 157:3</p> <p>Fanning's ^[2] - 110:12, 111:1</p>				

<p>38:9, 41:23, 60:13, 71:25, 151:2</p> <p>financially [7] - 35:6, 35:12, 35:28, 37:2, 37:5, 42:3, 109:11</p> <p>findings [1] - 160:23</p> <p>fine [14] - 20:21, 24:12, 34:23, 34:28, 35:2, 35:4, 35:7, 37:23, 39:1, 40:8, 152:2, 162:10, 169:27, 170:10</p> <p>fined [12] - 20:19, 23:13, 23:20, 23:24, 23:26, 24:1, 24:9, 24:15, 25:14, 30:4, 39:16, 45:4</p> <p>fines [1] - 43:29</p> <p>finish [1] - 15:11</p> <p>finished [2] - 43:6, 170:16</p> <p>Finn [6] - 157:11, 158:4, 158:16, 158:18, 159:21, 160:25</p> <p>FINN [1] - 3:5</p> <p>finn [1] - 157:12</p> <p>Finn's [2] - 157:14, 160:11</p> <p>FINTAN [1] - 2:21</p> <p>firmly [1] - 167:29</p> <p>first [27] - 6:4, 7:19, 15:22, 17:12, 34:12, 37:9, 51:12, 67:12, 67:19, 67:20, 76:17, 93:7, 95:22, 101:21, 102:2, 114:23, 124:11, 129:8, 142:13, 142:15, 148:17, 151:17, 152:2, 155:23, 164:5, 170:1, 170:13</p> <p>firstly [2] - 102:2, 143:21</p> <p>fit [19] - 13:18, 15:1, 21:28, 22:12, 22:15, 29:10, 50:19, 76:8, 76:14, 90:2, 90:9, 91:23, 92:9, 94:12, 99:27, 132:2, 132:23, 132:28, 133:3</p> <p>fitness [2] - 76:5, 91:27</p> <p>FITZWILLIAM [1] - 4:8</p> <p>five [5] - 13:15, 19:2, 25:2, 44:5, 46:5</p> <p>fixed [2] - 103:6, 109:11</p> <p>fixing [2] - 120:26,</p>	<p>120:27</p> <p>flag [1] - 60:19</p> <p>flagged [2] - 60:19, 131:13</p> <p>flourished [1] - 166:26</p> <p>flu/viral [6] - 101:20, 103:15, 107:9, 107:16, 107:23, 126:2</p> <p>FLYNN [1] - 3:19</p> <p>focus [2] - 32:4, 32:6</p> <p>follow [2] - 39:23, 91:10</p> <p>followed [4] - 8:22, 47:9, 65:15, 148:11</p> <p>FOLLOWING [1] - 1:4</p> <p>following [14] - 1:25, 7:15, 33:9, 45:29, 49:27, 56:9, 115:3, 118:26, 124:6, 131:25, 132:4, 145:24, 149:27, 166:21</p> <p>FOLLOWS [6] - 6:1, 6:9, 41:11, 47:5, 55:21, 109:3</p> <p>follows [1] - 139:19</p> <p>foot [3] - 92:13, 114:28, 150:11</p> <p>FOR [11] - 1:7, 2:6, 2:10, 2:15, 2:20, 2:27, 3:2, 4:1, 4:4, 4:10, 109:2</p> <p>force [2] - 56:11, 104:16</p> <p>foregoing [2] - 133:24, 146:24</p> <p>forget [1] - 111:1</p> <p>forgive [2] - 14:7, 159:10</p> <p>forgot [2] - 29:9, 50:18</p> <p>form [21] - 13:7, 13:25, 14:3, 14:10, 19:19, 23:11, 27:10, 30:5, 37:11, 45:16, 48:14, 73:18, 74:8, 83:22, 85:28, 88:14, 99:12, 140:6, 148:24, 155:1, 164:19</p> <p>formal [2] - 149:21, 155:5</p> <p>formalisation [1] - 73:19</p> <p>formally [2] - 18:15, 65:23</p> <p>formed [1] - 41:24</p> <p>FORMER [2] - 1:13, 2:3</p>	<p>forming [1] - 76:5</p> <p>forms [2] - 34:13, 73:21</p> <p>formulates [1] - 47:26</p> <p>formulating [1] - 47:21</p> <p>formulation [1] - 47:19</p> <p>forth [1] - 149:22</p> <p>forward [11] - 9:2, 9:6, 9:9, 26:5, 34:10, 66:25, 75:18, 100:8, 165:12, 165:13, 166:27</p> <p>forwarded [9] - 15:20, 25:25, 26:5, 27:6, 27:7, 70:25, 91:5, 145:8, 151:25</p> <p>foster [1] - 139:28</p> <p>founding [1] - 12:27</p> <p>four [9] - 34:28, 37:26, 39:25, 46:4, 53:25, 70:14, 102:29, 123:15, 150:9</p> <p>four-page [1] - 123:15</p> <p>four-year [2] - 102:29, 150:9</p> <p>fourth [1] - 29:4</p> <p>Frank [2] - 122:20, 142:1</p> <p>free [2] - 69:12, 74:2</p> <p>FREEMAN [1] - 2:22</p> <p>frequent [1] - 91:3</p> <p>frequently [2] - 67:25, 68:6</p> <p>fresh [1] - 165:6</p> <p>Friends [1] - 169:22</p> <p>front [2] - 27:12, 142:29</p> <p>full [17] - 11:18, 40:24, 52:2, 83:19, 83:22, 85:18, 99:8, 104:26, 109:20, 114:9, 115:19, 120:4, 122:9, 133:25, 138:21, 150:26, 165:15</p> <p>full/light/restricted [1] - 76:8</p> <p>fully [5] - 8:3, 33:8, 61:25, 62:3, 113:16</p> <p>function [7] - 39:7, 39:9, 39:10, 46:18, 74:25, 98:21, 129:2</p> <p>funds [1] - 71:24</p> <p>funny [1] - 128:24</p> <p>future [1] - 121:23</p>	<p style="text-align: center;">G</p> <p>gain [6] - 35:5, 35:12, 35:28, 37:2, 37:5, 42:2</p> <p>Galway [4] - 75:3, 80:24, 102:19, 124:5</p> <p>game [1] - 98:23</p> <p>GARDA [10] - 2:10, 2:27, 2:27, 2:28, 3:2, 3:10, 3:11, 3:12, 3:21, 4:10</p> <p>Garda [267] - 6:18, 6:24, 6:28, 10:5, 10:25, 12:4, 12:7, 13:11, 14:27, 15:14, 16:21, 17:26, 18:4, 18:5, 18:18, 19:6, 19:13, 19:25, 20:6, 20:17, 20:28, 21:2, 21:9, 22:19, 22:25, 23:20, 24:8, 24:20, 26:15, 27:27, 29:7, 29:8, 29:11, 29:13, 29:16, 29:25, 30:5, 30:13, 31:21, 32:15, 33:8, 33:10, 34:11, 34:21, 34:27, 35:2, 35:4, 35:5, 36:7, 36:10, 36:14, 36:21, 36:26, 37:22, 38:5, 38:19, 39:7, 39:24, 40:3, 40:5, 40:28, 42:2, 42:13, 42:17, 43:1, 43:15, 47:9, 49:23, 49:27, 50:12, 50:13, 50:19, 50:21, 50:24, 50:29, 51:8, 51:15, 52:2, 52:8, 52:21, 52:27, 53:4, 53:7, 56:5, 56:25, 57:3, 57:14, 58:2, 62:29, 63:4, 63:11, 64:6, 64:13, 65:3, 65:20, 66:10, 67:1, 67:9, 67:21, 67:25, 68:12, 69:24, 70:7, 71:2, 72:6, 72:10, 72:24, 73:4, 73:24, 73:29, 74:25, 75:1, 75:11, 76:4, 77:19, 77:22, 80:22, 81:11, 81:28, 83:10, 83:23, 83:29, 84:5, 84:29, 85:1, 86:5, 87:19, 87:24, 88:18, 88:28, 90:21, 90:22, 90:24, 91:2, 92:20, 92:29, 93:7, 93:11, 94:9, 94:11, 94:15, 95:19,</p>	<p>96:18, 97:4, 97:17, 98:24, 99:17, 100:2, 100:9, 100:14, 100:26, 100:28, 101:4, 101:5, 101:9, 101:10, 101:14, 101:27, 102:22, 104:29, 105:19, 106:1, 106:5, 107:3, 107:15, 108:6, 109:7, 113:10, 115:19, 116:12, 117:21, 119:4, 119:7, 120:2, 121:23, 121:26, 122:2, 122:8, 122:22, 123:4, 124:4, 124:19, 124:25, 125:1, 126:1, 126:11, 128:26, 129:12, 130:12, 130:24, 131:10, 131:29, 132:7, 132:13, 133:10, 133:12, 133:13, 133:15, 133:18, 133:25, 133:28, 134:2, 134:12, 135:1, 135:7, 135:24, 135:26, 136:16, 137:17, 137:18, 137:20, 138:11, 138:21, 139:9, 139:11, 139:25, 140:27, 142:3, 143:1, 143:2, 143:5, 143:11, 144:10, 144:15, 144:19, 145:3, 145:13, 146:4, 147:6, 150:3, 151:15, 151:25, 152:4, 152:5, 152:9, 152:17, 153:15, 154:10, 154:13, 154:17, 155:11, 157:4, 157:15, 158:8, 159:26, 160:9, 161:12, 161:16, 161:20, 162:16, 162:23, 163:26, 164:2, 164:17, 165:2, 165:27, 167:13, 168:2, 168:15, 169:5</p> <p>Gardai [1] - 118:26</p> <p>general [5] - 60:27, 76:16, 101:12, 149:4, 149:7</p> <p>GERAGHTY [1] - 2:17</p> <p>GERARD [1] - 2:11</p> <p>GERRY [1] - 3:11</p> <p>gift [5] - 71:24,</p>
---	--	--	--	---

<p>76:28, 78:23, 79:4, 128:3</p> <p>given [24] - 12:11, 12:17, 23:5, 30:20, 38:18, 43:3, 45:3, 56:20, 62:19, 69:20, 71:20, 73:1, 73:25, 74:8, 75:20, 75:21, 81:8, 96:5, 99:5, 99:11, 100:6, 157:21, 167:21, 168:15</p> <p>glare [1] - 168:7</p> <p>GLEESON [1] - 4:7</p> <p>glowing [1] - 156:16</p> <p>goals [1] - 165:22</p> <p>God [1] - 103:16</p> <p>GOODE [1] - 3:22</p> <p>GP [2] - 113:3, 116:13</p> <p>grades [1] - 57:23</p> <p>gradually [2] - 44:20, 112:1</p> <p>GRALTON [1] - 3:14</p> <p>granted [1] - 134:5</p> <p>great [1] - 48:6</p> <p>GREENE [1] - 2:27</p> <p>grievance [2] - 72:6, 133:15</p> <p>grievances [1] - 135:4</p> <p>GRIFFIN [1] - 3:26</p> <p>gritty [1] - 61:5</p> <p>grounds [2] - 30:19, 149:16</p> <p>guard [6] - 38:2, 41:16, 45:7, 46:4, 54:14, 156:1</p> <p>Guards [2] - 138:26, 162:12</p> <p>guards [9] - 31:13, 35:24, 39:3, 52:5, 53:26, 54:9, 54:13, 63:24, 156:1</p> <p>guess [1] - 165:1</p> <p>guessing [2] - 30:6, 30:7</p> <p>guidance [1] - 136:14</p> <p>guide [1] - 165:27</p> <p>guided [1] - 10:17</p> <p>guidelines [1] - 72:29</p> <p>guilty [11] - 21:3, 21:6, 28:19, 32:3, 34:21, 35:1, 41:17, 41:18, 153:5</p> <p>Guinan [1] - 100:18</p> <p>Gwen [1] - 1:24</p> <p>GWEN [1] - 1:29</p>	<p style="text-align: center;">H</p> <p>half [2] - 103:10, 104:26</p> <p>halfway [1] - 104:27</p> <p>HALIDAY [1] - 2:23</p> <p>halt [1] - 108:28</p> <p>hand [5] - 59:26, 60:3, 155:28, 159:28, 168:3</p> <p>handed [1] - 86:27</p> <p>handled [1] - 39:1</p> <p>hands [1] - 26:28</p> <p>handwritten [3] - 42:15, 51:11, 152:21</p> <p>hanging [1] - 161:6</p> <p>haphazard [1] - 67:25</p> <p>happy [4] - 35:20, 78:14, 170:2, 170:6</p> <p>HARAN [1] - 4:5</p> <p>harassment [6] - 101:28, 133:16, 155:15, 155:23</p> <p>Harcourt [3] - 56:15, 56:16, 57:10</p> <p>hard [2] - 19:27, 162:5</p> <p>harm [1] - 18:5</p> <p>harping [2] - 24:27</p> <p>harsh [7] - 35:7, 35:15, 35:21, 35:25, 37:1, 52:14, 102:27</p> <p>hat [1] - 53:11</p> <p>hate [2] - 27:9, 54:3</p> <p>HAVING [2] - 6:8, 55:19</p> <p>head [6] - 57:27, 113:6, 113:9, 121:2, 122:13, 125:23</p> <p>HEAD [1] - 3:15</p> <p>heading [2] - 76:16, 142:25</p> <p>headings [1] - 124:17</p> <p>headquarters [5] - 58:25, 59:4, 82:18, 88:27, 169:6</p> <p>Headquarters [3] - 56:26, 57:4, 57:14</p> <p>Health [4] - 70:22, 88:19, 131:26, 132:5</p> <p>health [5] - 91:22, 114:7, 120:21, 126:2, 163:11</p> <p>hear [1] - 158:2</p> <p>heard [7] - 17:19, 32:15, 33:16, 101:7, 101:21, 142:24,</p>	<p>167:10</p> <p>HEARING [3] - 6:1, 109:2, 170:24</p> <p>hearings [1] - 45:11</p> <p>heavily [6] - 21:21, 24:26, 29:9, 29:26, 50:14, 51:1</p> <p>heavy [1] - 86:27</p> <p>HELD [1] - 1:17</p> <p>held [1] - 91:12</p> <p>help [6] - 19:10, 96:1, 137:17, 138:2, 138:16, 163:18</p> <p>hence [1] - 14:22</p> <p>herself [1] - 61:17</p> <p>HIGGINS [1] - 4:10</p> <p>high [2] - 95:27, 115:22</p> <p>highlighted [2] - 68:22, 156:16</p> <p>highlights [1] - 90:28</p> <p>highly [1] - 166:28</p> <p>himself [2] - 93:8, 95:29</p> <p>his/her [1] - 76:23</p> <p>history [6] - 17:2, 22:14, 29:16, 50:24, 150:20, 150:27</p> <p>hmm [1] - 114:22</p> <p>hold [1] - 42:20</p> <p>home [1] - 121:21</p> <p>honest [8] - 21:26, 32:6, 72:23, 75:3, 125:24, 161:23, 165:3, 168:3</p> <p>honestly [2] - 24:14, 136:5</p> <p>honesty [2] - 156:10, 161:22</p> <p>hope [1] - 164:21</p> <p>HORAN [1] - 3:25</p> <p>hospital [2] - 91:18, 111:29</p> <p>hour [2] - 39:8, 52:7</p> <p>hours [3] - 54:15, 90:4, 94:26</p> <p>HOUSE [3] - 2:23, 3:27, 4:11</p> <p>house [3] - 100:17, 106:9, 123:26</p> <p>HQ [4] - 10:8, 10:17, 11:29, 40:23</p> <p>HR [9] - 82:15, 84:21, 85:27, 90:11, 113:6, 113:9, 113:12, 121:17, 140:20</p> <p>HRM [36] - 33:19, 36:6, 37:9, 38:13, 46:1, 46:7, 46:8, 46:12, 54:22, 54:28,</p>	<p>76:21, 79:24, 80:8, 81:24, 82:10, 82:12, 98:6, 98:29, 101:24, 103:29, 106:20, 107:26, 111:7, 114:19, 117:13, 120:10, 127:29, 128:6, 129:7, 129:17, 136:14, 137:8, 150:13, 150:15, 155:9</p> <p>HRPD [3] - 97:17, 97:20, 97:23</p> <p>huge [4] - 64:4, 102:22, 166:23, 167:2</p> <p>hugely [1] - 166:29</p> <p>HUGHES [2] - 2:29, 2:30</p> <p>HUMAN [1] - 3:15</p> <p>Human [1] - 88:25</p> <p>hundred [1] - 33:19</p> <p>hurt [1] - 42:3</p> <p style="text-align: center;">I</p> <p>I.A.11 [1] - 10:4</p> <p>I.A.12 [1] - 30:7</p> <p>I.A.13 [1] - 48:7</p> <p>I.A.16 [1] - 155:1</p> <p>i.e [1] - 111:19</p> <p>ICELAND [1] - 4:11</p> <p>idea [1] - 91:21</p> <p>identifies [1] - 43:28</p> <p>identifying [1] - 8:13</p> <p>ifs [1] - 37:7</p> <p>illness [10] - 78:2, 78:3, 90:23, 97:24, 121:6, 121:11, 121:14, 121:15, 125:1, 131:13</p> <p>illness/injury [1] - 77:28</p> <p>illnesses [1] - 102:4</p> <p>illogical [1] - 166:9</p> <p>imagined [1] - 135:5</p> <p>immediate [1] - 66:23</p> <p>immediately [6] - 48:9, 65:13, 76:9, 79:23, 90:29, 127:7</p> <p>impact [1] - 41:23</p> <p>impartial [2] - 72:21, 168:8</p> <p>implying [1] - 117:8</p> <p>import [1] - 35:14</p> <p>importance [1] - 35:26</p> <p>important [13] - 8:2, 54:6, 61:1, 65:14, 90:8, 98:7, 120:2,</p>	<p>120:4, 120:7, 156:11, 156:12, 161:22, 161:23</p> <p>impose [3] - 41:19, 44:5, 45:19</p> <p>imposed [7] - 12:3, 12:7, 20:3, 24:12, 35:4, 35:7, 44:17</p> <p>imposing [2] - 12:11, 35:1</p> <p>imposition [1] - 12:1</p> <p>impressed [1] - 166:29</p> <p>impression [1] - 119:14</p> <p>improper [1] - 73:5</p> <p>improved [1] - 150:18</p> <p>IN [1] - 1:17</p> <p>inappropriate [1] - 155:25</p> <p>inaudible [1] - 65:27</p> <p>incidents [1] - 133:11</p> <p>include [2] - 26:15, 134:9</p> <p>included [9] - 34:5, 45:15, 50:2, 50:5, 52:18, 142:2, 152:9, 154:10, 159:20</p> <p>including [8] - 9:20, 47:22, 85:3, 94:16, 113:15, 148:6, 167:17, 168:18</p> <p>inclusion [1] - 49:22</p> <p>inclusive [1] - 36:15</p> <p>incorrect [1] - 120:7</p> <p>incorrectly [1] - 101:18</p> <p>incredulous [1] - 165:2</p> <p>indeed [10] - 75:23, 80:25, 103:2, 115:25, 120:5, 133:17, 136:21, 139:6, 162:20, 163:10</p> <p>independence [1] - 135:11</p> <p>independent [3] - 81:23, 116:3, 168:8</p> <p>INDEX [1] - 5:1</p> <p>indicate [1] - 140:10</p> <p>indicated [11] - 18:28, 19:4, 21:3, 29:13, 47:10, 50:21, 70:9, 74:28, 84:29, 85:7, 124:24</p> <p>indicates [2] - 85:12, 118:18</p> <p>indicating [3] -</p>
--	--	--	--	---

<p>67:29, 85:4, 117:8 INDICATING [1] - 42:23 indifferent [1] - 163:23 indirect [1] - 159:28 indirectly [1] - 117:15 individual [1] - 162:7 indoor [2] - 135:21, 167:18 inextricably [2] - 80:28, 131:5 influence [2] - 47:17, 164:2 inform [2] - 140:25, 144:20 informal [3] - 73:15, 74:4 information [28] - 15:20, 30:20, 60:13, 70:25, 76:7, 76:23, 77:13, 84:29, 85:20, 91:5, 93:16, 97:6, 97:18, 99:13, 99:15, 100:6, 123:29, 124:2, 133:27, 139:18, 143:13, 145:8, 147:7, 153:7, 153:16, 154:15 information/ breaches [1] - 48:13 informed [10] - 20:9, 51:25, 71:8, 81:11, 81:16, 122:25, 124:14, 124:26, 148:21, 160:10 informing [2] - 61:13, 151:22 informs [1] - 119:2 initiate [1] - 74:26 initiated [1] - 162:21 initiatives [1] - 163:8 injured [2] - 78:15, 116:19 injuries [2] - 78:11, 80:8 injury [19] - 76:16, 76:19, 76:27, 77:5, 78:2, 78:4, 78:23, 79:22, 81:18, 82:2, 98:7, 98:26, 109:18, 111:20, 115:9, 115:14, 119:22, 121:4, 121:8 injury/illness [1] - 113:12 inpatient [2] - 139:11, 139:21 inquiries [2] - 17:17, 167:16</p>	<p>inquiry [4] - 47:17, 74:26, 160:22, 168:4 INQUIRY [2] - 1:2, 1:8 inserted [1] - 52:26 insight [1] - 92:6 inssofar [5] - 93:4, 140:1, 147:6, 159:26, 163:28 inspection [1] - 74:17 inspections [1] - 101:6 Inspector [5] - 123:22, 123:25, 124:11, 125:2, 137:19 INSPECTOR [7] - 3:4, 3:10, 3:15, 3:17, 3:18, 3:22, 4:5 inspector [5] - 11:23, 57:20, 64:25, 134:6, 135:12 instance [1] - 144:1 instead [2] - 85:12, 101:18 instruct [2] - 128:5, 160:8 instructed [2] - 87:10, 87:17 INSTRUCTED [8] - 2:11, 2:17, 2:22, 2:29, 3:26, 4:1, 4:8, 4:10 instruction [10] - 69:21, 74:16, 75:10, 83:1, 86:13, 107:26, 108:27, 110:3, 110:22, 151:5 instructions [1] - 77:9 INSTRUMENT [1] - 1:7 instrumental [2] - 17:15, 20:2 intelligence [6] - 142:28, 143:1, 143:17, 143:24, 145:1, 145:5 intended [2] - 101:4, 164:2 inter [1] - 123:3 interaction [2] - 167:14, 169:5 interactions [2] - 99:29, 162:18 interest [3] - 64:19, 64:22, 163:8 interested [1] - 56:22 interfere [1] - 47:17 interference [1] - 155:25</p>	<p>interim [2] - 89:27, 89:28 intermittently [2] - 68:16, 133:1 Internal [14] - 10:11, 30:6, 33:20, 33:29, 34:13, 148:13, 148:21, 148:28, 149:23, 151:23, 154:16, 155:7, 155:8, 155:9 internal [1] - 30:8 interpretation [1] - 129:5 interrupt [2] - 68:25, 116:10 intervene [1] - 86:14 intervention [3] - 71:26, 72:25, 73:17 interventions [2] - 106:4, 165:15 interview [58] - 8:26, 8:28, 8:29, 9:2, 9:5, 19:16, 19:22, 20:10, 20:11, 20:24, 20:28, 23:11, 23:20, 25:16, 25:18, 25:21, 25:25, 26:16, 26:19, 26:20, 27:6, 27:13, 30:11, 31:10, 31:12, 33:10, 33:14, 34:4, 34:20, 42:8, 42:24, 42:25, 43:6, 48:7, 48:27, 49:19, 49:23, 50:2, 51:7, 51:11, 52:3, 52:21, 53:5, 53:6, 69:22, 81:12, 83:17, 83:27, 87:11, 87:24, 152:13, 152:15, 153:21, 154:2, 154:10, 157:15, 166:20 interviewed [1] - 33:11 interviewing [1] - 36:7 interviews [1] - 96:22 intimated [2] - 121:27, 133:10 INTO [1] - 1:2 investigate [5] - 63:15, 63:26, 75:10, 80:19, 134:2 investigated [5] - 64:3, 135:10, 136:21, 136:25, 155:22 investigating [2] - 85:8, 89:1 investigation [64] -</p>	<p>6:23, 6:27, 7:3, 7:17, 8:13, 8:15, 8:23, 11:20, 12:28, 13:1, 14:22, 17:18, 27:1, 47:16, 63:6, 64:16, 65:6, 66:22, 68:10, 79:19, 79:23, 80:25, 80:29, 83:20, 85:18, 85:21, 85:22, 86:24, 96:15, 96:18, 99:8, 100:1, 103:19, 104:6, 105:20, 113:4, 113:5, 115:1, 120:11, 120:13, 122:9, 122:14, 122:16, 122:28, 126:16, 128:25, 130:29, 133:14, 133:25, 133:29, 134:4, 136:23, 144:8, 144:29, 146:7, 146:15, 147:19, 158:29, 160:12, 161:5, 161:7, 162:18, 163:19, 169:10 investigations [8] - 64:20, 65:8, 113:13, 113:15, 121:25, 156:8, 160:28, 161:16 investigative [1] - 129:2 investigator [1] - 131:4 investigators [5] - 56:1, 61:9, 158:17, 166:16, 166:20 involve [1] - 47:16 involved [5] - 39:13, 45:7, 64:18, 71:19, 85:23 involvement [10] - 63:24, 71:6, 121:25, 123:17, 130:15, 155:16, 163:22, 168:20, 168:22, 169:9 involves [2] - 97:19, 142:29 Irishtown [1] - 58:29 issue [109] - 6:22, 9:21, 9:22, 17:25, 22:24, 24:19, 31:11, 31:28, 31:29, 36:2, 36:8, 38:15, 38:28, 39:1, 47:10, 53:7, 54:26, 54:28, 57:16, 63:19, 63:20, 63:25, 65:20, 66:4, 71:1, 71:20, 72:24, 73:2, 74:12, 74:24, 77:6, 78:13, 78:24, 79:4,</p>	<p>80:9, 81:2, 84:1, 86:4, 89:17, 90:10, 91:11, 92:28, 93:29, 94:27, 96:2, 96:11, 96:21, 97:12, 97:28, 98:6, 98:10, 101:15, 102:6, 102:12, 103:13, 103:20, 103:22, 107:5, 109:9, 109:13, 111:15, 111:16, 111:21, 113:29, 114:13, 114:27, 115:11, 115:13, 117:23, 118:16, 118:17, 118:18, 118:29, 119:5, 119:7, 119:28, 120:26, 123:20, 125:8, 128:4, 129:25, 134:15, 134:23, 135:7, 135:8, 136:1, 136:20, 138:4, 141:29, 145:27, 146:12, 147:10, 150:1, 152:10, 152:26, 152:27, 159:26, 160:18, 160:21, 163:17, 167:15, 168:3, 170:12 issued [10] - 22:17, 29:17, 50:25, 74:16, 75:25, 79:3, 94:10, 112:12, 112:14, 112:15 issues [38] - 36:25, 40:27, 60:2, 60:29, 61:23, 64:2, 64:16, 65:16, 66:23, 66:26, 67:23, 67:26, 68:4, 69:29, 78:27, 79:28, 90:28, 94:22, 95:2, 97:4, 109:24, 112:16, 114:7, 114:18, 123:5, 123:6, 123:12, 123:16, 135:17, 140:5, 141:25, 143:11, 147:16, 165:9, 166:23, 167:12, 167:17, 167:19 issuing [4] - 78:29, 113:15, 114:8 IT [5] - 56:21, 57:17, 57:19, 60:12, 120:28 item [3] - 49:22, 144:29, 145:5 items [2] - 49:13, 49:15 iterative [1] - 161:1 itself [3] - 81:28, 81:29, 161:7</p>
--	--	---	---	--

J	<p>165:11 Kelly [6] - 41:8, 42:19, 42:22, 120:17, 169:24, 170:2 kelly [1] - 45:2 KELLY [14] - 2:10, 3:12, 5:6, 41:11, 41:13, 42:20, 42:23, 42:26, 45:1, 45:3, 170:8, 170:10, 170:12, 170:18 Keogh [202] - 6:24, 10:5, 12:4, 12:7, 13:11, 14:27, 15:14, 16:21, 17:27, 18:4, 18:18, 19:6, 19:13, 19:26, 20:17, 21:3, 22:20, 23:21, 24:1, 24:8, 24:20, 27:27, 29:7, 29:8, 29:11, 29:13, 29:16, 29:25, 30:5, 30:13, 31:21, 32:15, 33:8, 33:10, 34:12, 34:21, 34:27, 35:2, 35:4, 35:5, 36:7, 36:10, 36:14, 36:21, 36:26, 37:23, 38:5, 38:6, 40:3, 40:5, 40:28, 42:2, 42:13, 42:17, 43:1, 43:15, 47:9, 49:23, 49:27, 50:12, 50:13, 50:19, 50:21, 50:24, 50:29, 51:8, 52:2, 52:21, 52:28, 53:4, 53:7, 63:4, 63:11, 64:6, 64:13, 65:3, 65:21, 66:10, 67:1, 67:9, 67:21, 67:26, 68:13, 69:24, 70:7, 72:7, 72:10, 72:24, 73:4, 73:24, 73:29, 74:25, 75:1, 75:12, 77:19, 77:22, 80:22, 81:11, 81:28, 83:10, 83:29, 84:5, 84:29, 86:6, 87:19, 87:24, 90:21, 90:24, 91:2, 92:20, 93:8, 93:11, 94:9, 94:11, 94:15, 95:19, 98:24, 99:17, 100:2, 100:9, 100:26, 101:4, 101:9, 101:10, 101:15, 101:27, 102:23, 104:29, 105:19, 106:2, 106:5, 107:3, 107:15, 108:6, 109:7, 115:19, 117:21, 119:4, 119:7, 120:2, 121:23, 121:26, 122:2,</p>	<p>122:22, 124:4, 124:19, 124:25, 125:1, 126:11, 128:26, 129:12, 130:12, 130:24, 131:10, 131:29, 132:7, 133:10, 133:13, 133:18, 133:28, 134:12, 135:1, 135:7, 135:26, 136:16, 137:17, 137:20, 138:11, 138:21, 139:9, 139:11, 142:3, 146:4, 147:6, 150:3, 151:15, 151:25, 152:4, 152:5, 152:17, 153:15, 154:10, 154:13, 154:17, 155:11, 157:4, 157:15, 158:9, 160:9, 161:12, 161:17, 162:16, 162:23, 163:26, 164:3, 164:17, 165:27, 167:13, 168:2, 168:15 KEOGH [1] - 2:10 Keogh" [1] - 20:28 Keogh's [23] - 22:25, 26:15, 39:24, 52:8, 63:1, 71:2, 75:1, 88:28, 90:22, 92:29, 96:18, 97:5, 100:14, 116:12, 122:8, 126:1, 132:13, 133:25, 134:2, 135:24, 152:9, 159:26, 165:2 kept [2] - 17:20, 153:3 KEVIN [1] - 3:14 Kevin [2] - 58:23, 59:1 kick [2] - 114:2, 161:16 kicked [2] - 78:18, 104:18 KIERAN [1] - 3:20 Killarney [6] - 20:7, 20:9, 45:7, 52:29, 128:5, 150:13 Kilmainham [1] - 59:1 kind [2] - 28:11, 52:12 KIRWAN [1] - 3:13 knowledge [4] - 64:4, 99:15, 143:4, 166:29 known [5] - 19:12, 38:28, 40:16, 40:19,</p>	<p>64:25 knows [1] - 22:14</p>	<p>level [8] - 73:18, 95:27, 115:22, 124:20, 134:11, 134:12, 135:11, 166:14</p>
		L		
<p>JACK [1] - 3:6 JAMES [1] - 2:28 JANUARY [3] - 1:18, 6:2, 170:24 January [3] - 70:15, 92:23, 160:16 jigsaw [1] - 131:9 job [12] - 60:8, 89:11, 95:26, 98:15, 124:5, 139:8, 161:21, 162:3, 162:25, 162:27, 167:2 jobs [2] - 62:13 JOE [1] - 3:14 JOHN [4] - 2:11, 2:16, 3:8, 4:1 joined [1] - 56:5 judge [1] - 162:13 JUDGE [1] - 3:12 Judge [1] - 39:2 July [29] - 6:24, 13:19, 13:20, 14:11, 15:1, 15:3, 15:4, 15:23, 16:2, 16:5, 17:25, 24:9, 36:15, 51:15, 52:10, 58:21, 90:11, 90:12, 90:14, 127:9, 136:27, 139:11, 147:19, 147:20, 147:21 junction [2] - 162:20, 162:22 June [4] - 126:12, 126:13, 129:21, 157:23 JUSTICE [3] - 1:7, 1:12, 2:2 justification [1] - 118:4 justified [2] - 30:20, 38:10</p>	<p>K</p> <p>KANE [1] - 2:28 KATE [1] - 3:25 KAVANAGH [1] - 2:5 Kavanagh [13] - 7:7, 7:8, 9:9, 10:9, 10:28, 13:8, 13:29, 14:16, 15:27, 17:24, 18:25, 29:3, 43:26 KEANE [1] - 4:6 keen [1] - 105:19 keep [8] - 15:26, 17:23, 69:14, 88:14, 91:22, 149:7, 161:29,</p>	<p>language [4] - 17:29, 28:1, 35:27, 165:10 last [11] - 16:15, 16:16, 17:25, 59:11, 71:15, 77:25, 134:9, 149:28, 165:4, 170:21 late [1] - 87:7 law [1] - 166:29 LAWLOR [1] - 2:29 layer [1] - 82:4 layers [1] - 67:1 leadership [1] - 166:17 learning [1] - 168:13 least [3] - 39:29, 53:4, 73:17 leave [16] - 6:24, 13:20, 34:27, 36:14, 37:19, 37:29, 40:16, 42:10, 67:11, 70:17, 70:18, 90:26, 90:28, 119:7, 119:14, 160:21 Leave [1] - 104:12 leaving [2] - 59:24, 115:17 led [2] - 83:1, 90:16 left [6] - 18:19, 44:28, 119:11, 125:25, 141:22, 145:25 legal [2] - 31:13, 32:21 legislation [2] - 85:14, 167:1 LEITRIM [1] - 2:13 lenient [2] - 73:8, 167:22 less [1] - 7:11 letter [32] - 14:3, 15:12, 15:13, 16:10, 28:2, 35:14, 36:9, 36:11, 38:11, 38:25, 76:26, 82:14, 82:26, 87:13, 88:25, 110:12, 114:23, 122:18, 123:14, 126:7, 128:11, 128:16, 129:21, 130:4, 133:6, 134:10, 141:11, 142:8, 146:1, 147:20, 152:24, 157:7 letters [1] - 149:22 letting [2] - 37:28, 163:16</p>	<p>level [8] - 73:18, 95:27, 115:22, 124:20, 134:11, 134:12, 135:11, 166:14 liaise [1] - 155:9 liaising [1] - 62:19 liaison [3] - 62:10, 62:26, 124:7 LIAM [1] - 3:18 Liam [1] - 123:20 life [2] - 138:27, 156:10 light [6] - 8:14, 86:2, 87:1, 129:29, 143:4, 145:1 limits [1] - 138:2 line [19] - 8:8, 25:15, 68:20, 72:14, 75:7, 77:16, 77:21, 78:20, 82:8, 86:10, 93:16, 93:18, 94:1, 111:24, 146:1, 146:17, 151:17, 165:16 linear [1] - 98:26 lines [4] - 19:2, 71:16, 108:3, 131:21 link [2] - 114:18, 127:14 linked [5] - 80:28, 100:28, 116:24, 118:6, 131:5 linking [1] - 138:29 list [4] - 49:22, 59:17, 164:11, 168:25 listed [1] - 49:13 listen [2] - 81:2, 87:4 listened [1] - 41:16 listening [1] - 165:3 lists [3] - 59:16, 59:17, 59:21 LITTLE [1] - 3:28 live [2] - 65:16, 156:10 local [13] - 74:22, 79:28, 80:13, 93:9, 95:12, 95:13, 97:20, 106:20, 135:24, 137:6, 137:8, 137:26, 139:27 locally [3] - 70:1, 114:19, 124:6 log [2] - 32:11, 152:21 logged [1] - 107:8 logic [2] - 37:6, 37:7 logically [1] - 39:23 long-term [1] - 96:4 longstanding [1] - 139:21</p>	

<p>look [70] - 10:28, 13:6, 13:29, 14:5, 17:11, 19:8, 20:11, 20:27, 24:3, 25:17, 34:25, 38:11, 40:3, 41:15, 42:20, 43:6, 50:7, 67:16, 71:14, 75:24, 78:20, 81:8, 82:15, 82:21, 84:12, 84:16, 84:20, 87:11, 88:9, 89:16, 90:12, 92:12, 92:25, 93:20, 94:28, 94:29, 95:4, 95:8, 97:3, 98:5, 99:10, 100:13, 103:16, 105:12, 106:29, 107:6, 107:7, 119:4, 119:12, 121:16, 122:19, 126:15, 128:12, 128:13, 129:26, 132:12, 133:7, 137:9, 139:8, 139:12, 147:26, 148:22, 149:8, 151:13, 154:9, 160:13, 164:23, 165:12, 165:13</p> <p>looked [4] - 28:2, 48:4, 66:14, 107:23</p> <p>looking [16] - 10:7, 25:7, 25:29, 26:19, 42:28, 43:24, 43:27, 44:8, 77:25, 80:25, 82:22, 91:26, 131:21, 136:13, 164:9, 170:13</p> <p>LORRAINE [3] - 3:4, 5:9, 55:19</p> <p>Lorraine [2] - 9:15, 55:23</p> <p>lost [2] - 166:8, 168:6</p> <p>lovely [3] - 162:2, 162:3</p> <p>lower [1] - 151:11</p> <p>lucky [3] - 25:4, 25:6, 45:23</p> <p>LUNCH [1] - 109:2</p> <p>lunch [3] - 24:8, 105:12, 147:20</p> <p>LYONS [1] - 4:6</p>	<p>158:15</p> <p>mailed [1] - 126:12</p> <p>mails [2] - 126:26, 134:19</p> <p>main [3] - 35:11, 35:15, 51:12</p> <p>MAIN [1] - 2:12</p> <p>maintained [1] - 25:4</p> <p>major [1] - 59:20</p> <p>MALONE [1] - 1:29</p> <p>Malone [1] - 1:24</p> <p>malpractice [1] - 85:19</p> <p>man [7] - 35:25, 37:25, 117:15, 117:21, 118:11, 138:22</p> <p>manage [2] - 57:18, 57:25</p> <p>management [22] - 60:13, 67:2, 74:22, 79:28, 80:13, 95:12, 95:13, 95:24, 96:4, 97:20, 106:20, 123:4, 133:19, 135:2, 135:24, 137:6, 137:9, 137:26, 139:17, 139:27, 141:25, 166:17</p> <p>Management [3] - 75:24, 101:16, 104:12</p> <p>manager [1] - 62:7</p> <p>manner [1] - 106:6</p> <p>manners [2] - 31:15</p> <p>manpower [2] - 25:1, 25:3</p> <p>March [15] - 21:12, 51:17, 58:17, 65:23, 67:21, 70:17, 70:18, 81:12, 84:1, 85:2, 87:19, 87:23, 130:7, 130:20, 156:25</p> <p>MARGARET [1] - 3:21</p> <p>MARIE [2] - 3:8, 3:17</p> <p>MARK [1] - 3:3</p> <p>Mark [2] - 59:27, 61:1</p> <p>Mark's [1] - 60:8</p> <p>marks [1] - 168:14</p> <p>marrinan [1] - 14:8</p> <p>MARRINAN [1] - 2:7</p> <p>material [7] - 10:1, 10:6, 17:12, 17:13, 17:14, 17:18, 88:8</p> <p>materialises [1] - 11:14</p> <p>MATT [1] - 3:19</p> <p>matter [41] - 8:12, 10:16, 12:14, 32:26,</p>	<p>38:19, 46:11, 51:29, 52:8, 52:17, 61:27, 63:28, 71:21, 74:21, 76:20, 88:5, 88:27, 88:28, 101:23, 112:13, 113:16, 113:29, 116:4, 116:29, 127:29, 128:6, 131:11, 134:4, 137:8, 142:17, 142:21, 145:18, 145:22, 149:1, 155:5, 155:10, 159:24, 160:27, 161:2, 167:25, 167:29, 170:5</p> <p>MATTERS [1] - 1:4</p> <p>matters [19] - 12:19, 60:18, 60:21, 65:8, 73:14, 75:13, 89:3, 94:14, 101:14, 121:28, 124:27, 127:23, 144:25, 146:28, 160:19, 163:18, 166:24, 167:26</p> <p>MATTHIAS [1] - 2:10</p> <p>McBrien [4] - 2:16, 59:8, 64:25, 64:29</p> <p>McCARTAN [2] - 4:10, 4:11</p> <p>McCormack [4] - 21:16, 21:27, 29:10, 50:18</p> <p>McCOURT [1] - 2:17</p> <p>McGARRY [1] - 2:21</p> <p>McGrath [22] - 2:7, 2:28, 5:5, 6:4, 6:6, 6:9, 6:13, 6:14, 11:2, 11:4, 14:10, 26:25, 27:5, 28:27, 30:10, 32:9, 34:7, 35:27, 40:11, 41:3, 55:8, 55:9</p> <p>McGuinness [37] - 2:6, 3:24, 5:11, 55:15, 55:20, 55:26, 56:4, 68:25, 68:27, 69:1, 69:4, 69:7, 69:16, 69:19, 93:23, 93:24, 93:26, 93:28, 105:14, 105:16, 109:5, 110:20, 112:27, 118:24, 157:29, 158:1, 158:4, 159:13, 159:17, 164:12, 164:24, 164:26, 164:27, 166:13, 169:13, 169:19, 169:22</p> <p>McHugh [1] - 123:20</p>	<p>McLoughlin [16] - 62:17, 62:18, 62:20, 107:4, 107:21, 108:5, 108:10, 108:23, 108:26, 126:8, 126:11, 126:27, 127:12, 128:11, 129:25, 139:6</p> <p>MCLOUGHLIN [1] - 3:6</p> <p>McLoughlin's [3] - 128:7, 133:8, 134:19</p> <p>McLYNN [1] - 4:2</p> <p>MCMAHON [1] - 3:8</p> <p>McMahon's [1] - 169:10</p> <p>MCPARTLIN [1] - 3:20</p> <p>mean [66] - 20:2, 28:3, 28:18, 39:23, 44:22, 62:6, 64:10, 64:16, 64:19, 66:2, 72:10, 72:28, 74:28, 77:2, 78:11, 78:27, 80:6, 81:4, 81:16, 81:28, 82:1, 84:5, 86:19, 87:8, 87:15, 89:9, 91:20, 99:10, 99:24, 103:6, 107:2, 109:11, 114:1, 115:21, 116:2, 123:29, 129:27, 131:17, 132:19, 132:29, 134:11, 135:7, 135:10, 135:15, 138:26, 139:3, 146:17, 150:24, 153:14, 154:7, 155:29, 156:6, 159:9, 160:27, 161:8, 161:14, 161:19, 161:25, 164:4, 164:17, 165:8, 165:14, 165:26, 169:3</p> <p>means [1] - 44:23</p> <p>meant [2] - 28:8, 157:7</p> <p>measure [1] - 70:5</p> <p>mechanism [1] - 124:28</p> <p>mediation [2] - 157:5, 157:6</p> <p>MEDICAL [1] - 3:11</p> <p>Medical [9] - 70:6, 76:1, 113:10, 124:22, 124:23, 131:25, 131:27, 132:1, 132:6</p> <p>medical [26] - 16:27, 19:9, 22:14, 27:27, 28:7, 28:9, 29:15,</p>	<p>50:24, 70:7, 76:5, 76:6, 83:23, 85:3, 85:29, 97:18, 99:21, 114:4, 118:28, 119:2, 132:3, 132:11, 138:3, 138:25, 139:7, 141:6</p> <p>medically [4] - 16:1, 89:12, 134:16, 136:10</p> <p>medium [1] - 96:4</p> <p>meet [5] - 66:10, 66:16, 70:2, 158:6, 158:16</p> <p>meeting [24] - 59:26, 60:6, 63:13, 65:25, 66:2, 67:20, 68:8, 68:15, 83:29, 95:7, 102:12, 105:29, 109:8, 119:3, 120:1, 124:6, 130:7, 130:19, 130:20, 134:29, 137:3, 138:20, 165:10, 168:16</p> <p>meetings [1] - 53:28</p> <p>member [72] - 8:4, 8:18, 9:1, 9:7, 12:13, 12:15, 12:16, 15:7, 16:26, 17:5, 19:17, 22:29, 25:26, 26:1, 26:3, 26:5, 26:20, 26:21, 27:8, 27:16, 30:12, 38:3, 53:3, 53:12, 53:13, 68:3, 68:16, 70:2, 70:9, 70:14, 70:16, 70:21, 76:8, 76:9, 78:14, 78:16, 79:21, 79:25, 83:17, 83:27, 85:2, 85:5, 85:11, 85:17, 85:21, 86:3, 86:16, 87:11, 88:17, 88:18, 90:7, 95:3, 95:29, 97:19, 97:22, 99:27, 113:2, 121:20, 124:24, 127:13, 130:14, 132:1, 133:21, 136:10, 139:20, 140:1, 140:7, 140:25, 142:28, 146:9, 161:19</p> <p>MEMBER [1] - 2:2</p> <p>member's [25] - 7:28, 11:9, 17:2, 39:7, 71:22, 76:4, 76:10, 77:7, 78:1, 78:3, 79:29, 80:6, 83:6, 83:18, 83:24, 85:19, 85:29, 89:2, 94:12, 95:25, 96:7, 114:24, 122:10, 131:25, 139:17</p>
M				
<p>macro [1] - 89:6</p> <p>mad [1] - 124:6</p> <p>MADE [2] - 1:2, 1:7</p> <p>mail [8] - 20:9, 126:15, 126:22, 129:20, 130:1, 155:20, 158:10,</p>	<p>158:15</p> <p>mailed [1] - 126:12</p> <p>mails [2] - 126:26, 134:19</p> <p>main [3] - 35:11, 35:15, 51:12</p> <p>MAIN [1] - 2:12</p> <p>maintained [1] - 25:4</p> <p>major [1] - 59:20</p> <p>MALONE [1] - 1:29</p> <p>Malone [1] - 1:24</p> <p>malpractice [1] - 85:19</p> <p>man [7] - 35:25, 37:25, 117:15, 117:21, 118:11, 138:22</p> <p>manage [2] - 57:18, 57:25</p> <p>management [22] - 60:13, 67:2, 74:22, 79:28, 80:13, 95:12, 95:13, 95:24, 96:4, 97:20, 106:20, 123:4, 133:19, 135:2, 135:24, 137:6, 137:9, 137:26, 139:17, 139:27, 141:25, 166:17</p> <p>Management [3] - 75:24, 101:16, 104:12</p> <p>manager [1] - 62:7</p> <p>manner [1] - 106:6</p> <p>manners [2] - 31:15</p> <p>manpower [2] - 25:1, 25:3</p> <p>March [15] - 21:12, 51:17, 58:17, 65:23, 67:21, 70:17, 70:18, 81:12, 84:1, 85:2, 87:19, 87:23, 130:7, 130:20, 156:25</p> <p>MARGARET [1] - 3:21</p> <p>MARIE [2] - 3:8, 3:17</p> <p>MARK [1] - 3:3</p> <p>Mark [2] - 59:27, 61:1</p> <p>Mark's [1] - 60:8</p> <p>marks [1] - 168:14</p> <p>marrinan [1] - 14:8</p> <p>MARRINAN [1] - 2:7</p> <p>material [7] - 10:1, 10:6, 17:12, 17:13, 17:14, 17:18, 88:8</p> <p>materialises [1] - 11:14</p> <p>MATT [1] - 3:19</p> <p>matter [41] - 8:12, 10:16, 12:14, 32:26,</p>	<p>38:19, 46:11, 51:29, 52:8, 52:17, 61:27, 63:28, 71:21, 74:21, 76:20, 88:5, 88:27, 88:28, 101:23, 112:13, 113:16, 113:29, 116:4, 116:29, 127:29, 128:6, 131:11, 134:4, 137:8, 142:17, 142:21, 145:18, 145:22, 149:1, 155:5, 155:10, 159:24, 160:27, 161:2, 167:25, 167:29, 170:5</p> <p>MATTERS [1] - 1:4</p> <p>matters [19] - 12:19, 60:18, 60:21, 65:8, 73:14, 75:13, 89:3, 94:14, 101:14, 121:28, 124:27, 127:23, 144:25, 146:28, 160:19, 163:18, 166:24, 167:26</p> <p>MATTHIAS [1] - 2:10</p> <p>McBrien [4] - 2:16, 59:8, 64:25, 64:29</p> <p>McCARTAN [2] - 4:10, 4:11</p> <p>McCormack [4] - 21:16, 21:27, 29:10, 50:18</p> <p>McCOURT [1] - 2:17</p> <p>McGARRY [1] - 2:21</p> <p>McGrath [22] - 2:7, 2:28, 5:5, 6:4, 6:6, 6:9, 6:13, 6:14, 11:2, 11:4, 14:10, 26:25, 27:5, 28:27, 30:10, 32:9, 34:7, 35:27, 40:11, 41:3, 55:8, 55:9</p> <p>McGuinness [37] - 2:6, 3:24, 5:11, 55:15, 55:20, 55:26, 56:4, 68:25, 68:27, 69:1, 69:4, 69:7, 69:16, 69:19, 93:23, 93:24, 93:26, 93:28, 105:14, 105:16, 109:5, 110:20, 112:27, 118:24, 157:29, 158:1, 158:4, 159:13, 159:17, 164:12, 164:24, 164:26, 164:27, 166:13, 169:13, 169:19, 169:22</p> <p>McHugh [1] - 123:20</p>	<p>McLoughlin [16] - 62:17, 62:18, 62:20, 107:4, 107:21, 108:5, 108:10, 108:23, 108:26, 126:8, 126:11, 126:27, 127:12, 128:11, 129:25, 139:6</p> <p>MCLOUGHLIN [1] - 3:6</p> <p>McLoughlin's [3] - 128:7, 133:8, 134:19</p> <p>McLYNN [1] - 4:2</p> <p>MCMAHON [1] - 3:8</p> <p>McMahon's [1] - 169:10</p> <p>MCPARTLIN [1] - 3:20</p> <p>mean [66] - 20:2, 28:3, 28:18, 39:23, 44:22, 62:6, 64:10, 64:16, 64:19, 66:2, 72:10, 72:28, 74:28, 77:2, 78:11, 78:27, 80:6, 81:4, 81:16, 81:28, 82:1, 84:5, 86:19, 87:8, 87:15, 89:9, 91:20, 99:10, 99:24, 103:6, 107:2, 109:11, 114:1, 115:21, 116:2, 123:29, 129:27, 131:17, 132:19, 132:29, 134:11, 135:7, 135:10, 135:15, 138:26, 139:3, 146:17, 150:24, 153:14, 154:7, 155:29, 156:6, 159:9, 160:27, 161:8, 161:14, 161:19, 161:25, 164:4, 164:17, 165:8, 165:14, 165:26, 169:3</p> <p>means [1] - 44:23</p> <p>meant [2] - 28:8, 157:7</p> <p>measure [1] - 70:5</p> <p>mechanism [1] - 124:28</p> <p>mediation [2] - 157:5, 157:6</p> <p>MEDICAL [1] - 3:11</p> <p>Medical [9] - 70:6, 76:1, 113:10, 124:22, 124:23, 131:25, 131:27, 132:1, 132:6</p> <p>medical [26] - 16:27, 19:9, 22:14, 27:27, 28:7, 28:9, 29:15,</p>	<p>50:24, 70:7, 76:5, 76:6, 83:23, 85:3, 85:29, 97:18, 99:21, 114:4, 118:28, 119:2, 132:3, 132:11, 138:3, 138:25, 139:7, 141:6</p> <p>medically [4] - 16:1, 89:12, 134:16, 136:10</p> <p>medium [1] - 96:4</p> <p>meet [5] - 66:10, 66:16, 70:2, 158:6, 158:16</p> <p>meeting [24] - 59:26, 60:6, 63:13, 65:25, 66:2, 67:20, 68:8, 68:15, 83:29, 95:7, 102:12, 105:29, 109:8, 119:3, 120:1, 124:6, 130:7, 130:19, 130:20, 134:29, 137:3, 138:20, 165:10, 168:16</p> <p>meetings [1] - 53:28</p> <p>member [72] - 8:4, 8:18, 9:1, 9:7, 12:13, 12:15, 12:16, 15:7, 16:26, 17:5, 19:17, 22:29, 25:26, 26:1, 26:3, 26:5, 26:20, 26:21, 27:8, 27:16, 30:12, 38:3, 53:3, 53:12, 53:13, 68:3, 68:16, 70:2, 70:9, 70:14, 70:16, 70:21, 76:8, 76:9, 78:14, 78:16, 79:21, 79:25, 83:17, 83:27, 85:2, 85:5, 85:11, 85:17, 85:21, 86:3, 86:16, 87:11, 88:17, 88:18, 90:7, 95:3, 95:29, 97:19, 97:22, 99:27, 113:2, 121:20, 124:24, 127:13, 130:14, 132:1, 133:21, 136:10, 139:20, 140:1, 140:7, 140:25, 142:28, 146:9, 161:19</p> <p>MEMBER [1] - 2:2</p> <p>member's [25] - 7:28, 11:9, 17:2, 39:7, 71:22, 76:4, 76:10, 77:7, 78:1, 78:3, 79:29, 80:6, 83:6, 83:18, 83:24, 85:19, 85:29, 89:2, 94:12, 95:25, 96:7, 114:24, 122:10, 131:25, 139:17</p>

<p>members [15] - 11:15, 24:28, 37:27, 39:14, 39:16, 45:21, 53:25, 96:17, 102:25, 103:2, 139:24, 140:28, 143:2, 169:11</p> <p>members' [1] - 74:17</p> <p>memo [29] - 22:19, 22:27, 22:28, 23:2, 26:7, 26:15, 26:20, 27:15, 29:19, 31:10, 32:24, 33:9, 33:14, 33:16, 33:18, 34:4, 40:29, 42:17, 42:24, 42:25, 43:1, 43:14, 49:23, 50:1, 50:5, 152:14, 153:20, 154:1</p> <p>memoranda [1] - 60:1</p> <p>memory [1] - 21:13</p> <p>memos [2] - 70:28, 115:17</p> <p>mental [4] - 114:7, 120:20, 126:2, 163:11</p> <p>mention [4] - 32:9, 101:26, 102:7, 125:7</p> <p>mentioned [4] - 13:3, 31:20, 83:6, 101:4</p> <p>merely [1] - 42:2</p> <p>merited [1] - 168:3</p> <p>message [3] - 18:19, 21:23, 22:3</p> <p>met [18] - 21:2, 23:19, 24:8, 41:16, 53:8, 53:28, 62:18, 62:20, 64:12, 65:28, 67:12, 68:12, 85:1, 87:18, 106:5, 107:3, 126:11, 135:26</p> <p>metropolitan [2] - 58:20, 58:22</p> <p>Michael [1] - 100:29</p> <p>MICHAEL [4] - 3:4, 3:5, 3:10, 3:19</p> <p>Mick [1] - 101:7</p> <p>middle [9] - 13:11, 17:28, 18:24, 19:1, 34:8, 48:9, 50:9, 109:6</p> <p>might [21] - 6:25, 14:15, 15:11, 18:5, 38:22, 41:23, 54:26, 65:27, 78:17, 81:14, 81:23, 94:25, 94:26, 103:8, 115:27, 127:25, 135:13, 145:18, 159:16, 164:14</p> <p>mightn't [3] - 37:10, 125:14, 164:7</p>	<p>mind [14] - 31:18, 66:5, 68:1, 119:27, 121:2, 135:6, 135:23, 135:29, 136:1, 153:26, 154:4, 161:19, 162:10, 166:8</p> <p>mindful [2] - 61:26, 100:25</p> <p>mindset [1] - 127:16</p> <p>minimum [1] - 53:25</p> <p>MINISTER [1] - 1:7</p> <p>MINNOCK [1] - 3:9</p> <p>Minnock [4] - 123:22, 123:25, 125:2, 137:19</p> <p>Minnock's [1] - 124:11</p> <p>minor [4] - 71:21, 71:22, 74:14, 116:6</p> <p>minute [2] - 99:7, 139:13</p> <p>minutes [6] - 95:6, 95:8, 113:17, 137:10</p> <p>misrecorded [1] - 103:14</p> <p>misrecording [3] - 94:7, 119:5, 159:26</p> <p>misreporting [1] - 160:21</p> <p>misrepresenting [1] - 164:21</p> <p>missed [2] - 21:24, 159:11</p> <p>missing [1] - 39:15</p> <p>mistake [6] - 15:17, 18:25, 29:12, 29:28, 50:20, 51:3</p> <p>misuse [1] - 95:25</p> <p>mitigation [6] - 24:21, 29:23, 29:25, 30:1, 50:29, 52:17</p> <p>moment [13] - 6:18, 8:27, 10:6, 10:10, 15:13, 15:25, 16:10, 26:8, 45:9, 68:26, 86:21, 145:26, 159:11</p> <p>Monaghan [1] - 15:15</p> <p>MONDAY [2] - 1:18, 6:1</p> <p>Monday [3] - 15:3, 107:6, 128:20</p> <p>money [5] - 73:26, 103:7, 103:13, 128:1, 139:2</p> <p>MONICA [1] - 3:15</p> <p>Monica [2] - 38:13, 126:27</p> <p>months [8] - 58:16,</p>	<p>65:6, 66:13, 102:26, 102:28, 103:10, 104:26</p> <p>mood [1] - 137:3</p> <p>moreover [1] - 43:5</p> <p>morning [11] - 6:4, 6:5, 6:12, 6:14, 6:15, 41:13, 41:14, 48:5, 55:24, 63:19, 113:19</p> <p>MORONEY [1] - 3:18</p> <p>MORRISSEY [1] - 3:26</p> <p>most [4] - 48:4, 90:28, 115:29, 161:22</p> <p>motivation [1] - 161:27</p> <p>move [6] - 7:9, 7:14, 27:16, 62:12, 97:1, 165:11</p> <p>moved [5] - 62:11, 65:14, 73:2, 136:25, 166:26</p> <p>moves [2] - 59:19, 62:11</p> <p>moving [2] - 62:13, 168:14</p> <p>Moylan [5] - 18:19, 21:19, 21:24, 21:29, 22:4</p> <p>Moylan's [2] - 16:18, 18:13</p> <p>MR [74] - 1:12, 2:2, 2:5, 2:6, 2:7, 2:10, 2:10, 2:16, 2:16, 2:21, 2:21, 2:22, 2:28, 2:28, 2:29, 3:13, 3:14, 3:16, 3:23, 3:23, 3:24, 3:24, 4:1, 4:1, 4:6, 4:10, 4:10, 5:6, 5:7, 5:11, 41:10, 41:13, 42:20, 42:23, 42:26, 45:1, 45:3, 46:29, 47:4, 47:7, 55:15, 55:20, 55:26, 56:4, 68:27, 69:1, 69:4, 69:7, 69:16, 69:17, 69:19, 93:24, 93:26, 93:28, 105:14, 105:16, 109:5, 110:20, 112:27, 118:24, 158:1, 158:4, 159:13, 159:17, 164:27, 166:13, 169:13, 169:19, 169:22, 170:8, 170:10, 170:12, 170:18, 170:19</p> <p>MS [29] - 2:7, 2:11, 2:29, 2:30, 3:25, 3:25, 3:26, 3:26, 4:1, 4:7,</p>	<p>4:7, 5:5, 6:4, 6:9, 6:14, 11:2, 11:4, 14:10, 26:25, 27:5, 28:27, 30:10, 32:9, 34:7, 35:27, 40:11, 41:3, 55:7, 55:9</p> <p>Mulcahy [1] - 71:29</p> <p>MULCAHY [1] - 3:5</p> <p>Mulligan [3] - 82:14, 83:2, 111:8</p> <p>MULLIGAN [2] - 2:11, 3:13</p> <p>Mulligan's [1] - 87:13</p> <p>Mullingar [12] - 6:11, 6:18, 24:29, 25:4, 35:23, 39:4, 45:23, 48:19, 53:24, 59:4, 59:6, 59:12</p> <p>MURPHY [4] - 2:30, 3:23, 69:17, 170:19</p> <p>Murphy [1] - 170:3</p> <p>Murray [92] - 6:5, 6:11, 10:15, 13:9, 14:4, 14:28, 17:20, 19:23, 21:26, 23:19, 24:8, 25:6, 29:6, 29:12, 29:27, 31:2, 32:21, 37:21, 47:1, 47:15, 47:25, 50:11, 50:20, 51:2, 59:9, 59:11, 62:5, 65:26, 67:15, 68:8, 68:9, 68:12, 69:21, 69:26, 71:1, 71:28, 72:11, 72:18, 72:27, 73:1, 73:6, 73:16, 73:28, 74:2, 74:16, 74:24, 77:17, 82:5, 82:16, 82:27, 83:28, 84:4, 86:3, 88:8, 89:15, 90:24, 91:9, 95:11, 95:15, 96:13, 104:19, 107:14, 107:17, 107:24, 120:16, 120:24, 123:11, 123:19, 128:8, 129:1, 135:4, 135:27, 139:5, 144:15, 144:24, 145:10, 147:22, 150:29, 151:23, 151:28, 152:14, 152:23, 153:8, 153:27, 153:28, 154:8, 154:28, 162:21, 164:9, 164:14, 168:18, 168:21</p> <p>MURRAY [6] - 3:3, 3:9, 5:3, 6:8, 41:10,</p>	<p>47:4</p> <p>Murray's [18] - 14:2, 15:12, 23:18, 23:27, 36:5, 71:24, 74:28, 76:26, 80:17, 84:12, 84:16, 90:13, 91:1, 130:7, 130:19, 149:11, 163:29, 166:17</p> <p>must [10] - 11:7, 12:11, 25:25, 26:5, 27:6, 27:7, 90:29, 125:26, 144:11</p> <p>MÍCHEÁL [1] - 3:23</p>
N				
<p>name [1] - 64:10</p> <p>named [3] - 1:26, 36:14, 83:24</p> <p>namely [1] - 26:19</p> <p>nature [1] - 131:12</p> <p>Navan [2] - 36:6, 45:21</p> <p>near [1] - 18:10</p> <p>nearly [1] - 58:8</p> <p>necessary [11] - 8:10, 17:17, 61:6, 66:18, 66:20, 74:3, 79:27, 113:14, 125:3, 140:9, 140:14</p> <p>need [11] - 65:11, 66:15, 70:28, 86:24, 97:27, 130:3, 138:5, 138:29, 142:24, 149:21, 154:9</p> <p>needed [8] - 65:17, 69:6, 106:24, 132:11, 138:1, 138:16, 168:1</p> <p>needs [2] - 95:29, 96:1</p> <p>negative [3] - 28:11, 35:24, 164:3</p> <p>neglect [3] - 20:13, 20:19, 78:15</p> <p>never [14] - 14:23, 22:27, 60:23, 100:21, 104:8, 121:2, 133:10, 133:13, 136:25, 163:14, 163:16, 165:12, 165:25, 165:28</p> <p>new [19] - 11:13, 57:19, 58:25, 59:21, 60:29, 61:28, 62:7, 62:14, 65:25, 68:2, 75:6, 87:2, 93:12, 102:21, 124:7, 131:3, 132:10, 150:6, 150:9</p>				

<p>newly [2] - 60:25, 161:27</p> <p>news [2] - 32:14, 63:21</p> <p>next [33] - 7:14, 9:18, 13:16, 14:15, 14:25, 16:29, 18:23, 19:15, 19:29, 20:14, 27:19, 27:25, 29:3, 29:22, 34:16, 48:16, 50:27, 51:19, 53:28, 55:15, 70:12, 74:3, 75:21, 79:18, 79:19, 88:15, 97:9, 106:11, 108:1, 108:2, 115:1, 159:3, 160:20</p> <p>nice [1] - 165:13</p> <p>NICHOLAS [2] - 2:10, 4:5</p> <p>Nicholas [1] - 20:28</p> <p>Nick [3] - 24:1, 95:13, 105:19</p> <p>nick [1] - 14:27</p> <p>night [6] - 39:6, 39:17, 52:6, 53:26, 54:8, 125:20</p> <p>nil [1] - 20:21</p> <p>nine [1] - 39:5</p> <p>nitty [1] - 61:5</p> <p>no, [1] - 141:27</p> <p>NOEL [1] - 4:10</p> <p>Nolan [1] - 122:28</p> <p>NOLAN [1] - 3:6</p> <p>nominated [2] - 157:16, 160:18</p> <p>non [1] - 79:21</p> <p>non-effective [1] - 79:21</p> <p>nonetheless [1] - 67:27</p> <p>Noreen [1] - 64:24</p> <p>NOREEN [1] - 2:16</p> <p>normal [4] - 24:18, 95:9, 95:10, 111:17</p> <p>NORTHUMBERLAN D [1] - 2:18</p> <p>not.. [1] - 27:17</p> <p>note [12] - 21:1, 21:2, 42:7, 42:13, 51:11, 87:22, 92:13, 101:20, 102:8, 105:11, 124:12, 157:18</p> <p>noted [4] - 10:15, 83:6, 101:26, 105:16</p> <p>notes [9] - 1:26, 10:25, 92:11, 105:19, 115:17, 124:12, 132:25, 136:28, 157:14</p> <p>nothing [20] - 31:29,</p>	<p>38:8, 39:27, 39:28, 39:29, 41:27, 55:9, 65:16, 73:5, 73:13, 73:23, 117:4, 117:8, 125:14, 125:28, 125:29, 162:24, 165:14, 168:4, 169:6</p> <p>notice [11] - 8:26, 19:16, 19:22, 20:10, 23:11, 151:10, 151:25, 152:5, 152:18, 154:16, 154:17</p> <p>Notice [3] - 31:24, 31:25, 33:4</p> <p>notification [4] - 52:27, 150:28, 151:13, 151:27</p> <p>notified [4] - 33:4, 76:10, 140:26, 156:22</p> <p>notify [6] - 46:1, 46:7, 46:8, 80:15, 148:28, 154:27</p> <p>notifying [2] - 155:21, 156:29</p> <p>notwithstanding [1] - 134:22</p> <p>November [7] - 33:3, 34:16, 111:2, 152:24, 154:20, 155:20, 156:23</p> <p>nuances [2] - 89:4, 99:28</p> <p>nub [1] - 62:4</p> <p>Nugent [1] - 126:27</p> <p>NUGENT [2] - 3:14, 3:21</p> <p>number [39] - 6:22, 13:4, 13:28, 14:6, 20:19, 21:4, 21:6, 23:13, 30:4, 30:27, 32:3, 32:4, 32:6, 32:7, 38:14, 49:13, 50:1, 54:20, 59:16, 61:3, 62:11, 79:14, 98:17, 104:10, 123:12, 126:23, 130:12, 130:18, 135:27, 142:23, 146:7, 150:14, 157:28, 164:10, 167:12, 168:17</p> <p>numbers [1] - 20:18</p> <p>NYLAND [1] - 3:19</p> <p>NÍ [1] - 2:30</p> <p>NÓIRÍN [1] - 3:7</p>	<p style="text-align: center;">O</p> <p>O'BRIEN [1] - 2:10</p> <p>O'Brien [2] - 160:12, 160:26</p> <p>o'clock [1] - 39:6</p> <p>O'CONNOR [1] - 2:21</p> <p>O'HIGGINS [1] - 3:23</p> <p>O'MARA [1] - 2:17</p> <p>O'Neill [2] - 107:25, 123:17</p> <p>O'NEILL [1] - 4:1</p> <p>O'REARDON [1] - 3:17</p> <p>O'Reilly [1] - 57:8</p> <p>O'ROURKE [2] - 4:7, 55:7</p> <p>O'Sullivan [1] - 63:3</p> <p>O'SULLIVAN [1] - 3:7</p> <p>object [3] - 151:5, 157:18, 163:1</p> <p>objective [4] - 72:9, 73:3, 98:24, 161:29</p> <p>obligation [3] - 11:8, 31:16, 69:13</p> <p>obligations [1] - 144:10</p> <p>obliged [5] - 31:13, 32:11, 116:29, 151:10, 167:27</p> <p>observation [3] - 93:19, 95:22, 95:29</p> <p>observations [5] - 95:14, 127:1, 137:6, 137:9, 153:29</p> <p>obstacle [1] - 140:4</p> <p>obtain [2] - 11:19, 158:8</p> <p>obtained [1] - 32:11</p> <p>obvious [1] - 95:25</p> <p>obviously [39] - 51:29, 66:3, 68:23, 74:15, 76:1, 77:24, 86:11, 95:11, 98:6, 109:17, 114:23, 114:27, 119:2, 119:4, 119:17, 120:16, 123:18, 126:11, 130:5, 130:22, 131:9, 132:14, 134:15, 135:15, 136:22, 137:2, 137:21, 137:25, 138:25, 143:4, 145:17, 146:2, 146:6, 151:19, 167:10, 167:18, 168:15, 169:5, 169:9</p>	<p>occasion [2] - 100:9, 102:2</p> <p>occasions [4] - 129:6, 133:3, 134:13, 135:27</p> <p>Occupational [4] - 70:22, 88:18, 131:26, 132:5</p> <p>occupational [7] - 91:21, 98:18, 98:26, 113:11, 119:22, 121:3, 121:8</p> <p>occurred [4] - 47:29, 70:15, 76:20, 133:11</p> <p>occurring [2] - 67:24, 70:16</p> <p>October [3] - 91:10, 151:22, 151:27</p> <p>OF [13] - 1:2, 1:8, 1:12, 1:13, 2:3, 3:2, 3:15, 41:6, 46:25, 55:4, 169:16</p> <p>offence [2] - 32:7, 71:19</p> <p>offer [2] - 139:18, 153:7</p> <p>offered [2] - 29:7, 50:12</p> <p>offered/received [1] - 123:6</p> <p>offering [1] - 143:19</p> <p>offers [1] - 115:8</p> <p>office [21] - 19:9, 23:28, 26:17, 26:22, 27:17, 33:27, 56:16, 56:19, 60:20, 89:18, 89:19, 113:10, 116:4, 122:19, 122:25, 132:8, 142:27, 143:12, 147:14, 148:18, 151:3</p> <p>OFFICE [1] - 3:27</p> <p>Officer [9] - 70:6, 76:2, 113:10, 124:22, 124:23, 131:25, 131:27, 132:1, 132:6</p> <p>officer [42] - 7:2, 9:14, 9:29, 10:16, 11:4, 17:14, 18:16, 30:24, 32:27, 38:13, 39:16, 46:14, 46:19, 46:20, 47:20, 47:26, 49:4, 53:11, 53:24, 64:28, 76:20, 84:2, 90:20, 95:13, 95:28, 100:28, 110:4, 111:14, 111:19, 113:4, 113:14, 144:14, 144:19, 149:6, 149:24, 152:6,</p>	<p>152:9, 152:12, 157:8</p> <p>OFFICER [2] - 3:11, 3:14</p> <p>officer/ superintendent [1] - 76:11</p> <p>officers [6] - 11:18, 18:8, 18:16, 36:20, 53:21, 157:17</p> <p>offices [1] - 59:5</p> <p>official [1] - 39:12</p> <p>OGHUVBU [1] - 3:11</p> <p>old [4] - 79:7, 105:8, 168:28</p> <p>OLIVIA [2] - 3:12, 4:1</p> <p>Olivia [4] - 107:25, 120:17, 123:17</p> <p>ON [6] - 1:5, 1:9, 1:18, 2:13, 6:1</p> <p>once [3] - 138:4, 150:26, 151:8</p> <p>one [59] - 7:19, 8:1, 11:27, 14:15, 16:8, 16:12, 20:13, 20:14, 23:17, 25:15, 28:14, 28:18, 33:25, 33:27, 33:29, 38:22, 39:17, 41:17, 42:6, 42:10, 42:18, 42:23, 43:24, 44:8, 44:13, 44:25, 44:26, 45:5, 45:8, 45:9, 45:20, 52:6, 52:7, 54:14, 56:23, 67:23, 79:9, 88:21, 89:25, 96:12, 98:2, 99:6, 113:29, 116:8, 117:14, 121:10, 121:11, 121:14, 130:22, 146:18, 148:14, 152:3, 153:5, 157:17, 157:23, 162:4, 163:8, 168:1</p> <p>one's [2] - 98:14, 160:29</p> <p>ongoing [5] - 66:23, 122:28, 125:2, 133:21, 144:29</p> <p>onward [1] - 70:25</p> <p>onwards [2] - 55:29, 56:2</p> <p>open [6] - 7:16, 10:9, 12:26, 16:8, 17:16, 17:22</p> <p>opened [6] - 11:22, 13:13, 16:13, 17:15, 30:11, 31:11</p> <p>operate [3] - 72:29, 75:5, 128:4</p> <p>operational [1] - 57:10</p>
---	--	---	--	--

<p>operations [2] - 57:3, 57:6 opinion [10] - 76:6, 87:18, 100:4, 119:2, 127:23, 130:23, 139:18, 146:25, 167:7, 168:3 opportunities [1] - 161:4 opportunity [6] - 12:17, 24:3, 30:27, 71:20, 73:25, 157:21 opposite [1] - 23:2 opt [1] - 157:5 option [4] - 8:17, 12:3, 24:23, 168:5 options [3] - 11:27, 13:13, 13:15 oral [1] - 12:17 orally [1] - 59:29 order [10] - 16:25, 33:8, 68:5, 70:7, 73:27, 83:17, 113:8, 139:27, 160:5, 164:15 ordinary [5] - 77:28, 78:2, 78:3, 97:23, 121:6 organisation [14] - 17:4, 57:27, 70:21, 73:21, 74:7, 74:8, 92:4, 114:6, 120:4, 132:20, 143:9, 143:14, 146:20, 150:10 organised [1] - 106:19 original [5] - 52:27, 55:27, 71:11, 84:27, 158:29 originally [2] - 56:5, 100:12 ORLA [1] - 3:20 OSMOND [1] - 3:27 OTHER [1] - 1:3 otherwise [5] - 71:7, 94:4, 116:20, 128:6, 160:8 ought [1] - 43:19 ourselves [4] - 73:10, 131:14, 136:9, 147:14 outcome [13] - 23:11, 29:22, 47:17, 71:8, 79:24, 92:16, 126:17, 144:17, 149:25, 151:28, 154:16, 155:3, 160:10 outcomes [1] - 155:6 outline [2] - 34:24, 144:16</p>	<p>outlined [3] - 103:29, 132:1, 144:26 outlines [3] - 8:8, 9:19, 13:10 outlining [1] - 34:23 outs [1] - 77:23 outside [10] - 71:25, 73:1, 75:5, 85:10, 121:26, 128:4, 134:6, 134:26, 135:14, 143:14 overall [1] - 66:3 overindulgence [1] - 17:4 overleaf [1] - 15:17 overview [1] - 87:8 overnight [1] - 107:29 overpaid [2] - 150:14, 151:6 overpayment [6] - 36:8, 36:16, 37:3, 93:15, 150:1, 150:15 Overpayment [1] - 36:11 overpayments [1] - 150:28 oversaw [1] - 65:14 overtime [2] - 24:26, 53:27 overview [1] - 9:27 owed [1] - 151:7 own [19] - 38:6, 70:1, 91:17, 94:12, 98:28, 99:7, 106:9, 108:20, 111:15, 114:1, 114:3, 114:24, 116:2, 130:20, 132:3, 134:16, 138:13, 152:9, 158:22 owner [1] - 144:8 ownership [1] - 26:29</p>	<p>49:28, 50:7, 51:10, 55:28, 56:1, 67:17, 67:18, 70:12, 71:10, 71:14, 75:28, 75:29, 76:15, 79:19, 82:15, 82:28, 83:2, 87:12, 88:15, 88:24, 89:16, 90:12, 92:11, 92:25, 93:19, 93:22, 97:3, 97:9, 97:12, 100:13, 105:12, 105:14, 110:2, 121:17, 122:19, 123:11, 123:15, 123:23, 124:12, 124:18, 126:15, 128:12, 128:14, 130:4, 131:21, 136:28, 140:19, 142:6, 147:26, 148:3, 148:22, 148:29, 149:23, 151:14, 151:22, 152:4, 152:19, 152:21, 153:28, 154:23, 157:22, 157:25, 159:3, 159:23, 160:13, 160:20, 160:22, 166:19 paid [9] - 36:27, 39:25, 40:7, 53:13, 73:3, 73:4, 150:21, 151:11 papers [3] - 42:14, 60:1, 154:11 paragraph [29] - 10:13, 16:15, 16:21, 16:23, 18:25, 19:2, 29:4, 29:22, 34:8, 44:10, 49:9, 50:9, 50:27, 51:13, 51:19, 67:19, 67:20, 71:15, 76:17, 77:25, 79:18, 90:18, 121:18, 130:6, 142:13, 149:28, 160:20 paragraphs [2] - 133:6, 147:28 paraphrasing [1] - 37:20 pardon [1] - 93:26 park [1] - 146:14 part [11] - 7:10, 31:1, 41:24, 45:14, 45:16, 71:11, 135:23, 141:29, 165:23, 165:29, 166:3 particular [17] - 9:18, 13:6, 22:26, 38:15, 38:27, 44:18, 60:29,</p>	<p>65:20, 66:21, 78:5, 82:22, 91:15, 105:10, 125:16, 136:20, 151:14, 156:18 particularly [2] - 60:21, 127:23 pass [2] - 27:3, 141:28 passed [2] - 87:9, 92:7 PASSED [1] - 1:4 past [2] - 45:12, 70:14 Pat [7] - 13:9, 14:4, 23:27, 31:2, 73:28, 107:13, 125:20 patient [1] - 117:20 Patrick [1] - 154:28 PATRICK [4] - 2:7, 2:10, 2:28, 3:3 Paul [1] - 51:15 PAUL [3] - 2:16, 2:21, 4:1 pay [58] - 7:21, 7:27, 7:28, 8:2, 8:4, 11:28, 20:1, 20:5, 20:6, 24:23, 35:3, 35:24, 39:24, 39:25, 40:14, 40:19, 41:26, 44:10, 44:12, 44:14, 44:21, 52:26, 52:29, 72:10, 73:29, 74:2, 81:16, 93:11, 93:14, 101:15, 102:21, 102:26, 103:3, 103:9, 103:10, 103:12, 104:26, 105:5, 109:9, 114:9, 115:20, 119:10, 120:25, 126:1, 126:3, 127:4, 127:13, 127:28, 127:29, 128:5, 138:3, 150:8, 150:20, 150:26, 160:5, 163:6 payment [4] - 37:4, 71:24, 105:21, 160:8 Pearse [1] - 58:29 peer [2] - 79:27, 140:26 PEGGY [1] - 4:7 penalty [14] - 11:26, 12:1, 12:7, 12:11, 20:3, 32:5, 38:9, 39:22, 39:26, 41:20, 44:16, 45:19, 155:10, 155:12 pending [2] - 78:4, 144:17 pension [4] - 103:11, 105:1, 105:3, 105:5</p>	<p>people [57] - 42:27, 59:18, 62:11, 62:12, 62:13, 62:15, 64:21, 65:13, 69:18, 75:3, 81:6, 84:21, 86:24, 91:20, 91:22, 91:24, 92:10, 94:21, 94:25, 95:1, 99:3, 100:1, 102:18, 114:16, 115:26, 126:23, 128:5, 132:12, 139:7, 139:8, 146:17, 146:18, 150:7, 150:14, 150:17, 150:19, 151:6, 151:8, 151:10, 156:11, 156:17, 161:14, 161:24, 162:1, 162:4, 162:7, 162:9, 162:13, 162:25, 162:26, 162:29, 163:15, 163:16, 165:4, 168:8 People [1] - 85:27 PEOPLE [1] - 3:16 people's [1] - 161:15 per [2] - 35:3, 35:4 perceived [1] - 86:27 percent [1] - 33:19 perfect [1] - 156:6 perfectly [1] - 69:12 perform [1] - 113:8 perhaps [20] - 17:21, 45:20, 67:16, 71:14, 75:23, 79:16, 82:13, 88:9, 92:12, 92:25, 93:20, 94:28, 94:29, 95:7, 100:13, 105:12, 115:6, 127:21, 148:18 period [17] - 13:21, 36:27, 63:21, 72:1, 82:17, 83:11, 89:27, 91:16, 92:6, 97:16, 102:29, 104:18, 104:23, 126:28, 127:7, 150:9, 151:14 periods [2] - 91:3, 147:2 permission [1] - 134:5 permit [1] - 71:24 permitted [1] - 132:4 pernickety [1] - 33:20 persistent [1] - 90:22 person [55] - 12:15, 12:16, 61:29, 62:10, 62:27, 62:28, 64:1, 64:6, 75:8, 77:10, 77:14, 78:19, 80:11, 80:12, 81:22, 82:12,</p>
P				
<p>Paddy [1] - 100:18 PAF [1] - 65:29 PAGE [1] - 5:2 page [100] - 6:16, 7:14, 9:18, 10:9, 13:7, 13:16, 16:29, 17:22, 18:23, 18:24, 19:29, 27:19, 27:22, 27:25, 29:1, 29:3, 34:16, 36:9, 42:16, 43:25, 48:3, 48:9, 48:13, 48:16, 48:17, 49:6, 49:7, 49:8, 49:14,</p>				

<p>89:9, 89:11, 89:14, 90:1, 90:2, 91:21, 91:23, 91:29, 93:13, 93:14, 98:3, 98:7, 98:12, 98:13, 98:18, 99:21, 102:17, 106:6, 114:2, 114:8, 115:24, 116:3, 116:7, 116:16, 116:19, 117:21, 124:7, 131:14, 132:23, 136:14, 138:2, 138:16, 138:25, 155:27, 162:14, 163:5, 167:23 person's [3] - 91:26, 99:22, 155:26 personal [3] - 71:23, 74:6, 90:25 personally [2] - 19:26, 66:11 perspective [1] - 135:24 PETER [2] - 2:5, 3:13 phone [2] - 13:22, 21:16, 21:19, 21:20, 21:22, 22:1, 22:2, 22:4, 22:5, 31:1, 31:6, 31:14, 31:17, 31:28, 38:3, 101:5, 106:18, 124:9, 132:17, 152:22 phoned [3] - 21:26, 106:14, 125:20 phoning [3] - 21:27, 21:29, 132:15 physical [1] - 95:27 pick [3] - 86:2, 169:1, 169:4 picked [1] - 169:4 piece [7] - 65:10, 66:14, 98:29, 106:28, 115:26, 131:9, 148:13 pieces [2] - 98:9, 99:29 pitch [1] - 165:21 PLACE [1] - 4:8 place [19] - 20:25, 61:4, 61:29, 62:9, 62:15, 64:17, 65:6, 67:28, 100:25, 102:24, 125:5, 133:19, 136:27, 162:12, 162:24, 163:3, 164:14, 165:27 plain [1] - 35:27 planning [1] - 143:10 play [2] - 62:16, 132:20 played [1] - 52:9 pleaded [5] - 32:3, 34:21, 35:1, 41:17,</p>	<p>153:5 pleading [1] - 21:3 pleasant [1] - 106:6 plus [3] - 26:20, 37:23, 105:21 point [30] - 35:11, 35:12, 35:15, 38:27, 40:17, 52:1, 64:27, 68:3, 72:20, 74:27, 75:24, 82:23, 85:5, 86:17, 87:22, 87:26, 90:9, 91:26, 93:3, 99:22, 108:10, 115:12, 122:16, 124:14, 130:2, 131:17, 141:8, 143:20, 158:17, 170:4 pointed [1] - 23:12 points [2] - 104:10, 140:22 police [2] - 76:9, 161:29 policies [1] - 156:8 Policing [1] - 169:6 policing [5] - 53:25, 76:5, 124:25, 132:2, 140:8 policy [10] - 77:16, 93:13, 93:15, 120:29, 133:15, 142:20, 149:3, 155:23, 163:4, 163:5 portion [1] - 100:14 posing [1] - 80:16 position [30] - 20:17, 20:29, 63:1, 66:3, 75:1, 80:5, 81:6, 84:5, 84:8, 86:11, 86:19, 87:2, 88:2, 88:28, 89:8, 96:28, 99:11, 118:19, 120:14, 123:1, 123:5, 129:17, 130:25, 136:2, 136:13, 136:18, 138:9, 146:16, 162:9 positive [1] - 166:27 possession [1] - 40:24 possibility [1] - 146:2 possible [11] - 16:25, 41:20, 44:5, 68:4, 81:15, 133:17, 133:24, 142:29, 145:3, 147:23, 161:26 possibly [1] - 162:15 posting [1] - 164:5 potential [1] - 96:11 POWER [1] - 4:10 practicable [1] -</p>	<p>140:1 practice [7] - 59:29, 60:11, 61:14, 95:9, 95:10, 97:22, 164:5 practitioner [1] - 132:3 preceding [1] - 127:7 precise [2] - 99:25, 115:12 precluded [2] - 78:29 preferred [1] - 158:21 preferring [1] - 149:16 prejudice [1] - 140:5 prepared [6] - 48:18, 60:1, 60:5, 89:4, 123:13, 157:5 preparing [1] - 158:22 preprinted [1] - 27:10 presence [4] - 53:25, 96:18, 96:19, 157:16 present [5] - 60:17, 66:26, 105:21, 124:25, 161:4 presentation [1] - 95:27 presenting [1] - 60:22 presents [1] - 160:22 preserve [1] - 141:5 PRESIDENT [2] - 1:13, 2:3 press [1] - 66:4 presumably [5] - 32:4, 40:3, 68:8, 146:6, 166:13 presume [1] - 167:7 presumptive [1] - 121:7 pretty [2] - 35:16, 35:18 prevent [2] - 93:15, 151:6 prevents [1] - 73:13 previous [8] - 12:12, 34:29, 64:24, 131:28, 132:14, 132:17, 143:11, 163:14 previously [5] - 39:4, 70:10, 126:26, 142:5, 158:5 primary [1] - 32:7 principal [1] - 38:12 principally [1] - 130:19 principle [1] - 118:25 prioritised [1] -</p>	<p>133:20 privy [3] - 106:3, 127:6, 127:19 probability [1] - 121:22 problem [6] - 17:28, 72:11, 74:20, 111:4, 118:4, 169:21 problems [5] - 35:23, 53:28, 54:11, 54:12, 112:4 procedure [5] - 10:9, 19:16, 22:27, 26:18, 133:15 procedures [7] - 8:9, 8:21, 10:25, 62:8, 72:29, 156:9, 167:1 proceed [1] - 145:14 proceeded [1] - 157:4 proceedings [2] - 47:9, 49:27 process [15] - 47:25, 79:2, 81:18, 98:9, 98:27, 116:20, 117:18, 144:8, 151:29, 155:18, 156:3, 159:3, 160:24, 161:1, 168:20 processes [2] - 156:2, 162:29 processing [1] - 97:6 procurement [1] - 57:27 produced [1] - 28:22 produces [1] - 60:23 professional [4] - 70:7, 74:13, 87:18, 130:23 programme [2] - 96:9, 140:3 progress [6] - 63:7, 88:27, 139:17, 145:3, 145:27, 161:7 progressed [2] - 121:26, 143:26 progressing [1] - 144:16 project [2] - 57:18, 57:24 promoted [5] - 57:2, 57:20, 57:28, 60:25, 164:6 promotion [7] - 39:7, 58:12, 59:16, 61:13, 61:18, 168:19, 168:20 propensity [1] - 90:25 properly [2] - 109:19, 115:10</p>	<p>proportionality [1] - 9:22 propose [1] - 48:5 proposition [1] - 138:17 prosecution [1] - 122:27 PROTECTED [2] - 1:2, 1:3 protected [17] - 62:1, 62:7, 63:9, 63:16, 63:17, 64:1, 75:2, 75:14, 81:1, 84:7, 99:20, 102:24, 136:18, 161:13, 161:17, 163:5, 164:3 protection [1] - 143:10 Protection [2] - 143:13, 144:11 protections [2] - 85:7, 85:13 protest [1] - 156:29 protocol [1] - 121:13 protracted [1] - 160:29 proud [1] - 161:19 proved [1] - 127:14 provide [4] - 34:15, 113:7, 149:24, 163:20 provided [9] - 14:3, 17:13, 19:10, 19:16, 22:29, 97:2, 97:18, 133:27, 166:18 provides [1] - 9:11 providing [1] - 84:29 provision [3] - 11:14, 11:26, 45:17 provisions [4] - 12:6, 12:29, 68:23, 141:1 prudent [1] - 67:27 psychological [3] - 78:11, 78:27, 115:14 psychologically [1] - 116:20 psychologist [1] - 138:25 public [15] - 61:27, 63:29, 64:10, 66:5, 71:24, 72:16, 72:28, 73:26, 74:7, 99:20, 128:1, 155:29, 166:5, 168:7, 168:17 Public [1] - 104:12 publicly [1] - 66:7 published [1] - 59:22 pull [1] - 129:29 pulled [1] - 124:1 pulling [2] - 125:19, 147:14</p>
--	--	---	---	---

<p>Pulse [4] - 142:3, 143:17, 147:10, 147:15</p> <p>punches [1] - 78:17</p> <p>purely [1] - 26:22</p> <p>purpose [5] - 12:15, 60:26, 88:19, 89:1, 90:17</p> <p>purposes [5] - 8:22, 9:28, 20:3, 32:21, 36:4</p> <p>pursue [1] - 90:10</p> <p>pursued [1] - 36:21</p> <p>push [4] - 91:11, 134:21, 146:26, 160:27</p> <p>put [24] - 37:20, 40:13, 43:22, 47:7, 53:10, 61:29, 62:14, 67:27, 98:24, 105:2, 121:3, 123:10, 125:4, 133:19, 137:4, 147:11, 150:6, 151:10, 155:6, 155:12, 158:26, 164:14, 164:27, 165:26</p> <p>puts [1] - 121:6</p> <p>putting [1] - 36:29</p>	<p>quoting [1] - 100:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radio [2] - 63:20, 101:8</p> <p>raise [3] - 94:22, 94:23, 94:24</p> <p>raised [10] - 38:7, 64:2, 93:8, 95:1, 107:5, 109:9, 109:10, 129:26, 134:15, 146:3</p> <p>raises [1] - 102:6</p> <p>ramifications [1] - 81:16</p> <p>rang [3] - 106:11, 107:13, 107:14</p> <p>rank [2] - 8:18, 11:23</p> <p>ranks [1] - 57:25</p> <p>rate [8] - 20:1, 40:18, 103:11, 105:2, 105:5, 109:20, 119:10, 151:12</p> <p>rather [2] - 30:7, 53:11</p> <p>rationale [8] - 34:11, 34:15, 34:24, 35:18, 36:28, 118:5, 153:9, 154:9</p> <p>rationalise [4] - 156:4, 156:5, 156:20</p> <p>re [2] - 43:29, 83:4</p> <p>Re [1] - 113:2</p> <p>reach [1] - 165:22</p> <p>reacted [1] - 81:6</p> <p>reaction [1] - 82:18</p> <p>read [9] - 19:28, 22:19, 31:24, 31:25, 31:26, 112:27, 113:17, 130:5, 165:5</p> <p>reading [1] - 154:11</p> <p>reads [1] - 50:27</p> <p>real [2] - 98:5, 135:4</p> <p>realised [1] - 87:29</p> <p>realistically [3] - 87:6, 131:4, 131:6</p> <p>reality [1] - 99:16</p> <p>really [55] - 12:27, 13:12, 21:2, 22:11, 23:10, 52:6, 60:20, 60:26, 62:1, 64:4, 64:15, 64:19, 64:28, 65:9, 66:20, 66:24, 67:4, 71:15, 72:8, 73:8, 77:12, 81:4, 86:26, 90:17, 91:11, 99:1, 99:12, 102:20, 102:27, 105:6, 106:10, 107:10,</p>	<p>107:11, 107:18, 108:21, 109:27, 110:1, 114:7, 115:12, 120:1, 121:7, 122:17, 125:23, 128:24, 132:24, 136:3, 147:17, 149:3, 149:8, 154:9, 156:4, 161:23, 162:10, 170:1</p> <p>reason [17] - 42:29, 66:21, 75:8, 82:25, 91:15, 93:5, 103:28, 107:27, 116:17, 125:11, 125:16, 132:16, 153:14, 153:17, 156:18, 162:14, 163:1</p> <p>reasonable [3] - 99:22, 155:27, 170:2</p> <p>reasonably [1] - 140:1</p> <p>reasoning [1] - 41:24</p> <p>reasons [6] - 48:12, 62:12, 118:10, 127:15, 149:24, 161:10</p> <p>receipt [3] - 80:17, 131:24, 152:6</p> <p>receive [8] - 17:12, 50:1, 61:10, 89:18, 92:16, 95:8, 139:26, 140:17</p> <p>received [16] - 12:14, 13:4, 16:7, 17:8, 31:2, 49:28, 70:28, 82:14, 82:18, 87:14, 107:26, 122:18, 123:25, 139:16, 148:13, 154:24</p> <p>receiving [1] - 97:6</p> <p>recent [2] - 90:28, 130:22</p> <p>recipient [1] - 85:10</p> <p>recite [1] - 142:13</p> <p>recites [1] - 160:19</p> <p>recognise [1] - 27:20</p> <p>recollect [2] - 91:7, 137:25</p> <p>recollection [6] - 89:21, 91:9, 101:13, 103:12, 125:19, 138:15</p> <p>recommend [2] - 17:5, 134:5</p> <p>recommendation [5] - 91:1, 148:6, 148:14, 148:19, 168:29</p> <p>recommending [1] - 41:26</p> <p>record [15] - 12:12,</p>	<p>17:24, 17:26, 20:1, 23:10, 23:11, 25:19, 26:15, 27:22, 40:16, 61:27, 95:28, 97:23, 101:2, 159:27</p> <p>recorded [20] - 16:15, 17:21, 18:25, 20:16, 23:12, 29:6, 31:10, 42:24, 50:11, 93:1, 93:9, 94:16, 101:18, 101:19, 101:20, 103:21, 109:28, 137:27, 141:3, 159:29</p> <p>recording [9] - 14:12, 14:18, 16:1, 29:1, 93:5, 97:9, 101:15, 101:22, 102:4</p> <p>records [2] - 29:22, 74:6</p> <p>recoup [2] - 36:16, 37:4</p> <p>recouping [1] - 38:29</p> <p>recoupment [2] - 37:23, 38:15</p> <p>recovered [1] - 41:27</p> <p>recovery [1] - 112:2</p> <p>rectified [1] - 101:23</p> <p>REDDY [1] - 4:8</p> <p>reduced [2] - 105:5, 127:13</p> <p>reduction [5] - 7:21, 7:27, 11:28, 24:23, 44:10</p> <p>refer [13] - 34:17, 63:6, 76:20, 80:7, 81:22, 91:24, 94:5, 109:22, 111:24, 113:19, 116:29, 117:12, 130:5</p> <p>reference [17] - 15:17, 18:2, 18:18, 28:3, 91:26, 104:11, 110:2, 110:11, 123:17, 123:22, 132:25, 135:20, 147:23, 153:14, 153:23</p> <p>referenced [4] - 52:16, 100:7, 103:29, 162:22</p> <p>references [3] - 51:6, 51:25, 51:26</p> <p>referencing [4] - 17:27, 17:28, 164:12, 164:24</p> <p>referral [8] - 83:22, 85:28, 88:18, 99:13, 115:3, 117:11, 129:9,</p>	<p>132:22</p> <p>referred [13] - 12:24, 63:3, 75:7, 76:2, 82:26, 90:5, 90:13, 95:6, 99:24, 115:27, 124:22, 149:27, 165:6</p> <p>referring [3] - 70:22, 111:6, 145:16</p> <p>refers [11] - 11:13, 67:18, 67:19, 74:24, 76:1, 84:20, 89:14, 97:4, 114:19, 139:13, 145:16</p> <p>reflect [1] - 87:6</p> <p>reflected [2] - 107:29, 145:2</p> <p>reflection [1] - 13:12</p> <p>refused [1] - 125:25</p> <p>regard [9] - 12:11, 12:18, 12:26, 22:28, 30:20, 52:2, 98:21, 115:27, 160:6</p> <p>regarded [2] - 135:1, 166:28</p> <p>regarding [3] - 15:17, 32:12, 113:16</p> <p>regardless [1] - 150:27</p> <p>region [2] - 58:20, 58:22</p> <p>Region [4] - 75:27, 85:8, 142:9, 145:18</p> <p>REGISTRAR [1] - 2:5</p> <p>regular [2] - 94:25, 124:25</p> <p>regularly [4] - 22:11, 22:14, 51:23, 100:27</p> <p>regulation [8] - 6:27, 7:12, 7:17, 8:23, 9:27, 25:18, 43:28, 44:4</p> <p>Regulation [9] - 9:29, 10:7, 10:28, 11:18, 17:6, 43:25, 43:27, 73:12, 167:14</p> <p>Regulations [3] - 6:28, 10:26, 104:13</p> <p>regulations [23] - 7:6, 7:10, 8:25, 20:4, 30:12, 38:20, 40:23, 43:25, 71:25, 73:7, 73:12, 73:13, 85:1, 93:12, 102:22, 102:27, 104:11, 105:8, 128:1, 148:28, 150:6, 150:10, 155:4</p> <p>rehearing [1] - 153:11</p> <p>reiterate [1] - 88:3</p> <p>reiterated [1] - 154:14</p>
<p style="text-align: center;">Q</p> <hr/> <p>qualified [2] - 94:11, 114:11</p> <p>QUAY [3] - 2:24, 2:31, 4:12</p> <p>queried [1] - 128:10</p> <p>queries [1] - 38:7</p> <p>questioned [2] - 29:27, 51:2</p> <p>questioning [1] - 152:26</p> <p>questions [7] - 41:4, 46:29, 47:8, 55:6, 55:7, 55:8, 65:2</p> <p>quick [1] - 85:5</p> <p>Quigley [4] - 106:14, 106:16, 106:18, 106:26</p> <p>Quinn [4] - 95:13, 100:29, 101:5, 137:18</p> <p>QUINN [1] - 3:10</p> <p>quite [19] - 58:27, 73:8, 75:15, 77:8, 81:7, 81:20, 87:1, 98:11, 105:1, 105:3, 106:8, 116:6, 130:2, 136:2, 149:4, 149:7, 160:29, 168:2, 170:6</p>				

<p>reiterating [1] - 86:11</p> <p>reject [2] - 37:24, 163:17</p> <p>related [80] - 16:2, 21:11, 29:8, 29:26, 40:26, 50:13, 51:1, 51:6, 51:16, 51:26, 52:16, 63:23, 67:29, 68:11, 68:16, 69:24, 74:24, 75:9, 76:14, 77:10, 79:1, 79:22, 80:12, 80:13, 80:20, 81:13, 81:19, 81:29, 82:5, 83:8, 83:19, 85:5, 85:11, 89:10, 93:6, 97:16, 97:21, 97:24, 100:20, 101:19, 102:7, 104:7, 105:22, 107:10, 107:16, 110:4, 110:23, 111:16, 112:11, 113:3, 113:27, 114:12, 114:25, 115:9, 116:13, 117:28, 117:29, 118:3, 118:12, 119:21, 120:3, 120:13, 121:24, 122:10, 126:17, 127:15, 129:3, 129:14, 129:15, 130:6, 130:13, 130:16, 133:2, 133:13, 133:26, 134:3, 168:19</p> <p>relates [3] - 31:1, 90:14, 95:22</p> <p>relating [5] - 83:24, 92:11, 142:2, 160:4, 168:18</p> <p>relation [70] - 6:22, 6:23, 7:6, 8:3, 9:21, 10:5, 10:8, 11:5, 11:26, 19:9, 22:25, 24:19, 36:8, 40:12, 40:23, 47:19, 52:26, 60:2, 61:3, 61:29, 62:26, 64:13, 67:6, 68:10, 69:24, 71:1, 71:7, 72:14, 74:16, 78:27, 85:20, 86:19, 92:19, 93:8, 93:20, 94:15, 96:21, 97:12, 98:29, 99:26, 101:22, 102:12, 105:16, 106:26, 106:28, 108:14, 110:23, 113:29, 114:16, 124:3, 126:1, 134:29,</p>	<p>141:25, 145:18, 145:22, 147:3, 147:6, 153:8, 154:20, 155:15, 155:17, 159:19, 160:23, 163:19, 163:26, 166:5, 167:13, 167:28, 168:20, 169:11</p> <p>relations [1] - 56:14</p> <p>relaying [1] - 95:24</p> <p>relevance [1] - 152:27</p> <p>relevant [18] - 12:14, 31:7, 36:17, 36:22, 36:24, 68:24, 76:23, 111:11, 111:12, 112:16, 121:11, 123:6, 125:22, 125:26, 139:16, 147:11, 147:13, 162:23</p> <p>relied [3] - 17:16, 17:18, 118:25</p> <p>reluctant [1] - 77:22</p> <p>rely [1] - 17:13</p> <p>relying [3] - 85:12, 120:5, 130:18</p> <p>remain [1] - 131:29</p> <p>remained [2] - 13:20, 44:16</p> <p>remains [2] - 125:1, 143:23</p> <p>remember [6] - 11:27, 21:27, 25:1, 39:6, 124:15, 165:10</p> <p>reminded [1] - 149:22</p> <p>reminder [3] - 134:26, 136:24, 145:21</p> <p>removed [2] - 39:24, 94:9</p> <p>remuneration [2] - 40:18, 105:8</p> <p>rented [1] - 78:21</p> <p>repeat [2] - 12:5, 159:16</p> <p>repeated [1] - 140:22</p> <p>repeats [1] - 12:23</p> <p>replaced [1] - 59:9</p> <p>replied [3] - 123:13, 152:23, 154:14</p> <p>replies [2] - 128:22, 154:8</p> <p>reply [5] - 91:7, 128:12, 135:15, 157:21, 157:22</p> <p>report [85] - 8:29, 9:2, 13:19, 14:21,</p>	<p>15:2, 20:27, 25:16, 25:18, 25:21, 25:25, 26:13, 26:19, 27:6, 27:13, 27:19, 29:10, 30:11, 31:27, 38:2, 39:5, 48:6, 48:17, 48:20, 48:23, 48:26, 48:27, 49:7, 49:19, 50:8, 50:19, 51:26, 51:27, 52:18, 52:19, 52:23, 67:16, 67:18, 68:19, 74:23, 74:28, 78:21, 80:17, 80:20, 82:4, 82:26, 83:4, 83:22, 84:12, 84:13, 84:16, 84:20, 84:27, 85:28, 87:15, 89:9, 89:18, 90:13, 90:23, 92:16, 104:1, 105:27, 113:5, 113:7, 114:2, 114:4, 123:3, 123:13, 123:15, 123:25, 124:9, 125:10, 133:13, 140:17, 144:23, 145:26, 147:9, 147:21, 147:27, 152:6, 152:8, 152:11, 152:12, 152:13</p> <p>reported [21] - 13:18, 14:12, 14:23, 15:1, 28:5, 51:15, 67:15, 68:16, 77:5, 77:21, 79:24, 81:29, 82:16, 88:24, 89:15, 93:14, 97:21, 104:19, 124:27, 139:10, 142:5</p> <p>reporter [2] - 85:6, 130:15</p> <p>reporting [12] - 15:18, 21:8, 21:28, 85:1, 85:13, 88:1, 90:16, 92:26, 124:28, 141:5, 141:29, 147:22</p> <p>reports [9] - 75:8, 77:10, 78:19, 79:21, 80:11, 85:9, 113:13, 123:10, 130:8</p> <p>represent [1] - 137:3</p> <p>represented [1] - 169:19</p> <p>reprimand [1] - 7:22</p> <p>request [7] - 32:20, 34:10, 42:7, 89:29, 125:18, 130:1, 152:28</p> <p>requested [3] - 90:20, 144:14, 144:18</p> <p>requesting [1] - 152:21</p> <p>require [2] - 33:9,</p>	<p>155:1</p> <p>required [10] - 15:6, 53:26, 60:17, 64:18, 66:29, 88:13, 94:13, 127:16, 140:28, 169:23</p> <p>requirement [1] - 134:2</p> <p>requires [1] - 83:22</p> <p>requiring [1] - 144:25</p> <p>reshuffle [1] - 59:20</p> <p>resolution [3] - 73:15, 73:16, 74:5</p> <p>RESOLUTIONS [1] - 1:4</p> <p>resolving [1] - 8:13</p> <p>RESOURCES [1] - 3:15</p> <p>Resources [1] - 88:25</p> <p>resources [5] - 25:3, 25:5, 25:7, 37:26, 54:1</p> <p>respect [27] - 11:15, 12:3, 22:7, 30:4, 34:12, 36:21, 44:11, 51:21, 54:24, 62:15, 79:1, 90:21, 91:2, 110:4, 131:29, 132:7, 139:16, 140:2, 143:26, 145:5, 146:3, 151:14, 152:2, 153:29, 156:3, 162:7, 163:26</p> <p>respected [1] - 89:7</p> <p>respectful [1] - 52:12</p> <p>respectfully [1] - 17:5</p> <p>respectively [1] - 39:17</p> <p>respond [1] - 38:1</p> <p>responded [1] - 159:24</p> <p>responding [1] - 145:23</p> <p>response [7] - 38:12, 134:19, 142:1, 158:23, 158:25, 158:26, 159:19</p> <p>responsibilities [1] - 17:3</p> <p>responsibility [9] - 47:22, 80:19, 83:26, 85:26, 92:1, 92:3, 143:10, 143:17, 144:8</p> <p>responsible [2] - 47:20, 167:24</p> <p>rest [2] - 29:1, 43:16</p> <p>restate [1] - 88:3</p>	<p>restated [1] - 129:11</p> <p>restructuring [1] - 166:25</p> <p>result [3] - 63:9, 79:22, 151:28</p> <p>resulted [1] - 150:13</p> <p>resume [1] - 76:9</p> <p>RESUMED [2] - 6:1, 109:2</p> <p>resumed [1] - 37:15</p> <p>resumption [4] - 14:18, 16:6, 122:8, 125:3</p> <p>reticent [3] - 67:26, 74:29, 85:11</p> <p>RETIRED [7] - 3:5, 3:6, 3:7, 3:7, 3:11, 3:12, 3:13</p> <p>retrospective [8] - 16:26, 27:27, 28:3, 28:9, 28:12, 28:23, 28:28, 103:1</p> <p>return [13] - 13:18, 15:6, 101:14, 105:19, 124:26, 125:4, 132:2, 132:3, 133:3, 133:18, 139:28, 140:4, 140:7</p> <p>returned [5] - 48:20, 48:25, 104:5, 122:26</p> <p>returning [4] - 16:18, 121:22, 121:27, 140:10</p> <p>returns [1] - 120:12</p> <p>revenue [2] - 71:19, 74:12</p> <p>review [21] - 9:11, 30:13, 30:14, 30:16, 30:19, 33:5, 82:23, 88:28, 89:19, 105:23, 124:23, 131:25, 132:4, 140:9, 151:20, 152:19, 153:11, 154:12, 154:21, 154:25, 155:4</p> <p>reviewed [6] - 9:20, 9:24, 45:22, 89:29, 132:27, 158:28</p> <p>revisit [1] - 120:14</p> <p>ring [3] - 21:22, 31:19, 61:15</p> <p>rise [1] - 74:15</p> <p>ROAD [1] - 2:18</p> <p>road [3] - 74:1, 74:10, 122:13</p> <p>role [15] - 11:4, 12:28, 40:13, 52:9, 62:2, 64:17, 64:21, 65:9, 69:27, 81:24, 81:25, 85:7, 97:5, 159:28, 166:3</p>
--	---	---	---	---

<p>roles [4] - 56:23, 62:15, 132:20, 132:29</p> <p>roll [1] - 130:28</p> <p>roughest [1] - 162:12</p> <p>route [1] - 24:23</p> <p>rules [1] - 121:15</p> <p>ruling [1] - 157:5</p> <p>run [3] - 21:22, 49:14, 163:9</p> <p>runs [1] - 107:28</p> <p>RYAN [2] - 1:12, 2:2</p>	<p>SCM [1] - 122:26</p> <p>screen [4] - 7:8, 107:23, 107:28, 107:29</p> <p>screens [1] - 107:12</p> <p>scroll [2] - 88:13, 158:28</p> <p>SEAN [4] - 1:12, 2:2, 2:22, 3:17</p> <p>SEANAD [1] - 1:5</p> <p>second [14] - 10:13, 22:7, 47:23, 51:21, 67:20, 90:17, 116:8, 121:17, 130:5, 138:7, 149:28, 152:3, 153:5, 165:1</p> <p>seconded [1] - 52:4</p> <p>secondly [1] - 102:6</p> <p>section [17] - 9:10, 9:13, 13:12, 20:6, 20:7, 20:11, 30:12, 37:4, 41:26, 48:8, 57:3, 97:17, 97:20, 150:15, 150:28</p> <p>Section [1] - 97:23</p> <p>sections [1] - 20:11</p> <p>sector [2] - 72:28, 74:7</p> <p>Security [2] - 142:19, 143:16</p> <p>see [46] - 16:6, 16:14, 17:27, 17:28, 18:23, 19:1, 19:9, 20:12, 22:16, 30:25, 38:25, 39:29, 43:24, 48:8, 49:8, 50:9, 51:12, 54:14, 59:27, 62:29, 70:29, 74:25, 83:26, 84:1, 94:21, 95:11, 99:22, 100:29, 101:11, 103:23, 107:9, 107:28, 111:17, 126:15, 127:27, 136:29, 137:13, 137:29, 141:10, 141:17, 145:19, 152:20, 155:27, 156:7, 164:4, 170:20</p> <p>seeing [1] - 88:10</p> <p>seek [3] - 47:15, 76:21, 113:9</p> <p>seeking [1] - 82:25</p> <p>seem [5] - 38:22, 88:26, 90:13, 118:24, 152:27</p> <p>seisin [1] - 115:8</p> <p>self [1] - 155:26</p> <p>self-confidence [1] - 155:26</p>	<p>send [18] - 10:4, 21:23, 22:3, 26:4, 26:26, 33:21, 33:25, 33:29, 81:23, 87:22, 89:22, 90:1, 91:21, 98:11, 116:16, 116:27, 154:16</p> <p>sending [2] - 25:7, 82:10</p> <p>sends [4] - 27:14, 116:3, 116:23, 152:12</p> <p>senior [4] - 18:8, 18:16, 36:20, 139:27</p> <p>sense [16] - 20:3, 28:27, 39:26, 60:27, 89:6, 103:18, 122:13, 125:17, 135:1, 135:5, 150:11, 153:16, 155:5, 165:17, 165:18, 166:10</p> <p>sensible [1] - 170:14</p> <p>sensitive [1] - 167:3</p> <p>sensitivity [1] - 146:12</p> <p>sent [36] - 10:10, 33:22, 43:22, 49:20, 49:24, 50:4, 52:19, 52:23, 56:7, 68:19, 71:1, 82:8, 82:27, 83:10, 83:13, 86:10, 88:8, 88:10, 89:27, 89:28, 93:4, 99:24, 128:7, 130:8, 134:26, 136:24, 141:11, 148:10, 148:18, 151:1, 151:27, 152:14, 153:4, 154:17, 157:22</p> <p>sentence [2] - 16:16, 122:5</p> <p>separate [5] - 36:25, 45:19, 46:10, 48:13, 72:17</p> <p>September [9] - 20:25, 27:18, 31:12, 36:23, 40:28, 48:18, 48:27, 49:7, 50:9</p> <p>sequence [1] - 142:5</p> <p>sequentially [1] - 82:13</p> <p>Sergeant [13] - 15:15, 16:18, 18:13, 18:19, 21:16, 21:19, 21:24, 21:27, 21:29, 22:4, 29:10, 50:18, 100:18</p> <p>SERGEANT [5] - 3:12, 3:20, 4:5, 4:6, 4:6</p> <p>sergeant [7] - 39:9, 39:13, 39:14, 57:2, 57:6, 68:2, 78:20</p> <p>sergeants [1] - 61:3</p> <p>serious [4] - 7:11, 43:29, 95:24, 114:13</p> <p>servant [1] - 156:1</p> <p>served [7] - 19:25, 19:28, 39:4, 53:3, 151:25, 152:16, 155:1</p> <p>Service [6] - 70:23, 88:19, 104:12, 131:26, 132:5, 139:26</p> <p>service [13] - 12:12, 57:29, 85:22, 104:24, 104:29, 105:1, 133:22, 140:9, 155:24, 161:3, 162:24, 162:26, 163:17</p> <p>Services [1] - 1:24</p> <p>SERVICES [1] - 1:29</p> <p>services [1] - 96:2</p> <p>set [9] - 34:12, 44:12, 60:1, 63:6, 128:25, 146:22, 147:28, 150:15, 162:6</p> <p>settling [1] - 66:18</p> <p>severe [1] - 53:21</p> <p>sexual [2] - 101:28, 133:16</p> <p>shall [8] - 8:1, 12:16, 44:10, 44:13, 79:23, 79:26, 79:28, 140:11</p> <p>SHANE [1] - 3:23</p> <p>SHANKEY [1] - 3:21</p> <p>SHANKEY-SMITH [1] - 3:21</p> <p>SHANNON [1] - 2:13</p> <p>shape [1] - 164:19</p> <p>SHEAHAN [1] - 3:18</p> <p>SHELLEY [1] - 3:25</p> <p>ship [1] - 162:25</p> <p>SHIP [1] - 3:28</p> <p>short [1] - 95:27</p> <p>shortly [1] - 168:16</p> <p>show [4] - 24:2, 36:9, 54:6, 54:19</p> <p>showed [1] - 37:15</p> <p>sic [1] - 107:25</p> <p>sick [36] - 6:24, 15:19, 15:28, 21:9, 21:12, 22:11, 28:5, 37:10, 37:18, 38:2, 38:5, 40:16, 46:4, 51:15, 51:17, 67:11, 67:24, 70:14, 75:8, 77:10, 80:11, 81:29, 83:4, 84:27, 89:9, 90:26, 93:14, 102:25, 102:28, 103:2,</p>	<p>105:21, 150:9, 151:9, 159:26, 160:21</p> <p>Sick [1] - 104:12</p> <p>sickness [10] - 78:1, 81:15, 93:12, 95:28, 141:2, 147:22, 150:20, 150:27, 159:27, 167:16</p> <p>Sickness [2] - 75:25, 101:16</p> <p>side [2] - 137:21, 170:1</p> <p>sight [2] - 120:4, 165:16</p> <p>sights [1] - 162:7</p> <p>sign [3] - 22:22, 27:10, 73:26</p> <p>signed [8] - 16:5, 20:24, 23:3, 30:5, 42:18, 148:9, 152:5</p> <p>significance [2] - 28:11, 122:6</p> <p>significant [2] - 90:24, 167:11</p> <p>significantly [1] - 150:19</p> <p>signs [1] - 22:20</p> <p>similar [1] - 157:7</p> <p>simple [8] - 23:27, 25:13, 80:8, 98:11, 107:11, 107:12, 117:3, 117:5</p> <p>simply [4] - 10:12, 36:3, 42:26, 114:28</p> <p>SINÉAD [1] - 4:7</p> <p>SINéAD [1] - 2:7</p> <p>sit [2] - 36:10, 165:23</p> <p>sitting [1] - 23:1</p> <p>situation [8] - 42:2, 85:17, 115:6, 115:7, 116:12, 116:14, 143:20, 145:2</p> <p>situations [1] - 167:3</p> <p>six [6] - 58:7, 58:8, 102:26, 134:27, 136:24, 147:28</p> <p>skip [1] - 50:27</p> <p>sky [1] - 31:23</p> <p>slightly [4] - 104:28, 128:14, 141:29, 148:2</p> <p>slow [1] - 93:27</p> <p>small [2] - 107:11, 135:27</p> <p>smart [1] - 128:20</p> <p>SMITH [1] - 3:21</p> <p>SMITHFIELD [2] - 2:24, 4:12</p> <p>social [2] - 103:8, 105:4</p> <p>SOLE [1] - 2:2</p>
S			
<p>safe [2] - 102:20, 162:1</p> <p>safeguards [2] - 165:26</p> <p>sake [3] - 8:7, 10:7, 47:14</p> <p>SAMS [15] - 36:15, 93:1, 93:9, 94:17, 101:23, 105:27, 106:28, 107:10, 107:15, 107:18, 119:7, 120:6, 141:3, 141:6</p> <p>sanction [3] - 31:1, 34:11, 45:14</p> <p>sanctions [1] - 44:5</p> <p>SANDRA [1] - 4:6</p> <p>sat [1] - 32:16</p> <p>satisfactory [1] - 169:28</p> <p>satisfied [3] - 111:19, 116:23, 124:18</p> <p>Saturday [2] - 15:3, 155:20</p> <p>SAVAGE [1] - 3:16</p> <p>saw [14] - 24:21, 40:23, 41:19, 73:5, 76:25, 92:19, 92:22, 126:4, 134:14, 137:5, 138:22, 143:20, 147:20</p> <p>SC [11] - 2:6, 2:7, 2:10, 2:16, 2:21, 2:28, 3:23, 3:23, 3:24, 4:6, 4:7</p> <p>SCANLAN [1] - 3:8</p> <p>schedule [1] - 142:2</p> <p>scheduled [1] - 122:3</p> <p>scheme [2] - 79:26, 140:27</p> <p>science [2] - 56:20, 57:16</p>	<p>send [18] - 10:4, 21:23, 22:3, 26:4, 26:26, 33:21, 33:25, 33:29, 81:23, 87:22, 89:22, 90:1, 91:21, 98:11, 116:16, 116:27, 154:16</p> <p>sending [2] - 25:7, 82:10</p> <p>sends [4] - 27:14, 116:3, 116:23, 152:12</p> <p>senior [4] - 18:8, 18:16, 36:20, 139:27</p> <p>sense [16] - 20:3, 28:27, 39:26, 60:27, 89:6, 103:18, 122:13, 125:17, 135:1, 135:5, 150:11, 153:16, 155:5, 165:17, 165:18, 166:10</p> <p>sensible [1] - 170:14</p> <p>sensitive [1] - 167:3</p> <p>sensitivity [1] - 146:12</p> <p>sent [36] - 10:10, 33:22, 43:22, 49:20, 49:24, 50:4, 52:19, 52:23, 56:7, 68:19, 71:1, 82:8, 82:27, 83:10, 83:13, 86:10, 88:8, 88:10, 89:27, 89:28, 93:4, 99:24, 128:7, 130:8, 134:26, 136:24, 141:11, 148:10, 148:18, 151:1, 151:27, 152:14, 153:4, 154:17, 157:22</p> <p>sentence [2] - 16:16, 122:5</p> <p>separate [5] - 36:25, 45:19, 46:10, 48:13, 72:17</p> <p>September [9] - 20:25, 27:18, 31:12, 36:23, 40:28, 48:18, 48:27, 49:7, 50:9</p> <p>sequence [1] - 142:5</p> <p>sequentially [1] - 82:13</p> <p>Sergeant [13] - 15:15, 16:18, 18:13, 18:19, 21:16, 21:19, 21:24, 21:27, 21:29, 22:4, 29:10, 50:18, 100:18</p> <p>SERGEANT [5] - 3:12, 3:20, 4:5, 4:6, 4:6</p> <p>sergeant [7] - 39:9,</p>	<p>39:13, 39:14, 57:2, 57:6, 68:2, 78:20</p> <p>sergeants [1] - 61:3</p> <p>serious [4] - 7:11, 43:29, 95:24, 114:13</p> <p>servant [1] - 156:1</p> <p>served [7] - 19:25, 19:28, 39:4, 53:3, 151:25, 152:16, 155:1</p> <p>Service [6] - 70:23, 88:19, 104:12, 131:26, 132:5, 139:26</p> <p>service [13] - 12:12, 57:29, 85:22, 104:24, 104:29, 105:1, 133:22, 140:9, 155:24, 161:3, 162:24, 162:26, 163:17</p> <p>Services [1] - 1:24</p> <p>SERVICES [1] - 1:29</p> <p>services [1] - 96:2</p> <p>set [9] - 34:12, 44:12, 60:1, 63:6, 128:25, 146:22, 147:28, 150:15, 162:6</p> <p>settling [1] - 66:18</p> <p>severe [1] - 53:21</p> <p>sexual [2] - 101:28, 133:16</p> <p>shall [8] - 8:1, 12:16, 44:10, 44:13, 79:23, 79:26, 79:28, 140:11</p> <p>SHANE [1] - 3:23</p> <p>SHANKEY [1] - 3:21</p> <p>SHANKEY-SMITH [1] - 3:21</p> <p>SHANNON [1] - 2:13</p> <p>shape [1] - 164:19</p> <p>SHEAHAN [1] - 3:18</p> <p>SHELLEY [1] - 3:25</p> <p>ship [1] - 162:25</p> <p>SHIP [1] - 3:28</p> <p>short [1] - 95:27</p> <p>shortly [1] - 168:16</p> <p>show [4] - 24:2, 36:9, 54:6, 54:19</p> <p>showed [1] - 37:15</p> <p>sic [1] - 107:25</p> <p>sick [36] - 6:24, 15:19, 15:28, 21:9, 21:12, 22:11, 28:5, 37:10, 37:18, 38:2, 38:5, 40:16, 46:4, 51:15, 51:17, 67:11, 67:24, 70:14, 75:8, 77:10, 80:11, 81:29, 83:4, 84:27, 89:9, 90:26, 93:14, 102:25, 102:28, 103:2,</p>	<p>105:21, 150:9, 151:9, 159:26, 160:21</p> <p>Sick [1] - 104:12</p> <p>sickness [10] - 78:1, 81:15, 93:12, 95:28, 141:2, 147:22, 150:20, 150:27, 159:27, 167:16</p> <p>Sickness [2] - 75:25, 101:16</p> <p>side [2] - 137:21, 170:1</p> <p>sight [2] - 120:4, 165:16</p> <p>sights [1] - 162:7</p> <p>sign [3] - 22:22, 27:10, 73:26</p> <p>signed [8] - 16:5, 20:24, 23:3, 30:5, 42:18, 148:9, 152:5</p> <p>significance [2] - 28:11, 122:6</p> <p>significant [2] - 90:24, 167:11</p> <p>significantly [1] - 150:19</p> <p>signs [1] - 22:20</p> <p>similar [1] - 157:7</p> <p>simple [8] - 23:27, 25:13, 80:8, 98:11, 107:11, 107:12, 117:3, 117:5</p> <p>simply [4] - 10:12, 36:3, 42:26, 114:28</p> <p>SINÉAD [1] - 4:7</p> <p>SINéAD [1] - 2:7</p> <p>sit [2] - 36:10, 165:23</p> <p>sitting [1] - 23:1</p> <p>situation [8] - 42:2, 85:17, 115:6, 115:7, 116:12, 116:14, 143:20, 145:2</p> <p>situations [1] - 167:3</p> <p>six [6] - 58:7, 58:8, 102:26, 134:27, 136:24, 147:28</p> <p>skip [1] - 50:27</p> <p>sky [1] - 31:23</p> <p>slightly [4] - 104:28, 128:14, 141:29, 148:2</p> <p>slow [1] - 93:27</p> <p>small [2] - 107:11, 135:27</p> <p>smart [1] - 128:20</p> <p>SMITH [1] - 3:21</p> <p>SMITHFIELD [2] - 2:24, 4:12</p> <p>social [2] - 103:8, 105:4</p> <p>SOLE [1] - 2:2</p>

<p>solely [1] - 51:9 solicitor [1] - 157:16 SOLICITORS [1] - 3:27 SOLICITORS [6] - 2:11, 2:18, 2:23, 2:30, 4:8, 4:11 solution [2] - 56:21, 72:27 solve [3] - 68:4, 72:11, 72:27 someone [8] - 11:23, 41:26, 78:18, 89:12, 112:7, 119:20, 134:25, 165:23 sometimes [6] - 73:11, 89:22, 115:27, 137:10, 160:29, 162:28 soon [2] - 65:18, 77:16 sorry [33] - 9:4, 12:5, 14:25, 23:24, 37:12, 45:2, 45:26, 45:29, 46:2, 48:22, 49:18, 79:14, 93:22, 93:27, 97:10, 105:13, 110:9, 116:10, 118:22, 140:18, 141:18, 152:4, 157:25, 157:28, 158:2, 159:10, 159:14, 159:16, 160:14, 164:22, 164:25, 165:19 sort [35] - 25:10, 38:8, 56:21, 56:22, 57:18, 60:16, 60:19, 61:26, 64:27, 65:17, 66:18, 66:23, 67:7, 77:22, 78:7, 78:21, 80:10, 91:10, 102:16, 102:29, 103:26, 106:4, 110:3, 114:15, 126:4, 129:6, 129:11, 134:23, 147:11, 151:8, 154:13, 161:1, 162:22, 167:11 sorted [2] - 108:25, 139:1 sought [3] - 45:10, 84:13, 142:19 source [14] - 68:1, 80:14, 83:18, 87:28, 89:1, 89:5, 122:10, 130:13, 143:23, 143:27, 144:2, 144:3, 144:4, 147:7 south [3] - 58:22, 58:27, 59:1</p>	<p>space [2] - 98:25, 133:5 speaking [1] - 25:28 specialist [1] - 81:24 specific [4] - 10:6, 47:21, 86:25, 133:27 specifically [2] - 52:16, 112:11 specifics [1] - 88:6 specified [1] - 22:11 specify [1] - 148:29 speculating [1] - 92:8 spent [3] - 56:28, 57:22, 57:23 spoken [2] - 95:18, 123:19 Square [2] - 56:15, 56:16 SR1 [2] - 14:10, 37:13 staff [2] - 163:13, 163:14 stage [32] - 21:2, 21:25, 22:5, 23:3, 23:26, 26:28, 33:13, 35:23, 47:15, 56:7, 65:26, 66:29, 68:10, 70:29, 80:19, 88:7, 92:29, 93:12, 96:23, 103:9, 106:21, 114:23, 115:11, 123:18, 123:27, 125:15, 125:21, 126:10, 134:21, 141:26, 152:8, 158:9 stages [1] - 114:21 stakeholders [2] - 142:25, 143:7 stamped [3] - 15:22, 148:13 stand [2] - 69:3, 162:8 standard [3] - 99:12, 148:24, 150:5 standards [1] - 166:3 standing [1] - 165:1 stands [1] - 169:26 start [2] - 86:24, 130:29 started [1] - 169:27 STATE [1] - 3:27 state [1] - 54:3 statement [24] - 6:16, 23:7, 26:13, 32:20, 33:10, 34:20, 38:6, 55:27, 55:29, 71:11, 97:2, 97:5, 100:12, 100:15, 108:6, 109:27, 121:5,</p>	<p>152:9, 152:22, 152:28, 156:25, 156:26, 158:8, 163:20 states [1] - 31:4 stating [2] - 94:10, 94:12 Station [1] - 133:12 station [7] - 6:18, 37:28, 39:5, 57:10, 58:2, 96:17, 96:22 stationed [1] - 64:9 status [2] - 122:23, 123:4 stay [2] - 69:12, 115:29 stayed [1] - 58:7 staying [1] - 23:16 steer [1] - 162:25 stem [1] - 17:4 stenographer's [1] - 31:26 stenographic [1] - 1:26 stenography [1] - 1:24 STENOGRAPHY [1] - 1:29 step [6] - 19:15, 74:4, 75:21, 132:15, 145:27, 160:5 STEPHANIE [1] - 2:27 STEPHEN [1] - 2:21 stewardship [2] - 162:20, 166:26 still [10] - 15:18, 58:26, 72:20, 112:2, 126:3, 137:8, 144:21, 147:4, 150:11, 156:20 stop [4] - 19:10, 27:24, 97:11, 116:8 stopped [2] - 96:24, 96:25 Store [1] - 56:7 story [1] - 40:2 straight [3] - 66:25, 72:14, 165:11 straightaway [1] - 150:8 straightforward [1] - 80:8 strategic [1] - 143:10 STREET [3] - 2:12, 3:28, 4:3 Street [4] - 56:7, 58:23, 59:1 stress [104] - 16:2, 21:11, 22:10, 22:13, 22:14, 29:9, 29:26, 40:26, 50:14, 51:1,</p>	<p>51:6, 51:16, 51:22, 51:25, 51:26, 52:9, 52:17, 53:22, 68:1, 68:11, 68:17, 69:24, 74:25, 75:9, 75:11, 76:15, 77:8, 77:11, 78:27, 79:1, 79:22, 79:29, 80:6, 80:12, 80:13, 80:14, 80:20, 80:29, 81:13, 81:20, 81:21, 81:29, 82:5, 83:7, 83:18, 85:5, 85:11, 87:25, 89:2, 89:6, 89:10, 93:6, 97:17, 98:29, 100:20, 101:19, 102:7, 103:15, 103:21, 104:7, 105:22, 107:10, 110:5, 110:23, 111:16, 112:12, 113:3, 113:5, 113:27, 114:12, 114:25, 115:9, 115:25, 116:13, 117:28, 117:29, 118:4, 118:12, 119:22, 120:3, 120:14, 121:24, 122:10, 126:17, 127:15, 127:24, 128:27, 129:3, 129:14, 129:15, 129:16, 130:6, 130:14, 130:16, 133:2, 133:13, 133:26, 134:3, 135:23, 136:10, 136:17, 136:21 stress [1] - 107:17 stressed [16] - 75:13, 89:12, 90:7, 98:4, 98:13, 98:15, 98:19, 103:27, 104:4, 115:28, 115:29, 118:9, 120:10, 134:16, 136:11 stressful [1] - 105:20 stressing [1] - 98:16 stressors [1] - 97:21 stricken [1] - 111:29 strictly [1] - 141:2 strong [1] - 161:26 strongly [2] - 129:13, 163:1 structured [1] - 60:6 struggle [1] - 166:2 stuck [1] - 24:29 studying [1] - 56:19 stuff [6] - 56:22, 60:16, 67:7, 73:22,</p>	<p>82:4, 162:21 stupid [1] - 159:10 style [1] - 166:17 sub [3] - 43:28, 44:4, 101:7 sub-district [1] - 101:7 sub-regulation [2] - 43:28, 44:4 subject [3] - 144:21, 155:14, 161:18 submissions [2] - 12:14, 12:18 submitted [9] - 16:26, 27:27, 28:7, 33:17, 37:15, 43:8, 97:19, 113:6, 122:25 subsection [10] - 8:6, 8:17, 9:18, 9:21, 9:23, 11:13, 11:14, 11:15, 12:1, 44:8 subsequent [7] - 57:14, 78:28, 80:10, 110:3, 113:21, 125:10, 134:26 subsequently [7] - 57:24, 67:5, 68:19, 89:28, 91:8, 92:19, 159:29 substantially [1] - 137:5 substantive [3] - 27:19, 135:8, 162:17 subversive [1] - 165:15 successful [2] - 139:28, 140:4 suffered [2] - 29:25, 50:29 suffering [4] - 85:4, 85:12, 115:25, 136:10 suggest [2] - 24:11, 38:22 suggested [1] - 83:19 suggesting [4] - 87:29, 96:4, 117:5, 158:5 suggestion [2] - 134:9, 164:13 suggests [3] - 24:13, 33:13, 33:15 sum [2] - 41:27, 44:26 summarise [1] - 8:26 summarising [1] - 14:27 summary [3] - 8:21, 12:28, 29:19 summation [2] -</p>
--	---	--	--	--

<p>41:21, 41:22 Sunday [1] - 15:3 super [2] - 60:25 Superintendent [148] - 6:5, 6:11, 7:3, 9:15, 10:11, 10:15, 13:9, 14:2, 14:4, 14:28, 15:12, 17:20, 21:25, 23:18, 23:19, 24:8, 25:5, 29:6, 29:12, 29:27, 31:2, 32:21, 36:5, 37:21, 42:8, 43:11, 43:19, 47:1, 47:15, 47:25, 49:2, 49:20, 49:24, 50:11, 50:20, 51:2, 55:16, 55:23, 55:25, 55:26, 56:4, 59:8, 59:9, 59:11, 59:23, 61:20, 62:5, 62:17, 62:18, 62:20, 63:13, 64:12, 64:29, 65:2, 65:25, 67:15, 68:8, 68:9, 68:12, 68:29, 69:9, 69:19, 69:21, 69:26, 70:29, 71:23, 71:28, 71:29, 72:11, 72:18, 72:26, 73:1, 73:6, 73:16, 74:2, 74:16, 74:23, 74:28, 76:25, 77:16, 80:17, 82:5, 82:16, 82:27, 83:28, 84:4, 84:12, 84:16, 86:3, 88:8, 89:15, 90:13, 90:24, 91:1, 91:9, 95:11, 95:15, 96:13, 100:17, 104:19, 107:4, 107:14, 107:17, 107:21, 107:24, 108:5, 108:9, 108:23, 108:25, 120:16, 120:24, 122:20, 123:11, 123:14, 123:19, 128:8, 129:1, 129:25, 130:7, 130:19, 134:19, 135:4, 135:16, 135:27, 139:5, 142:1, 144:15, 144:24, 145:10, 147:21, 149:11, 150:29, 151:23, 151:28, 152:14, 152:23, 153:8, 153:27, 154:8, 154:28, 162:21, 163:29, 164:9, 164:14, 166:17, 168:18, 168:21 SUPERINTENDENT [21] - 2:15, 3:3, 3:3,</p>	<p>3:4, 3:5, 3:6, 3:8, 3:9, 3:9, 3:13, 3:14, 3:17, 3:19, 3:19, 3:21, 5:3, 5:9, 6:8, 41:10, 47:4, 55:19 superintendent [78] - 6:13, 6:14, 6:17, 8:18, 9:3, 9:4, 9:6, 9:8, 9:25, 10:3, 10:11, 11:5, 13:5, 13:11, 14:5, 16:11, 17:9, 18:26, 19:23, 19:24, 20:5, 24:3, 24:4, 26:24, 26:26, 27:3, 27:14, 31:14, 31:18, 32:27, 33:5, 33:28, 33:29, 36:29, 38:12, 38:14, 40:11, 41:3, 41:13, 44:2, 46:17, 46:18, 46:19, 47:7, 48:3, 48:19, 49:17, 49:18, 49:29, 50:5, 52:19, 52:20, 52:24, 52:25, 54:24, 54:26, 55:10, 57:28, 58:5, 59:5, 64:24, 78:13, 86:15, 87:10, 87:13, 109:5, 111:5, 111:18, 111:21, 112:3, 115:15, 142:27, 164:6, 166:15, 167:23, 167:26, 168:4, 170:16 superintendent's [5] - 6:16, 17:24, 26:17, 28:2, 87:15 superintendents [5] - 67:6, 165:10, 166:14, 168:26, 169:1 supers [2] - 59:17, 66:1 supervisor [1] - 73:14 supplied [2] - 9:1, 9:28 support [17] - 66:7, 67:28, 79:27, 96:5, 106:4, 137:17, 138:21, 139:8, 139:27, 140:27, 162:26, 165:27, 167:2, 167:4, 168:9 supported [2] - 139:25, 166:1 supporting [2] - 156:11, 162:4 supportive [2] - 138:17, 156:16 supports [10] - 70:8, 78:20, 100:25, 123:6,</p>	<p>125:4, 133:18, 140:26, 144:20, 162:23, 163:3 suppose [187] - 12:2, 31:19, 38:26, 47:7, 57:22, 57:23, 59:15, 59:21, 60:5, 60:7, 60:8, 60:18, 60:20, 60:23, 60:24, 60:25, 60:26, 61:28, 62:14, 62:25, 62:26, 63:19, 63:20, 63:27, 64:3, 65:5, 66:13, 66:16, 66:25, 66:29, 67:6, 68:15, 69:26, 69:29, 72:8, 72:9, 72:12, 72:17, 73:23, 74:11, 75:5, 75:15, 75:22, 76:28, 77:9, 77:12, 77:18, 78:11, 80:7, 80:28, 81:1, 82:12, 87:1, 87:2, 87:6, 88:29, 89:6, 89:27, 89:28, 90:1, 90:8, 91:11, 91:22, 91:23, 91:24, 91:25, 91:29, 92:9, 93:10, 93:11, 98:5, 98:16, 98:24, 99:4, 99:10, 99:16, 99:25, 102:14, 102:16, 102:17, 102:20, 102:21, 102:22, 102:23, 103:1, 104:3, 104:28, 107:2, 107:3, 108:3, 108:24, 108:26, 110:2, 110:3, 111:13, 111:23, 112:11, 113:28, 114:1, 114:6, 114:8, 114:18, 115:21, 115:24, 116:4, 117:3, 118:10, 118:28, 119:28, 121:10, 124:1, 124:4, 124:5, 125:12, 125:13, 125:16, 127:28, 127:29, 128:1, 128:3, 129:5, 129:12, 129:27, 130:1, 131:3, 132:19, 132:23, 132:24, 134:11, 134:13, 134:18, 134:20, 134:22, 134:23, 135:7, 135:8, 135:29, 136:3, 136:24, 137:6, 137:9, 138:3, 138:24, 139:1, 139:9, 145:11, 146:9, 146:11, 146:12, 146:13, 146:24, 147:13,</p>	<p>147:15, 147:16, 150:8, 150:10, 150:12, 150:14, 151:2, 152:11, 153:1, 153:2, 154:14, 156:10, 156:13, 161:9, 162:3, 162:20, 164:10, 164:27, 164:29, 165:19, 167:21, 167:28, 168:6, 168:22, 168:23, 168:28 Supreme [1] - 149:27 surprised [3] - 137:5, 137:8, 156:14 surprising [1] - 127:21 surrounding [1] - 89:3 sustained [2] - 96:7, 139:28 sweep [1] - 59:14 SWORN [2] - 6:8, 55:20 system [22] - 57:17, 57:19, 60:12, 60:22, 93:9, 94:17, 99:9, 103:14, 103:23, 107:7, 107:8, 107:10, 107:11, 107:12, 107:19, 120:29, 129:15, 145:20, 146:19, 146:23, 168:28, 168:29 System [1] - 101:17 SIÓCHÁNA [1] - 3:2 Sióchána [8] - 6:28, 10:26, 38:20, 56:5, 101:27, 133:15, 143:11, 161:20</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T&N [1] - 4:2 tab [11] - 14:6, 14:10, 14:15, 14:26, 15:13, 15:25, 16:5, 16:13, 16:14 table [3] - 23:2, 127:26, 139:6 tablets [1] - 21:12 tabs [4] - 14:6, 15:11, 16:13, 16:14 talks [1] - 21:8 TARA [1] - 3:22 targeting [2] - 155:15, 161:11 task [2] - 56:20,</p>	<p>108:16 tax [5] - 44:21, 71:2, 73:25, 167:13, 167:21 TD [1] - 101:7 tea [2] - 101:11, 119:27 team [10] - 80:25, 130:29, 132:23, 133:19, 162:1, 162:2, 163:25, 165:24, 165:29, 167:4 technically [1] - 97:8 template [1] - 60:4 TEMPLE [1] - 2:31 temporarily [1] - 140:7 temporary [1] - 40:18 ten [4] - 60:24, 65:5, 66:13, 79:7 tension [1] - 96:17 Terenure [2] - 58:2, 64:26 term [3] - 73:9, 95:27, 96:4 terms [37] - 10:17, 60:18, 64:16, 66:3, 68:24, 72:9, 72:12, 73:24, 76:14, 78:11, 81:28, 87:9, 89:9, 91:25, 93:7, 93:11, 97:8, 98:23, 99:1, 102:8, 102:14, 109:8, 115:23, 123:1, 124:3, 130:2, 136:1, 142:5, 159:7, 160:4, 162:18, 165:5, 166:25, 167:4, 167:21, 168:22, 168:23 Terrace [1] - 57:10 testing [1] - 102:16 THE [13] - 1:3, 1:7, 1:8, 1:13, 2:3, 2:6, 6:1, 6:11, 55:11, 55:13, 55:23, 109:2, 170:24 themselves [5] - 47:16, 60:17, 91:29, 151:8, 156:2 THEN [3] - 55:13, 109:2, 170:24 thereafter [1] - 168:18 therefore [1] - 81:15 therein [1] - 147:28 thinking [4] - 35:17, 41:24, 54:8, 69:2 third [5] - 8:8, 37:10, 37:13, 49:6, 160:22 thorough [1] - 79:23</p>
--	---	---	---	--

<p>thousands [1] - 151:7</p> <p>three [13] - 53:26, 57:23, 57:25, 67:1, 98:5, 98:9, 102:28, 103:10, 104:26, 130:4, 157:17, 164:10</p> <p>three-page [1] - 130:4</p> <p>throughout [1] - 14:11</p> <p>tie [1] - 38:26</p> <p>tied [1] - 136:17</p> <p>tight [1] - 37:26</p> <p>timeframe [1] - 127:9</p> <p>tipped [1] - 151:15</p> <p>today [3] - 69:10, 167:7, 169:27</p> <p>today's [2] - 121:20, 131:27</p> <p>together [13] - 43:14, 59:18, 98:4, 98:10, 99:3, 99:4, 124:1, 125:19, 127:26, 129:29, 132:12, 147:14, 152:13</p> <p>TOM [3] - 3:12, 4:10</p> <p>Tom [1] - 57:8</p> <p>tomorrow [6] - 69:10, 69:15, 169:26, 170:17, 170:21</p> <p>Tony [2] - 107:4, 129:20</p> <p>took [20] - 20:24, 21:1, 23:2, 30:1, 34:28, 35:2, 72:14, 99:26, 102:8, 103:25, 108:3, 119:23, 120:9, 130:25, 132:15, 134:17, 136:27, 146:16, 146:24, 161:8</p> <p>top [6] - 97:11, 123:23, 131:21, 146:20, 157:24</p> <p>topical [1] - 66:4</p> <p>topped [1] - 105:3</p> <p>total [1] - 70:14</p> <p>totally [2] - 45:19, 47:23</p> <p>touch [3] - 62:29, 69:14, 123:2</p> <p>touched [1] - 64:14</p> <p>touching [1] - 123:16</p> <p>tough [1] - 156:18</p> <p>tours [2] - 70:16, 70:18</p> <p>TOWNPARKS [1] - 2:12</p> <p>trail [1] - 129:27</p> <p>train [1] - 123:10</p>	<p>tranches [1] - 88:21</p> <p>transcript [2] - 1:25, 42:27</p> <p>transfer [10] - 24:28, 39:8, 59:3, 59:8, 67:20, 96:5, 96:11, 141:8, 164:9</p> <p>transferred [4] - 58:9, 141:9, 141:15, 141:23</p> <p>transmission [1] - 70:26</p> <p>transpired [2] - 96:6, 107:21</p> <p>travel [1] - 24:26</p> <p>travelling [1] - 71:4</p> <p>TRACY [1] - 2:27</p> <p>treat [2] - 91:20, 123:8</p> <p>treated [4] - 52:5, 78:3, 92:1, 135:25</p> <p>treatment [4] - 96:9, 138:4, 139:3, 140:3</p> <p>TRIBUNAL [2] - 1:2, 2:6</p> <p>Tribunal [9] - 6:22, 55:27, 55:29, 69:14, 100:13, 147:1, 155:18, 166:16, 167:10</p> <p>TRIBUNALS [1] - 1:8</p> <p>tried [1] - 41:19</p> <p>triggered [4] - 82:17, 102:14, 136:12, 146:22</p> <p>TRR [5] - 103:11, 104:18, 104:27, 109:13, 155:11</p> <p>true [1] - 162:17</p> <p>truth [2] - 11:9, 168:2</p> <p>try [3] - 86:14, 88:27, 139:2</p> <p>trying [7] - 42:1, 69:20, 72:11, 72:27, 73:28, 162:25</p> <p>TUESDAY [1] - 170:24</p> <p>Tuesday [2] - 15:4, 28:6</p> <p>turn [9] - 46:4, 48:3, 48:16, 49:6, 53:12, 82:2, 147:18, 152:4, 168:5</p> <p>turned [6] - 14:23, 28:6, 39:18, 53:26, 125:14, 125:28</p> <p>TURNER [1] - 2:28</p> <p>turning [1] - 48:2</p> <p>turns [1] - 136:22</p> <p>twice [1] - 40:4</p>	<p>two [25] - 7:28, 12:24, 20:4, 33:25, 36:25, 39:3, 39:14, 46:10, 52:5, 56:28, 58:10, 58:20, 59:16, 59:21, 66:1, 67:18, 103:7, 108:3, 114:21, 129:6, 133:6, 134:13, 152:13, 152:29, 163:10</p> <p>two-page [1] - 67:18</p> <p>type [1] - 13:1</p> <p>typed [1] - 51:11</p> <p>types [1] - 9:23</p>	<p>understood [6] - 43:5, 43:8, 45:12, 109:12, 119:23, 119:29</p> <p>undertake [4] - 8:9, 8:19, 108:16, 140:8</p> <p>undertook [3] - 105:22, 119:4, 119:11</p> <p>underuse [1] - 57:17</p> <p>unfair [1] - 40:4</p> <p>unfit [10] - 14:12, 15:18, 16:1, 92:24, 94:11, 100:26, 106:2, 113:3, 124:24, 140:7</p> <p>unfortunate [1] - 102:23</p> <p>unfortunately [1] - 139:1</p> <p>unit [4] - 15:1, 22:3, 37:27, 54:12</p> <p>unkind [1] - 138:9</p> <p>unless [3] - 121:7, 169:26, 169:28</p> <p>unlikely [2] - 69:5, 169:23</p> <p>unlucky [1] - 39:12</p> <p>UNTIL [1] - 170:24</p> <p>unusual [6] - 73:5, 75:6, 80:7, 80:29, 81:2, 87:1</p> <p>up [99] - 7:7, 10:9, 14:23, 23:27, 26:4, 26:16, 26:22, 27:20, 28:6, 31:9, 31:11, 32:1, 33:29, 39:18, 40:5, 40:16, 42:15, 42:21, 43:11, 43:22, 43:26, 46:4, 49:14, 53:12, 53:26, 54:6, 54:19, 57:17, 68:19, 75:7, 77:5, 77:21, 78:19, 80:8, 80:21, 81:3, 82:8, 82:16, 83:13, 86:2, 86:10, 88:8, 88:11, 88:25, 89:29, 90:5, 90:11, 90:17, 91:10, 92:10, 93:16, 93:17, 94:25, 95:15, 95:20, 95:21, 97:10, 99:24, 101:15, 102:17, 102:25, 103:14, 103:20, 103:25, 105:3, 105:27, 111:24, 115:3, 115:27, 116:16, 120:10, 121:16, 123:3, 129:6, 129:7, 129:8, 129:21, 129:28, 130:8, 130:25, 136:17,</p>	<p>136:19, 146:17, 146:20, 146:23, 147:9, 148:12, 150:13, 150:15, 152:12, 152:13, 152:14, 154:16, 155:8, 157:24, 162:8, 165:16</p> <p>up-to-date [1] - 123:3</p> <p>update [2] - 139:16, 145:21</p> <p>updated [1] - 36:16</p> <p>updates [1] - 140:10</p> <p>upsetting [1] - 106:8</p> <p>upwards [1] - 142:1</p> <p>urgency [3] - 132:18, 132:19, 136:12</p> <p>urgent [1] - 123:8</p> <p>useful [3] - 110:2, 127:25, 129:29</p> <p>utterances [1] - 72:2</p> <p>utterings [1] - 67:18</p>
U				V
<p>ultimate [1] - 160:10</p> <p>ultimately [3] - 67:9, 83:1, 127:28</p> <p>unable [2] - 83:29, 86:15</p> <p>unacceptable [1] - 16:22</p> <p>unclear [1] - 143:23</p> <p>uncomfortable [1] - 164:23</p> <p>UNDER [2] - 1:2, 1:8</p> <p>under [48] - 6:27, 8:6, 8:8, 8:13, 8:17, 8:25, 10:25, 11:8, 17:6, 21:11, 22:10, 22:15, 29:8, 31:13, 31:16, 38:19, 44:10, 46:20, 48:9, 50:13, 51:16, 51:22, 53:21, 69:13, 76:15, 82:12, 85:1, 90:3, 96:17, 101:27, 102:18, 105:8, 118:11, 122:28, 124:27, 138:28, 142:25, 144:10, 148:27, 155:4, 155:22, 156:8, 162:20, 162:29, 166:14, 166:26, 168:28, 169:25</p> <p>underhand [1] - 73:24</p> <p>undermining [1] - 155:25</p> <p>underpinned [1] - 127:29</p> <p>understandable [8] - 75:4, 75:15, 77:8, 80:24, 81:7, 86:7, 89:5, 100:3</p> <p>understandably [1] - 75:12</p>	<p>vague [1] - 16:22</p> <p>value [2] - 153:2, 161:22</p> <p>values [1] - 156:10</p> <p>variables [1] - 81:26</p> <p>variety [1] - 161:9</p> <p>various [4] - 56:24, 155:6, 156:8, 167:3</p> <p>veracity [1] - 94:4</p> <p>verbatim [1] - 1:25</p> <p>version [4] - 51:11, 148:2, 148:4, 148:17</p> <p>via [2] - 85:22, 117:13</p> <p>view [56] - 8:12, 28:13, 52:1, 53:18, 64:27, 72:8, 72:9, 72:20, 73:24, 75:17, 80:2, 81:23, 87:26, 93:3, 96:6, 97:27, 98:6, 98:29, 99:22, 99:26, 100:4, 103:25, 104:4, 108:24, 113:28, 115:13, 119:20, 121:5, 126:3, 127:12, 129:13, 131:17, 132:25, 132:28, 133:24, 134:17, 134:20, 134:24, 136:14, 137:18, 137:29, 138:1, 138:16, 138:27, 143:19,</p>			

<p>146:13, 164:2, 164:29, 165:2, 165:7, 165:8, 167:20, 167:21, 167:23, 167:29 viewed [1] - 109:8 viewing [1] - 142:15 views [2] - 147:1, 153:29 virtue [1] - 161:12 visible [1] - 143:1 visit [13] - 60:26, 100:9, 101:4, 101:11, 101:24, 101:26, 102:9, 102:17, 103:29, 105:19, 109:7, 124:11, 146:29 visited [4] - 121:20, 123:23, 129:11, 129:12 voice [3] - 138:19, 139:4 volition [1] - 108:20 Volume [9] - 43:25, 55:28, 56:1, 67:17, 75:29, 88:9, 89:17, 97:2, 147:27</p>	<p>weeks' [4] - 7:21, 7:28, 20:4, 44:12 weight [1] - 169:2 welcome [2] - 69:12, 102:17 welfare [26] - 61:4, 64:15, 64:27, 64:28, 65:1, 65:10, 66:14, 80:26, 82:12, 85:22, 100:28, 102:17, 102:20, 103:8, 105:4, 106:4, 121:21, 123:1, 123:5, 124:19, 133:20, 144:19, 162:3, 162:23, 163:8, 167:5 wellbeing [3] - 139:28, 140:5, 163:12 welling [1] - 121:21 WELLINGTON [1] - 2:31 west [1] - 58:20 Western [1] - 85:8 Westmeath [10] - 58:13, 59:3, 61:18, 62:21, 121:26, 134:6, 142:27, 163:9, 163:29, 165:14 WESTMEATH [1] - 4:4 whatsoever [1] - 123:18 Wheatley [15] - 7:3, 9:16, 42:9, 43:11, 43:19, 49:2, 49:20, 49:24, 55:16, 55:23, 55:25, 56:4, 68:29, 69:19, 100:17 WHEATLEY [3] - 3:4, 5:9, 55:19 Wheatley's [2] - 55:27, 69:9 whereabouts [1] - 13:22 whereby [1] - 160:18 whistleblower [1] - 128:25 whistleblowers [2] - 66:4, 66:7 whistleblowing [1] - 63:20 WHITE [1] - 3:11 whole [21] - 43:6, 63:19, 69:10, 79:2, 80:28, 81:1, 81:18, 81:26, 82:4, 91:21, 104:8, 120:11, 121:13, 127:4, 128:4, 131:6, 136:15, 146:12, 149:3, 151:5,</p>	<p>169:20 willful [1] - 78:15 willing [1] - 80:23 willingness [1] - 137:23 wise [1] - 31:17 wish [5] - 35:12, 35:28, 69:3, 69:14, 70:5 wished [1] - 145:13 withdraw [1] - 24:27 WITHDREW [1] - 55:13 WITNESS [5] - 5:2, 6:11, 55:11, 55:13, 55:23 witness [4] - 6:5, 55:15, 59:11, 169:14 witnesses [4] - 27:24, 69:2, 69:11, 69:15 wonder [1] - 41:3 wondering [4] - 42:6, 44:16, 92:6, 148:17 woods [1] - 138:14 word [7] - 24:24, 24:27, 28:12, 28:28, 38:3, 134:10, 161:26 words [4] - 28:10, 54:5, 100:20, 118:13 workplace [9] - 68:4, 70:8, 98:20, 101:29, 116:24, 118:7, 133:11, 133:17, 136:11 works [2] - 46:20, 99:9 world [2] - 38:2, 124:4 worry [1] - 14:9 worse [1] - 54:3 write [7] - 54:22, 54:23, 94:27, 95:3, 121:16, 128:20, 168:29 writing [5] - 29:6, 50:11, 54:25, 135:6, 149:24 written [9] - 12:18, 36:6, 45:21, 129:6, 129:7, 136:19, 154:20, 158:5 wrote [16] - 16:11, 82:21, 90:11, 103:25, 103:28, 120:9, 126:7, 129:8, 129:16, 129:20, 129:21, 148:21, 151:22, 152:3, 153:23, 153:27</p>	<p style="text-align: center;">Y</p> <p>year [9] - 57:21, 91:13, 102:26, 102:28, 102:29, 132:14, 132:17, 150:9, 156:18 years [18] - 25:2, 56:12, 56:13, 56:28, 57:26, 57:29, 58:7, 58:8, 58:10, 58:20, 59:16, 60:24, 70:15, 79:7, 104:29, 105:2, 138:26, 162:11 young [1] - 138:22 yourself [7] - 20:17, 45:20, 92:16, 109:17, 114:28, 122:13, 145:27</p> <p style="text-align: center;">€</p> <p>€168 [1] - 35:3 €300 [9] - 20:22, 23:13, 23:21, 24:9, 24:12, 24:15, 30:4, 34:11, 35:2 €78 [1] - 35:4 €80 [1] - 39:16 €840 [1] - 52:28 €840.49 [1] - 35:3 €85 [1] - 39:16</p> <p style="text-align: center;">É</p> <p>ÉABHALL [1] - 2:30 Éireann [1] - 67:19 ÉIREANN [2] - 1:4, 1:5</p> <p style="text-align: center;">Ó</p> <p>Ó [13] - 3:7, 63:14, 63:25, 72:1, 96:15, 96:22, 128:28, 129:2, 143:28, 144:18, 144:28, 163:19, 163:25</p>
W			
<p>wages [10] - 36:16, 36:27, 37:23, 38:29, 40:13, 44:28, 45:5, 45:15, 45:22, 150:1 wait [1] - 146:28 Wallace [3] - 72:3, 101:7, 168:16 Walsh [3] - 122:20, 135:16, 142:1 Walsh's [1] - 123:14 wants [1] - 46:27 Ward [1] - 10:11 warning [1] - 7:22 warrant [1] - 146:8 warranted [2] - 133:14, 134:5 WAS [4] - 6:8, 41:10, 47:4, 55:20 watching [1] - 54:13 water [1] - 102:16 week [7] - 8:1, 44:13, 44:19, 44:24, 44:25, 44:28, 101:24 weekend [1] - 78:17 weekly [4] - 8:2, 35:3, 44:14, 45:6 weeks [6] - 12:24, 60:22, 134:27, 136:24, 150:12, 165:4</p>			