

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON TUESDAY, 28TH JANUARY 2020 - DAY 133

133

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 28TH
2 JANUARY 2020:

3
4 CHAIRMAN: Now, good morning, chief superintendent.

5 THE WITNESS: Morning. 10:31

6 CHAIRMAN: So, Mr. Kelly, it's your team's, isn't that
7 right, turn?

8 MR. KELLY: That's right. Ms. Mulligan.

9 CHAIRMAN: Thanks very much. Good morning,
10 Ms. Mulligan. 10:31

11
12 CHIEF SUPERINTENDENT LORRAINE WHEATLEY WAS
13 CROSS-EXAMINED BY MS. MULLIGAN, AS FOLLOWS:

14
15 1 Q. MS. MULLIGAN: Good morning chief superintendent, I 10:31
16 just have some questions on behalf of Garda Keogh. Can
17 I just ask you, I think you gave evidence to the
18 Chairman yesterday that you have been in the force for
19 the last 35 years, isn't that right?

20 A. That's correct, yes. 10:31

21 2 Q. Can you just confirm to me how long you were a
22 superintendent for?

23 A. Nine and a half years.

24 3 Q. When was that?

25 A. I was promoted in 2005, July 2005, yeah. 10:31

26 4 Q. Was that 2005 to 2013, or have you been a chief
27 superintendent since 2005?

28 A. No. I have been a superintendent, I have been an
29 officer, then I have been a superintendent, I was a

1 superintendent for nine and a half years, from July
2 2005 to March 2013. So I have been a chief
3 superintendent, actually I have five years service next
4 week, so five years.

5 5 Q. Five years? 10:32

6 A. Yes.

7 6 Q. In terms of then your familiarity in relation to
8 Superintendent Murray's role, you would be quite
9 familiar with his obligations in terms of regulations,
10 because you were in fact a superintendent for an 10:32
11 extended period of time, is that fair?

12 A. That's fair, yeah.

13 7 Q. In terms of your own familiarity with the role -- as a
14 chief superintendent in a role in relation to sick pay
15 and your obligations in that regard, would you say to 10:32
16 the Tribunal that you are familiar with your
17 obligations?

18 A. Yes.

19 8 Q. In terms of work related stress, have you ever had to
20 do a work related stress assessment prior to this issue 10:32
21 arising in 2014?

22 A. People have reported sick with work related stress.

23 9 Q. Yes.

24 A. And I suppose there's a number of ways this can happen,
25 and you make a referral to headquarters. It can be 10:32
26 something quite -- when people are absent with work
27 related stress you make your referral to the CMO. It
28 can be just quite minor. You establish the facts. In
29 most cases, in my experience, and it's evolving, the

1 whole process, because I suppose -- I think you can be
2 stressed but it has to be someone's fault.

3 10 Q. Yes.

4 A. So while -- let's say, any context, it's a very
5 stressful job and you can be stressed over court cases 10:33
6 or if you are, indeed, being disciplined or whatever,
7 but that's not necessarily the job's fault.

8 11 Q. Indeed. Can I just go back, and I appreciate that you
9 have given that evidence to the Chairman, that stress
10 is not as straightforward as a broken arm, for example. 10:33

11 A. Yes.

12 12 Q. That is something obviously you can't use -- if you
13 can't drive, you may not be able to do your regular
14 duties. I think it is accepted by everyone in the room
15 that there is no issue from that point of view? 10:33

16 A. Sorry, really the point I was trying to make here, in
17 terms of -- clearly I can't assess whether a person is
18 stressed or not, people can be stressed because it is a
19 stressful job that we have. In terms of the
20 organisation making a determination that you -- first 10:34
21 of all, you actually have to be clinically, I suppose,
22 diagnosed as having stress, is a part of it, but for
23 the organisation to make the decision that, yes, I
24 suppose, that we are responsible, if you like, for
25 this, for this injury that they have clinically, I 10:34
26 suppose, assessed. It has to be linked back to the
27 job. So there have been cases where people have made
28 complaints under the bullying and harassment policy,
29 and the outcome is that basically it's established that

1 indeed the behaviours have caused this stress. In
2 those instances, it's my understanding, after appeal
3 and the CMO has -- this can happen to you but you
4 actually mightn't be clinically stressed, and the CMO
5 has give answer clinical diagnosis, it is usually done 10:35
6 in conjunction with an external person, that the person
7 is indeed stressed and it is indeed totally connected,
8 there is a causal link, is actually the phrase, to the
9 behaviours in the workplace. And then the final
10 arbiter in making that decision is executive director 10:35
11 of HRM. And they can also carry out a number of
12 enquiries.

13 13 Q. I just want to go back to the first thing that you
14 said, you have to establish the facts. In terms of
15 when you were doing a work related stress investigation 10:35
16 in general, what steps do you take to establish facts?

17 A. Garda Keogh --

18 14 Q. I am not asking about Garda Keogh.

19 A. I know, just bear with me. To establish the facts in
20 any investigation, a person has to make a complaint, 10:36
21 they have to identify the nature of the complaint, the
22 source of the complaint and maybe give you witnesses.

23 15 Q. Okay. I just want to deal with that a little bit. So
24 is there a distinction being made between making a
25 complaint and identifying that you are under work 10:36
26 related stress?

27 A. Garda Keogh's doctor --

28 16 Q. No, it's a very specific question, I would like a
29 direct answer please?

1 A. Maybe if I --

2 17 Q. Is there a distinction to be made between making a
3 complaint and identifying to your superior officer that
4 you are under work related stress? Because the
5 Sickness Absence Management System is not about 10:36
6 complaints, you have a bullying and harassment protocol
7 for that, is that right?

8 A. I was just doing that by way of explaining the
9 protocol. When a person is absent due to work related
10 stress, clearly it's related to the work related 10:36
11 stress, what the policy says is you should identify the
12 cause of that stress. And what you do in any case when
13 anyone makes a complaint, or when anyone makes a
14 complaint, clearly if anyone has an issue, they bring
15 it to your attention and clearly in Garda Keogh's case, 10:37
16 he had been out periodically, I understand, prior to
17 when Superintendent Murray arrived with work related
18 stress. His doctor had deemed him fit to work on
19 numerous occasions also. When a person is absent with
20 work related stress, we are obliged to find out why the 10:37
21 person is stressed. And I suppose the rationale behind
22 that is that the CMO, I suppose, needs to understand
23 what this is about.

24
25 To be honest with you, I reflected on this. In terms 10:37
26 of Garda Keogh's case, he was out with work related
27 stress and then he was back and he was fit and
28 notwithstanding that, Superintendent Murray, because
29 that was there, sent it up the line.

1 18 Q. Okay. I want to go back to the question that I
2 actually asked you.

3 A. Okay.

4 19 Q. Which is: Is there a distinction to be made about a
5 complaint versus a notification of an issue arising? I 10:38
6 think you accept that there is a distinction to be
7 made?

8 A. No, I didn't. I won't accept that.

9 20 Q. You don't?

10 A. No. It's in order, Chair, that I clarify that. 10:38

11 21 Q. Yes.

12 A. When a person reports sick with work related stress,
13 when they are absent with work related stress and they
14 report sick, you have to refer that to the CMO. The
15 CMO logically needs to understand if this is related to 10:38
16 work, what issue in the workplace is causing this
17 stress. So you try and establish the source of that
18 stress. Garda Keogh did give us the source of his
19 stress and we did establish the source of his stress
20 and he was very clear that the source of his stress was 10:38
21 absolutely connected with the protected disclosure.

22 22 Q. We will get back to that.

23 A. Yes.

24 23 Q. Again you gave evidence to the Chairman this morning
25 that you have to establish the facts. And I am asking 10:39
26 you in a general case what do you do to establish the
27 facts. So, for example, do you expect to have an
28 interview with the person who is alleging work related
29 stress?

1 A. You talk to the person first.

2 24 Q. Yes, you talk to them. What would you do then?

3 A. You would ask the person to say what's the cause of the

4 stress. Like normally people will tell you.

5 25 Q. Yes. 10:39

6 A. You know. And in Garda Keogh's case, I think we did

7 establish it and he wasn't -- he didn't hide it. He

8 was very clear about the source of his stress.

9 26 Q. I don't want to talk about Garda Keogh, I don't want to

10 cut across you, I don't want to continually cut across 10:39

11 you, but I wonder would you answer the question I am

12 actually asking you. So you talk to the individual who

13 has alleging work related stress, yes?

14 A. Yes.

15 27 Q. Would you look, for example, any third party 10:39

16 information, information from sergeants, information

17 from any person that is named that might know something

18 about whatever the source of that stress is?

19 A. I absolutely would not do that in the first instance.

20 I'm very clear about is that. 10:40

21 28 Q. You wouldn't do that?

22 A. Absolutely would not do that. It wouldn't be

23 appropriate to do it. You know, if a person makes a

24 complaint that they're -- you know, they're stressed,

25 okay, certainly if they make a complaint, and they give 10:40

26 you the names, they give you the reason. You take that

27 information and you move with that. Just in relation

28 to Garda Keogh's case, and it's in in order, I just

29 really think is important because I have reflected on

1 it at length. Garda Keogh made the position very
2 clear, and that is absolutely understandable, and we
3 sent it up the line. We were anxious that he would be
4 clinically assessed by the CMO. The CMO, even now, you
5 know, that people have reported -- you know, I'm aware 10:40
6 of cases where people are sick with work related
7 stress, the investigation can take an awful lot -- can
8 take a long time when the person engages with the
9 process. The CMO can make a clinical determination
10 that the person is actually stressed. The piece about 10:41
11 linking it back to the investigation and the piece
12 about the HRM having a view has to take place. So in
13 relation to Garda Keogh's case, and the medical people
14 can give their own determination, the CMO or no one at
15 this stage, I don't believe, has made that clinical 10:41
16 determination, that Garda Keogh was in fact stressed.
17 29 Q. We will get to that.
18 A. Yes. It's in order and I have reflected on this. We
19 weren't putting a roadblock up here to prevent Garda
20 Keogh from progressing to the next sort of, if you 10:41
21 like, junction in relation to this matter. We were
22 conscious that we had a fairly good understanding of
23 what the issue was. And that's as far as we could
24 bring it. And I don't believe the CMO had a view that,
25 well, there's really not sufficient here, like we're 10:41
26 not that unkind, to sort of -- he didn't write back and
27 say, no, I'm not doing this determination, I haven't
28 enough here.
29

1 So, as I said, when Garda Keogh -- he was back work,
2 fit now, you have to remember, when he was referred
3 back to the CMO, in the first instance the CMO deemed
4 him fit for duty and then he came back fit, back on our
5 team. He wasn't absent due to stress. His doctor said 10:42
6 he was fit to work. And then when other patterns
7 arose, Superintendent Murray said, no, we need to refer
8 him up the line here again, you know, we need the CMO
9 to see him. He is reporting sick with work related
10 stress, this is the reason why he is stressed. And 10:42
11 ultimately a case conference was triggered in respect
12 of this matter. From reading the material and the
13 disclosures, it's not my understanding that there was
14 ever a conversation around that the clinical issue in
15 respect that Garda Keogh was stress. 10:42
16 30 Q. Chief superintendent, we will get there.
17 A. Yes.
18 31 Q. My questions are much more basic, which is: what are
19 the steps that happen generally, and then we will talk
20 what happened here, and then we will talk about what 10:43
21 happened in the CMO. I need you to answer the question
22 that I am actually asking you. Because otherwise we
23 will be here for a very long time?
24 A. Well every case is different.
25 32 Q. I haven't asked you a question yes? 10:43
26 A. Okay.
27 MR. MURPHY: Chairman, this question has been asked
28 several times and has been answered.
29 MS. MULLIGAN: with respect, I didn't ask any question.

1 I was about to ask a question.

2 MR. MURPHY: My friend has put it to the witness that
3 she has asked her the question, she needs to answer it.
4 In my respectful submission, the question has been
5 answered and it has been repeated again and again. 10:43

6 MS. MULLIGAN: I will move on.

7 MR. KELLY: Chairman, with respect, Ms. Mulligan is
8 asking this witness a question and this witness is
9 choosing to answer and other questions that she would
10 prefer to have been asked. In those circumstances, it 10:43
11 seems to me that it is perfectly fair for Ms. Mulligan
12 to ask the question yet again.

13 CHAIRMAN: I don't want to get into a situation where I
14 am interfering unnecessarily with cross-examination.
15 It seems to me that if questions are put that are not 10:44
16 correctly based in evidence or are based on a
17 misunderstanding or are unfair in some shape or form, I
18 have an obligation to intervene, otherwise I don't. In
19 this case, the latter is the situation. Ms. Mulligan
20 is asking her questions and we are proceeding. 10:44

21 33 Q. MS. MULLIGAN: So you identify that you establish the
22 facts, you don't go to outside parties, you only try to
23 establish the facts and then the matter goes to the
24 CMO, that's your position, is that right?

25 A. If it's in order, I would just like to clarify that. 10:45

26 34 Q. No, I just want to ask you --

27 A. No, sorry, I need to clarify the question.

28 35 Q. Very well.

29 A. Okay. What they say is, when a member reports with

1 work related stress, I suppose the organisation
2 recognises that this was something that they needed to
3 be looking at from, I suppose, a HR perspective, the
4 member should be referred to the CMO. You know, you
5 should establish the source of the stress. If a person 10:45
6 is out -- establish -- you know, we did establish it.
7 And Garda Keogh told us his stress was all connected in
8 relation to his protected disclosure. His position was
9 quite clear, you know, his position had been quite
10 clear in relation to other matters, that he was dealing 10:45
11 with people in Galway, he made a protected disclosure.
12 I made the professional, if you like, judgment when it
13 was sent to me that we couldn't push this. It wouldn't
14 be -- at this stage this was -- Garda Keogh had made a
15 protected disclosure -- 10:46

16 36 Q. CHAIRMAN: Chief superintendent, can I stop you for a
17 second.

18 A. Yeah.

19 37 Q. CHAIRMAN: we may be having a misunderstanding here?

20 A. Yes. 10:46

21 38 Q. CHAIRMAN: My understanding is that Ms. Mulligan is
22 saying, I want to ask you questions in general about
23 the approach in a case, an unspecified case of work
24 related stress, I am not yet asking you about Garda
25 Keogh. So an answer to her question should not deal 10:46
26 with Garda Keogh. I think there may be a
27 misunderstanding here. She is, it seems to me, saying,
28 what should happen in general, part one, and I expect
29 that she will then move on to say, let's compare and

1 contrast that with what happened in Nick Keogh's case.
2 That's what I expect her to do?

3 A. Yeah, I can --

4 39 Q. CHAIRMAN: No, no, don't worry for a second. Don't
5 worry. That's where we are going. It's an 10:47
6 exploration. So the first thing she is saying is:
7 what happens in general?

8 A. In general --

9 40 Q. CHAIRMAN: Now, she is getting a little frustrated, if
10 I may say that, because when she asks that you talk 10:47
11 about Nick Keogh and she hasn't come on to that yet.
12 Are we understanding each other at this point?

13 A. Yes, I am, Chairman.

14 41 Q. CHAIRMAN: Don't think this is a big criticism, there
15 just seems to me to be a misunderstanding. 10:47

16 A. Yeah.

17 42 Q. CHAIRMAN: So at this moment Ms. Mulligan is asking
18 what happens in general?

19 A. what happens in general, if a person --

20 43 Q. CHAIRMAN: well, let's let her ask the question first 10:47
21 of all.

22 A. Okay.

23 CHAIRMAN: Don't you worry, we will let her ask the
24 question and we will answer it as simply as possible
25 and then we will proceed to the next one. Okay. Am I 10:47
26 right, Ms. Mulligan, am I understanding your position?

27 MS. MULLIGAN: Yes, Chairman, I'm obliged.

28 CHAIRMAN: Okay. So there we are.

29 44 Q. MS. MULLIGAN: Chief superintendent, you identify that

1 the first thing you do is you establish the facts. The
2 second thing you don't do is you don't go looking for
3 third party information or any corroborating evidence.
4 That's what you said. So let's go back to the first
5 part. You establish the facts and by establishing the 10:48
6 facts you accepted that you would interview the member,
7 isn't that right?

8 A. I didn't say that. What I am saying is, of course you
9 wouldn't wait to establish the facts, you would send a
10 referral up straightaway to the CMO and say you were 10:48
11 exploring the issues. In this case -- in any case a
12 person who reports sick with work related stress, you
13 know, the superintendent would ask the person what was
14 the source of his stress and if they had said, you
15 know, it's to do with this, that and the other, it may 10:48
16 not be a case -- sometimes it's a case where a person
17 has made a complaint under the bullying and harassment
18 -- so that kicks off an investigation, you have a
19 complaint. There's times where people don't
20 necessarily have to do that, but they say, you know, 10:49
21 this is the source of the stress. We referred this up
22 the line because this is very unusual, I suppose Garda
23 Keogh made a protected disclosure -- in Garda Keogh's
24 case, we just -- I took the position that this was very
25 unusual, Garda Keogh is taking this position, this is 10:49
26 the stress he is attributing to the investigation and
27 clearly for us to put another investigation on top of
28 that and to sort of go questioning him about it, could
29 have been perceived in a negative way. We were saying

1 listen, he is saying this, and we didn't disbelieve
2 him, I understood it, so we were saying, listen, this
3 is the position, this is how far we will bring it, can
4 you review this man. And so -- and he did review him.
5 45 Q. Chief superintendent, that wasn't my question. Can I 10:49
6 take you back to my question. You said we're
7 exploring -- what do you do to establish the facts and
8 you said you discuss the source of stress with the
9 member?
10 A. Yes. 10:50
11 46 Q. I'm right about that?
12 A. The superintendent discusses the source of the stress.
13 47 Q. The superintendent discusses, okay. That's as far as
14 we have gotten?
15 A. That's as far as we could go as well. 10:50
16 48 Q. I wonder if could you let me ask the question and then
17 answer the questions that I am asking?
18 A. Okay.
19 49 Q. So you ask the member what is the source of the stress.
20 Now, when you do that, how long does that take, do you 10:50
21 have a formal meeting about it? In ordinary cases, are
22 people notified of the meeting ahead of time so they
23 can prepare themselves. In an ordinary case. I would
24 accept that Garda Keogh is in a slightly more nuanced
25 position, so if we leave Garda Keogh here for a little 10:50
26 bit, that would be very helpful. An ordinary work
27 related stress case, what are the steps that would
28 happen to identify. Would you in the first instance --
29 I think you confirmed you would have a meeting with the

1 person who is alleging work related stress, is that
2 right? That you would talk to them.

3 A. The superintendent would.

4 50 Q. The superintendent would talk to them?

5 A. Yes. 10:51

6 51 Q. And when talking to them, would they be given notice of
7 the fact that they are having this meeting about work
8 related stress?

9 A. Garda Keogh --

10 52 Q. No. 10:51

11 A. Okay. Okay, sorry. When it comes to, I suppose, the
12 district officer's attention, when the certs comes
13 through that a person is suffering with work related
14 stress, the policy is that, you know, you have to put
15 the CMO on notice. Okay, you have to establish the 10:51
16 source of this stress as well.

17 53 Q. Yes. I want to talk about --

18 A. Yeah.

19 54 Q. You said that would you meet with the person and I want
20 you to answer this question: would you notify the 10:51
21 person that you are having this meeting about work
22 related stress? Is there a protocol or procedure or
23 anything that identifies that the person knows what the
24 meeting is about? It's a yes or no answer?

25 A. No, it's not actually. 10:52

26 55 Q. No, it is a yes or no answer?

27 A. No, it's not, if you don't mind.

28 56 Q. Is there any process or procedure that identifies that
29 you notify the person the purpose of the meeting?

1 A. I really need to explain this. It's in order,
2 Chairman.

3 57 Q. CHAIRMAN: Yes.

4 A. I suppose a lot of cases where people -- I suppose, the
5 impact of what happens in the workplace makes them 10:52
6 unwell in the sense that they're stressed, they go out
7 and the doctor says people are out with work related
8 stress. In many cases it's because maybe they have
9 made a complaint or something has happened to them in
10 the workplace and they have complained it, and they 10:52
11 make it under the bullying and harassment -- you know,
12 an investigation kicks off and that's happening there,
13 do you know what I mean. So that's a separate issue.
14

15 If a person hasn't made a complaint, which was the 10:52
16 case -- if a person hasn't made a complaint, you know,
17 you want to talk to me in general terms, and it comes
18 to our attention that a person has been absent with
19 work related stress, we're -- you know, we have to find
20 the source of that stress. In Garda Keogh's case -- 10:53

21 58 Q. CHAIRMAN: First, you find the source of the stress?

22 A. Yes.

23 59 Q. CHAIRMAN: You see, work related stress is a
24 conclusion?

25 A. Yes. 10:53

26 60 Q. CHAIRMAN: Not a diagnosis. Stress is the diagnosis.
27 I am stressed. You say the first thing you do is to
28 say what's stressing you. That's the first thing you
29 do. And you say you refer the person to the CMO, is

1 that --

2 A. Yes.

3 61 Q. CHAIRMAN: Now this is in general terms?

4 A. Yes, general.

5 62 Q. CHAIRMAN: Not to do particularly -- you do two things. 10:53

6 You say, what's causing your stress? If a person comes

7 in, is certified as saying work related stress. I am

8 understanding you don't give them notice, you don't

9 write out and say, I am proposing to have a

10 conversation with you about the cause of your work 10:53

11 related stress, you don't write them out a letter of

12 that kind?

13 A. No, you don't.

14 63 Q. CHAIRMAN: There is no provision that says you should

15 write a letter of that kind, is that right? 10:54

16 A. Yeah.

17 64 Q. CHAIRMAN: So the answer to Ms. Mulligan's question is

18 no, there is no protocol for that. In general, the

19 superintendent, the district officer talks to the

20 person and says, what's causing your stress? 10:54

21 A. And I think -- of course we don't wait, stress is very

22 serious and unfortunately I understand the impact of

23 stress. It is a very serious matter, stress. So you

24 don't wait. You refer the person up to the CMO on that

25 basis. You are -- 10:54

26 65 Q. CHAIRMAN: Sorry for interrupting. Are you going to

27 refer the person to the CMO anyway, whether or which?

28 A. Oh, you'd have to.

29 66 Q. CHAIRMAN: Whatever I say about the cause of my stress,

1 am I going to be referred to the CMO?

2 A. Yes, yes. We're not a roadblock. There was never any
3 roadblocks. We actually opened the road, I would have
4 thought. So in this situation --

5 67 Q. CHAIRMAN: Okay. So in general terms, two things 10:55
6 happen, there is a conversation, what's causing your
7 stress? And the answer to that is written down.
8 Irrespective of the answer to that, I am being
9 certified with work related stress, you are going to
10 refer me to the CMO? 10:55

11 A. Oh yeah, absolutely.

12 68 Q. CHAIRMAN: Because you're going to get the advice of
13 the CMO, is that right?

14 A. Absolutely.

15 69 Q. CHAIRMAN: Very good. So now two things. Now, 10:55
16 Ms. Mulligan, I am sorry for interrupting you?

17 70 Q. MS. MULLIGAN: Not at all, Chairman. So you don't
18 notify them that they are having a meeting with the
19 stress, that this is what this meeting is about; is
20 that right? 10:55

21 A. Yes.

22 71 Q. In terms of the steps you take then, you notify the
23 CMO, but you notify the CMO or at least it appears that
24 you're supposed to notify the CMO once you're past the
25 28 day absence; is that right? 10:55

26 A. They're two separate -- you've to do it for both. You
27 could be out with stress for four days and you'd
28 referring a person, but if you are out ordinarily for
29 28 days, that's a referral you have to do as well.

1 72 Q. In fairness, there is evidence of that happening over
2 the years of that arising. And in terms of then what
3 is causing you stress, you yourself, if you are doing
4 that meeting, would you ask open-ended questions or
5 would you ask closed questions? Do you challenge the 10:56
6 individual as to what the nature of the stress is?
7 A. You'd ask the person about the stress.
8 73 Q. Yes.
9 A. I think you'd be alive to the context, you'd be alive
10 to, I suppose, the position that a person had taken, 10:56
11 that they weren't in a position to discuss this. And
12 if a person takes the shutters down and the person is
13 telling you they are stressed, you're not going to push
14 it.
15 74 Q. So you wouldn't push it? 10:56
16 A. And I suppose -- and I will just deal with it in
17 general terms. In the majority of cases, generally,
18 people make a complaint under maybe work, bullying and
19 harassment and that can cause them stress. I have seen
20 cases where people have -- and the CMO is saying stress 10:57
21 is very serious, it's a mental health issue, don't
22 leave it, send them up to me straightaway, because if
23 there is an issue in the workplace, I have to look at
24 this and see if they are fit to work or not. So,
25 Superintendent Murray straightaway put this on notice. 10:57
26 And there are cases where people don't take that
27 position and they take the position well, I'll tell you
28 why I'm stressed, I have four witnesses here and this
29 is happening. You still send the thing up

1 straightaway, because you want -- you can't have a
2 person in the workplace if they are not fit to work.

3 75 Q. Yes, I accept that. So can we just go back to what you
4 just said, again, meeting the superintendent, is not a
5 regular occurrence, that seems to be the evidence from 10:57
6 most of the guards, is that meeting the superintendent
7 wouldn't be a regular occurrence, it happens on a
8 weekly basis in a formal sense. So, if he arrives with
9 four witnesses, would you speak to those witnesses?

10 CHAIRMAN: Sorry, say that again. If somebody arrives 10:58
11 with four witnesses.

12 76 Q. MS. MULLIGAN: Chief Superintendent wheatley identified
13 in her own evidence there a moment ago that if there
14 was someone there with four people and says I have four
15 witnesses that want to talk about this work related 10:58
16 stress, and my question is, if they did, would you talk
17 to them?

18 A. Can I just, and I think it's in order, Chairman, in
19 this case --

20 77 Q. CHAIRMAN: Did you ever come across a case where 10:58
21 somebody suffering from stress came along with four
22 witnesses?

23 A. No, I didn't. I suppose what I was saying, and maybe
24 you misunderstood --

25 78 Q. CHAIRMAN: Could you conceive of a situation where 10:58
26 somebody suffering from stress comes along with four
27 witnesses?

28 MS. MULLIGAN: It was information given to me by the
29 chief superintendent, I am merely exploring the issue.

1 A. No, what I am saying here is, refer to the CMO, if the
2 person is suffering with stress, is he fit to be in the
3 workplace or not, that's the priority. In many cases,
4 any work related stress investigation or an
5 investigation that is underpinned by the policy under 10:58
6 bullying and harassment, they're slightly different,
7 you can be stressed but you mightn't make a complaint
8 under that policy. It can take a long time, so you
9 don't wait. You send it up. The CMO wants to have --
10 so the end game here is: Is this person going to get 10:59
11 occupational injury classification? Is he injured?
12 That obviously has to be part of the equation. Did the
13 job cause it? And HRM make a decision. As I said the
14 other day, you don't wait and do your investigation or
15 I don't say to people, if you're not prepared to 10:59
16 discuss this with me I'm not sending you into the CMO,
17 absolutely you don't do that. You send it up the line.
18
19 In the ordinary -- where a person makes a complaint,
20 and I am very clear about this, you don't go on a 10:59
21 fishing exercise, because that can embarrass people and
22 cause stress to people. You would say, is there anyone
23 you want me to talk to? Have you any witnesses? You
24 know, who is the cause of this stress? So that's what
25 you do. Then you'd appoint someone to explore it. 10:59
26 79 Q. Okay.
27 A. Okay.
28 80 Q. Your evidence is, is there any witnesses, is that
29 right, and you appoint someone to explore that?

1 A. No, what I am saying to you is --

2 81 Q. I'm sorry, it's on the transcript that that is what you
3 just said to the Chairman. I am just not clear what it
4 is that you're trying to tell the Chairman?

5 A. What I am trying to tell you is that -- 11:00

6 82 Q. I understand that you are trying to --

7 CHAIRMAN: Wait now, you're each interrupting each
8 other in a way that makes it impossible to know what is
9 happening.

10 MS. MULLIGAN: Apologies, Chairman. 11:00

11 A. What I am saying is --

12 83 Q. CHAIRMAN: There is some mitigation for my criticism.
13 Chief superintendent, could we try to keep this simple.

14 A. Okay.

15 84 Q. CHAIRMAN: Look, we're ranging off into bullying and 11:00
16 harassment, which has nothing to do with this.

17 A. Well I --

18 85 Q. CHAIRMAN: Hold on. Hold on. It could be that
19 somebody comes and says, I'm stressed and it's work
20 related stress, and it turns out that it's a bullying 11:01
21 and harassment case. It could be, or it could be that
22 I am just being bullied and harassed, but they're
23 separate issues. Somebody coming along and saying I'm
24 stressed is something. We're now talking about looking
25 for witnesses. That is to do with a claim or a 11:01
26 complaint or a case that's somebody is making against
27 other people. For the present purposes -- there may be
28 cases where that is relevant, but for the present
29 purposes, Ms. Mulligan is asking in general terms,

1 somebody comes along and says I am suffering from
2 stress and it's work related stress, and you have said,
3 I ask the person what's causing the stress. That's the
4 first thing you do, and the second thing you do, it is
5 proper and you follow this, you refer the person to the 11:01
6 CMO.

7 A. That's right.

8 86 Q. CHAIRMAN: Are we understanding? Please don't think I
9 am making a big criticism, I am just trying to follow
10 where we are going. 11:02

11 A. Okay.

12 87 Q. CHAIRMAN: In this heading I have Ms. Mulligan asking
13 questions in general. That's where we are at the
14 moment. I expect, before we are very much older, I
15 would be turning to say Garda Keogh, do you follow me? 11:02
16 So that's where Ms. Mulligan is going in her
17 cross-examination, if I am following her. Okay. Now,
18 Ms. Mulligan, I'm sorry for interrupting?
19 MS. MULLIGAN: Not at all.

20 CHAIRMAN: Please. 11:02

21 MS. MULLIGAN: I appreciate, Chairman, and I will
22 endeavour to be more direct in my questioning.

23 CHAIRMAN: No, there is no criticism. No, I am not
24 criticising you at all. I'm trying to explain where
25 there seems to be a bit of a misunderstanding and maybe 11:02
26 we will proceed.

27 88 Q. MS. MULLIGAN: Chief superintendent, what I am trying
28 to unpack is, when you say what's the cause of the
29 stress, what are the questions that would be asked in

1 order to ascertain what the cause of the stress is? So
2 if I can be a little bit more direct in my questioning.
3 You would start with the open question and in terms of
4 building, I presume you have to build a rapport for the
5 purpose of asking these questions. Presumably 11:03
6 superintendents don't often know the individual garda,
7 is that fair?

8 A. I suppose not necessarily. I suppose if you are only
9 new to a station you wouldn't know the guard.

10 89 Q. Exactly? 11:03

11 A. Yeah.

12 90 Q. Would you expect there to be an element of rapport
13 building in terms of what might be considered to be
14 quite a difficult question?

15 MR. MCGUINNESS: Chairman, it's just an issue with the 11:03
16 audio and the stenography. It is related to where
17 chief superintendent is sitting vis-à-vis the
18 microphone. She has to turn, but it would help if she
19 could turn the microphone --

20 CHAIRMAN: Can you pull the little gadget in front of 11:03
21 you, the base. No, don't fiddle -- I'm sorry, forgive
22 my impatience, I am sorry. Just pull the thing towards
23 you.

24 THE WITNESS: Okay.

25 CHAIRMAN: Philip, can it go forward towards the chief 11:04
26 superintendent. No, it's stuck. Sorry. I'm sorry.
27 Okay. So it's difficult when somebody is asking you
28 questions from one position and you are tending to face
29 -- that's difficult, so don't worry. Now, you were

1 asking about rapport building.

2 91 Q. MS. MULLIGAN: Rapport building, would you expect there
3 to be opening rapport because you haven't met this
4 person, it's more likely than not, and I suppose it's a
5 fact in this situation, this was the first meeting 11:04
6 between Superintendent Murray and Garda Keogh, would
7 you expect there to be rapport building?

8 A. Yes, I would yeah.

9 92 Q. You would. You would say in terms of how would you
10 deal with questions, would you dismiss the allegation 11:04
11 or would you keep everything open, or would you
12 challenge the individual about the validity of their
13 assertion of work related stress?

14 A. A person -- if you become aware, sometimes the person
15 might tell you, you might have known before the cert 11:05
16 comes in, you know, that they were out with work
17 related stress. You have a conversation with the
18 person to find out the source of the stress. And if
19 they're not willing to tell you the source of the
20 stress, you sort of -- they might give you a sort -- 11:05
21 they mightn't get into the specifics of it, but they
22 might you a context, they might give you some
23 understanding of it.

24 93 Q. Okay. So my question was: would you challenge the
25 version of events at the first meeting or would you 11:05
26 mainly use the first meeting to, I suppose, elucidate
27 or elicit information so that you could conduct your
28 investigation? Which would you do, given that this is
29 the first meeting and, as you have said, this isn't an

1 investigation, we're not at the investigation point per
2 se?

3 A. I think you have to listen to people and you have to
4 make your -- you know, you have to listen to people.
5 If people are saying to you, I'm not discussing this 11:06
6 with you, I can't discuss it with you, but I am working
7 with -- I am suffering from work related stress. It's
8 related maybe to something they were involved in. And
9 if that's their position, you know, and if their
10 position that you are quite clear of from other 11:06
11 positions they have taken when inquiries have been
12 made, that they don't want to discuss this, this is all
13 connected with another matter, you know, you would say,
14 well listen, I can't bring this any further. You
15 wouldn't push a person. You wouldn't put a person 11:06
16 under pressure about it. I think that would be the
17 wrong thing to do.

18 94 Q. Okay. You wouldn't put a person under pressure. Okay.
19 A. A person is saying to you that they are stressed,
20 what's the nature of your stress? what is it connected 11:06
21 with? Can you go any further? And I think and I know
22 I'm staying on point here, Superintendent Murray -- we
23 were very alive to this, the challenging context that
24 Garda Keogh was in and could well understand that he
25 was only going to bring this to a certain point. We 11:07
26 were saying, yeah, that's understandable. The stress,
27 you know, that mechanism kicked in as well.
28
29 So, you know, we referred this up to the CMO to say,

1 this is how far he is willing to go. Sometimes in my
2 experience, some people will have a deeper conversation
3 with the medical officer.

4 95 Q. Okay. If Garda Keogh or any individual member, named
5 superior officers who might have information about 11:07
6 this, I presume you would go and talk to them, not
7 necessarily if -- and I understand what you said
8 earlier about you wouldn't necessarily challenge the
9 individual because that is the purpose of the
10 investigation, but if there were superior officers and 11:07
11 you were told there were superior officers who had
12 information about what was being complained of, would
13 you contact them, if you asked to by the member?

14 A. In this case -- no, okay, where there was a protected
15 disclosures issue, you know, or where there was 11:08
16 something very sensitive and where it was very
17 connected, yeah, you probably wouldn't. I suppose this
18 was an unusual case. We were looking to sort of say,
19 listen, we were trying to -- at the first point, we
20 were trying to move it on, trying to -- so it had gone 11:08
21 up to the CMO. Garda Keogh made his position crystal
22 clear. We weren't going to push it. And in my actual
23 opinion, I think the context of the whole thing, and
24 that's a matter for himself and maybe a conversation
25 with professional people, it was very clear to me that 11:08
26 he was, he was -- this was a cause of stress and it was
27 connected. And you know, when you think about it
28 realistically, even, you know, for me to roll out a
29 team, to say, well, I have to put a team on this, I

1 have to put a whole new team and they're ask you
2 questions in relation to this but we simply have to
3 have a separate investigation, that wouldn't have been
4 the right thing to do, I don't believe.

5 96 Q. Superintendent, I am really sorry but I didn't ask you 11:09
6 that question?

7 A. Okay.

8 97 Q. what I asked you was: If Garda Keogh named their
9 direct line superior and says this person knows about
10 where the source of my stress is and asked you to speak 11:09
11 to them, would you do that?

12 A. Sorry, say that again?

13 98 Q. If Garda Keogh named his direct supervisor and said,
14 this person knows about my stress, will you talk to
15 them, would you do that? 11:09

16 A. Yes, you would. Yeah.

17 99 Q. Okay. I wonder if we could see page 2187,
18 Mr. Kavanagh. I am sure, chief superintendent, that
19 you have seen this document before. It's the note from
20 Superintendent Murray, his own diary note in written 11:10
21 format of what he understands has occurred on this day.
22 I appreciate that we don't have any other notes and
23 this is the best that I have in trying to elucidate
24 when you say what the cause of this stress is and
25 trying to elucidate this information. I presume you 11:10
26 didn't see this diary entry at any time prior to the
27 disclosure of this material being provided to the
28 Tribunal, would I be right about that?

29 A. Yes.

1 100 Q. Yes. So to be fair to you, you have made it very clear
2 that you believe that Garda Keogh was crystal clear and
3 is it fair to say that your view is formed by
4 Superintendent Murray's view, isn't that fair?
5 A. Yes. 11:11

6 101 Q. Because you didn't interview at any time Garda Keogh,
7 isn't that right, about the work related stress prior
8 to May 2016?
9 A. Yes.

10 102 Q. So the only information that we have about what 11:11
11 actually happened is this note, do you accept that?
12 A. Yes, I do.

13 103 Q. Okay. So I just wonder if we can have a little look at
14 the entirety of this note. So we know, because this
15 has been opened ad nauseam to the Chairman, that this 11:11
16 was not a meeting purely about work related stress. Do
17 you accept that?
18 A. Yes.

19 104 Q. It also talks about car tax?
20 A. Yes, it does. 11:11

21 105 Q. Is it fair to say that we know this is also, that this
22 was the first time Garda Keogh met Superintendent
23 Murray, it's clear on the page that this is the very
24 first meeting?
25 A. Yes. 11:11

26 106 Q. There doesn't appear to be any evidence of rapport
27 building on the part of Pat Murray, is that fair?
28 There may have been some but we don't have any other
29 note?

1 A. That wouldn't necessarily be captured, yeah.

2 107 Q. Okay. And can we just go to the third paragraph, just
3 further down. He is notified that he'd send it to the
4 CMO.

5 11:12

6 "...he declined to answering questions re points he was
7 making, instead asking me to contact Detective
8 Superintendent Mulcahy and Superintendent McBrien. "

9

10 He said he wouldn't do that but would ask him and it 11:12
11 was up to him whether he would answer or not. So,
12 would you say that Superintendent Pat Murray was
13 incorrect, given the evidence you've just given to the
14 Tribunal

15 A. Garda Keogh, I suppose out of this meeting it was 11:12
16 accepted that he would need support and that the
17 support would come from Galway. Basically the team
18 were doing it in Galway and then the welfare piece.

19 108 Q. Now respectfully, you weren't at this meeting, correct?

20 A. No, I wasn't. 11:13

21 109 Q. No. And there's no further notes other than the letter
22 of the 2nd April, isn't that right, and this note here?

23 A. Yeah.

24 110 Q. So, just to be clear, working off this note, where does
25 it say that? 11:13

26 A. Well I'm aware of that.

27 111 Q. How are you aware of it?

28 A. That the team in Galway were -- that Garda Keogh was
29 linking in with the team in Galway from a welfare point

1 of view.

2 112 Q. Yes, from a welfare point of view. But from a work
3 related stress point of view?

4 A. I don't know what you mean.

5 113 Q. Garda Keogh asks Superintendent Murray to make contact 11:13
6 with Superintendent McBrien and Detective
7 Superintendent Mulcahy and he declines to do so. And
8 what you gave in your evidence to the Tribunal there a
9 moment ago was that if the guard citing work related
10 stress asked you to speak to their superior officer, 11:13
11 that you would do that. And I am just asking you to
12 comment as to whether or not Superintendent Murray was
13 incorrect in those circumstances?

14 A. D/Superintendent Mulcahy wouldn't be a superior
15 officer. 11:14

16 114 Q. Very good. In terms of Superintendent McBrien then?

17 A. That wouldn't be a superior officer, they're the same
18 grade.

19 115 Q. Is Superintendent McBrien not a person who has given
20 extensive evidence to this Tribunal about all of the 11:14
21 welfare supports she provided to --

22 A. I thought you said a superior officer.

23 116 Q. My apologies if I am being in some way inarticulate.
24 Superintendent McBrien is who Superintendent Murray is
25 being asked to make contact with, given her extensive 11:14
26 knowledge and welfare work that she did with Garda
27 Keogh. He is being asked then, Pat Murray is being
28 asked to make contact with her, he is declining to do
29 so. I ask you again, do you think that Superintendent

1 Murray was incorrect in that determination?

2 A. No, I don't think he was. I mean, I know he had a very
3 good relationship with Superintendent McBrien and she
4 was looking after his welfare and there was no welfare
5 officer even required at that stage. They had a good 11:15
6 relationship, they knew each other before. So I
7 understand that Garda Keogh was comfortable there. In
8 terms of -- around that time it was just -- because of,
9 I suppose, Garda Keogh's reluctance to discuss
10 anything, because of the confidential nature of what he 11:15
11 was involved in, my understanding is that
12 Superintendent Mulcahy, he was liaising with him and
13 ringing him. Superintendent Murray took the decision,
14 and I supported that decision, that because of the sort
15 of, I suppose, unusual nature about this, we didn't 11:15
16 say, we didn't say he won't tell us, the door is shut,
17 we're not doing any more about it. The position we
18 took is, we said we really need to move this on, we
19 need to explore it, this person is saying they're
20 stressed. We gave, I suppose, as much as we could 11:16
21 give. There was an opportunity then -- there was quite
22 an extensive -- I suppose we gave the context, it was
23 all connected with this. Sometimes people have deeper
24 conversations with the CMO. And I am conscious -- and
25 I suppose I know you're talking about in general terms. 11:16
26 In this case, we -- like we sent him up the line for
27 the medical supports and because it was so unusual, we
28 were -- and he was reticent to discuss it with us and I
29 suppose there was probably a reluctance to get into

1 asking questions that were going to bring it into the
2 nitty gritty of the core investigation in Galway, we
3 were saying -- you know, Pat initiated, listen, we need
4 to send it up the line here, he needs support, that was
5 the primary thing. We are giving you -- we're giving 11:17
6 you as much information as we can and please make this
7 assessment. When Garda Keogh -- Garda Keogh was back
8 working then, he was deemed fit. So, you know, he was
9 back working, he was fit. In May he was deemed fit as
10 well. 11:17

11
12 We looked then to have a case conference. We looked at
13 case conference with HRM, saying, this member, you
14 know, is reporting sick by work related stress, he has
15 been seen by the CMO, we have a fairly deep 11:17
16 understanding what the issue is but, you know, we just
17 don't think we can bring it any further. This
18 wasn't --

19 117 Q. Chief superintendent, I am really reluctant to
20 continually cross over when you're speaking, but my 11:17
21 questions are really quite short?

22 A. Okay.

23 118 Q. You have given the same evidence nine times now?

24 A. Okay.

25 119 Q. And we had a whole day of it yesterday. It's clear 11:18
26 what your position is. We would all be moving a little
27 bit faster if you just answer my questions for a
28 moment. It's a matter for the Chairman to decide what
29 the reality of the facts are. So in terms of what I

1 asked you in terms of Superintendent McBrien, and you
2 say, well, maybe there's a conflict about how that
3 would happen. I just want to explore this with you:
4

5 "I said I wouldn't contact anyone for anecdotal info 11:18
6 but would ask him and it was to him whether he would
7 answer or not."
8

9 That seems to be shutting down seeking to get any
10 information from any other third party, were you aware 11:18
11 of that? Because if you weren't aware of it, then that
12 is one thing

13 A. I was aware that he had contacted the superintendent in
14 Galway.

15 120 Q. Were you aware that Superintendent Pat Murray declined 11:18
16 to contact Superintendent McBrien despite the request?

17 A. No.

18 121 Q. No. Can I just go back up then to the previous
19 paragraph, and it is confirmed that he asked -- he
20 said: 11:19
21

22 "No, I would send him to assess the stress because the
23 in and out appearance do not in my view support what he
24 is saying."
25

26 I am going to put it to you then just for completeness,
27 that that seems to be challenging on a preliminary
28 basis, version of events, what Garda Keogh seems to be
29 saying about work related stress and is quite

1 dismissive of his work related stress

2 A. well, I don't think -- Garda Keogh was intermittently
3 out sick with work related stress. As I said, he was
4 -- he wasn't -- he was intermittently -- so he wasn't
5 out for a protracted period of work related stress. So 11:19
6 we're obliged to report it to the CMO. But just in
7 relation to the other aspect, Superintendent Pat Murray
8 and Superintendent McBrien would have had a hand over
9 meeting and there would have been -- you know, there
10 would have been, I suppose, a conversation. 11:20

11 122 Q. There has been evidence given in relation to that. I
12 don't need to ask you about that part. I may need to
13 ask you whether you know about it, and if you do that's
14 fine, and if you don't that's fine. Can you accept
15 that it appears that he seems to be telling Garda Keogh 11:20
16 that he is sceptical about his work related stress?
17 Can you accept that that's a reasonable interpretation
18 of what that says?

19 A. He was sending it to the CMO, as he was supposed to do.
20 Garda Keogh went from being fit to being medically 11:20
21 stressed, you know, in patterns. You know, stress is a
22 very serious matter, is a very serious issue. I mean,
23 Superintendent Murray didn't say, you know, I don't
24 believe you and that's the end of it. He was sending
25 him to the CMO to get an assessment done. 11:21

26 123 Q. That was my question. Can you accept on the --
27 CHAIRMAN: The meaning of that, Ms. Mulligan, is really
28 for me, isn't it? It is pretty clear --
29 MS. MULLIGAN: very well --

1 CHAIRMAN: Hold on, let me speak, Ms. Mulligan, don't
2 cut across me when I am speaking.

3 MS. MULLIGAN: Apologies.

4 CHAIRMAN: It's pretty clear what the meaning is. I
5 think you might possibly consider drawing this to a 11:21
6 conclusion by saying that the chief superintendent
7 agreed, dealing in general terms with the person
8 complaining of work related stress, dealing in general,
9 the chief superintendent agreed with two propositions
10 that you put. One, that the superintendent would not, 11:21
11 perhaps ought not, challenge or disagree with the
12 situation as described. Number one. That is what the
13 chief superintendent said. And number two, that if the
14 person said that there were other people who could
15 assist with information, that it would be reasonable to 11:22
16 go and ask those people. The chief superintendent, as
17 I noted, agreed with those two propositions. And your
18 point is, Superintendent Murray appears to have
19 disagreed with both of those. He wasn't interested
20 where he said he had anecdotal evidence from somebody 11:22
21 else about it, I'm not saying he is right or he is
22 wrong, but this is the situation. There is a
23 difference there between the what the chief
24 superintendent said would be general practice and what
25 Superintendent Murray appears to have adopted. Isn't 11:22
26 that really where we are going.

27 MS. MULLIGAN: Yes.

28 124 Q. CHAIRMAN: What do you say to that, chief
29 superintendent?

1 A. I think what I am saying is, in this particular case.

2 125 Q. CHAIRMAN: Yes.

3 A. It was so, I suppose, sensitive and even the fact that

4 I suppose when there was a substantive investigation

5 ongoing and people were being investigated in the 11:23

6 station, that was a cause of concern. In this case --

7 126 Q. CHAIRMAN: First of all, do you agree, he took a

8 different view from the one you have expressed?

9 A. No, I don't. Sorry, if it's in order, Chairman.

10 127 Q. CHAIRMAN: Okay. 11:23

11 A. I mean, I know --

12 128 Q. CHAIRMAN: Tell me where I am wrong. I had it down

13 that you agreed with Ms. Mulligan that if the person

14 told you, you would be sympathetic, it wouldn't be

15 challenging, it would be a sympathetic engagement and 11:23

16 it wouldn't be challenging?

17 A. Sorry, yeah.

18 129 Q. CHAIRMAN: Number one, that's the first thing I

19 thought. The second thing was that if the person told

20 you there were senior officers who had information 11:23

21 about the matters, would you talk to them, and you said

22 yes, you would?

23 A. Yeah.

24 130 Q. CHAIRMAN: That appears to be different from what

25 superintendent -- it doesn't make him wrong, it doesn't 11:24

26 make him -- or whatever. I mean, am I missing

27 something here? There is a difference between those

28 two propositions?

29 A. What I am saying, Chairman, if it's in order, sorry.

1 131 Q. CHAIRMAN: Yeah, go on.
2 A. I suppose the uniqueness of this case.
3 132 Q. CHAIRMAN: Sorry, in the circumstances of this case it
4 may have been perfectly right. I am not saying that
5 you are right or that Superintendent Murray is right, 11:24
6 all I am saying is, there's a difference between the
7 two positions. Hold on. There is a difference between
8 the two positions, chief superintendent?
9 A. Okay. Okay.
10 133 Q. CHAIRMAN: Now, he may be right, he may be perfectly 11:24
11 right in saying, in this particular case, but we can
12 keep it simple, at least in my simplicity, when I wrote
13 that down, I thought, well let's see what the situation
14 is, and then Ms. Mulligan asked, is that not different
15 from here, in two respects I thought? 11:25
16 A. Well, I think if you look at the next step, Chairman,
17 if it's in order --
18 134 Q. CHAIRMAN: We may find out something else, chief
19 superintendent. I'm sorry, and please don't think -- I
20 mean, I am sorry, I am not succeeding in covering my 11:25
21 impatience, I'm sorry, forgive me. In this case, let's
22 keep it very simple?
23 A. Okay.
24 135 Q. CHAIRMAN: We're not worrying about what happened next
25 or what happened before or anything else. We have a 11:25
26 situation. Now, Ms. Mulligan, as far as I'm concerned,
27 may take it that she has established two points of
28 difference between your general approach, as you have
29 said, that's a general approach, and Superintendent

1 Murray's particular approach. In this case there
2 appears on the face of it to be two differences, that
3 is all I am saying?

4 A. If it's in order, so that's the point I make, Chairman.

5 136 Q. CHAIRMAN: Yes. 11:25

6 A. In this context, when you're ten months into, I
7 suppose, a complicated issue, Garda Keogh had been out
8 intermittently with work related stress, I don't know
9 that there had been a referral in that period. When
10 Superintendent Murray became aware that Garda Keogh had 11:26
11 been out with work related stress and I suppose he
12 referred him up the line straightaway, for him to be
13 properly assessed. So this is the key issue here.

14 137 Q. CHAIRMAN: You say the key point, whatever about those 11:26
15 differences, the key point is he did the one crucial
16 thing, which is to refer to the CMO?

17 A. And I think the second point, Chairman.

18 138 Q. CHAIRMAN: Yes.

19 A. As I said, investigations go on all the time and they
20 go on in stations and most people have no problem with 11:26
21 that, but clearly Garda Keogh had a problem with that.
22 I think even in my professional opinion, for us to
23 start an investigation when a person, in that time --

24 139 Q. CHAIRMAN: I am understanding.

25 A. It was just going to be -- it just was going to be so 11:26
26 complex and it could even be seen as robust.

27 140 Q. CHAIRMAN: Just to reassure you, I am not missing the
28 point?

29 A. Okay.

1 CHAIRMAN: Somebody may well submit that Superintendent
2 Murray was right not to go asking Detective
3 Superintendent Mulcahy about the state of Garda Keogh's
4 stress. Somebody may well make that point. I'm not
5 missing that. But I'm just saying there is a 11:27
6 difference in the two positions. Okay, Ms. Mulligan.
7 Let's move on. I'm sorry, if you are satisfied that I
8 have the point at least, well and good.
9 MS. MULLIGAN: Certainly, Chairman.

10 141 Q. In relation to this note, it's fair to say that within 11:27
11 that note there's also no notification in terms of the
12 consequences being of work related stress being
13 notified to Garda Keogh, is that fair?

14 A. Sorry.

15 142 Q. The consequences of an investigation into work related 11:27
16 stress for Garda Keogh, that hasn't been notified, that
17 is not on the note, there's no information about that?

18 A. No.

19 143 Q. Isn't that the case? In those terms, the issue of pay, 11:28
20 for example, and being notified that if he doesn't
21 cooperate with the investigation that his pay will
22 continue will be cut or will continue to be cut?

23 A. That is actually not correct. I know Garda Keogh --

24 144 Q. Sorry, it's only in relation to what is on this note?
25 A. I know, I just want to explain this. Sorry, Chairman. 11:28

26 145 Q. I'm very sorry, I am sure the Chairman --
27 CHAIRMAN: There's no reference to that on the note.
28 There isn't. Don't worry about interpretation of the
29 note, Ms. Mulligan, I can read it.

1 146 Q. MS. MULLIGAN: I wasn't asking for an interpretation.
2 It's the case, Chief Superintendent, that there is no
3 information on that note about Garda Keogh being told
4 of the consequences of a work related stress
5 investigation, isn't that fair? 11:28

6 A. That's the point I was answering, I agree with you that
7 there is no note in relation to that. What I am saying
8 to you is, when a member is out sick with work related
9 stress, it's not, even if they fully cooperate with the
10 investigation and I am not saying he didn't, you know, 11:29
11 I don't even think -- there hasn't even been an
12 investigation, five years later. If he fully
13 cooperated with the investigation and he felt he could,
14 maybe when everything was over, you know, that doesn't
15 of itself automatically entitle Garda Keogh to pay. 11:29
16 It's quite a complex issue.

17 147 Q. I accept that.

18 A. Okay.

19 148 Q. That is accepted. My question was about that
20 information. So your position has been from the 11:29
21 extensive evidence that Garda Keogh was explicitly
22 clear that he wasn't going to engage with anyone. Are
23 you satisfied that Superintendent Murray was
24 sufficiently clear about the process that he was
25 embarking on with Garda Keogh? 11:29

26 A. Yes, I am. As I said, I mean, that's why we brought it
27 to the next step, to say, listen, this is as far as we
28 can go with it here. And I don't even -- I think we
29 went -- in my professional opinion, I think we went far

1 enough in terms of giving the background. Sometimes
2 when someone is out work related stress, it could be
3 something very simple and a page will tell you the
4 story and it's not necessary a major investigation.
5 And that is sufficient for the CMO to say, yeah, that's 11:30
6 the issue that happened there, there's a causal link
7 there, happy enough, that's work related stress. And
8 the person is off.

9 149 Q. So you would disagree with Superintendent Murray when
10 he said that he could have been more clear with Nick 11:30
11 about what was happening?

12 A. In respect of what?

13 150 Q. In terms of the investigation. And I think if you go,
14 it's Day 125, and it's page 54, just for the benefit of
15 your team, they can consider it, because it's a whole 11:30
16 page, where it was identified by Superintendent Murray
17 that he could have been a bit clearer about the
18 position in relation to the work related stress
19 assessment. So you disagree, you think Superintendent
20 Murray was sufficiently clear? 11:31

21 A. Where are you referring to?

22 151 Q. Day 125, page 54, line 14.

23 A. Yeah, I don't disagree with that.

24 152 Q. Okay. So you don't disagree with it.

25 A. Yeah. 11:31

26 153 Q. You gave evidence to the Chairman there that you did
27 think he was sufficiently clear, you are now changing
28 that evidence?

29 A. No, I'm not.

1 154 Q. That's a change of position. You said he was
2 sufficiently clear and now you accept that he wasn't
3 sufficiently clear?
4 A. Sorry, maybe put what you are saying in context,
5 because I've lost you there now. 11:32

6 155 Q. I will move on. Can I also look then at page 3253.
7 This is just in relation to what you say is the steps.
8 You have identified what steps need to be taken as to
9 what the cause of the stress is. Then you go straight
10 to the CMO. Just so I am clear, is there any further 11:32
11 investigation process that needs to happen prior to
12 going to the CMO.
13 A. If a person -- if a person was willing to engage with
14 you, you could.

15 156 Q. You could. Okay. Can you just clarify, so if a person 11:32
16 is willing to engage, what would you do?
17 A. Well, you take a statement of complaint from the person
18 who is making -- who -- you know, you would kick off
19 the investigation from the person.

20 157 Q. Okay. And what's different from that point of view 11:33
21 than identifying the cause of stress? So what is the
22 difference between the two? What additional steps, if
23 someone was willing to engage, you said Garda Keogh
24 wasn't, you say you would take a statement. What is
25 the difference there between what you previously 11:33
26 identified to the Chairman, identifying what the cause
27 of the stress is and taking the statement?
28 A. Can I just say, in this case, you know, we were saying,
29 listen -- we were alive to the sensitivities around the

1 whole issue. I don't believe -- and we had given a
2 very good summary of the issue up to the CMO. I don't
3 believe it would have been -- I didn't believe that it
4 was appropriate to start, you know, asking questions
5 around the place and doing that. I didn't believe it, 11:34
6 I think it could have been perceived in a negative way,
7 because, you know, the sensitivities around it. And if
8 the stress that Garda Keogh was suffering was actually
9 to do with how the investigations were doing, if it was
10 something to do with how people were reacting because 11:34
11 how he did it. There were so many nuisances. In my
12 professional opinion it wasn't going to be appropriate
13 at that stage to sort of start kicking something off on
14 top of him when he was part of this. So I was -- you
15 know, so we were saying, send it up, you know, let's 11:34
16 get an assessment here and that's his position. And it
17 wasn't the CMO's position, well, I'm not looking at
18 this person here because I don't have enough
19 information.

20 158 Q. We will get to that and perhaps that is a matter for 11:34
21 the CMO?

22 A. Yes.

23 159 Q. But just so I am clear, you would identify the source
24 of the stress, you send Garda Keogh to the CMO. If he
25 had not been in the specific factual nexus that he 11:35
26 found himself in, you would have taken a statement of
27 complaint?

28 A. If he was willing to make one.

29 160 Q. If he was willing to make one, yes?

1 A. Yes.

2 161 Q. And is there anything else you would have done?

3 A. Well, I suppose Garda Keogh was under the care of the
4 welfare person at the time but normally you would
5 actually -- if the person wasn't, you would remind them 11:35
6 of the services of the welfare.

7 162 Q. So you would remind them of welfare. Anything else?

8 A. Not really, no.

9 163 Q. Okay. So just for the purposes of this statement of
10 complaint, who did the statement of complaint 11:35
11 ordinarily go to, in other scenarios?

12 A. Well you might make an appointment with an inspector to
13 go and ask the person for a statement of complaint.
14 But in this case, this wasn't something that I was
15 going to kick off. 11:36

16 164 Q. No, sorry, that was a more basic question. If the
17 statement of complaint is taken, does it go to the CMO,
18 does it go to you? Who actually has charge of that
19 document and what is its purpose?

20 A. It's like any statement, I suppose it's to establish 11:36
21 what is the causes of the stress.

22 165 Q. And who does that document go to?

23 A. Well a person -- it could go to -- it would come
24 through to me. I suppose if you had it at the time and
25 if Garda Keogh was giving additional information at the 11:36
26 time or he had made a statement, that would have gone
27 up to the CMO as well.

28 166 Q. That would have gone. Just correct me if I am wrong
29 and I think it's clear from the papers but no one asked

1 Garda Keogh to provide a statement to the CMO
2 specifically, given just the factual scenario, okay, we
3 can't look at it, I appreciate that that might be too
4 difficult, will you write it all down and give it the
5 CMO. That didn't happen, sure it didn't? 11:36

6 A. No, but he had an opportunity to have a conversation
7 with the CMO.

8 167 Q. He did. He did have an opportunity to. We will get to
9 that. We will talk about the CMO in due course. But
10 you didn't ask him to make that statement and neither 11:37
11 did Superintendent Murray, isn't that right?

12 A. Yeah.

13 168 Q. No. And again, that didn't go to the CMO, isn't that
14 the case?

15 A. It wasn't made. He didn't make one, yeah. 11:37

16 169 Q. Okay. So the process then, we're now at the referral
17 stage, going to the CMO, that's in around the --
18 somewhere between the 19th and the 22nd May. Is there
19 any other steps that need to be taken in order for
20 Garda Keogh to be considered for an injury on duty for 11:37
21 work related stress from a HR point of view?

22 A. They have to consult with HRM. They can -- I know they
23 can ask for further enquiries to take place in relation
24 to it. And they can -- they sometimes send the person
25 to an external person as well. So ultimately the 11:37
26 executive director of HRM makes the determination
27 whether the person gets -- falls into that category.

28 170 Q. Okay. In relation to the document at 3253, and then it
29 just goes on to page 3254 it's an e-mail from Clare

1 Egan and I just want to ask you about it, who I believe
2 works for HR. The executive director is on it and
3 member is on sick leave. And I think to be fair, it is
4 a document that might have been redacted, I am not
5 entirely sure. I just want to go to, I think it's the 11:38
6 sixth last line. It says:

7
8 "This branch is not in receipt of nor aware of any
9 application for this sickness absence to be treated as
10 anything other than ordinary illness." 11:38
11

12 I just wanted to ask, is there an application process
13 for documents to be considered as something different
14 from ordinary illness?

15 A. Yeah. When a person is injured on duty, I issue an 11:38
16 11.37. So people can apply for that.

17 171 Q. Yes. And that's just what I wanted to clear up. The
18 application, so my understanding of the 11.37 was that
19 that is at the end and it's, I suppose, the final cog
20 in the wheel? 11:39

21 A. Yes.

22 172 Q. This might be a question for HR, so if you can't answer
23 it that's fine. But am I reading it right, that the
24 application has to come from local management?

25 A. Well, actually, there's a whole process, right. 11:39

26 173 Q. But does it have to come from local management, that is
27 the only question I want to ask?

28 A. No, just in the context of work related stress, it is
29 actually slightly different. I suppose a person

1 themselves could apply for this to be considered as
2 work related stress. And I think there would be a lot
3 of cases now up in the air, in the ether in the
4 organisation. I suppose the Code puts the
5 responsibility back on the chief superintendent to 11:39
6 issue an 11.37, really to say, yes, this is injury on
7 duty, put him back on the payroll, get the pay
8 retrospective. In relation to work related stress,
9 because I suppose of the complexities and that around
10 it, we're told -- when the executive director 11:40
11 adjudicates on the matter and I suppose the stress
12 piece has been established, the causal link has been
13 established, they can ask other inquiries as well. If
14 they're satisfied, the CMO, in conjunction with HRM,
15 they say, yes, this person is injured, the job is 11:40
16 responsible for this injury, then they go back to you
17 and say, issue an 11.37.

18 174 Q. Yes. No, I am very clear on that. Just so I am
19 absolutely clear, I'm not aware of -:

20
21 "This branch is not in receipt of nor aware of any 11:40
22 application for this sickness absence to be treated as
23 anything other than ordinary illness."

24
25 Again, just so that we are clear on the date, that's in 11:41
26 May of 2016.

27 A. Yeah.

28 175 Q. So we've already had the letter going up to the CMO, I
29 think it's the letters in May, seeking for there to be

1 a work related stress investigation. So is it possible
2 that the HR are incorrect that there's been no
3 application for this to be treated as work related
4 stress, or is there some other piece that I am just not
5 following?

11:41

6 A. No. Yeah, yeah. HRM ultimately make the
7 determination, or I suppose the executive director in
8 consultation with the CMO and local -- you know, he
9 ultimately says, yes -- there has been a few of them,
10 there hasn't been too many in the job -- that this
11 person is medically stressed, it's an injury. We're
12 happy enough, we have done all this. I think there
13 might have been a case where a couple of chiefs were
14 issuing an 11.37s for work related stress and the
15 organisation said, no, you can't do that, you're not
16 qualified.

11:41

11:42

17 So just in relation to this, this would have come from
18 HRM, the application to the pay section, to say, look,
19 we are happy that this is an 11.37, so put him into
20 that category.

11:42

21 176 Q. So just I am clear and that's very helpful, I
22 appreciate that, this is the distinction to be made
23 between the HR directorate and the Sick Section?

24 A. Yeah.

25 177 Q. Okay. So the application can come from you, can come
26 from Garda Keogh, and then there is a final
27 recommendation from the HR department, which then is
28 sent to the Sick Section. Did I get that right?

11:42

29 A. Yeah, broken down it's clearer, you know what I mean.

1 178 Q. I accept that. I just wanted to be clear. Can I then
2 just ask you to go to page 2509, please, Mr. Kavanagh.
3 A. Yes.

4 179 Q. Could you just confirm to the Chairman who the private
5 secretary to the Commissioner is and what the purpose 11:43
6 of this report was?
7 A. Yeah. He's Superintendent Frank Walsh. This report
8 was a response to an e-mail that I received from
9 Superintendent Frank Walsh on the 18th May. It may
10 have been triggered, I don't know what triggered it but 11:43
11 the Commissioner wanted a report, an up-to-date report,
12 I suppose, around all matters in relation to Garda
13 Keogh. So that's what triggered that.

14 180 Q. Okay. So can you just point to me in this document
15 where you identify the issue of work related stress, 11:43
16 any investigation, the inability to have an
17 investigation or anything at all just in that general
18 tenor? Because I just can't see it.

19 A. Well, there wasn't one because we -- there wasn't an
20 investigation, there still hasn't been an investigation 11:44
21 because the member reported sick with work related
22 stress and we brought it to a certain point and
23 certainly for the first couple of months the CMO didn't
24 deem him stressed and actually, I don't know, I don't
25 know what the medical determination is for Garda Keogh 11:44
26 at the moment. That's matter for someone else. So
27 really, as I said, we didn't do a work related stress
28 investigation.

29 181 Q. But I asked you what the purpose of this document was

1 for and it was all information in relation to Garda
2 Keogh and surely if this was at the forefront of your
3 mind that this was an issue that you couldn't progress,
4 surely it would have made its way into this report?

5 A. Well, we stepped out what we did, you know what I mean, 11:44
6 and the lines that we took.

7 182 Q. Can I point you to page 2510, into the paragraph of
8 "welfare". Just to go into the third paragraph.
9 Because you do identify Yvonne Martin, Sergeant Yvonne
10 Martin was nominated to make intermittent enquiries 11:45
11 with Garda Keogh with effect from the 2nd April 2005
12 [sic], isn't that right, that's what that says?

13 A. Yeah.

14 183 Q. I think that is relied upon by you in your report to
15 Chief Superintendent McLoughlin as one of the steps you 11:45
16 took as a support for Garda Keogh --

17 A. Yeah.

18 184 Q. -- to deal with the work related stress. And yet still
19 the work related stress issue doesn't make its way up
20 the chain in this document, isn't that right? 11:45

21 A. At the risk of repeating myself. Garda Keogh reported
22 sick with work related stress, he was referred to the
23 CMO, okay, and he was deemed fit. He came back into
24 the workplace and then he was out again, periodically,
25 and we referred him back up again. After that -- and 11:46
26 there was a conference held. He was out of the
27 workplace from January -- he's still out of the
28 workplace, but from that time, from January to May,
29 when I saw him. So, you know, he had -- that was his

1 view and that was his doctor's view and he brought it
2 to our attention. He had made the position clear. We
3 had sent him to the CMO.

4 185 Q. Okay.

5 A. So really we didn't have any sort of road map after 11:46
6 that to move ahead with this.

7 186 Q. All right. My questions, perhaps I am being unclear.
8 You're asked for a full assessment of all the things
9 that had been done in relation to Garda Keogh and the
10 failure or the inability, as you say, to have an 11:47
11 investigation, just to be clear, is not mentioned in
12 this report, and then you say that Yvonne Martin was
13 nominated to make intermittent enquiries. Did you ever
14 follow up with whether or not Yvonne Martin did that?

15 A. No. 11:47

16 187 Q. No. Were you here for her evidence that she said she
17 didn't?

18 A. Yes.

19 188 Q. Yes. Okay. So again, that made it into a report,
20 which I think again is relied -- 11:47

21 A. That was a welfare thing, that wasn't necessarily work
22 related stress.

23 189 Q. We will come back to that, as I think there might be
24 another dispute between yourself and Superintendent
25 Murray about what that was for. Return to work 11:47
26 interviews were conducted, just two paragraphs down, at
27 the very end of that page. Was the work related stress
28 a feature in the return to work interviews?

29 A. Sorry, I'm not aware. This report was pulled together

1 from all reports, you know, coming from various people.

2 190 Q. You signed it, it's your report.

3 A. I know it's my report, yeah, I'm just -- where are you
4 referring to?

5 191 Q. "Return to work interviews were conducted with Garda 11:48
6 Keogh on his return from periods of absence."

7
8 So again I just wanted to ask, did work related stress
9 come up there and if it did, why is there no
10 notification to the secretary about the issue of work 11:48
11 related stress

12 A. Well, we were always clear that Garda Keogh continued
13 to -- when he was absent from duty, that his doctor --
14 you know, he was the doctor certified him sick due to
15 work related stress, okay. And that's fine. My 11:49
16 reference point in terms of -- we referred Garda Keogh
17 to the CMO, and I know I'm repeating myself but I think
18 it's is important, and the CMO deemed him unfit for
19 duty in December. He didn't go into a lot of detail as
20 to what the actual issue was, nor should he, because 11:49
21 it's confidential. So that was that position for that
22 period. So Garda Keogh continues and does continue to
23 this day I think to get certs from his doctor to say
24 that he is out, that he is suffering from work related
25 stress, he has to get -- so I am sort of not clear as 11:49
26 to what the issue is you are raising.

27 192 Q. Okay. Can we just have a look at the document, Volume
28 11, page 3267, please. You will be very familiar with
29 this, it's a report that you completed for chief

1 Superintendent McLoughlin. You're familiar with this
2 document, I presume?

3 A. Oh yeah.

4 193 Q. It has been opened several times to the Chairman. So I
5 think from this document that efforts were made locally 11:50
6 to establish the source of the alleged work related
7 stress, yes?

8 A. Yes.

9 194 Q. It identifies frequent absences from work, it
10 identifies that the member was reviewed, it establishes 11:50
11 the additional workplace supports, to assist the member
12 locally. Now, I just want to ask you about this piece
13 here:
14
15 "A request was made and reviewed to establish any 11:50
16 additional work supports."
17
18 If we just go to the next paragraph, the next page,
19 please, Mr. Kavanagh. Yes.
20 11:51
21 "...sergeant rank to a member to discuss and if
22 possible solve any work related issues he may have in
23 Athlone in order to allow him to attend work more
24 frequently."
25 11:51
26 So in this document that you send, I think, just so I
27 am clear, two weeks prior.

28 A. Yes.

29 195 Q. So we have a document on page 2509 which you author on

1 the 24th May 2016, which makes no reference to work
2 related stress, which references Yvonne Martin.

3 A. Yes.

4 196 Q. Then a second document at page 3266 and then 3267
5 references the sergeant who I believe is Yvonne Martin, 11:52
6 as being identified as a source of support in
7 identifying work issues. I just can't understand how
8 work related stress didn't come into this document on
9 the 26th May and yet the same person is relied upon in
10 page 3267, two weeks later, as a support and work done 11:52
11 in relation to work related stress support?

12 A. These were two different reports.

13 197 Q. Can you comment on that. Yes, they are two different
14 reports?

15 A. Yes. One was going to the Commissioner. This report 11:52
16 actually on the 8th --

17 198 Q. The 6th June?

18 A. The 6th June, was in response to Chief Superintendent
19 McLoughlin's request.

20 199 Q. Yes. 11:53

21 A. As I said, we had written up twice, we had referred him
22 twice. On the day, on the 20th -- 16th May I had seen
23 Garda Keogh and at that he sort of took the decision
24 that he was out with stress, that his doctor said he
25 was stressed and that, you know, he wasn't going to 11:53
26 come back until it was all over. So the position I
27 took then was that, yeah, he is saying he is stressed,
28 he is saying it is all connected with this matter. So
29 I took the decision then and I wrote up to HRM to say

1 when he returns, when this is all over and when he is
2 in a position to return to work, then I will do the
3 investigation into work related stress. And in
4 response to the two e-mails, I know I have given this
5 evidence yesterday, I just said, I will put this whole 11:53
6 report together, just to pull it all together and my
7 professional opinion, you know, at that stage it wasn't
8 going to be realistic to sort of put another
9 investigation on top of this investigation. So then I
10 said, you know, to be clear, do you want us to do an 11:54
11 investigation, do you want us to do it, do you think it
12 is appropriate? You are the medical people, you are
13 the HR people, do you think we should go ahead with
14 this now? Do you think it's appropriate? I sent a
15 reminder subsequent. My understanding is that an 11:54
16 investigation to this date hasn't taken place.

17 200 Q. I put it to you for the purposes of the transcript that
18 it's clear that there was no legitimate investigation
19 into work related stress and that the report on the
20 26th May is proof of that. I presume you're not going 11:54
21 to accept that, but I am just putting it to you for the
22 purposes of --

23 A. No, maybe you just might repeat what you said.

24 201 Q. Sorry, my apologies. I am just going to put it to you
25 again that you wrote a document on the 26th May, making 11:55
26 no reference to any work related stress, despite it
27 being in relation to all issues with Garda Keogh, and
28 then two weeks later, using the same information, you
29 rely on certain information within it to prove that you

1 have done a work related stress investigation, and I am
2 putting to you that it undermines the credibility as to
3 whether or not there was ever any work related stress
4 investigation done in any way, shape or form?

5 A. No, I didn't say that. Sorry, that not -- I said when 11:55
6 I went to see him, I said I will undertake one when he
7 comes back, when it's is all over.

8 202 Q. Yes.

9 A. And then Superintendent McLoughlin may not have had
10 sight of that because it was on the 26th -- I think it 11:55
11 was the day I visited him, and I said we had told -- we
12 had told people already and we had told the people in
13 HRM, we really don't believe we can advance this. You
14 know, it was always open to people, maybe they could
15 ask the people in Galway to do an investigation because 11:55
16 it was so interlinked. I'm not aware that that was
17 ever suggested. So, you know, so when I went to visit
18 him and he was quite -- he said, I'm out with stress,
19 and that was the whole essence of the issue for him, I
20 wrote up then and said, yes, the member is asserting 11:56
21 his absence is to do with being stressed. When he
22 returns from work, when this is all over, I propose to
23 do a work related stress -- pursue it. Chief
24 Superintendent McLoughlin may not have seen it because
25 of the timeframe and then he asked the question. So I 11:56
26 was putting this whole thing no context. And I said,
27 okay, if people have a helicopter view, having been
28 alive to the substantive issue, been alive to the
29 medical piece, are you saying, yes, plough ahead.

1 203 Q. I appreciate that some of this is out of context, I
2 just don't want to go over material that the Tribunal
3 has already opened extensively. But can we just go to
4 page 3729 and 3730, on the basis of what you have just
5 said. I appreciate, chief superintendent, that this is 11:57
6 slightly before your time?

7 A. Okay.

8 204 Q. It is stamped on the -- my apologies, I think actually
9 this is the document that is without a date. If you go
10 to 3729, it's 20th February 2015, and it is a report 11:57
11 from Sergeant Cormac Moylan and it appears to me, and I
12 am sure someone will correct me if I am incorrect, that
13 3730 is a request for a report from Garda Nicholas
14 Keogh in relation to his absences, from HR. I presume
15 you didn't see this document prior to the disclosures? 11:58

16 A. No.

17 205 Q. No. Okay. Just so I am clear, at 3730, it's a third
18 reminder, but it appears to be a proforma request from
19 HR, which identifies a need to get some more
20 information from Garda Keogh on the basis of his 11:58
21 absence. Is that a standard enough letter?

22 A. Yes.

23 206 Q. Is that something that happens once you go past a
24 certain number of days?

25 A. Yeah. 11:58

26 207 Q. Am I right about that?

27 A. Yeah.

28 208 Q. Then we get to 3729, which I think is the response and
29 it certainly does answer the questions that are in that

1 letter, on 20th February 2015. It seems to identify
2 that Garda Keogh performs all his duties consummate
3 with his rank, that any history is available in the
4 district office, there is no coping skills or other
5 measures deemed necessary at this stage. He has a good 11:59
6 working relationship with his peers, and he does not
7 wish to note any other reasons or concerns. This was
8 opened to the Tribunal prior to this, I just want to
9 know did you see this document when you were doing your
10 assessment of Garda Keogh? 11:59

11 A. No, I don't think so.

12 209 Q. No, you didn't see it, that's fine. So we have the
13 26th March, which is the first meeting with Garda Keogh
14 and Superintendent Patrick Murray, isn't that right?

15 A. Yes. 11:59

16 210 Q. Then, on foot of that, a report is sent to you on the
17 2nd. You send that up, as you're obliged to, to HR,
18 isn't that right?

19 A. Yes.

20 211 Q. They come back then and I think it's Ann Mulligan comes 12:00
21 back to you, saying you should now seek to interview
22 the member, isn't that right?

23 A. That's right, yeah.

24 212 Q. I think you gave evidence, and I just want to give you
25 an opportunity to respond to this, you sent a direction 12:00
26 to Patrick Murray to talk to Nick. And I think you
27 said, in response to questions, you said:
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29 "There's no point in asking him to send up the note

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again. "

I just want to be absolutely clear about this, you were clear that the report of the 22nd May didn't involve any further questions or anything else being put to Nick after it was requested on the 20th May -- or sorry, on the 4th May by Ann Mulligan, for there to be an investigation.

12:00

A. I think so, yeah.

213 Q. So you're clear that at no point did you feel it necessary for Garda Keogh to be informed or re-informed of the consequences of not engaging in a work related stress investigation or not giving you the information, you were satisfied that nothing further needed to be done?

12:00

A. I felt that he made his position clear. I am not sure that there was actually direct consequences for him, actually. In the sense that we had -- we were really trying to explore, this is a complicated issue, you know. Do you actually need us to do this this way or is there any other way to look at this? I wasn't clear at that stage. I suppose the whole thing was new, the whole protected disclosures piece. And because of that, this is the real, I suppose, piece of the jigsaw here, because of that we were saying, you know, really do we do this the same way as you would ordinarily do it, because of the complexities of it. He is bringing it so far and, you know, really do we start putting another layer on top of this, would that complicate

12:01

12:01

12:01

1 matters? would it compromise even the integrity of the
2 substantive issue? So this was my -- this was our
3 view, our position; really can we do this or do they
4 have other mechanisms to deal with it?

5 214 Q. And just on that note of other mechanisms, we saw this 12:02
6 when Chief Superintendent Curran gave evidence, where
7 there was uncertainty there was extensive
8 correspondence trying to resolve the issue. Could I
9 just be clear, there is no extensive correspondence
10 from you trying to resolve the issue of Garda Keogh's 12:02
11 pay, isn't that right?

12 A. Yes.

13 215 Q. Yes. You did give extensive evidence yesterday of your 12:02
14 welfare interest in your members, it's fair to say that
15 pay is a substantial aspect of the purpose of
16 employment and yet no steps were taken by you to try
17 and rectify the issue on pay for Garda Keogh?

18 A. Pay is governed by regulations and, you know, I haven't
19 been able -- I have never -- there's never been a
20 position other than maybe in a few cases now, in that 12:03
21 people have made protected disclosures, there is no --
22 you know, I work within the processes and procedures in
23 the organisation and I could write -- I can't -- no
24 matter what I wrote up to HRM, I can't ask them to
25 operate outside the pay guidelines, or pay regulations. 12:03
26 So, you know, there was never going to be -- and I
27 think they still haven't managed to sort of come up
28 with regulations that would allow people to be paid,
29 you know, when they're out in certain contexts. So

1 really, making a submission wouldn't have been any
2 value, because it wasn't going -- and even HRM haven't
3 -- it wasn't within their gift to sort of pay people
4 outside of the regulations. They are quite black and
5 white. 12:03

6 216 Q. And no attempts in particular to find a solution to
7 allow an investigation into the work related stress to
8 progress? There's one letter on the 22nd May --

9 A. Yes.

10 217 Q. -- which you send up from Superintendent Murray and 12:04
11 that's it. The chain stops until May of 2016?

12 A. Well, like, I suppose --

13 218 Q. Is that the case? Isn't it the case that the chain
14 stops after that letter until May of 2016?

15 A. Yes. 12:04

16 219 Q. Yes. Thank you.

17 A. He was outside the workplace, from December he is
18 outside the workplace.

19 220 Q. Yes.

20 A. Yeah. 12:04

21 221 Q. Just a practical question, in relation to the CMO after
22 seeing Garda Keogh on the 22nd May, did you receive a
23 letter from the CMO?

24 A. No.

25 222 Q. I don't think you did. I just wanted to be clear? 12:04
26 A. I don't think we did, yeah.

27 223 Q. That's probably a matter for the CMO. But you didn't
28 follow up or look for it. I don't see any evidence of
29 that happening either?

1 A. No. I mean, we didn't. We looked for it, we are
2 sending up -- I mean, I know I am repeating myself
3 here. Is this person fit to work or not? And I
4 suppose -- and he said he was -- clearly he didn't say
5 he wasn't, I suppose, taking it the other way. And I 12:05
6 suppose even to follow-through on the issue of, you
7 know, why we didn't pursue matters, I mean, we were
8 looking for HRM to give us a bit of guidance here in
9 relation to this matter, because of the stress piece
10 and because of the confidential piece and no other 12:05
11 advice -- advices didn't come back down to say, the
12 member here is acting stressed, he is saying he has
13 work related stress. You know, so when we -- I suppose
14 if you look later on at the minutes of the December
15 2015 conference -- 12:05

16 224 Q. We will, we will look at those.

17 A. You know, but no advice came back down and we took it
18 then that the -- and the member had been back in work
19 and his doctor had deemed him fit in that period as
20 well. So we took it that the member was fit to work. 12:05

21 225 Q. All right. Just so that we are clear, the only
22 material that went to the CMO in April is the report of
23 Superintendent Murray dated 2nd April 2015?

24 A. Yes.

25 226 Q. Yes, that's right. And any other questions I have in 12:06
26 relation to that I can probably put to the CMO. One
27 other question. I have very little left, you might be
28 glad to know, chief superintendent. If we have a look
29 at page 8874 as well, please. This is a document that

1 is written to you by Superintendent Murray to you,
2 isn't that right, on the 4th November?

3 A. I had transferred from the 8th August.

4 227 Q. Very good. No issue arise in that regard. Just to be
5 clear, you didn't see that document? 12:07

6 A. No.

7 228 Q. No. Very good. I just want to put it to you so that
8 it is absolutely clear, it is Garda Keogh's case that
9 there were no legitimate steps taken to properly
10 investigate the nature of his work related stress by 12:07
11 you or by Superintendent Pat Murray?

12 A. Garda Keogh made his position quite clear and, as I
13 said, understandably, it wouldn't have been appropriate
14 and on reflection, even now it wouldn't have been
15 appropriate to sort of have an investigation around him 12:08
16 and to be asking questions about people, it would not
17 have been appropriate. In light of the very sensitive
18 context I was in at the time, you know, we were looking
19 for guidance in relation to this.

20 229 Q. I put it to you that no steps were taken to limit or 12:08
21 ameliorate that risk that I just identified, of Garda
22 Keogh being a whistleblower, by you or by
23 Superintendent Pat Murray?

24 A. Sorry?

25 230 Q. No steps were taken by you to limit or ameliorate that 12:08
26 concern, that you couldn't do this because of Garda
27 Keogh being a whistleblower, no steps were taken --
28 CHAIRMAN: Sorry, that's too complicated, Ms. Mulligan.
29 It is at least three questions and it is too

1 complicated.

2 MS. MULLIGAN: Perhaps it is.

3 CHAIRMAN: I am not sure how you mitigate concern.

4 MS. MULLIGAN: Very good, Chairman.

5 CHAIRMAN: I understand what you are trying to do. 12:09

6 MS. MULLIGAN: Yes.

7 CHAIRMAN: But could you make it simple.

8 MS. MULLIGAN: I will do my best, Chairman. Apologies.

9 CHAIRMAN: That's okay. And possibly in three simple

10 propositions. I have you down as saying that you have 12:09

11 put to the chief superintendent that no steps -- well,

12 let's try to put it in the active voice. She took no

13 steps and neither did Superintendent Murray to

14 investigate Garda Keogh's work related stress, is that

15 a specific point that you have been putting? 12:09

16 MS. MULLIGAN: Yes.

17 CHAIRMAN: Okay, that's the one I have.

18 MS. MULLIGAN: Yes.

19 CHAIRMAN: Now, the next one.

20 231 Q. MS. MULLIGAN: And in addition to that, the steps that 12:09

21 you did take were insufficient to protect Garda Keogh

22 from losing his pay, which in fact occurred.

23 A. I reject that entirely. The work related stress

24 investigation, if I have had have ploughed ahead with

25 it, wouldn't of itself given Garda Keogh -- it wouldn't 12:10

26 have automatically entitled to Garda Keogh to his pay.

27 I took the view that this is unusual, this is

28 different, you know, he's not in a position really to

29 sort of go into any great detail. we brought it that

1 far. I think this is an important point to make here.
2 I don't believe that -- and no one came back to us to
3 say, well actually, do you know what, he is stressed,
4 the doctor has said he is stressed but in order for us
5 to make a decision here, we just need a little bit 12:10
6 more. You know, so we were bringing it up to -- and I
7 really wouldn't -- we were saying because of the
8 complexities of this, you know, are we going to put
9 this person through another investigation just because
10 normal policy tells you if a person -- you know, if 12:11
11 that piece wasn't over there and a person is stressed,
12 you go straight down the line and you do it a certain
13 way.

14 232 Q. CHAIRMAN: Okay.

15 A. We were saying, this is slightly different and, you 12:11
16 know, it was so linked. And I know he wasn't -- he
17 wasn't -- I wouldn't have expected him to go into any
18 more detail. And we brought it that far. I think --
19 so the three pieces of the -- we couldn't do any more
20 here, I believe. And I don't believe the fact we 12:11
21 couldn't advance it into any more detail of the nature
22 of the stress, there was another conversation that was
23 going to be had with the CMO that could have teased
24 that out. And then the conversation with HRM. I don't
25 believe -- you know, there was sufficient there, I 12:11
26 believe -- in my opinion, there was -- there wasn't a
27 case, well, you have to prove this, you have to prove
28 that. I think there was sufficient information there
29 for all the relevant parties to have. If there was a

1 conclusion that indeed Garda Keogh was suffering from
2 stress, you know, I believe that people would have made
3 a decision that, okay, do you know what, maybe we can
4 pay him.

5 233 Q. I am just going to put it to you that by depriving 12:12
6 Garda Keogh of the opportunity to engage in a work
7 related stress investigation, he was targeted as a
8 result of that action?

9 A. I absolutely reject that.

10 MS. MULLIGAN: You might answer some of the questions 12:12
11 that my Friend has.

12 CHAIRMAN: Ms. Mulligan, just let me check the second
13 proposition, it really arises out of the first one, it
14 seems to me. You say that the chief superintendent and
15 the superintendent did nothing to investigate his work 12:12
16 related stress.

17 MS. MULLIGAN: Yes.

18 CHAIRMAN: That's the first point you are making. And
19 the second one is, that they failed -- I am trying to
20 clarify your point, that they failed to protect his 12:13
21 entitlement to full pay.

22 MS. MULLIGAN: Yes.

23 CHAIRMAN: Is that in essence the whole thing?

24 MS. MULLIGAN: Yes.

25 CHAIRMAN: Okay, thank you very much. You have given 12:13
26 your answers to those questions. I just wanted to make
27 sure I had it clear as to what Ms. Mulligan was
28 putting. So thank you very much.

29 MS. MULLIGAN: Chairman, just for the benefit -- I

1 tried not to referral to material that has already been
2 opened by the Tribunal and they are a matter for
3 submissions.
4 CHAIRMAN: Thank you very much.
5 MS. MULLIGAN: I didn't want to double up. 12:13
6 CHAIRMAN: Those are your calls, Ms. Mulligan, thank
7 you very much. Now, who is next.
8 MR. O'BRIEN: In fact, Chairman, I would like to ask
9 Chief Superintendent Wheatley just some questions.
10 CHAIRMAN: I don't think that is allowable, 12:13
11 Mr. O'Brien. I think one person cross-examines and you
12 don't have two goes at the cherry.
13 MS. MULLIGAN: Very good, Chairman, it is required for
14 me to continue in those circumstances.
15 CHAIRMAN: Sorry, I thought that was pretty standard. 12:14
16 MS. MULLIGAN: No issue, Chairman. We will deal with
17 it in the usual way then.
18 CHAIRMAN: I think it is much more satisfactory.
19 MS. MULLIGAN: No issue, Chairman.
20 CHAIRMAN: Is there a principled objection? There 12:14
21 probably is, because it's one thing for a witness to
22 face questioning and cross-examination by one person,
23 but it's a bit unfair for another person then to say,
24 well I will take up the cudgels now and have a go.
25 MS. MULLIGAN: Chairman, there is no issue with that. 12:14
26 I wonder would you be in a position to rise for five
27 minutes, just to organise my papers.
28 CHAIRMAN: That is perfectly reasonable. Okay, we will
29 do that. I am hoping that we will finish by lunchtime.

1 MS. MULLIGAN: Yes.

2 CHAIRMAN: Very good. Yes, if you want five minutes,
3 that's not a problem. Well I will actually say ten
4 minutes because I am not going to stand outside in the
5 cold. 12:14

6 MS. MULLIGAN: Thank you, Chairman.

7

8 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED, AS
9 FOLLOWS:

10 12:27

11 CHAIRMAN: Thank you.

12 MS. MULLIGAN: Thank you, Chairman.

13 CHAIRMAN: Thank you, Ms. Mulligan.

14 234 Q. MS. MULLIGAN: In relation to the aspect of bullying
15 and harassment piece, I have very few questions for 12:27
16 you, chief superintendent. Can I just Mr. Kavanagh if
17 we can have page 4507, please. 4507, my apologies.
18 This is just a letter that you wrote. I think I am
19 right in saying that you were concerned in particular
20 about the delay in relation to -- 12:28

21 A. Yes.

22 235 Q. -- his assessment and that you were really trying to
23 progress matters with this letter, would I be right
24 about that?

25 A. Yes. 12:28

26 236 Q. And just on that, I think you then met for the purposes
27 of this investigation on 23rd January 2018, does that
28 sound correct, with Assistant Commissioner Finn? Page
29 4113.

1 A. Sorry.

2 237 Q. It's a note from Assistant Commissioner Finn, which
3 seems to refer to -- it's the fourth paragraph. Do you
4 see that?

5 A. Yeah, I do, yeah. 12:28

6 238 Q. Do you remember that meeting?

7 A. I do, yeah.

8 239 Q. Can I just ask, who was at that meeting, can you
9 remember?

10 A. It was just myself and the assistant commissioner, it 12:28
11 was in the officers club.

12 240 Q. In the office?

13 A. Yeah.

14 241 Q. Which office?

15 A. The Officers Club in Garda Headquarters. 12:29

16 242 Q. What did you discuss? The meeting was in relation to
17 your concerns, I was just wondering if you have any
18 specific or additional information that you might be
19 able to provide to the Chairman in relation to the
20 meeting. 12:29

21 A. Not really, no.

22 243 Q. Sorry, 4113. Just that meeting on the 23rd January:
23 The meeting was for the purpose of hearing concerns in
24 relation to the investigation. I am just wondering did
25 you have any additional or specific memory about that 12:30
26 meeting?

27 A. No, it was a short meeting, it was in the evening time.
28 I think I had -- no, I don't, no.

29 244 Q. Did you discuss Garda Keogh's complaint?

1 A. It was in that context I met him. I was meeting him in
2 the context of this -- you know, of the bullying and
3 harassment case.

4 245 Q. So how long do you think that meeting lasted? When you
5 say short, how short? 12:30

6 A. I remember it was the evening time. I was learning
7 sign language at the time, so I had to run off to the
8 class. So I was very annoyed about this, being honest
9 with you, the actual -- the appointment, altogether.
10 So I suppose that was my position. 12:31

11 246 Q. When you say you were annoyed, is it because it was
12 just an informal meeting or because it was so late in
13 the day?

14 A. No, no, I was annoyed by the appointment. You know, I
15 was disappointed that I was being investigated under 12:31
16 this policy.

17 247 Q. Okay. Did you express that annoyance?

18 A. I would have, yeah.

19 248 Q. Yes. Did you ever meet him again after that date, to
20 the best of your knowledge? 12:31

21 A. In this context?

22 249 Q. In this context?

23 A. Yes, of course, yeah. I'm not really sure whether I
24 send him my statement.

25 250 Q. You did send him a statement? 12:31

26 A. Yes.

27 251 Q. The only question is whether or not there was any
28 additional meeting, to the best of your knowledge?

29 A. No, there wasn't, no.

1 252 Q. what about Chief Superintendent Myers or Inspector
2 Bryan?

3 A. I never met any of those. I made it quite clear to
4 Assistant Commissioner Finn that I would only deal with
5 him. 12:32

6 253 Q. And predominantly then in the form of written
7 correspondence, is that right?

8 A. Yeah.

9 254 Q. No further questions. I am obliged.

10

12:32

11 END OF EXAMINATION.

12

13 CHAIRMAN: Thanks very much. Very good. Now,
14 Mr. Murphy.

15 MR. MURPHY: Thank you, Chairman. If there is any
16 other party, Chairman, perhaps they would go ahead of
17 me. 12:32

18 MS. O'ROURKE: No, Chairman.

19 CHAIRMAN: Nobody else has any questions. Very good.
20 So it's all yours, Mr. Murphy. 12:32

21

22 CHIEF SUPERINTENDENT LORRAINE WHEATLEY WAS EXAMINED BY
23 MR. MURPHY, AS FOLLOWS:

24

25 255 Q. MR. MURPHY: Chief superintendent, could I ask you
26 please to be shown on the screen page 3219 of the
27 material, please. Chief superintendent, this is a
28 document you have seen previously, this is a document
29 HQ Directive 139/2010. I think you're familiar with 12:32

1 Chief Medical Officer, the CMO, advises the Garda
2 Commissioner of members' fitness for policing duties?
3 A. That's correct.
4 263 Q. You emphasised in your evidence, in response to
5 questions from my friend, that the CMO played an 12:34
6 important role in what you did in this case?
7 A. Yes.
8 264 Q. Can we just tease out why that was so important for you
9 in this case. In the same paragraph, it says:
10
11 "When the CMO advised that the member is fit for duty, 12:34
12 the member will resume duty immediately having been
13 notified of same."
14
15 Now, does this indicate the role the CMO in relation to 12:34
16 medical assessments of the member?
17 A. Yes. I mean, we're asking the CMO to tell us whether a
18 member is fit or otherwise, sometimes they're fit with
19 conditions. So if the CMO tells management this member
20 is fit or he is not fit, he is fit for light duties, 12:34
21 restricted duties, that's our reference point, you
22 know.
23 265 Q. Yes. I think the position is that individual members
24 can submit medical reports or medical certificates and
25 the CMO may choose to speak to those treating doctors 12:35
26 before arriving at this conclusion?
27 A. Because of the confidentiality clearly of medical
28 issues, members are advised when they're going up to
29 CMO that they bring all their own medical records with

1 them. And it is my experience that the CMO or his
2 team, they will link in with the relevant professionals
3 and the member's doctors, so that is obviously
4 something that is not within our sort of sight, rightly
5 so.

12:35

6 266 Q. Yes. Just to assist the Tribunal, if I could ask you
7 to turn to the next page, please, page 3 in fact. In
8 the third paragraph you will see there is a reference
9 to members resuming duty after a period of sickness, do
10 you see that?

12:35

11 A. Yes.

12 267 Q. If we just pause for a moment on this issue. Is it the
13 case that when a member is resuming duty after a period
14 of sickness absence and is certified as fit or
15 restricted to light duties by his GP, that requires the
16 further approval of the CMO?

12:35

17 A. Yes.

18 268 Q. So again, is it fair to say that the CMO operates a key
19 position in terms of a clinical medical assessment in
20 relation to a decision as to whether people are fit or
21 unfit for duty?

12:36

22 A. Yeah, and we do have a situation where we have people
23 who want to come back to work and their doctor deems
24 them fit and the CMO will say that they are not fit.
25 And we have situations where, which is more the case,
26 that, you know, their doctors will say they are not fit
27 and the CMO will say they are. So our reference point
28 is whatever the CMO's determination is.

12:36

29 CHAIRMAN: Mr. Murphy, sorry, the reference that you

1 just made to the CMO and the GP, where is that?
2 MR. MURPHY: That, Judge, is at page 3221, and it's on
3 the third paragraph down, under the heading:
4
5 "A marginal note should be made to Code 11.34." 12:36
6
7 You will see the next sentence starts:
8
9 "Members resume duty..."
10
11 CHAIRMAN: I see, thank you very much. No, I just
12 didn't see that.
13 269 Q. MR. MURPHY: Thank you, Chairman. Let's keep this
14 general, as my Friend indicated.
15 A. Yes. 12:37
16 270 Q. This is a rule that applies to everybody in the force?
17 A. Yes.
18 271 Q. Moving down in the same paragraph, it is indicated that
19 a report be forwarded to assistant commissioner HRM on
20 resumption of duty and the report will contain relevant 12:37
21 medical certificates and reports?
22 A. Yes.
23 272 Q. It says:
24
25 "Members will remain on duties until the member's files 12:37
26 are reviewed by the CMO."
27 A. Yes.
28 273 Q. SO is it the case that once a person enters into the
29 field where the CMO is, that he or she remains in a

1 sense subject to review as time goes by?

2 A. Yes, until he discharges them, I suppose, effectively.

3 274 Q. Then moving forward, in general terms again, to the
4 question of injury on duty. Can I just ask you to look
5 please at the next paragraph. You will see there, 12:37
6 there is reference to where there is any doubt that
7 injury on duty occurred. So in general terms, is it
8 your understanding as a divisional officer you have to
9 refer the matter to the assistant commissioner HRM, who
10 will seek the advice of the CMO? 12:37

11 A. Yes.

12 275 Q. So in a sense there is a triangle between the
13 divisional officer, the CMO and the HRM?

14 A. Yes.

15 276 Q. Then in terms of the next sentence, it says: 12:38
16
17 "The CMO will take into account all relevant
18 information in arriving at his or her advices."

19 A. Yes.

20 277 Q. So, taking the general question as put forward by my 12:38
21 Friend, if a member made a statement of complaint, for
22 example, about work related stress or some other form
23 of injury in the workplace, would that statement, if it
24 was made available by the member, go to the CMO?

25 A. Yes. 12:38

26 278 Q. Would that be part of all relevant information?

27 A. Yes.

28 279 Q. And conversely, if a member refused to make a
29 statement, that information couldn't travel to a CMO?

1 A. No, but the member would be in a position, I suppose,
2 to give an account of the CMO himself.

3 280 Q. I see. We will come back to that in a moment, but the
4 CMO is then obliged to look at all the relevant
5 information. The next paragraph indicates: 12:38
6

7 "A decision regarding injury on duty will be based on
8 the complete investigation file into the incident,
9 management views and recommendations and the assessment
10 and opinion of the CMO." 12:39

11 A. Yes.

12 281 Q. But the decision regarding injury on duty is a decision
13 of the CMO?

14 A. Yes.

15 282 Q. Then turning to the next paragraph -- 12:39
16 CHAIRMAN: Could you go down a bit, Peter?

17 283 Q. MR. MURPHY: Sorry, Chairman. The last paragraph,
18 please:
19

20 "Where there is any doubt as to whether the member's 12:39
21 sickness/absence is due to ordinary illness or an
22 injury on duty, the member's absence will be treated as
23 ordinary illness pending a decision on the
24 classification of the injury and in particular the
25 CMO's advice." 12:39
26

27 So is it your understanding that there are two issues.
28 The first is, is there an injury? And the second is,
29 what's its classification?

1 A. Yes.

2 284 Q. And who makes that decision?

3 A. The CMO.

4 285 Q. Because that's a medical decision?

5 A. Yes. 12:39

6 286 Q. The final paragraph indicates:

7

8 "If it is determined that the absence does relate to an

9 injury on duty, the member's pay will be

10 retrospectively adjusted as soon as practicable." 12:40

11 A. Yes.

12 287 Q. So is it the case, on your understanding of the

13 regulations and the obligations, that the member's pay

14 stays as it is unless and until there is a

15 classification of an injury on duty? 12:40

16 A. Yes.

17 288 Q. By the CMO?

18 A. Yes.

19 289 Q. And that has an impact then on pay. Then finally just

20 on this point, turning over, please, to page 3222, 12:40

21 there's heading on the top "investigations". You have

22 been asked a number of questions about investigations.

23 "Moving from the general to the particular" do you see

24 that paragraph?

25 A. Yes. 12:40

26 290 Q. It says that a thorough investigation should be carried

27 out immediately and the outcome reported to the

28 assistant commissioner. Now, in this case, is it your

29 evidence that Garda Keogh declined to cooperate with an

1 attempt to open up such an investigation?
2 A. I wouldn't even -- I wouldn't even, I suppose, use that
3 sort of language. His position was that he couldn't
4 really because he was so -- he couldn't, I suppose,
5 discuss it outside of the protected disclosures 12:41
6 context, you know, and it was all connected with that.
7 291 Q. Yes. So is it your evidence that in the course of that
8 interaction with Garda management, he took the view and
9 never changed his view in 2015, that the protected
10 disclosures mechanism meant that he wasn't going to 12:41
11 talk to you?
12 CHAIRMAN: Well that's a bit of a jump, isn't it,
13 Mr. Murphy? Surely that's matter for me.
14 MR. MURPHY: Very good, Chairman.
15 CHAIRMAN: I mean, we know what he is recorded as 12:41
16 saying.
17 MR. MURPHY: Yes.
18 CHAIRMAN: We know what he says about it.
19 MR. MURPHY: Yes.
20 CHAIRMAN: The chief superintendent's interpretation of 12:41
21 the concept, I think is irrelevant.
22 292 Q. MR. MURPHY: Very good. Well, just as a matter of fact
23 then as opposed to interpretation, can you confirm as a
24 matter of fact that Garda Keogh did not make a
25 statement to you in relation to this matter in 2015? 12:41
26 A. Yes.
27 293 Q. Moving to the particular, you have mentioned earlier
28 that the --
29 CHAIRMAN: It's not so much that he has to make a

1 statement. We can be a little confused about
2 complaint, because if I go to the doctor I may have a
3 complaint. But really, if I say I am suffering from
4 stress, that's really the question, and you say
5 ultimately that matter is for the CMO. That's 12:42
6 basically what you say.

7 A. Yes, to get a determination.

8 294 Q. CHAIRMAN: The CMO. And Mr. Murphy said that there is
9 a triangle, divisional officer. So superintendent,
10 HRM, CMO. 12:42

11 A. I suppose, just I made this point probably already, in
12 my experience it can be something very minor but it
13 does impact on a person and it could be -- you know,
14 the CMO, you know, will make his determination when he
15 sees the person. 12:42

16 295 Q. CHAIRMAN: I understand. In a situation, in a stress
17 case?

18 A. He doesn't wait for the investigation.

19 296 Q. CHAIRMAN: The cause might be something relatively
20 minor, it might be disproportionate in its impact on 12:42
21 me?

22 A. What I am saying is --

23 297 Q. CHAIRMAN: Is that --

24 A. Sorry, he will make his determination that a person is
25 stressed without even having an investigation file. I 12:43
26 mean, you won't get paid until all the things match up
27 properly.

28 298 Q. CHAIRMAN: I understand.

29 A. Thank you.

1 CHAIRMAN: Sorry, Mr. Murphy.

2 299 Q. MR. MURPHY: would you agree with me that not all work
3 related stress absences can be attributed to An Garda
4 Síochána? There can be other multifarious factors
5 affecting stress in the workplace? 12:43

6 A. Yes. The language the CMO uses, you know, is that
7 there has to be a causal link between the workplace and
8 --

9 300 Q. CHAIRMAN: I think he means all stress problems. If it
10 is work related stress, it's work related stress. But 12:43
11 stress problems don't always relate to work.

12 A. Yes.

13 301 Q. MR. MURPHY: And you have mentioned the word causation,
14 that is an important word from your perspective in
15 terms of this type of area, is that right? 12:43

16 A. Yes.

17 302 Q. Is that because an individual's perception of events
18 may be inaccurate and that's why a clinical judgment is
19 required by the CMO?

20 A. Yes. 12:44

21 303 Q. In terms of this case, I think you have given evidence
22 about the fact that you were aware that Garda Keogh
23 went to the CMO in May of 2015?

24 A. Yes.

25 304 Q. I wonder could you be shown document 3790, please? 12:44
26 This is the CMO's notes from 19th May 2015. I
27 appreciate you did not see those notes at the time?

28 A. No.

29 305 Q. Did you see those notes then when disclosure was

1 provided by this Tribunal?

2 A. Yes.

3 306 Q. We will deal with this in Dr. Oghuvbu's evidence in due
4 course, but in terms of this document, it reflects the
5 conversation that he had with Garda Keogh. In terms of 12:45
6 the document itself, would you agree with me, just take
7 a moment to read it, that the references throughout
8 that document are to alcohol addiction?

9 A. Yes.

10 307 Q. Yes. So, for example, if one looks at the top of the 12:45
11 page:

12

13 "Was referred on account of management's concerns about
14 high level of short absences (48 days in 12 months
15 period from January 2014)." 12:45

16

17 In the middle of the page you will see reference -- and
18 the reference then in the middle of the page to:

19

20 "In the context of well being supports, says has to 12:45
21 attend AA regularly."

22 A. Yes.

23 308 Q. And then:

24

25 "Says no alcohol since April, though would have drunk 12:45
26 excessively over St. Patrick's weekend and between
27 January and February unwell, 12 pints binge, saw GP."

28

29 without going through all the details, I think you will

1 agree with me that this document focuses on that
2 discussion --

3 A. Yes.

4 309 Q. -- as being focused entirely on alcohol?

5 A. Yes. 12:46

6 310 Q. From the point of view of your understanding of Garda
7 Keogh's position, were you aware in 2014 or '15 and '16
8 that Garda Keogh had an alcohol problem?

9 A. Yes, I was, yes. I had been linking in with his
10 welfare officer from time to time. 12:46

11 311 Q. Did you have a concern that in fact his alcohol problem
12 was a cause or a foundation cause of the difficulties
13 he was experiencing?

14 A. It was a significant factor, yeah.

15 312 Q. At the end of the process in 2016, what treatment were 12:46
16 you aware was provided to him in consultation with the
17 CMO and An Garda Síochána?

18 A. I understand he went into residential treatment to deal
19 with his alcohol problem. That's just a fact.

20 313 Q. And that was the only treatment that you were aware of 12:46
21 provided to him in 2016?

22 A. Yes, yes.

23 314 Q. So you mentioned in an earlier answer that if a person
24 has a complaint, he is in a position to freely to talk
25 to the CMO and make no foundations of any complaint he 12:47
26 wishes to make?

27 A. Yes.

28 315 Q. Would you agree with me, also in that note there isn't
29 any reference to the work related stress, in terms of

1 the details of it or the alleged causes of it?

2 A. Yes.

3 316 Q. Could I ask you then please to be furnished with one
4 further piece of documentation, which is page 9722,
5 please? 12:47

6 A. Yes, I have it open now.

7 317 Q. Sorry, Chairman.

8 CHAIRMAN: That's all right.

9 318 Q. MR. MURPHY: Perhaps I will return to that in a moment.
10 Can I ask you instead to be shown 6171, please. I 12:48
11 wonder if we could scroll up the top of that, please.
12 The very top.

13 A. Yes.

14 319 Q. This is a document that Mr. McGuinness took you through
15 yesterday, you're familiar with this? 12:49

16 A. Yes.

17 320 Q. I wonder can you scroll down please, registrar, to the
18 second page?

19 A. Yes.

20 321 Q. And further down again, please? 12:49

21 A. Yes.

22 322 Q. Down to the next page?

23 CHAIRMAN: what is the paragraph.

24 MR. MURPHY: It begins "Garda Keogh has never
25 intimated". 12:49

26 CHAIRMAN: Yes, it's is the second last paragraph.

27 323 Q. MR. MURPHY: The second last paragraph, thank you very
28 much. I think the position here is that it's intimated
29 in the course of the letter:

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"Garda Keogh has never intimated that there were any incidents which occurred in the workplace in Athlone Garda Station which were causing his alleged work related stress."

12:49

Is that correct?

A. Yes.

324 Q. It goes on to say:

"Garda Keogh has never made any report which warranted investigation in accordance with the Garda Síochána grievance procedures or the Garda policy for dealing with harassment, sexual harassment and bullying in the workplace."

12:50

Is that correct?

A. At that time, yes.

325 Q. It goes on to say:

"Indeed, all possible supports to facilitate a return to work by Garda Keogh have been put in place by the district management team in Athlone and his welfare has been prioritised through ongoing enquiries to ensure the member is aware and availing of the employee assistance service."

12:50

12:50

12:50

A. Yes.

326 Q. Is that correct also?

A. Yes.

1 327 Q. Just in terms of your approach towards Garda Keogh's
2 welfare, is it your evidence that you did seek to care
3 for his welfare and to ensure that he was given all
4 necessary supports when you became aware of his
5 difficulties? 12:50

6 A. Absolutely, yes.

7 328 Q. In terms of the position that the CMO came to
8 ultimately, is it the case that ultimately the CMO came
9 to the view that the clinical basis was his concerns in
10 relation to Garda Keogh and his absences, was his long 12:51
11 standing and established condition, which was alcohol
12 dependency?

13 A. Yes.

14 329 Q. Was it his recommendation in light of that assessment
15 that the treatment for that was alcohol addiction 12:51
16 treatment?

17 A. Yes.

18 CHAIRMAN: He can tell us that when he comes.
19 MR. MURPHY: Yes.

20 330 Q. So again, just to assist the Chairman to understand the 12:51
21 position, in this triangular process which you have
22 described, was it the case that the search by the CMO
23 and by management was to identify what was the cause of
24 the difficulty and was it an injury caused in the
25 workplace? 12:51

26 A. Yes.

27 331 Q. In terms of your overall stewardship, it has been
28 suggested that you failed to protect Garda Keogh's
29 entitlement to full pay. Do you reject that

1 allegation?

2 A. I reject that completely. I mean, I don't know what
3 more I could have done in this case.

4 332 Q. Just in the same document, if I could ask you to look
5 down to page 6170. There it is said that:

12:52

6

7 "Despite a number of enquiries with Garda Keogh to
8 establish the source of his alleged work related
9 stress, the member has continually correlated his
10 involvement as a confidential reporter to his absence
11 through alleged work related stress."

12:52

12

13 Does that marry with what you said to us earlier on?

14 A. Yes, yes.

15 333 Q. Again, I wonder can you be shown, please, page 3790.
16 These again are the CMO's notes from May of 2015.
17 These should be read by the Chairman ultimately in
18 conjunction with notes from December 2015, is that
19 correct?

12:52

20 A. Yes.

12:53

21 334 Q. I wonder if you can be shown, please, 3791. Again, did
22 you see those notes in 2015 or did you only see them
23 more recently?

24 A. No. No, I didn't.

25 335 Q. And just very briefly, I think in the course of this
26 report itself, there's a reference about five lines
27 down to Xanax and alcohol being taken by Garda Keogh in
28 July 2015, do you see that?

12:53

29 A. Yes.

1 336 Q. Can I ask you to go two lines further down.
2 Dr. Oghuvbu recorded:
3
4 "Garda Keogh said he was stressed by difficulties with
5 his senior manager." 12:53
6
7 Do you see that?
8 A. Yes.
9 337 Q. Does that confirm your view that the member was free to
10 speak to the CMO if he wished to? 12:54
11 A. Yes.
12 338 Q. And this is information which on this occasion was
13 before him?
14 A. Yes.
15 339 Q. Is that right? 12:54
16 A. Yes.
17 340 Q. And finally, chief superintendent, can I ask you just
18 to comment on the suggestion that has been put, that
19 you somehow failed to carry out your duties in relation
20 to Garda Keogh. Can I ask you to indicate to the 12:54
21 Chairman, did you by any act or omission on your part
22 intend to target, harass or discredit Garda Keogh?
23 A. I absolutely did not. I completely reject it. I think
24 the evidence shows that any -- at every stage we
25 signposted him to the supports that he needed. Indeed, 12:55
26 when I went to visit him, you know, I contacted the
27 doctor because I was so concerned about him. He was
28 put in the right direction at every stage, he was
29 provided with welfare support along the way. I

1 absolutely reject it in the strongest terms. I was
2 concerned about Garda Keogh. We didn't put any
3 barriers, there was no interference in place there. I
4 carried out my duty, like I do for all my members. And
5 I reject absolutely that I targeted and discredited 12:55
6 Garda Keogh. I did not.

7 341 Q. In overall terms, having reviewed the file and dealt
8 with Superintendent Murray, did you find anything in
9 his actions which in your view amounted to targeting or
10 harassing of Garda Keogh? 12:55

11 A. No, I didn't.

12 MR. MURPHY: Thank you.

13
14 END OF EXAMINATION.

15
16 CHAIRMAN: Very good. Now, Mr. McGuinness, have you
17 anything? 12:55

18 MR. MCGUINNESS: Yes.

19
20 CHIEF SUPERINTENDENT LORRAINE WHEATLEY WAS RE-EXAMINED 12:55
21 BY MR. MCGUINNESS, AS FOLLOWS:

22
23 342 Q. MR. MCGUINNESS: Chief superintendent, yesterday you
24 referred to a document which you read. Could I ask you
25 to look at volume 41, page 11797? That appears to be 12:56
26 headed at the top an instruction sent out by e-mail on
27 30th May 2018.

28 A. Yes.

29 343 Q. It's going to a wide variety of people. If we scroll

1 down then, it's an instruction to each divisional
2 officer regarding the issuing of an 11.37 certificate,
3 isn't that correct?

4 A. Yes.

5 344 Q. Then if we go on to the second next page, 11799, that 12:56
6 is the instruction. The first sentence reflects what
7 is already in the directive 139/10?

8 A. Yes.

9 345 Q. You are meant to investigate the stress, isn't that
10 correct? 12:57

11 A. Yes.

12 346 Q. The second paragraph requires you to report it upwards
13 in the same manner. Then, the third paragraph provides
14 that the head of the HR can seek the advices of the
15 CMO. In this case, just relating it to what occurred, 12:57
16 Superintendent Murray referred it up on the basis of an
17 instruction given by Mr. Mulligan of HR, which was
18 conveyed to you to reported it in the way provided by
19 the Code; isn't that correct?

20 A. Yes. 12:58

21 347 Q. And as part of that, Sergeant Moylan gave evidence on
22 Friday, at page 60 of Day 131, perhaps we will just
23 look at that, that he was instructed to bring it to the
24 attention of Garda Keogh, four different matters as set
25 out in the instruction. I am not sure whether you were 12:58
26 there for Sergeant Moylan's evidence, but if we go to
27 page 60, starting at the top, it's Sergeant Moylan's
28 report upwards as to what he had done on the 4th May in
29 relation to Garda Keogh. If we see there, if we go

1 down the text, four lines down from that, it says:
2
3 "Garda Keogh was aware that it was referred to the CMO
4 to determine his medical fitness for policing duty.
5 Garda Keogh has been advised to forward all relevant 12:59
6 medical reports on or prior to the review date. He
7 indicates that he may have a report with him on the day
8 as he is due to see his GP this week. He was also made
9 aware that these reports will be treated in the
10 strictest confidence. In relation to other non-medical 12:59
11 issues, Garda Keogh states that he may wish to discuss
12 this with the Chief Medical Officer in person."
13
14 Now, obviously you were aware from Superintendent
15 Murray's report to you, which complied with your 12:59
16 instruction to compile all the necessary documentation,
17 that the referral form was sent to the CMO by
18 Superintendent Murray, filled out by him on the 2nd
19 April, isn't that correct?
20 A. Yes. 12:59
21 348 Q. That contained within it a body of documents to be
22 found at page 6146 to 6160. We don't need to see them
23 but they included the member's own doctor's
24 certificates?
25 A. Yes, they would have. 12:59
26 349 Q. Relating to work related stress, isn't that correct?
27 A. Yes, yes.
28 350 Q. You yourself had been aware from Superintendent
29 Murray's original reports, the other report of the 2nd

1 May, of the member's reference to stress?

2 A. Yes.

3 351 Q. Isn't that right? So did you believe that you were
4 acting in accordance with the provisions of 139/10 in
5 referring him and allowing the referral to the CMO? 13:00

6 A. Yes.

7 352 Q. It would appear that Garda Keogh did raise the issue of
8 stress in some way, shape or form with the CMO, isn't
9 that correct, from the report that you have seen there?

10 A. Yes. 13:00

11 353 Q. Would you expect to see a report issued to you if the
12 member is deemed fit for duty and comes back on duty,
13 from the CMO? Would you expect to see such a report?

14 A. Yes, you would, yeah. Yeah.

15 354 Q. Now, just in terms of the effect on pay. If Garda 13:01
16 Keogh is appearing for duty and as such he performs
17 duty, he gets paid in the normal way?

18 A. That's right, yeah.

19 355 Q. If he is absent from duty through ordinary illness in
20 accordance with the system, if the illnesses clock up 13:01
21 to a certain amount, he is then subject to a reduction?

22 A. That's right, yeah.

23 356 Q. In terms of the effect of any decision that you made as
24 regard his pay, that would ultimately depend on whether
25 he had been, on the advice of the Chief Medical 13:01
26 Officer, found to be suffering from work related
27 stress?

28 A. Well, I wouldn't --

29 357 Q. You couldn't certify it either under the old system --

1 A. No.

2 358 Q. -- or the new system --

3 A. No.

4 359 Q. -- unless you had been so advised, is that not correct?

5 A. Yes. 13:02

6 360 Q. In terms of decision-making, it is clearly a decision
7 assigned to a divisional officer, albeit subject to the
8 outcome of investigations and subject to the proffering
9 of advice, isn't that correct?

10 A. Yes. 13:02

11 361 Q. Mr. Murphy referred you to 139/10. If we just go back
12 to page 3221, there's a reference there to that
13 paragraph:

14

15 "A marginal note should be made at Code 11.34(2)." 13:02

16

17 He put that paragraph to you. But that only deals with
18 where a member is resuming duty after a period of
19 sickness absence and his GP certifies him for
20 restricted or light duties; isn't that correct? 13:03

21 A. Yes.

22 362 Q. That had no application in this particular case at any
23 stage; isn't that correct?

24 A. Yes.

25 363 Q. I mean, all of Dr. Bartlett's certificates certified 13:03
26 absence from work due to work related stress for
27 specified periods and was unconditional then, isn't
28 that direct?

29 A. Yeah, like I suppose even when Garda Keogh was reviewed

1 by the CMO the last time, he qualified that at that
2 time he was unfit for duty, but, indeed, if his doctor
3 then deemed him fit for duty, that he wasn't -- that
4 really he would have to reference back to the CMO for
5 his determination. 13:03

6 CHAIRMAN: But this seems to envisage, as
7 Mr. McGuinness says, a situation where the GP says he
8 is fit for duty and he returned, it is still subject to
9 the CMO.

10 A. Yes. 13:03

11 CHAIRMAN: Isn't that the point, Mr. Murphy? I think
12 Mr. Murphy was just kind of giving a general view of
13 the regulations as a whole, but this particular one
14 does not have any relevance here.

15 A. No, sorry, what I am saying here is -- 13:04

16 CHAIRMAN: And Dr. Bartlett's certificates are indeed
17 retrospective.

18 MR. MURPHY: That is agreed, Chairman. As you
19 correctly identified, I made that point generally.

20 A. Maybe to clarify this, I know what this means because 13:04
21 we have this a lot sometimes. A doctor might certify
22 that people can't work nights.

23 364 Q. CHAIRMAN: Sure.

24 A. Or they can only work four hours a day.

25 365 Q. CHAIRMAN: Of course. 13:04

26 A. I would say, well, the CMO has to approve that.

27 366 Q. CHAIRMAN: Of course.

28 A. You know, if his doctor said he can only do much, the
29 CMO may have a different view.

1 367 Q. MR. McGUI NNESS: In any event, Dr. Bartlett never
2 imposed sort of conditionality or a restriction on
3 duties?
4 A. No.
5 368 Q. Which is contemplated by this?
6 A. Yes.
7 369 Q. This has no application?
8 A. No application, yeah.
9 370 Q. In terms of the effect of any decision on pay,
10 obviously you're not suggesting that the CMO makes a 13:04
11 decision as to what pay category or classification for
12 the purpose of pay affects any particular member, isn't
13 that correct?
14 A. Well, I suppose there's three categories; there's
15 ordinary, critical and injury on duty. The CMO does 13:05
16 make the determination that they are in that category.
17 But the HRM are the people who instruct Killarney on
18 what rate of pay. So that final piece of jigsaw is
19 with HRM. But clearly if the CMO says you're in any of
20 those categories, you're paid accordingly. 13:05
21 371 Q. CHAIRMAN: He doesn't deal with the consequences of his
22 diagnosis?
23 A. Yes.
24 372 Q. CHAIRMAN: He deals with the diagnosis to the extent of
25 cause and causation? 13:05
26 373 Q. MR. McGUI NNESS: And insofar as achieving full pay
27 status while suffering from related stress or it being
28 regarded as an injury on duty, that is dependent on a
29 certification by you at the end of the day for pay

1 purposes?

2 A. I suppose HRM make the decision that you're in this
3 space, you know what I mean, and --

4 374 Q. CHAIRMAN: Ultimately it comes down to an 11.34?
5 A. Yeah 11.37. 13:06

6 375 Q. CHAIRMAN: Absent an 11.34, the pay remains reduced.
7 A. Correct.

8 376 Q. CHAIRMAN: But when the process brings it back, it
9 comes back to the chief superintendent writing an
10 11.34? 13:06
11 A. 11.37.

12 377 Q. CHAIRMAN: 11.37?
13 A. 11.37.

14 CHAIRMAN: 11.37, I am sorry, there I go, yes, showing
15 off and I'm wrong. 13:06

16 378 Q. MR. McGUINESS: That is your function?
17 A. I suppose it is relevant, that is the Code, the chief
18 issues an 11.37. There can be times in situations
19 where there is complications with stress and all that,
20 that there might even be -- you know, it has to go 13:06
21 through a rigorous process before they finally say,
22 yeah, we're happy enough up here, you know, we need
23 this guy on -- he has been injured on duty, we're
24 satisfied it's connected, issue the 11.37, it goes into
25 the system and the pay is, you know, sorted. 13:06

26 379 Q. Yes, but obviously from the point of view of timing
27 now, Dr. Bartlett's first certificate relating to work
28 related stress effectively started from the beginning
29 of 2015. I am just anxious for your view on this: If

1 an investigation had in fact been able to take place
2 either at that period or shortly afterwards and if the
3 CMO had been asked to report on the basis of whether
4 there was work related stress being suffered, is it
5 possible that Garda Keogh's return to full pay might 13:07
6 have been achieved at an earlier point in time?

7 A. I don't think so. The key piece here is the injury,
8 the clinical diagnosis. So the clinical diagnosis is
9 the piece that whole thing turns on.

10 MR. McGUINESS: Thank you, chief superintendent. 13:07

11

12 END OF EXAMINATION.

13

14 CHAIRMAN: Very good. Thanks very much.

15 MR. MURPHY: Chairman, can I ask one question? There 13:07
16 was a document I mislaid.

17 CHAIRMAN: Certainly, sure.

18

19 CHIEF SUPERINTENDENT LORRAINE WHEATLEY WAS

20 FURTHER-EXAMINED BY MR. MURPHY, AS FOLLOWS: 13:07

21

22 380 Q. MR. MURPHY: I wonder if you can be shown document
23 9722, please?

24 CHAIRMAN: And you did refer to it in fact.

25 MR. MURPHY: I couldn't identify the reference, I'm 13:08
26 sorry.

27 CHAIRMAN: Okay, Mr. Murphy, 9722.

28 381 Q. MR. MURPHY: This is a document from Dr. Oghuvbu of the
29 21st July 2016. I just want to ask you, you have given

1 evidence about 2016 and your ongoing awareness of what
2 was happening to Garda Keogh. Just looking at
3 paragraph 1, were you made aware by Dr. Oghuvbu at that
4 stage that in his words:

5
6 "The member has now accessed and commenced appropriate
7 inpatient care for a long standing and clinical
8 position which has been the clinical basis of his
9 current absence."

10 A. Yes.

11 382 Q. Thank you.

12
13 END OF EXAMINATION.

14
15 CHAIRMAN: Very good. Thanks very much, chief
16 superintendent, you're finished now. Thank you. All
17 right. Very good, 2:10.

18
19 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS
20 FOLLOWS:

21
22 383 Q. MS. McGRATH: Good afternoon Chairman, the next witness
23 is Inspector Brian Downey, please.

24 CHAIRMAN: Thank you very much.

25
26 INSPECTOR BRIAN DOWNEY, HAVING BEEN SWORN, WAS
27 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

28
29 THE WITNESS: Inspector Brian Downey, Balbriggan Garda

1 station.

2 CHAIRMAN: Thanks very much.

3 384 Q. MS. McGRATH: Inspector, as you just said, you're
4 currently attached to Balbriggan Garda station, is that
5 right? 14:12

6 A. That's correct, yeah.

7 385 Q. However, you were previously attached to Garda Human
8 Resource Management, which we have been calling HRM, is
9 that right?

10 A. That's correct. 14:12

11 386 Q. In particular, this is at Garda Headquarters level, you
12 were attached to HRM from June 2014 until January 2017,
13 is that right?

14 A. Yes, that's correct.

15 387 Q. Now, can I just ask you, we have come across the 14:12
16 references to HRM and HRPD, can you tell the Chairman
17 what the connection is between those two acronyms. Is
18 it the same unit we're talking about?

19 A. HRPD is the human resource and personal development
20 umbrella section of HRM. It also encapsulates the HR 14:12
21 directorate, which is in Navan, and half of the HR
22 functions were transferred over to Navan a couple of
23 years before me taking up duty there and the remaining
24 functions are in HRM in Garda Headquarters. I was
25 attached to HRM in Garda Headquarters. 14:12

26 388 Q. Just to summarise, under HRM you have HRPD and, for
27 example, I think you reference as well Garda employee
28 relations office, is that under HRM as well?

29 A. Yeah, the Garda employee relations office is actually

1 the office formerly known as C&A, which I was in charge
2 of, which was conciliation and arbitration.

3 389 Q. Okay. Just one final question, you're really helping
4 us in relation to this, the Garda employee assistance
5 services? 14:13

6 A. Yes.

7 390 Q. They also come under that umbrella, do they?

8 A. Under HRM, yes.

9 391 Q. When you were at HRM, you say in your statement you
10 were responsible for the Garda conciliation and 14:13
11 arbitration office?

12 A. Yes.

13 392 Q. What's that, inspector?

14 A. It's the section that deals with pay talks and the
15 representative associations, the Garda Representative 14:13
16 Association and the Association of Garda Sergeants and
17 Inspectors, the Garda Superintendents Association and
18 Garda Chief Superintendents Association, and we work
19 with the Department of Justice and Department of Public
20 Expenditure and Reform in relation to conciliation 14:14
21 council and, you know, coming out of that, claims going
22 forward and agreed reports, and we manage the agreed
23 reports on behalf of the organisation.

24 393 Q. Would you say you have got very good experience then
25 with employee relations issues or industrial relations 14:14
26 issue really?

27 A. Yes.

28 394 Q. Would that be part of your remit?

29 A. Yes.

1 395 Q. Okay. Now, I think that you say also in your statement
2 that while you were attached to C&A, which you have
3 been calling it, that is the Conciliation and
4 Arbitration office, you would have attended a number of
5 case conferences on behalf of the superintendent in 14:14
6 HRM; is that right?

7 A. That's correct, yes.

8 396 Q. Okay. In particular, I would like to ask you about one
9 particular case conference that you attended in respect
10 of Garda Keogh and the minutes of that conference are 14:14
11 at page 6165. This is a case conference on 9th
12 December 2015. Do you remember that case conference,
13 inspector?

14 A. I remember the case conference, yes.

15 397 Q. The minutes will come up on the screen there, 6165. 14:15
16 Now, can I ask you there, in relation to these minutes,
17 looking at them there, do you have any recollection,
18 inspector, as to who might have drawn up these minutes?

19 A. The sickness absence section were responsible for
20 running the conference, so it was Sickness Absence 14:15
21 Section and they're based in, as we call it, the Human
22 Resources directorate section in Navan, under the remit
23 of Ms. Monica Carr.

24 398 Q. So do you know there, look at the attendees?

25 A. Yes. 14:15

26 399 Q. Could you identify maybe if any of those attendees
27 might have prepared these minutes? It's just it's not
28 in our disclosure documents?

29 A. Em, I think it was Fiona O'Brien, who works in the

1 CMO's office, because the conference was run by the CMO
2 but it's the Sickness Absence Section that would
3 request a conference.

4 400 Q. Okay. Just looking at the attendees, taking that
5 first, we have the CMO, Dr. Oghuvbu, is that right? 14:16

6 A. Yes.

7 401 Q. He's attached to Occupational Health, isn't that right?

8 A. Yes, that's correct.

9 402 Q. And then you have Superintendent Patrick Murray, and he
10 would come under the local management branch, is that 14:16
11 right?

12 A. Correct.

13 403 Q. You have superintendent Declan Mulcahy, and he was
14 there in his capacity of his involvement in the Galway
15 investigation, is that right? 14:16

16 A. Correct.

17 404 Q. Okay. You have HEO Clare Bryan, is it?

18 A. That's correct.

19 405 Q. She is HRPD, is that right?

20 A. Yes. She is from the Sickness Absence Section in 14:16
21 Navan.

22 406 Q. Okay. Yourself and then you have the employee
23 assistance officer, Mick Quinn and then as you say, you
24 have Fiona O'Brien, again, she is occupational health
25 effectively? 14:17

26 A. She is occupational health, so I would imagine she
27 would have drafted up the minutes.

28 407 Q. I just want to ask you a couple of questions about the
29 minute. If we look at the first column there, HRPD:

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"Observations and actions.

With regard to volume of sickness absence, member is going on to TRR rate of pay in each absence."

14:17

Could you tell the Chairman your recollection of the discussion surrounding that particular issue?

A. My understanding is that this conference was called and the whole thrust of the conference was actually the welfare of the individual member, Garda Nicholas Keogh, and the fact that he was now gone on TRR, which is temporary rehabilitation rate of pay or formerly pension rate of pay, which kicks in after a person has exhausted their sickness absence pay, the ordinary illness sickness absence, which is 92 days, and followed by further 13 weeks on half pay, and then the TRR kicks in under the revised sickness regulations that were introduced by the Department of Public Expenditure and Reform in 2014. So that's what TRR is.

14:17

14:17

14:18

408 Q. Okay. Now, it says that the member is going on to TRR rate of pay in each absence. And I think in your statement, just to read out what you said in your statement:

14:18

"The issues presented at the case conference related to the number of sick days taken by Garda Nicholas Keogh and the fact that he was on temporary rehabilitation rate (TRR) of pay each time he goes sick."

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Now, there was an issue which arose as to whether therefore the recording of his pay came up as an issue at this case conference or how he was being recorded as being out sick. Is it your recollection that that issue came up there that's recorded in the first column? Are you happy that that was discussed and the issue of ordinary illness --

A. I actually can't recall it coming up in relation to the discussion, as to how his pay was captured. I do know from the introduction of the Sickness Absence regulations in March 2014, the Garda Síochána were impacted more than most other agencies, in that we didn't have a four year look back when the regulations came in, which meant that anybody who had previous sickness absence could immediately have gone on TRR rate of pay if they had already exhausted the sickness pay at full pay and half pay within the four year look back. Most other departments that were subject to the regulations or agencies subject to the regulations already had a four year look back, so their employees were used to it. It was a whole new venture for An Garda Síochána, we didn't have it before.

409 Q. But I think just in relation to your statement, you say that:

"It was mentioned the fact that he was on TRR rate of pay every time he goes sick."

1 Again just to confirm clearly to the Chairman what was
2 being discussed here, was it being discussed that he
3 was on a reduced rate of pay and was there a reference
4 to ordinary illness in that regard?
5 A. Well, I knew he was on a reduced rate of pay and it was 14:20
6 discussed that he was on TRR.
7 410 Q. Okay.
8 A. But as to how it was captured locally, I don't know.
9 411 Q. CHAIRMAN: Or as to what it was called in the SAMS.
10 A. Yeah, it would be just ordinary illness. 14:20
11 412 Q. CHAIRMAN: Does that mean it had to be ordinary
12 illness -- sorry, everything was ordinary illness
13 unless it wasn't?
14 A. Yeah.
15 413 Q. CHAIRMAN: Isn't that right? 14:20
16 A. That's right.
17 414 Q. CHAIRMAN: Everything is ordinary?
18 A. Everything is ordinary illness.
19 415 Q. CHAIRMAN: Unless it isn't?
20 A. Yes. 14:20
21 416 Q. CHAIRMAN: So it would have been assumed that it was
22 ordinary illness in SAMS, is that right?
23 A. Correct, Chairman.
24 CHAIRMAN: Right, okay.
25 417 Q. MS. McGRATH: Because otherwise TRR doesn't even come 14:20
26 into the picture if someone is on injury and duty or
27 occupational injury; is that right?
28 A. Yes.
29 418 Q. Okay. Now, can I ask you then in relation to the next

1 column, "occupational health observations and actions"?

2 A. Yes.

3 419 Q. As we said there, occupational health, the members
4 attending from Occupational Health was the CMO and
5 Ms. Fiona O'Brien, is that right? 14:21

6 A. That's correct.

7 420 Q. Can we take it that the observations in this column, if
8 we can stay on that page, sorry, Mr. Kavanagh, that the
9 observations in this column come from those
10 individuals, is that right? 14:21

11 A. Correct.

12 421 Q. The chairman has seen this before:
13
14 "The member's condition appears to have taken a turn
15 for the worst, which was not apparent at the time of 14:21
16 the CMO's last review of him on 19th May 2015. It is
17 necessary that the member engage with support services
18 offered to him. The member should be booked into a
19 treatment facility to help him rehabilitate."
20 14:21

21 Again, only to the best of your recollection, are those
22 comments coming from Dr. Oghuvbu at that meeting, do
23 you know?

24 A. As far as I can remember, yes.

25 422 Q. Okay. And again: 14:22
26
27 "An early appointment for review at the OHS to arranged
28 and communicated to HRPD today."
29

1 I think that appointment is at the bottom there, 18th
2 December 2015. Again, are you happy from your
3 recollection, did that comment come from the CMO at the
4 meeting?

5 A. Yes. 14:22

6 423 Q. Finally, it says:

7
8 "Management to inform Garda Keogh of his early
9 appointment for review at the OHS, impress the
10 importance to the member of keeping his review 14:22
11 appointment and fully engage with the necessary
12 processes to prioritise his recovery and the aim of
13 retaining his employment. "

14
15 Again, was that Dr. Oghuvbu there, to your 14:22
16 recollection?

17 A. That he was informed by local management?

18 424 Q. That management were to inform him.

19 A. I'm not too sure now, I think it might have been
20 Superintendent Murray who said that we would have 14:22
21 inform the member of his appointment. But he would
22 have been written directly by the Occupational Health
23 Service as well. The answer is that I'm not too sure.

24 425 Q. Okay. As you say, the theme, you may not have used the 14:23
25 word theme but I am taking it from what you said at the
26 outset that the theme of this was a support type
27 meeting?

28 A. Correct.

29 426 Q. This is reflected there in that second column, is that

1 right?

2 A. Yes.

3 427 Q. Now, just in the third column there, just the reference
4 to local management observations and actions, when we
5 went through the attendees, the only attendee for local 14:23
6 management was Superintendent Patrick Murray, is that
7 right?

8 A. That's correct.

9 428 Q. If we just look at the first paragraph:
10 14:23

11 "Management relaying that there are serious concerns
12 over the member's obvious misuse of alcohol which is
13 adversely affecting his ability to do his job and his
14 physical presentation. High level of short term
15 sickness/absences on record." 14:23

16

17 Now, is it your recollection and again to the best of
18 your recollection, is that something that was said by
19 Superintendent Murray at the meeting?

20 A. Yes. 14:23

21 429 Q. Okay. Now, we have an EAS officer observation and
22 again, I would take this is the welfare officer, Garda
23 Quinn, is that right?

24 A. That's correct.

25 430 Q. "The member needs to decide himself that he needs help 14:24
26 and make a concerted effort to access service to
27 address the issue."
28
29 Is that right?

1 A. That's correct.

2 431 Q. What I want to ask you about is the last paragraph
3 here. It says:

4

5 "Management suggesting in the medium to long-term 14:24
6 support would be given for a transfer out of Athlone in
7 view of the events that had transpired there."

8

9 Now, can I ask you just -- well, I will continue it
10 actually and then I will ask you some questions about 14:24
11 the whole paragraph.

12

13 "In view of the events that had transpired there, if it
14 is considered to be beneficial for the member's
15 sustained well being and effectiveness after he would 14:24
16 have come through an appropriate treatment programme."

17

18 Can I ask you about this, it says "management
19 suggesting" so again, we may take it from the attendees
20 it appears to be Superintendent Patrick Murray, would 14:24
21 that be in accordance with your recollection

22 A. Yes.

23 432 Q. Okay.

24 A. My role in that would be one of the sections under HRM
25 and I was representing the chief superintendent, who 14:24
26 was absent at the time, at this meeting, was we were
27 responsible for transfer section. So we could
28 facilitate the transfer subject to management
29 requesting it, the doctor recommending it and also that

1 the member himself agreed to it. We would never
2 transfer somebody without the agreement of the member.
3 But it was discussed, and I remember distinctly that
4 Dr. Oghuvbu had said at this particular juncture, at
5 this particular point in time he wasn't ready to make 14:25
6 that determination, that it was in the best interests
7 of the member to transfer and he would do so at a later
8 point because he was going to meet him shortly. And
9 once that happened, I had no further action with
10 regards to transferring him or arranging a transfer or 14:25
11 initiating that process.

12 433 Q. Well, what I really would like you to clarify,
13 inspector, is, it's certainly from the note suggests
14 that it was local management who brought up the issue
15 of a transfer out of out Athlone, and it's not in any 14:25
16 other column. Can you confirm your recollection,
17 whether or not the issue of transfer was brought up by
18 Superintendent Murray at that meeting?

19 A. I can confirm that the issue of transfer was brought
20 up, but I cannot remember whether Superintendent Murray 14:26
21 brought it up or somebody else.

22 434 Q. Okay. In that regard, can I just ask you to look at
23 3097. Now, I will come back -- I just want to stay on
24 this issue and I will come back to your statement, but
25 if you can just look at page 3097, please. This is the 14:26
26 statement that Superintendent Patrick Murray gave to
27 the Tribunal investigators. If you just go down,
28 please, Mr. Kavanagh, to line 1366, please. Now this
29 is a discussion about this conference and if you see

1 there, starting with the word "regarding"?

2 A. Yeah.

3 435 Q. "Regarding a transfer out of Athlone at the 9th
4 December conference, there was a representation from
5 HRM in attendance and afterwards the inspector of 14:26
6 HRM. . . "
7

8 That's yourself?

9 A. Yeah.

10 436 Q. ". . . e-mailed me and others with his account of what 14:27
11 happened at the meeting, which referred to a transfer
12 but have I no influence over transfers in any shape or
13 form. "
14

15 Now, that could be in plain English a reference to the 14:27
16 fact that the issue of transfer came up from you at the
17 meeting. It says:
18

19 "There was a representation from HRM in attendance. "
20 14:27

21 Can you just confirm whether or not that's correct?

22 A. Yeah, I was the representative from HRM, but I didn't
23 bring up the area of transfer. I attended the meeting
24 to see what could be facilitated and in a general
25 discussion the issue of transfer came up. I can't 14:27
26 recall exactly who said it. I do know it came up.
27 But, as I said earlier on, I distinctly remember
28 Dr. Oghuvbu said I'm not prepared to push that at this
29 time, I am actually due to see the member shortly.

1 437 Q. Now, when Chief Superintendent Murray was giving his
2 evidence to the Tribunal on Day 125, at page 94, he was
3 asked whether the suggestion of a transfer came from
4 local management and he said no. Do you have any view
5 on that or can you assist the Chairman whether that is 14:28
6 or is not the case?

7 A. Chair, I can't recall exactly who said it.

8 438 Q. CHAIRMAN: Somehow it came up.

9 A. It came up in the discussion. It could have been from
10 HRPD or the Sickness Absence Section, it could have 14:28
11 been from the medical staff. I can't recall who
12 brought it up but I do remember it coming up.

13 439 Q. MS. McGRATH: Okay. Can I take you back then to page
14 11746 of the brief, which is the second page of your
15 statement to the Tribunal. Now, you see there in the 14:28
16 second line:

17

18 "The issues presented at the case conference..."

19

20 I have already opened this one. 14:28

21

22 "...related to the number of sick days taken by Garda
23 Nicholas Keogh and the fact that he was on temporary
24 rehabilitation (TRR) of pay each time he goes sick."

25 14:29

26 You have given your evidence to the Chairman on that?

27 A. Yes.

28 440 Q. "At the meeting a decision was made for Dr. Oghuvbu to
29 liaise directly with the member's general practitioner

1 to work with him to access addiction treatment."

2 A. Correct.

3 441 Q. I think you have given your evidence that this was a
4 support type meeting, you said earlier.

5 A. Yes. 14:29

6 442 Q. "It was also decided that depending on the engagement
7 with treatment services, a further case conference
8 could be arranged in January or February 2016."
9

10 A. Yes. 14:29

11 443 Q. "It was also agreed that a transfer to another division
12 could be of assistance to the member but no decision
13 was made on a transfer at this case conference."
14

14 A. Yes.

15 444 Q. And you go on to say: 14:29
16
17 "While I attended this case conference, my role was to
18 represent the superintendent HRM who, would be
19 responsible for arranging transfers when and where
20 necessary." 14:29

21 A. Yes.

22 445 Q. Can I just ask you to stop there. Is that why you were
23 there effectively, because that sentence would seem to
24 suggest that the reason you went or were asked to go --

25 A. Yeah. 14:29

26 446 Q. -- was because transfer was going to come up at this
27 meeting?

28 A. That's correct.

29 447 Q. How were you aware that transfer was going to be an

1 issue at this meeting?

2 A. I was informed, I think I was informed that morning
3 that, you know, there was going to be an issue in
4 relation to transfer, there's a case conference on and
5 can you go to the meeting. 14:30

6 448 Q. Do you know who?

7 A. Probably from the divisional office, which would be the
8 chief's office in HRM. But I can't recall who it was.

9 449 Q. Okay. So this was flagged as an issue before the
10 conference? 14:30

11 A. Yes.

12 450 Q. To you, in any event?

13 A. Yes. That's the reason why I was there.

14 451 Q. Okay. But as you say, your recollection is unclear as
15 to -- 14:30

16 A. Who requested it at the conference, no.

17 452 Q. Okay.

18 A. Or who mentioned it. But I do recall that it was
19 mentioned. There's no other reason for my section to
20 be there. Sickness Absence Section and occupational 14:30
21 health are the lead sections in relation to sickness
22 absence. It wouldn't our remit to get involved in
23 sickness absence per se, unless there is a special
24 reason or whatever, maybe the GRA making
25 representations or AGSI or something like that, that's 14:31
26 when we would involved.

27 453 Q. Then you record at page 11747, which was an exhibit
28 attached to your statement, this is the e-mail I think
29 that you circulated to HRM administration --

1 A. Yes.

2 454 Q. -- on the day at 12:11, and you copied it to Chief
3 Superintendent Anthony McLoughlin, Superintendent
4 Murray, you have Clare Bryan, you have Detective
5 Superintendent Mulcahy and Sinéad power? 14:31

6 A. Yes.

7 455 Q. Where is Sinéad Power attached to?

8 A. There's only two inspectors at that time in HRM, Sinéad
9 power and myself. Sinéad power was in charge of solely
10 on transfers and also competitions, but Sinéad wasn't 14:31
11 available to go and I attended on behalf of
12 superintendent. We were both controlled by the
13 superintendent.

14 456 Q. Can I just ask there, it very much reflects what you
15 have in your statement, but can I ask you about the 14:32
16 last sentence there, you say in the e-mail to these
17 individuals:

18

19 "It may be the case that a transfer to another division
20 or district may be of assistance to the member but this 14:32
21 will be looked at again following the next case
22 conference."

23

24 Can you tell me who made that decision at the meeting,
25 do you remember? 14:32

26 A. I remember Dr. Oghuvbu, it came up should a transfer be
27 considered and I remember Dr. Oghuvbu said that he
28 wasn't prepared to actually put his name to that at
29 that time. In other words, something similar to that,

1 because he was due to meet the member shortly or he
2 would be liaising with the member's GP and, yes, that
3 had to be determined. Sp it was going to be put back
4 for another case conference and I didn't go to the next
5 case conference. 14:32

6 457 Q. That's what I was just about to ask you, I think the
7 next case conference was 12th July 2016 and you're not
8 recorded as an attendee?

9 A. No.

10 458 Q. I think you didn't attend that case conference? 14:32

11 A. I didn't attend.

12 459 Q. Do you have any idea why, given that it seemed to have
13 been suggested that the issue was being moved to July,
14 do you have any idea why it fell away or why there was
15 no delegate invited from HRM on the issue, on the 14:33
16 application.

17 A. I know why I wasn't invited, I would say it is because
18 we were involved in the Landsdown Road Agreement talks,
19 which I was leading out on with the Garda
20 Representative Association, my primary function, I 14:33
21 certainly wouldn't have been available to go to any
22 case conference at that time.

23 460 Q. Before we leave, on the case conference notes that we
24 saw there for the 9/12 and, as you note, the CMO was
25 present. Can I ask you just to confirm to the 14:33
26 Chairman, was there any reference to the word stress or
27 work related stress or any discussion around that at
28 the conference to your recollection?

29 A. I can't recall that coming up.

1 461 Q. Okay. It's not recorded in your e-mail, isn't that
2 right?
3 A. No.

4 462 Q. Now can I ask you, just a final issue I would ask you
5 to deal with, Inspector Downey, is that the case 14:34
6 conference was in December 2015?
7 A. Yeah.

8 463 Q. Then the next case conference was in July 2016, but in
9 the month before that, June 2016, you are involved in a
10 series of e-mails in relation to this issue with work 14:34
11 related stress and I just want to confirm that you are
12 the Brian Downey that's on these e-mails?
13 A. That's me, yeah.

14 464 Q. Okay. These are been opened to the Chairman before
15 Christmas certainly, but if I can ask if we can start 14:34
16 at 9695, and we are going to work up the pages, as it
17 were, just to follow the chronology?
18 A. Okay.

19 465 Q. There is an e-mail there 5th June 2016 at -- sorry,
20 down at the bottom, it's 10:36. So this is 9695, if we 14:34
21 go to the bottom there, 10:36. And this is an e-mail
22 from Anthony McLoughlin and it's to Ms. Carr. Sorry,
23 Mr. Kavanagh, if you just go back up a little bit,
24 you're one of the recipients, isn't that right?
25 A. Yes. 14:35

26 466 Q. It's on the subject of work related stress. And on the
27 next page we see a discussion, and again the Chairman
28 has seen that, I don't need to read it out, but it is a
29 discussion of the definitions of injury on duty and

1 occupational injury, and the manner in which I suppose
2 work related stress is categorised and particularly, if
3 you go down, where he says:

4
5 "I posed this question, the issue of reduced pay." 14:35

6
7 And he says:

8
9 "These are sensitive cases."

10
11 Etcetera. Okay? 14:35

12 A. Yeah.

13 467 Q. So have you seen that e-mail in the documentation?

14 A. Yes.

15 468 Q. As I say, you are one of the recipients of this and you 14:35
16 reply. So again, Mr. Kavanagh, if we can work up
17 through the pages, back to 9695, you reply the next
18 day, in the afternoon, do you recall this particular
19 e-mail?

20 A. Yes. 14:36

21 469 Q. To the chief superintendent. You say:

22
23 "The issue of work related stress was discussed as part
24 of the injury on duty working group but it was decided
25 not to include it as it was too complicated. That 14:36
26 said, it was recognised that work related stress was an
27 issue in today's society and that it needed to be dealt
28 with as a separate matter. From my recollection of the
29 discussions, the causality of the work related stress

1 was the crux of the issue."

2
3 Can you tell the Chairman a little bit about this
4 working group, we haven't really gotten to that part of
5 the evidence in the Tribunal yet. 14:36

6 A. Okay, there was a working group established under the
7 CMO at the time, Dr. Donal Collins. He was chairing
8 that group. So Dr. Oghuvbu was an occupational health
9 physician in the Occupational Health section at that
10 time, he wasn't the CMO. I was asked to go over to see 14:36
11 what we could do in terms of progressing this, because
12 it was seeking to amend Code 11:37, to introduce an
13 occupational health injury scheme. The background to
14 that was that An Garda Síochána had ordinary illness
15 and injury on duty, we didn't have an occupational 14:37
16 injury scheme. And under the regulations in 2014, the
17 regulations came out and reduced the amount of sick
18 leave from 183 days to 92 for ordinary illness and
19 another six months on half pay and then TRR. And that
20 was pre the regulations coming out. When the 14:37
21 regulations came out, they actually specified that
22 these regulations do not interfere or prejudice any
23 previous occupational injury scheme. So we didn't have
24 one. And the other reason was that the injury on duty
25 tag had to be protected because when an event happens 14:37
26 everybody runs away and policemen and women run towards
27 it. So we have to, we put ourselves in harm's way and
28 that is what the injury on duty scheme is for.

29 470 Q. Okay.

1 A. But there are other issues. If you slip or trip or
2 fall off your chair in your office or go down the
3 stairs, that's typically occupational injury and it
4 should be categorised as that. So the group met to
5 actually put in place and amend Code 11.37. That's 14:38
6 what the group was for. We were there, myself and a
7 sergeant with me, who was working under my direction,
8 to try and bring some experience with regards to the
9 Code, the Garda Code in relation to 11.37, because one
10 of our remits was to give advice on the Garda Code and 14:38
11 how it should be interpreted and if there was any
12 conflict in relation to understanding the Code, we
13 would go back to agreed reports that would have been
14 the foundation for the Garda Code to be written in the
15 first place. So that's why we were there. 14:38

16 471 Q. Okay, so that's why you were there. Just looking at
17 your e-mail there, you say:
18
19 "The issue of work related stress was discussed as part
20 of the injury on duty working group." 14:38
21
22 Can you assist the Chairman with the rest of the
23 sentence:
24
25 "But it was decided not to include it as it was too 14:39
26 complicated."
27 A. Yeah, we couldn't get agreement with regards to the
28 work related stress. It was all linked to causality.
29 What was the cause of the work related stress? And

1 there was definitely an understanding that pre 2014 we
2 had 183 days to investigate the causality of work
3 related stress. This is now reduced to 92 days, which
4 is only 13 weeks, for the chief to make a
5 determination, to assign an inspector to investigate 14:39
6 it, to then go to the CMO and to have it all boxed off
7 in 92 days, was quite a task in itself.

8
9 So it was sort of looked at, we're still going to have
10 the problem of causality, whereas under the old system 14:39
11 we had 183 days to make that assessment. So with our
12 time reduced, it was just going to be more difficult.
13 But we still couldn't get over the problem of what was
14 the cause of the work related stress. And it was
15 highlighted at that meeting and agreed by everybody 14:39
16 that only the office of the CMO could make that
17 determination.

18 472 Q. You say only the office of the CMO could make that
19 determination. We have been hearing from Chief
20 Superintendent Wheatley yesterday and today in relation 14:40
21 to the relationship between a certificate from the
22 chief superintendent and the role of the CMO in that
23 regard?

24 A. Yes.

25 473 Q. But was it part of the injury on duty working group, 14:40
26 that you clearly saw it as CMO function?

27 A. No. We're amending the 11.37. At the moment,
28 currently, because that amendment didn't carry even
29 though we had agreement with the GRA and AGSI in

1 principle, but I did my part and submitted it up and I
2 don't know where it went after that.

3 474 Q. Just to be clear, the Code has not been changed, the
4 code is as we have seen on documents?

5 A. It is as we see it, 11.37 hasn't been changed. This is 14:40
6 a draft document we're talking about, that is not
7 policy, it has never been signed off by executive of
8 the organisation and the working group was to draft the
9 draft and present it up towards executive director
10 HRPD, which was John Barrett at the time, and after 14:41
11 that, my role was finished, once that was done.

12 475 Q. CHAIRMAN: Yes.

13 A. But the idea of introducing the amendment to the Code
14 was introducing an occupational injury scheme and an
15 injury on duty scheme. It was to separate the two. 14:41

16 476 Q. CHAIRMAN: Two separate schemes?

17 A. Yes.

18 477 Q. CHAIRMAN: One for falling off chair if I was at work?

19 A. Yes.

20 478 Q. CHAIRMAN: And the other for getting shot if I was on 14:41
21 duty?

22 A. Yes.

23 479 Q. MS. McGRATH: Just back at your e-mail there:
24
25 "This said, it was recognised that work related stress 14:41
26 was an issue in today's society and that it needed to
27 be dealt with as a separate matter."
28 A. Yes.

29 480 Q. what did you mean by that?

1 A. Well, I think there was pulls and there was a
2 difference of opinion, like any working group, you
3 know, there was discussions between Sickness Absence
4 Section, who were raising the issue of, you know,
5 they're responsible, the HRPD in Navan were responsible 14:41
6 for processing pay as well. So there was an issue of,
7 how do we actually recoup pay if we put them on halfway
8 after three months, if we don't do that, what are the
9 knock on effects for the organisation. So this working
10 group wasn't discussing any specific case, it was just 14:42
11 looking at the policy. But there was still a
12 recognition that work related stress is a problem,
13 which you probably couldn't find a more stressful
14 environment that front line policing at times, you
15 know. So there had to be a recognition that we had to 14:42
16 allow for that. But it was thought that it was best
17 looked at as a different measure at that time, because
18 it was very complicated, complex. Notwithstanding the
19 fact that the 92 days was a problem for us, trying to
20 assess it in 92 days. 14:42

21 481 Q. So when you say a separate matter, do you mean outside
22 the injury on duty working group process?

23 A. Well, I did propose a solution, that it could be looked
24 at as occupational injury because it was working
25 stress. But that's my proposal. Other people had 14:42
26 different ideas and different challenges that they had
27 to face in their section. I think it's in an e-mail I
28 sent up further in relation to that.

29 482 Q. Okay. We will go through those e-mails in a moment.

1 But when you say that it needed to be dealt with as a
2 separate matter, as you are saying, in the occupational
3 injury context, I think that hasn't happened to date,
4 is that right?

5 A. It hasn't happened, no. 14:43

6 483 Q. Okay. In your next paragraph you say:

7
8 "However, the fact that causality is an issue presents
9 an opportunity to deal with each case on a case-by-case
10 basis based on medical assessment." 14:43

11
12 These are your own views, I think, isn't that right?

13 A. Yes.

14 484 Q. "If a GP's diagnosis of work related stress is
15 supported by the CMO, then I see no issue with 14:43
16 categorising the illness as occupational injury or
17 injury illness on duty. This places the matter firmly
18 in the hands of medical professional and also allows
19 AGS to categorise work related stress with the
20 causality medically assessed as work related, as 14:43
21 occupational injury or injury on duty."

22
23 So again, you're expressing a very clear position there
24 that it is a combination of a GP and the CMO who would
25 categorise an injury as work related stress or 14:43
26 occupational?

27 A. Yes.

28 485 Q. Is that right?

29 A. They the competent authorities to actually make that

1 determination. Garda management as such, we do not
2 have that medical expertise and we shouldn't be
3 involved in actually saying that somebody is suffering
4 from work related stress because we can't determine the
5 causality or create the link medically. 14:44

6 486 Q. Can I just ask you, inspector, and I fully accept that
7 at the case conference in December you say you were
8 coming in on a very specific issue, but when you were
9 dealing with this issue in June, did you know or have
10 any recollection of, well, this issue is very similar 14:44
11 to what is happening in the Garda Keogh scenario, where
12 there are medical certificates from a GP certifying him
13 as out with work related stress? Did you know any of
14 that? Did that trigger any recollection or bell for
15 you? 14:44

16 A. Well, when I was working in the group that was there, I
17 didn't know, you know -- I can't even recall that -- I
18 remember going to the case conference it was Garda
19 Keogh, but, you know, there were a number of people who
20 had other issues, work related stress and stuff like 14:45
21 that. That wasn't the reason I was there. The reason
22 I was there was to actually amend policy and to advise
23 on the Garda Code and what would have to happen to
24 actually amend that Code. It was specific to any
25 specific case. 14:45

26 487 Q. Did you know, in the e-mail there that I opened first
27 of all, the one at 10:36 the previous day, Chief
28 Superintendent McLoughlin is referring to Garda X and
29 Garda Y and I think Garda Y is Garda Keogh, did you

1 know that?

2 A. No.

3 488 Q. Did you relate this e-mail interaction to any specific
4 Garda?

5 A. I think that was because at that time, I remember that 14:45
6 protected disclosure legislation was coming on the
7 track as well, so we had that, and Chief Superintendent
8 Tony McLoughlin was named as the protected disclosures
9 manager, but that was complicated, it had to be
10 confidential. So we would never know who was making a 14:46
11 protected disclosure or whether this case was a
12 protected disclosure. It's only today that I realise
13 you can link the two, but that's with hindsight, the
14 benefit of hindsight. But at that time, no, I didn't
15 know who they were. 14:46

16 489 Q. Your e-mail is there is on the 5th June at 14:05. If
17 we just go back to the previous page there,
18 Mr. Kavanagh. That's your e-mail at 14:05 to Tony
19 McLoughlin and then there is the response by the chief
20 superintendent to you and he copies Mr. Barrett? 14:46

21 A. Yes.

22 490 Q. Again, it's all work related stress, so everyone is
23 clear on what they are talking about?

24 A. Yes.

25 491 Q. He says: 14:46

26

27 "Thanks, Brian."

28

29 And he says:

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"In my absence, could you bring this forward and get it discussed with JB, Monica, CMO, particularly in relation to two cases. These cannot wait for my return for a decision. Sergeant Malone in EAS will provide the detail required."

14:46

So at that stage did you know that this was a Garda Keogh issue?

A. I actually can't recall, you know. For me, I was on the sickness absence working group to try and address this policy issue and that was my focus. I wasn't particularly linking it to any particular individual at the time.

14:46

492 Q. He goes on to say Kay:

14:47

"I don't think there is any dispute over the reasons for absence from work."

Again, that seems to be case specific that he is talking about. We will deal with this e-mail with the chief superintendent, but from yourself, again, it seems to be case specific in the answer he is giving down to you.

14:47

A. I just can't recall it.

14:47

493 Q. Okay. He says:

"But it is a big leap to categorise them as injury on duty."

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I think that's in accordance with your previous e-mail;
is that right?

A. That's correct.

494 Q. And your evidence.

14:47

"There should be another category such as occupational
injury, which is in my view safer."

He says:

14:47

"The key point here is that they should not be on
reduced pay until it is proven that there wasn't a
causal link between reason for absence and work related
stress."

14:47

Now, are you in agreement with that sentiment there
that he has just expressed?

A. I think the challenge for our organisation was the
impact that the sickness regulations had on us in
reducing that time to actually make that determination.
This was a government policy. We had to comply. And
it placed an onus, responsibility on us to try and get
this fast tracked and this is where the difficulty
arose for the organisation.

14:48

14:48

CHAIRMAN: Yes.

495 Q. MS. McGRATH: And he says:

"A change of mindset required here."

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And he is telling you this. Are you in agreement with that?

A. I think he was concerned, you know, and in hindsight again, he was quite correct, in terms of the challenges that he foresaw coming down the line. At that particular time, you know, I certainly brought his views back to the group. But, as I said, I wasn't chairing that group, the CMO was, and there were other people around that table that had different views. I certainly expressed the views, but I wasn't going to win everybody over. 14:48

496 Q. He tells you that it's urgent and he is concerned that the issue will appear in the media or the Dáil and it would be better if we are ahead of the game. Now, as you confirmed to the Chairman, changes were not made and have not been made? 14:49

A. No.

497 Q. Okay. You then reply the following day, well, you don't necessarily reply directly to him, but you send an e-mail the following day attaching that e-mail? 14:49

A. Okay.

498 Q. This is the 6th June 2016 at 11:03. This is your e-mail to Mr. Barrett, Donal Collins, he is the head of the working group there that you mentioned, is that right? 14:49

A. That's correct yeah.

499 Q. And Ms. Carr. And you copy a number of people there. At that stage AC Ó Cualáin, Margaret Nugent, Clare

1 Malone, HRPD executive director and Tony McLoughlin?

2 A. Correct.

3 500 Q. Again, you're attaching the e-mail from Chief
4 Superintendent McLoughlin, which we've just looked at,
5 and you are saying:

14:50

6

7 "Having discussed this issue with Chief Superintendent
8 McLoughlin, there is an opportunity to category work
9 related stress under the proposed occupational injury
10 scheme."

14:50

11

12 And again, this is just repeating effectively the
13 evidence that you have given to the Chairman?

14 A. Yes.

15 501 Q. Isn't that right?

14:50

16 A. Yes.

17 502 Q. You're expressing the view that if you do that,
18 effectively it's a breathing space to carry out the
19 enquiry --

20 A. Yes.

14:50

21 503 Q. -- as to causality. Okay. You say:

22

23 "I am of the view that the definition under the
24 proposed amendment to the Garda Code 11.37(1) allows
25 for the categorisation of work related stress as
26 occupational injury and the proposed definition states
27 as follows."

14:50

28

29 You outline it there:

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"Occupational injury illness is an injury illness;
1. That arises from any accident or incident that
occurs in the workplace as a result of which any person
carrying out any work suffers an injury or illness." 14:50

So, you were satisfied that work related stress could
come under that scheme?

A. That was my opinion.

504 Q. Okay. Now, can I ask you, it is said there: 14:51

"The attached document is the document agreed at the
injury on duty working group on 24th May 2016."

Now, we have a copy of that document, you have kindly 14:51
provided it to us, it's at a different place in the
brief, just so that the Chairman can see the document
you are talking about in your evidence, and it's at
15740. As you see there, it is marked draft?

A. Yes. 14:51

505 Q. So, as you said, that's the document that had been
circulating?

A. Yes.

506 Q. Okay. We mentioned there 1(1), which is the definition 14:51
that you felt could capture work related stress. If
you look at (a) there, it is talking about a full
report of the circumstances by the member. I think
that's a summary of that provision effectively, is that
right?

1 A. Yes.

2 507 Q. At (c), if you look at (c):

3

4 "When considering the appropriateness or otherwise as

5 to whether to issue a certificate (appendix A) the 14:52

6 divisional officer shall conduct preliminary enquiries

7 into the matter and at his/her discretion may appoint a

8 member not below inspector rank to investigate the

9 matter."

10

11 Can we look at the certificate A, I'm not sure if the

12 Chairman has seen these before, these are the

13 certificates, it's at 15744 there, it's draft one

14 you're talking about, 15744.

15 A. Yes. 14:52

16 508 Q. The first one is the one we're concerned about, if you

17 just go back there a little bit please, Mr. Kavanagh.

18 That says:

19

20 "Occupational injury/illness." 14:52

21

22 This is the certificate that it was envisaged would be

23 filled out by the chief superintendent.

24 A. Chief superintendent, correct.

25 509 Q. Okay. So that's what they effectively look like. As 14:52

26 you say, that has remained the position, in the sense

27 that it remains in draft form. Is it still under

28 discussion, to your knowledge, or have you moved on?

29 A. I have moved on from that section so...

1 510 Q. Maybe Ms. Carr may be help us?
2 A. She may be able to clarify.
3 511 Q. Going back to that e-mail of 9694, that is the e-mail
4 of the 6th June, your e-mail there that you sent at
5 11:03, there were a number of subsequent e-mails after 14:53
6 that to which you were the recipient, but I don't think
7 you -- we don't have an e-mail where you were coming
8 back yourself on the issues. I think you just
9 effectively were recipient to several e-mails on the
10 issue subsequently, is that right? 14:53
11 A. Some other people came back with different views.
12 512 Q. Okay?
13 A. Again, this is still not -- this is still a draft
14 policy document we're still talking about.
15 513 Q. Okay. And for example, the following day, on the 7th 14:53
16 June at 3:00pm, at 9693, which is just the previous
17 page, Mr. Kavanagh, you will see, and again Ms. Carr
18 can deal with this, she is addressing the e-mail to
19 Mr. Barrett, yourself, Fiona Broderick. Am I right
20 that Ms. Broderick is in the Commissioner's office? 14:54
21 A. Yes, she was the Commissioner's clerk.
22 514 Q. Okay. It says:
23
24 "Good afternoon, John.
25
26 Further to Brian's e-mail..." 14:54
27
28 And there is a discussion there of the issue
29 effectively of the categorisation issues and the

1 challenges facing the organisation in that regard, is
2 that right?

3 A. Yes.

4 515 Q. Again, Ms. Carr is probably the person who should deal
5 with that and the subsequent e-mails and they can be 14:54
6 opened with her tomorrow, but you were marked as a
7 recipient but you don't seem to have got back involved
8 in the fray, as it were. There is no further e-mails
9 with views from yourself, is that right?

10 A. That's correct. 14:54

11 516 Q. I think what subsequently happened and was discussed in
12 those later e-mails was an issue of placing somebody,
13 particularly in the context of protected disclosures
14 and work related stress, placing them on administrative
15 leave. Did you have any knowledge of that? 14:55

16 A. No.

17 517 Q. Or can you assist in relation to that?

18 A. No.

19 518 Q. Okay. Inspector, could you answer any questions
20 please? 14:55

21 A. Okay.

22

23 END OF EXAMINATION

24

25 INSPECTOR BRIAN DOWNEY WAS CROSS-EXAMINED BY MS. 14:55
26 MULLIGAN, AS FOLLOWS:

27

28 519 Q. MS. MULLIGAN: Good afternoon, inspector, I have one
29 very brief question.

1 CHAIRMAN: Yes, Ms. Mulligan.

2 MS. MULLIGAN: Subject to there being no issue with any
3 other party that wants to go ahead.

4 CHAIRMAN: No, I think it is probably better if you go.
5 You appear for inspector Downey, is that right, 14:55
6 Mr. McGuinness, but if anything arises, then liberty to
7 apply, Ms. Mulligan. So we will carry on this way.

8 520 Q. MS. MULLIGAN: Thank you, Chairman. Just one question
9 in relation to page 3254, inspector. It's just in
10 relation to the question of the application for 14:55
11 sickness. Just because you have obviously done quite a
12 significant amount of work on this. Can you confirm to
13 the Chairman who can make an application for work
14 related stress to be -- an application for work related
15 stress? If you don't know the answer that's fine, I 14:56
16 just thought I would ask.

17 A. If a member reports sick with a work related stress
18 aspect to it, it's my understanding that that's always
19 reported to the CMO by Garda management.

20 521 Q. Thank you very much. No further questions. 14:56
21

22 END OF EXAMINATION.

23

24 CHAIRMAN: Thanks. Hold on, yes, Mr. McGuinness.

25 MR. DONAL MCGUINNESS: No questions, Chairman. 14:56
26 CHAIRMAN: No questions. Nobody has any questions.
27 Thanks very much, inspector. Thank you for your
28 assistance.

29 MS. McGRATH: Thank you inspector.

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THE WITNESS THEN WITHDREW

MS. McGRATH: Chairman, the next witness is Garda Michael Quinn, please.

14:56

CHAIRMAN: Thanks very much.

GARDA MICHAEL QUINN, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY COUNSEL, AS FOLLOWS:

14:57

THE WITNESS: Garda Michael Quinn.

CHAIRMAN: Thanks very much, Garda Quinn.

522 Q. MS. McGRATH: Chairman, the statement of Garda Quinn is at page 3642 of the brief. Good afternoon, Garda Quinn.

14:57

A. Good afternoon.

523 Q. Now, Garda Quinn, just in relation to the section of the Gardaí that you're attached to, you say that you are a Garda employee assistance officer?

A. That's right.

14:57

524 Q. Is that effectively placing you under the umbrella there that we talked about with Inspector Downey, employee relations section of HRM?

A. Yeah, that has changed. The umbrella we have been under has changed on a number of occasions. Up until about, I couldn't say exactly, maybe five or six years ago, believe it or not, we were under Internal Affairs.

14:57

525 Q. CHAIRMAN: Okay.

A. So, I could be going to see somebody who could be

1 suspended or being disciplined and they'd say, who is
2 your chief and I'd say chief so and so, and he would
3 say, well this is the chief who suspended me. So they
4 changed it from one side of the house to the other
5 side.

14:58

6 526 Q. CHAIRMAN: EAS.

7 A. Yeah.

8 527 Q. CHAIRMAN: Is that the present one?

9 A. Well, no, we are the EAS, Employee Assistance Service,
10 but we are under HR, as distinct from IA, which is
11 Internal Affairs. They changed a number of years ago.
12 It is confusing.

14:58

13 528 Q. CHAIRMAN: To follow my pedantry for the initials, is
14 it HRM or HR?

15 A. Well, I saw it referred to HRPD one of the days
16 recently, it used to be HRM, before that it was B
17 branch. When I worked there it was B branch. I think
18 when somebody else changes the name --

14:58

19 529 Q. CHAIRMAN: So we can just call it HR, if you like, is
20 that right?

14:58

21 A. Yes.

22 530 Q. CHAIRMAN: That's the safer way, HR, and under HR, one
23 of the division sections is EAS?

24 A. Yes.

25 CHAIRMAN: Okay.

14:59

26 531 Q. MS. McGRATH: You say there that a number of years ago
27 you were initially under Internal Affairs, it is now
28 HR, we will be talking in a moment specifically about
29 when you came on line with Garda Keogh in 2015. In

1 2015 do you remember was it under IA?

2 A. No, it's under current side, the non-IA HR.

3 532 Q. Now, I think you have been working as a welfare officer
4 since 8th December 2003 in EAS, is that right?

5 A. Yeah, that's correct. 14:59

6 533 Q. Okay. Just a little bit about this service. You're
7 the first witness from EAS and will be the only
8 witness, I would imagine. I think it's considered to
9 be a confidential counselling service for members of An
10 Garda Síochána, is that a correct way of describing it? 14:59

11 A. Not exactly. I would have it as confidential, but A,
12 B, C, anything but counselling, because we're not
13 counsellors. So encouraging people, suggesting to
14 people, talking to people, but we're not counsellors.

15 534 Q. You say it's a confidential service, is that like a 15:00
16 doctor patient relationship?

17 A. Yeah.

18 535 Q. I want to understand now in a moment what you can talk
19 about to your superiors, what you can report. Can you
20 just explain the confidentiality aspect of it to the 15:00
21 Chairman?

22 A. Well, in order for me to build a bond with the person
23 who may be deciding whether to deal with me or not, it
24 is confidential. Anything, we'll say -- a number of
25 years ago there was a divisional employee welfare 15:00
26 committee meeting and at the meeting a particular chief
27 asked me was I dealing with a particular guard and I
28 told him that I couldn't even tell him that, whether he
29 was or he wasn't. He wasn't happy with my answer, so

1 he checked with my then supervisor in the middle of the
2 meeting. So it's that confidential. Now there are
3 exceptions, you know, if somebody tells me they have
4 committed a crime, or are about to commit a crime, self
5 harm -- 15:01

6 536 Q. CHAIRMAN: Urgency, self harm?
7 A. Or consent.

8 537 Q. CHAIRMAN: A threat to life, something like that?
9 A. Yeah.

10 538 Q. CHAIRMAN: The obvious ones? 15:01
11 A. Yeah, they're kind of standard, but they apply to us as
12 well. So if somebody says to me well -- if a guard
13 says to me, well, I stabbed somebody or I hit somebody
14 or whatever, I have to kind of put my Garda hat back on
15 again. 15:01

16 539 Q. MS. McGRATH: Okay. We will come to that, we will
17 drill down a little bit into that in a moment, about
18 the contact you have with the members and what they
19 tell you and what you can report. Can I just ask you
20 first of all, who is effectively your superior officer? 15:01
21 who do you report to?
22 A. Sergeant Clare Malone and then above that is
23 superintendent Della Murray.

24 540 Q. Della Murray, okay. I think you update your senior
25 officer, and we are talking generally at the moment, 15:01
26 you update your senior with regard to the progress of a
27 member or the contacts you have with a member, is that
28 right?
29 A. Em, normally it's only if there's something different

1 than the norm, you know. If the person is bad or
2 distressed or I can't get them in their normal course
3 of events, that kind of stuff, I might give a ring and
4 say -- we have what we call technically supervision,
5 where my sergeant would look at my client sheet, we 15:02
6 have a client sheet, I would take a few notes each day
7 or each time I contact the member, if I get them, and
8 say I got them or I didn't get them. So it should be
9 maybe once every six months, my sergeant will look and
10 have a quick read through it and say, well, you need to 15:02
11 contact him because he hasn't been in contact for six
12 months, something like that.

13 541 Q. Again just generally, we talked about there when would
14 you ever disclose the nature of a contact or something
15 a member has said and you said there, for example, 15:03
16 where there was a reference to a crime being committed?

17 A. Yes.

18 542 Q. Right.

19 A. Yes.

20 543 Q. would there be again exceptions where somebody 15:03
21 expressed a serious illness or suicidal ideation, can
22 you then escalate that up or disclose it?

23 A. Well, I would normally discuss it with the sergeant or
24 the superintendent. Not outside that remit.

25 544 Q. Okay. what about work related issues then? 15:03

26 A. Well, in the course of -- to the sergeant and
27 superintendent, I would and could discuss anything
28 really. Outside that, not really. Maybe the CMO at an
29 absolute exception. Apart from that, I wouldn't with

1 anybody.

2 545 Q. Okay. Now, just then going specifically to dealing
3 with Garda Keogh. I think your involvement with him
4 commenced on the 21st April 2015, is that right?

5 A. As a long-term -- well, we didn't know it was long-term 15:03
6 then. I had on occasions spoke with him before. My
7 colleague who covered -- I don't cover Athlone, my
8 colleague who covered Athlone used to deal with him in
9 some capacity, I am not exactly sure. So when she was
10 off and Nick had a problem, if you ring her number you 15:04
11 got my number, so I would talk to him then. So there
12 had been a low level, a very low level of contact, but
13 I had spoken to him before.

14 546 Q. So you knew of him?

15 A. I knew of him, yeah. 15:04

16 547 Q. But in the sense of being formally put in as his
17 welfare officer?

18 A. No, no, not until that, that was the day.

19 548 Q. That was the 21st April?

20 A. Well, it is actually the 22nd or 23rd, I just clarified 15:04
21 with my sergeant because he wasn't technically in my
22 area. But yeah, the first contact.

23 549 Q. So he wasn't in your area. So was this a little bit
24 unusual, that you were asked to deal with Garda Keogh?

25 A. Not really, no. Like, people have a choice. If 15:04
26 somebody had served with me and they didn't like me or
27 they didn't think they could get on with me, they could
28 ring the sergeant and say, well, I know Mick a long
29 time, we didn't get on, or vice versa.

1 550 Q. Okay.

2 A. There is that. You know, sometimes females might want
3 to deal with a female, that's okay too, it's not too
4 unusual, not too unusual.

5 551 Q. Now, I think you say in your statement that all of this 15:05
6 came about because you got a phone call from a
7 colleague of yours, Garda Morgan Landy, I think he
8 works with you in EAS, is that right?

9 A. That's right.

10 552 Q. He told you that he had been contacted by Detective 15:05
11 Superintendent Declan Mulcahy, is that right?

12 A. That's right, yeah.

13 553 Q. As you say, this was something you had to clear with
14 your sergeant because --

15 A. Just because it wasn't my area. 15:05

16 554 Q. Okay. You were asked to contact Garda Keogh from a
17 welfare perspective. I think those are the words you
18 use in your statement?

19 A. Yeah.

20 555 Q. Were you told anything about Garda Keogh? Were you 15:05
21 given any background, any context as to why this was
22 happening at that date in time?

23 A. No, just to go back just one tiny bit slightly, we were
24 known as the Garda welfare service, you know, but that
25 changed to employee assistance. well, I knew of Nick 15:06
26 from previously, so I would have -- I would have had an
27 idea about, you know, his situation generally, at that
28 stage.

29 556 Q. And would you have known anything to the effect or been

1 told about -- you saw the contact came through
2 Detective Superintendent Mulcahy, who was at that time
3 involved in the protected disclosures investigation.
4 Did you know any of this?

5 A. No. 15:06

6 557 Q. Were you told any context?

7 A. No.

8 558 Q. Okay.

9 A. Getting a call from a detective superintendent would be
10 a bit more unusual than a informed inspector. 15:06

11 559 Q. CHAIRMAN: Did you know him?

12 A. I didn't, no.

13 560 Q. CHAIRMAN: Did you know Detective Superintendent
14 Mulcahy?

15 A. No. 15:06

16 561 Q. CHAIRMAN: He presumably must have known you, or he
17 must have known something about you, because apparently
18 he asked for you, is that right? Maybe not?

19 A. No, well Morgan was covering Cork and Kerry, so I was
20 closer. 15:07

21 562 Q. CHAIRMAN: Oh, I see what you mean.

22 A. Something like that maybe.

23 563 Q. MS. McGRATH: would it be the case, and specifically in
24 the case of Garda Keogh, would you have a point of
25 contact with senior management in the sense of 15:07
26 contacting or keeping anybody updated like Detective
27 Superintendent Mulcahy or going back to, for example,
28 Chief Superintendent Wheatley?

29 A. No, our system is kind of unusual, once we get a

1 referral I can get them from medical aid, from a union
2 rep, from a wife or a partner or a sergeant, and once
3 they refer the person to me, that's it.

4 564 Q. Okay.

5 A. Now, it really becomes confusing, there's a very -- 15:07
6 there is a policy called the EAP, which is the Employee
7 Assistance Programme, which is -- and supervisor can
8 refer somebody to me if they're not deemed to be
9 performing. And in that case the superior, only if
10 it's under the Employee Assistance Programme, in that 15:08
11 case the sergeant can check and see did whoever contact
12 me. Otherwise, there's no me going back to them.

13 565 Q. And to be clear, Garda Keogh did not come to you via
14 the EAP?

15 A. No. 15:08

16 566 Q. Okay. All right. Now, I just want to ask you about
17 two separate areas of your evidence. I suppose you had
18 provided the notes that you kept with Garda Keogh?

19 A. Yes.

20 567 Q. Those notes go up until this moment in time, you are 15:08
21 still his welfare officer, is that right?

22 A. That's right. I suppose it's kind of unusual that my
23 statement is 24 lines, but in actual fact there's 23
24 pages, so it's kind of...

25 CHAIRMAN: Yes. 15:08

26 568 Q. MS. McGRATH: So you have your notes of those contacts.
27 But what I want to ask you about, because I want to
28 deal with the note separately. You went to two case
29 conferences over your time with Garda Keogh. One on

1 9/12/2015 and one a couple of months later, on 12th
2 July 2016, isn't that right?

3 A. That's right.

4 569 Q. We might talk bout those separately, if you don't mind,
5 Garda Quinn. 15:09

6 A. Okay.

7 570 Q. There is just a couple of questions about them. If we
8 can look at the first one. You will have heard
9 Inspector Downey looking at these earlier in his
10 evidence. 9/12/2015, at 6165 of the book. Again, I 15:09
11 want to ask you just similar questions but to get your
12 evidence on just two questions in particular. We have
13 gone through -- first of all, Inspector Downey was of
14 the belief that it was possibly Fiona O'Brien who
15 prepared these minutes? 15:10

16 A. It was.

17 571 Q. It was, okay. Thank you for that. Now, in relation to
18 the first column there, I was asking earlier about the
19 content of that column:

20 15:10

21 "With regard to volume of sickness absence, member is
22 going on to TRR rate of pay in each absence."

23

24 Now, and I'm sorry to do this to Mr. Kavanagh, can I
25 ask you, Mr. Kavanagh, to open up your statement, Garda 15:10
26 Quinn, at 3642. At 3642, you make reference to this
27 case conference and about three quarters of the way
28 down, if you can just flick down please, about six or
29 seven lines from the end, you record in your statement:

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"There was some discussion as to how the member's sick absence was being recorded."

Can you just tell the Chairman what you meant by that in your statement? 15:10

A. Yes. On the day, the reasoning behind the case conference was, you know, some absences and the fact that there would be TRR. But there was -- I can clearly remember that there was a discussion in relation to work related stress. Because the certs were coming in with work related stress on them but the doctor's record didn't state that. So there was some discussion as to -- and I suppose the key factor is, when people go sick with work related stress, the minute, the very day, whatever day, whether that is the next day or a month later, there is supposed to be an investigation as to -- if somebody puts stress on a cert, the people in Sick Section are supposed to clarify whether it is work related or, we'll call it, ordinary stress. So that is supposed to happen immediately the certs are submitted. 15:11

572 Q. Okay. On that day, the 9th December then, the discussion around this, if you can just tell the Chairman about the discussion around this, was there a discussion of work related stress and thereby medical certificates or thereby reduced pay? Can you tell the Chairman what you remember was the discussion surrounding specifically Garda Keogh? 15:11

1 A. I would remember it as a discussion as to how it was
2 recorded rather than discussing what work related
3 stress actually is. From my memory they didn't
4 actually go into that. People know what it is. But,
5 of course, nowadays there's a big problem, the 15:12
6 difference between people with an injury on duty is
7 that they get their full pay and all their allowances.
8 So if a member otherwise -- before the sick regulations
9 changed it wasn't as big an issue, now it's -- if
10 people get an injury on duty it's perceived as very 15:13
11 different. The physical work related injuries are much
12 clearer than psychologically.

13 573 Q. CHAIRMAN: Obviously?

14 A. Yeah. And there aren't as many -- well, I won't say
15 there aren't as many, well, there probably aren't as 15:13
16 many happen and there probably aren't as many granted.

17 574 Q. CHAIRMAN: And they don't last as long, the injuries,
18 probably. Well, maybe not.

19 A. Yeah, I don't know, I'm not sure.

20 CHAIRMAN: Sorry, it doesn't matter. 15:13

21 575 Q. MS. McGRATH: Was it clear that day, was there a
22 discussion that Garda Keogh was pay affected?

23 A. Well, he would be. He would be, yeah.

24 576 Q. Was it discussed at the meeting?

25 A. I wouldn't have a whole lot of discussion really. I 15:13
26 would have thought the main theme of the meeting -- to
27 me, the thing I remembered most was how the sick was
28 being recorded, to me.

29 577 Q. Okay. Now, the theme of the meeting, I understand from

1 the evidence, was with regard to Garda Keogh's
2 difficulties and the supports necessary for him, is
3 that right?

4 A. Yeah.

5 578 Q. Now, you're recorded there under the local management 15:14
6 column, and sorry, we're going back to 6165. Please?

7 A. Oh yeah.

8 579 Q. There's a reference to your contribution there. That
9 is your contribution, is that right?

10 A. Yes. 15:14

11 580 Q. EAS officer observation?

12 A. Yes.

13 581 Q. "The member needs to decide for himself that he needs
14 help and make a concerted effort to access services to
15 address the issue." 15:14

16 A. Yeah.

17 582 Q. Now, you had been dealing with him since the previous
18 April, isn't that right?

19 A. I am never of the opinion, ever, ever, ever, in
20 relation to addiction, that somebody going for 15:14
21 treatment, unless it's their will, is a waste of time.

22 583 Q. Was that the view you expressed at that meeting?

23 A. Yeah and it's still my view today, in relation to
24 anybody. People who are going to -- you know, one
25 person I dealt with, who was thankfully 13 years sober 15:15
26 on the 14th January, he said he went in twice, he went
27 in the first time to save his job, he went in the
28 second time to stop. So those, his words, resonate
29 hugely for me. And anybody going in who isn't ready,

1 you know, because there is a discipline inquiry coming
2 up or because his wife is getting onto him, to me they
3 are the wrong reasons. He must be ready.

4 584 Q. If the previous paragraph, at the top, you have local
5 management, who we know is Superintendent Murray,
6 referencing obvious misuse of alcohol, and we will see
7 from your notes later, you're aware of that?

15:15

8 A. Yes.

9 585 Q. And a high level of short-term sickness absences, I
10 think you were aware of that as well; is that right?

15:15

11 A. Yeah. They were probably more historic, you know, than
12 say the date in April, you know, they are probably
13 going back a good few years. I was away from the time
14 I dealt with him, yeah, certainly.

15 586 Q. Can I ask you, just at the last paragraph there:

15:16

16
17 "Management suggesting medium to long-term support be
18 given for a transfer out of Athlone in view of the
19 events that had transpired there."

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15:16

21 Now again can I ask you, I asked Inspector Downey, to
22 your recollection who raised the issue of a transfer at
23 this meeting?

24 A. I wouldn't be as clear on this. I was surprised that
25 there was somebody there from transfers, it wouldn't be
26 the norm at case conferences. Sometimes we are there,
27 sometimes we're not. Sometimes, I haven't been there,
28 but I have heard my colleagues say there are people
29 there from discipline section, you know, at a case
15:16

1 conference. So it would be unusual if someone was
2 there. I am not exactly sure, I couldn't pinpoint who
3 said it, but it was discussed. I don't know who.
4 587 Q. Okay. It says:
5
6 "A transfer out of Athlone in view of events that had
7 transpired there."
8
9 Do you know what that might mean? What was being
10 referred to? 15:17
11 A. Em, I don't know if Garda Keogh had become a
12 confidential recipient at that stage. I can't remember
13 what date he became -- I don't know if it's that or...
14 588 Q. And you think that's what that comment refers to, do
15 you? 15:17
16 A. I'd imagine so. I don't know if the -- I'm not sure if
17 the date he became a confidential recipient was before
18 or after that.
19 589 Q. CHAIRMAN: That was in May 2014, this is in December of
20 2015. 15:17
21 A. Okay. Well, it's possible.
22 590 Q. CHAIRMAN: Just to let you know what the dates are?
23 A. Okay.
24 591 Q. CHAIRMAN: The 8th May he became the confidential
25 recipient? 15:17
26 A. I wasn't sure if there was something else in the...
27 yeah, I would imagine it's that.
28 592 Q. MS. McGRATH: It's the --
29 A. It's the confidential recipient aspect of it.

1 593 Q. Okay. And it goes on to say:
2
3 "If the transfer is considered to be beneficial for the
4 member's sustained wellbeing and effectiveness after he
5 would have come through an appropriate treatment 15:18
6 programme."
7
8 Now, did you contribute to this discussion of a
9 transfer?
10 A. No. 15:18
11 594 Q. Did you have any view on it?
12 A. No, I wasn't asked to contribute, I didn't contribute.
13 But I suppose I'm not -- I wouldn't have thought that a
14 transfer was a solution to this problem. But I wasn't
15 asked. 15:18
16 595 Q. Okay. Can I ask you, it's not recorded on the face of
17 the minutes, was there a discussion of stress or work
18 related stress or that issue?
19 A. Not -- to me the big discussion was on how the sick was
20 being recorded, not on what constituted work related 15:18
21 stress.
22 596 Q. Okay. Now, I think again we will see the before and
23 after of that conference when we look at your notes,
24 but you then attended a second conference and that's
25 12th July 2016, isn't that right, Garda Quinn? 15:19
26 A. That's right.
27 597 Q. Okay. The minutes for this are at 6167, please.
28 Again, can you assist, do you think these notes were
29 prepared by Fiona O'Brien or do you know?

1 A. Yeah, Fiona O'Brien.

2 598 Q. Okay. Now, we see the attendees there. We see the
3 CMO, we see Chief Superintendent Wheatley, Chief
4 Superintendent Tony McLoughlin, who at that stage had
5 come on board as the protected disclosures manager, is 15:19
6 that right?

7 A. Yes. Well, he had that title then, but he was still
8 there at the previous one but he just didn't have that.
9 The protected disclosures manager title is just a very
10 small part of his remit, you know. He has been there 15:20
11 quite a number of years, you know.

12 599 Q. Okay. You have Clare Egan from HRPD and yourself and
13 Fiona O'Brien; isn't that right?

14 A. Yes.

15 600 Q. Now just looking at HRPD observations: 15:20
16
17 "Chief superintendent HRM and Mick Quinn GS met with
18 Garda Keogh on 3rd June 2016 to allow the member a
19 sounding board for his concerns and to outline all
20 aspects of welfare available to him." 15:20
21
22 Is that right?

23 A. That's right, yeah.

24 601 Q. We see that in your notes as well. Chief
25 superintendent HRM, would that be Tony McLoughlin? 15:20
26 A. That's right.

27 602 Q. Says:
28
29 "The member is presenting as articulate. List of

1 issues presented was pay affected."

2

3 So that's one of the issues being discussed?

4 A. Yes, that's right.

5 603 Q. Is that your recollection?

15:20

6 A. Yeah, it is.

7 604 Q. "The member did not present as interested in returning
8 to work in his previous station but would like to
9 return to work in another location."

10

15:20

11 So at that stage is the issue of transfer live, as it
12 were?

13 A. Well, the way I'd interpret that is that he certainty
14 wasn't -- I'd be surprised that there was talk of him
15 going to another station at that stage. I wouldn't
16 have thought that that was, we'll call it, an inference
17 from the meeting. He hasn't ever spoken to me about
18 going somewhere else, so...

15:21

19 605 Q. Okay. It's recorded there as having been raised by
20 Chief Superintendent Tony McLoughlin, do you agree or
21 disagree with that? Just your recollection?

15:21

22 A. I'd agree with the first bit, but not the second bit.

23 606 Q. As in, that you don't recall that being said by Chief
24 Superintendent McLoughlin?

25 A. No, I would think that he didn't present as being
26 interested in coming back to work, and he didn't say
27 that he would like to go to another place.

15:21

28 607 Q. To you, is that right?

29 A. Well, to what I heard, what I took.

1 608 Q. Okay. I think Chief Superintendent McLoughlin can deal
2 with that?

3 A. Yeah.

4 609 Q. Okay. Now GEAS is your contribution?

5 A. That's me. 15:22

6 610 Q. "Member's difficulties with alcohol are known at this
7 time and is he receiving relevant supports to help him
8 overcome same. Member has engaged positively with
9 GEAS. Concerns about the member being socially quite
10 isolated. The member's pets are very important to him. 15:22
11 The member himself admits he needs to return to the
12 job."
13

14 Can you tell the Chairman about that?

15 A. Myself and Nick have some things in common and some 15:22
16 things we don't have in common. And our biggest
17 difference, well, is our pet empathy. So his is 100%,
18 mine is... So his dogs are his life.

19 611 Q. CHAIRMAN: You're not a doggy person?

20 A. No, it's not -- 15:22

21 612 Q. CHAIRMAN: There's nothing sort of -- it's not a moral
22 judgment, but he is and you aren't?

23 A. He is, yeah, he is. I like them but I wouldn't be --

24 613 Q. CHAIRMAN: In their place, I know what you mean?

25 A. Well, and not alone dogs, but birds, animals, all that 15:22
26 kind of stuff, a huge part of his life.

27 CHAIRMAN: I understand.

28 614 Q. MS. McGRATH: You're recording there that he has
29 difficulties with alcohol. Again, we will see from the

1 notes that this was an ongoing issue over a number of
2 years, isn't that right?

3 A. Yeah, yeah. When I would have spoken to him pre April
4 '15, it would have been about alcohol issues as well.
5 You know, before I got to know him on a long-term, it
6 was alcohol related, some of it. 15:23

7 615 Q. Can you just assist the Chairman there, in your
8 contribution you say:

9

10 "The member himself admits he needs to return to the 15:23
11 job."

12

13 Is that your understanding, that that's Athlone Garda
14 Station

15 A. Yeah. But that's -- I would have that as a long-term, 15:23
16 not as a kind of a short-term or an intermediate. In
17 time. Nick Keogh never didn't like policing, in my
18 opinion, like you know.

19 616 Q. You say there:

20

21 "The member has indicated he would like to enroll in 15:23
22 the rehabilitation programme. It appears the member
23 has done a lot of research on this subject and has
24 decided on same."

25

26 I think the evidence we have heard so far, we 15:24
27 understand that this was the main raison d'être of this
28 meeting?

29 A. Yes.

1 617 Q. Was the rehabilitation issue?
2 A. Yes.
3 618 Q. And cost of same, is that right?
4 A. Yes.
5 619 Q. And the willingness to facilitate and assist him in 15:24
6 relation to the cost by the organisation?
7 A. Yeah. In my time as -- now it may have happened to
8 some of my colleagues in the Employee Assistance
9 Service, but I haven't -- the way that the treatment
10 programme was, I won't say paid for, or organised was 15:24
11 unusual, very unusual. If members of the guards, we
12 run a medical aid system, they pay -- some people think
13 private health care is great and this and that and the
14 other, but they pay for 28 days addiction treatment
15 every five years. Now, Laya and some of the others 15:24
16 might be paying 42 days every year. But ours mightn't
17 be as good. So you have to be clear five years before
18 you can get your 28 days. Some of the treatment
19 centres they cover, some they don't, some you pay a --
20 620 Q. CHAIRMAN: Some are more expensive than others? 15:25
21 A. Well, some are perceived as being better than others.
22 621 Q. CHAIRMAN: No, but some are more expensive?
23 A. Sorry, yes.
24 622 Q. MS. McGRATH: Can I ask you, it was certainly the
25 evidence of Chief Superintendent Murray that this 15:25
26 meeting was -- that the gist of the meeting, the
27 concern of the meeting was putting this residential
28 rehabilitation programme in place for him, is that
29 right?

1 A. Well he wasn't quite up to his five years clear. So he
2 would either have to pay for him himself and
3 somebody somewhere came up with what I would describe
4 as a very unusual suggestion, that it would be paid
5 for, most of it be paid for by medical aid and a top-up 15:26
6 from a section that's very unknown in the Guards,
7 called the Garda Reward Fund.

8 623 Q. Something I should have clarified with you at the
9 outset, I am sorry, Garda Quinn, when we looked at the
10 number of attendees there, the management attendee, the 15:26
11 local management attendee is Chief Superintendent
12 Lorraine Wheatley?

13 A. Yes.

14 624 Q. We heard evidence from now Chief Superintendent Patrick
15 Murray before Christmas, he said he attended this 15:26
16 meeting and that his name was omitted as an attendee,
17 do you recall that? Can you assist?

18 A. If I was to pick yes or no, I would say no. Just -- I
19 just remember meeting --

20 625 Q. CHAIRMAN: If you don't remember, you don't remember? 15:26
21 A. I don't remember. I hadn't noticed actually that he
22 was missing, you know from, that list there.

23 626 Q. MS. McGRATH: I think he has notes in his diary or his
24 memorandum to the effect that he did attend?

25 A. Okay. Yeah. 15:27

26 627 Q. Okay. Can I ask you to look, just there, it's on the
27 screen, in the second column, the second last
28 paragraph, it says:
29

1 "Management to suggest possible roles and places to the
2 member with a view to build back the member's
3 confidence. "
4
5 who was suggesting that, do you remember? 15:27
6 A. I would imagine it was Dr. Oghuvbu suggesting to Chief
7 Superintendent Wheatley that they look at trying to
8 find something that might be suitable.
9 628 Q. What did you understand by that?
10 A. Well, that's what I would understand by it. You know, 15:27
11 people who are coming back after long-term absence or
12 what's known as light duties, where, rather than be out
13 to the forefront, you could be checking pulse or
14 reviewing firearms licences, something like that. So
15 rather than doing nothing -- 15:28
16 629 Q. CHAIRMAN: To get you back sort of gradually?
17 A. Yeah, we call them light duties.
18 630 Q. CHAIRMAN: Ease you back into the job?
19 A. Yeah. And, of course, there's then the
20 non-confrontational light duties, which is -- people 15:28
21 are still looking for a description.
22 631 Q. MS. McGRATH: Was that the nature of the discussion in
23 respect of Garda Keogh specifically?
24 A. Yes, yeah.
25 632 Q. So a discussion regarding change of roles or change of 15:28
26 duties for him to facilitate him coming back, is that
27 right?
28 A. Yeah.
29 633 Q. Do you know if that was ever activated?

1 A. I wouldn't know.

2 634 Q. You wouldn't know?

3 A. No, I wouldn't know. Sometimes if somebody was trying
4 to do it, the chief or the super or an inspector, they
5 might ring and say, would Nick be prepared to do this 15:28
6 or do that, and I might talk to him then. But I doubt
7 if it happened. I am not aware.

8 635 Q. Okay. If we go to the next page, it's the end of the
9 first column. Sorry, if you go back up there. It's
10 talking about the cost of the programme: 15:29
11
12 "GEAS to liaise with the Garda medical aid and chief
13 superintendent HRPD and HRM with regards to the cost."
14
15 were you involved in that? 15:29

16 A. No, actually. I don't know why, but I wasn't. What
17 happened was that John Fahy, who was then the general
18 secretary of Garda medical aid, said he would give what
19 it costs for a person to go to Cluain Mhuire, which is
20 a non-private treatment centre, and that's about 15:29
21 €1,400. He said he would give that towards Garda
22 Keogh's. Then Inspector Della Murray, who is now a
23 superintendent, for some reason, even though she never
24 had any contact with Garda Keogh, as far as I know, she
25 was negotiating with John Fahy, they came up with 4,000 15:30
26 as the agreed figure. The shortfall of, say, 3,400, I
27 just mention it briefly.

28 636 Q. CHAIRMAN: Yes.

29 A. It's the Garda reward fund. And what it is, is guards

1 who have been disciplined, I would say there's 200
2 guards in the organisation know about it, it's guards
3 who have been disciplined and fined.

4 637 Q. CHAIRMAN: In the wrong. Sorry, go on?
5 A. Yeah, and fined monetary values. 15:30

6 638 Q. CHAIRMAN: Yes.
7 A. They give out the money in this format to people where
8 there's --

9 639 Q. CHAIRMAN: Oh, I see what you mean?
10 A. -- perceived hardship. 15:30

11 640 Q. CHAIRMAN: I follow. There is a fund there?
12 A. There is a fund.

13 641 Q. CHAIRMAN: I misunderstood. There is a fund there for
14 people who have been disciplined and fined?
15 A. Yes. 15:30

16 642 Q. CHAIRMAN: So my money goes into a thing, it doesn't go
17 into the general kitty, it goes into a fund and it's
18 available the?
19 A. It's available, it's available, yeah.

20 643 Q. CHAIRMAN: For a deserving cause? 15:31
21 A. Yeah.

22 644 Q. CHAIRMAN: I didn't know that. Okay.
23 A. Well, there's view few, very few people --

24 645 Q. CHAIRMAN: I would say not many people know that.
25 A. No. 15:31

26 646 Q. MS. McGRATH: Do you know there under the column, Garda
27 Quinn, local management observations and actions, do
28 you know why that might be blank?
29 A. No.

1 647 Q. Okay. Sorry, I should have finished that, when we were
2 dealing with the next page, on the next column. After
3 the discussion of the costs of the programme there is
4 an entry there, it says:

15:31

5

6

"The nature of the current illness certification on
7 record with HRPD is work related stress."

7

8

9 So, can we take it that work related stress was upfront
10 and central at that particular case conference?

15:31

11 A. The only thing is, now it would probably be Chief
12 McLoughlin, as far as I know Garda Keogh's -- I don't
13 know how he's currently recorded. I would doubt it's
14 work related stress. I would doubt it. I wouldn't
15 have access to it but I would doubt it. Work related
16 stress, non-physical, are really contentious.

15:32

17 648 Q. Okay.

18 A. So I would --

19 649 Q. I think we have heard evidence to the effect that he is
20 currently recorded -- well, the SAMS record marks
21 ordinary illness, namely mental health. Would you be
22 aware of that?

15:32

23 A. Yeah. Well, SAMS is excellent as a recording device,
24 but as an accurate way of recording the illness, I
25 think it's very poor. But it's very good at recording
26 the fact that people are sick.

15:32

27 650 Q. Now, what I would like to do, Garda Quinn, is look at
28 your notes. I think when you made your statement first
29 you provided your notes but they only went up to the

1 end of 2018, isn't that right?

2 A. That's right, yeah.

3 651 Q. I think you have kindly provided the notes which bring
4 us up-to-date and up to quite recently, in fact. Your
5 last date of entry is 24th January 2020. And just in 15:33
6 ease of the parties, Judge, the notes as initially
7 provided are at 10616 of the brief and the additional
8 ten pages, which were circulated this morning, everyone
9 should have them, are at 15941 of the brief. Now, I
10 just want to ask you about these notes, Garda Quinn. I 15:33
11 don't want to necessarily delay everybody in going
12 through them in too much detail but I think there are
13 some aspects of them, if we could just deal with them.
14 Do you have them in front of you?

15 A. I do, yeah. 15:33

16 652 Q. Okay. So, we see you coming on board there, this is
17 page 10616, if Mr. Kavanagh can bring it up. You come
18 on board, that's your first note of 21/4/2015 and you
19 make reference to the fact of you coming on board and
20 speaking to Garda Morgan Landy and Sergeant Clare 15:34
21 Malone, isn't that right?

22 A. Yeah.

23 653 Q. You made Sergeant Malone and D/Superintendent Mulcahy
24 aware that you had made contact with Garda Keogh and
25 you describe him as being very drunk, is that right? 15:34

26 A. Yeah.

27 654 Q. Now, I think in those entries in April, I won't open
28 every single one of them, but we will try and do it,
29 month by month or blocks like that, there was a

1 reference to drinking and then stopping drinking, I
2 think that would categorise a lot of the entries over
3 the years, is that right?

4 A. Mm-hmm.

5 655 Q. Now, on the 23rd April, just staying on that page, 15:34
6 there are some things I might point out to the Chairman
7 and feel free to point out anything else yourself that
8 you would like to do so.

9 A. Okay.

10 656 Q. The member rang, you answered. 15:34
11
12 "He said his pay had been cut and it didn't bother him
13 particularly."
14
15 Do you remember that? 15:34

16 A. Absolutely.

17 657 Q. Is this a reference to the reduced pay on ordinary
18 illness, was that your understanding?

19 A. Yeah, yeah.

20 658 Q. Okay. Then, as we say, during that month -- 15:35
21 A. I suppose, just to clarify, the only reason that I
22 remember is that I don't think I have ever dealt with
23 anyone before who wasn't concerned about their pay
24 being cut, ever.

25 659 Q. This is why you noted that? 15:35
26 A. Yeah.

27 660 Q. Can I ask you, actually, when you're making these
28 notes, are these a summary of the conversation, would
29 the conversations be a lot longer? what are you

1 reflecting in the notes? Just a summary?

2 A. It's only a summary, yeah. I suppose trying to capture
3 what -- if you asked me how long was the conversation,
4 I wouldn't have a clue if it was two minutes or two
5 hours, but I suppose the pertinent point on the day. 15:35

6 661 Q. Okay. As I say, the initial entries reference him
7 drinking on the 24th, you say stopped drinking, is that
8 right?

9 A. Yeah.

10 662 Q. You move into May, you met him at his home? 15:35
11
12 "We discussed all aspects of his case and how he
13 thought he might deal with the conclusions of the
14 investigation."

15 15:35
16 So, the investigation came up very early --

17 A. Yeah.

18 663 Q. -- in your meetings with him, is that right?

19 A. Yeah. Well, the fact that Detective Superintendent
20 Mulcahy would have contacted me would be, as I say, 15:36
21 very unusual.

22 664 Q. Okay. On the 10th May 2015, you are referencing
23 drinking and the last sentence:
24
25 "He went sick and took annual leave due to his 15:36
26 consumption of alcohol."

27 A. That's what he would have told me, you know.

28 665 Q. Okay, and that's what you are recording?

29 A. Yeah.

1 666 Q. Okay. On the next day, the top, he is after meeting --

2 667 Q. CHAIRMAN: Sorry, just a moment. The 10th May, when
3 you say rest day, is that your rest day?

4 A. Yeah, I'm resting.

5 668 Q. CHAIRMAN: That's your day off. Yes, okay. 15:36

6 A. Yeah. But I discovered very early on that, you know,
7 we have 365-day relationship.

8 669 Q. CHAIRMAN: I understand. I wasn't certain --

9 A. It's mine.

10 670 Q. CHAIRMAN: Whether it was Garda Keogh's -- 15:36

11 A. It's mine. Sometimes in work they want us to say,
12 well, how many times were you --

13 671 Q. CHAIRMAN: I understand.

14 A. Now, I never explained to Nick in the beginning that we
15 work Monday to Friday, nine to five. Look, it doesn't 15:36
16 make any difference.

17 672 Q. CHAIRMAN: As far as you're concerned that wasn't
18 vital, if he needed to talk to you?

19 A. Yeah, it doesn't matter.

20 673 Q. MS. McGRATH: Do you effectively consider yourself on 15:37
21 call, Garda Quinn, to these members?

22 A. Different people, yeah, and to Nick I would.

23 674 Q. Okay. At the top of the next page, 10617, just going
24 down through them, on the 20th May you contacted him:
25
26 "The member saw Dr. Oghuvbu yesterday and felt that he
27 had taken the party line. He is due to meet Detective
28 Superintendent Mulcahy next week."
29

1 Did you understand what he meant by any of that?

2 A. Yeah. Yeah. Party line, you know, he didn't deviate
3 too far from I suppose what he expected to hear, you
4 know.

5 675 Q. Moving in June, you rang him. 15:37

6

7 "The member said he was out sick because the person he
8 made the allegations against was being interviewed in
9 the station that they both worked in."

10 A. Yeah, he was very upset or annoyed or disappointed or, 15:37
11 I have another case, even in 2020, in a completely
12 area, but one of the members there recently saw another
13 person who was suspended in the station being
14 interviewed and they were -- they just happened to
15 comment. It's really not good practice. 15:38

16 676 Q. That's the beginning of June. By the end of June
17 you're contacting him.

18

19 "The member is finding it difficult to keep waiting for
20 the result of his investigation into his allegations. 15:38
21 He mentioned the amnesty other members had got to get
22 their motor documents rectified."

23 A. Yeah.

24 677 Q. Now, if there is further information that you wish to
25 give to the chair? 15:38

26 A. Okay.

27 678 Q. Or that you recall, please feel free to do so?

28 679 Q. CHAIRMAN: They largely speak for themselves. I'm
29 assuming that people will assume that the notes speak

1 for themselves. If there is anything that you want to
2 add or subtract, well and good. But otherwise, I
3 think, Ms. McGrath will use her own judgment to give a
4 flavour of the things. But otherwise, I think we will
5 just treat them as saying what they say.

15:39

6 MS. McGRATH: Okay.

7 CHAIRMAN: which is probably the best way to do it.

8 680 Q. MS. McGRATH: That is June, a couple of months into
9 your appointment with him. In July, we know from our
10 evidence that there was an issue, an AWOL issue in July
11 and have you an early entry and then you have a late
12 entry, where he has admitted to drinking, he said he
13 sent letters to the DPP and Minister for Justice, he
14 mentioned that he was due to visit the CMO:

15:39

15

16 "He spoke of his satisfaction with Detective
17 Superintendent Mulcahy and admits his frustration with
18 the inaction against those he has named."

15:39

20 He does mention that satisfaction with Detective
21 Superintendent Mulcahy a number of times, is that right
22 A. Consistently.

15:39

23 681 Q. Okay.

24 A. Yeah.

25 682 Q. In August, we have again two entries talking about
26 drinking and by the end of August you say he was sober
27 and determined in his approach. Again, that reflects
28 quite a theme in the notes, would that be fair.

15:39

29 A. Yeah.

1 683 Q. In July he has been served with discipline papers?
2 A. Sorry, I suppose, just a really important point, it's a
3 bit like the pay issue, I have never dealt with anybody
4 with an addiction who was so honest. You know, most
5 people -- 15:40

6 684 Q. CHAIRMAN: There was no concealment?
7 A. No concealment. Totally honest. Whether he is
8 stopping or starting or continuing.

9 685 Q. CHAIRMAN: Okay.
10 A. Very unusual. 15:40
11 CHAIRMAN: Thank you.

12 686 Q. MS. McGRATH: Garda Quinn, I think in Garda Keogh's
13 evidence, when he was giving direct-evidence and under
14 cross-examination before Christmas, he talked about the
15 very good relationship he had with you in that regard? 15:40
16 A. Yeah. We get on well.

17 687 Q. Now, in September, we have a reference to the
18 discipline and I think that was the discipline in
19 relation to the AWOL issue in July, is that right?
20 A. That's right, yeah. 15:40

21 688 Q. It is recorded that it was now finished, is that right?
22 A. Mm-hmm.

23 689 Q. Again, from time to time he is mentioning -- if you
24 look into October 2015, he is mentioning media issues
25 arising in relation to the protected disclosure from 15:41
26 time to time, is that right?
27 A. Yeah, it was kind of breaking or current for some
28 reason at that stage.

29 690 Q. Okay. And if you look at the 11th October, he mentions

1 that he spoke of Detective Superintendent Mulcahy's
2 good work and again there's a reference to a spell of
3 drinking in the next couple of entries, is that right?

4 A. Yeah. Yeah, he got on very well with Detective
5 Superintendent Mulcahy.

15:41

6 691 Q. Okay.

7 A. And Inspector Coppinger.

8 692 Q. Very good. On 27/10 you have an entry there of a
9 discussion with him:

10

15:41

11 "The member intends dealing with the fact that he has
12 been assigned to be permanent station orderly (PO) by
13 his superintendent in a positive way."

14

15 Now, that was the allocation to indoor duty at that
16 time

15:41

17 A. Yeah.

18 693 Q. And that's how you have recorded Garda Keogh's
19 response?

20 A. Yeah. Well, being assigned duty as permanent PO is, I
21 suppose, the job that everybody doesn't want in the
22 Guards, in any station really. Some people don't like
23 being indoors, whatever about doing it in rotation,
24 doing it consistently is difficult and naturally the
25 bigger the busier the station, you know. But he did
26 say that he was going to try and deal with it
27 positively, yeah.

15:41

15:42

28 694 Q. The next day you contacted -- or he contacted you,
29 referencing a white Volvo owned by a local drug dealer

1 near his home, is that right?

2 A. Yeah, that's right.

3 695 Q. In November, again you have drinking and sobriety
4 during the course of the month, is that right?

5 A. Yeah, it's consistent. I suppose when I read it 15:42
6 myself, my notes, even to myself are difficult to read
7 writing wise, but when I re-read the typed version
8 before I sent it in, it did seem unusual, started
9 drinking, stopped drinking, trying to stop. That's
10 what a lot of it -- but we talk about other things as 15:43
11 well. But I suppose just as a recording mechanism.

12 696 Q. CHAIRMAN: I mean, you have experience of addiction, I
13 take it?

14 A. Yeah.

15 697 Q. CHAIRMAN: was the pattern unusual? 15:43
16 A. I wouldn't describe the -- the pattern I would have
17 as --

18 698 Q. CHAIRMAN: It appeared to be very short-term on, very
19 short --

20 A. Yeah, on/off. There were only two, I think of all the 15:43
21 on/offers, on/offers, there were only two I was very
22 concerned about, and this would be by telephone, you
23 know, he lives in one place, I live in another place.
24 There were only two episodes that I felt these are
25 really serious, and one of them is in the new notes 15:43
26 that people got this morning.

27 699 Q. CHAIRMAN: Yes.

28 A. I think it was May '19. Apart from that, it's not that
29 I wasn't concerned but, you know, normally he'd say

1 today is Tuesday, I hope to be stopped by Thursday.
2 And I would ring on Thursday and he'd be stopped.

3 700 Q. MS. McGRATH: And you can point those out when we come
4 to them, Garda Keogh. That would be very helpful.
5 We're in December 2015 and the top of the next page, 15:44
6 ending in 19, on 9/12, and again there is a reference
7 to you discussing with him stopping drinking or
8 undergoing addiction programmes?

9 A. Mm-hmm.

10 701 Q. There's a reference there I just want to ask you about 15:44
11 on 14/12, this is in relation to attending the CMO.
12 Now you have been at the conference at this stage?

13 A. Yeah.

14 702 Q. Isn't that right?

15 A. Yeah. 15:44

16 703 Q. which we have talked about?

17 A. Sometimes we're invited to them, sometimes we're not.
18 Sometimes we go, sometimes we don't, depending on
19 various issues.

20 704 Q. Okay. You had spoken to Garda Keogh about being at the 15:44
21 conference and updated him effectively, is that right?

22 A. Yeah.

23 705 Q. Now, on 14/12 you say:
24
25 "The member confirmed that he would attend the CMO. 15:45
26 The member's superintendent rang me and I confirmed
27 that he would attend the CMO appointment."
28
29 Can you confirm if that's Superintendent Murray? Do

1 you remember?

2 A. Yes, I'm sure it is, yeah.

3 706 Q. And would you have had much contact --

4 A. No. I had nearly forgotten about that, only that I

5 have written it down. I think apart from there and 15:45

6 meeting him at the case conference, certainly the one,

7 I can't even remember if he was at the second, I don't

8 think I have ever had any other contact with him.

9 707 Q. Okay.

10 A. But I literally didn't remember that one there until I 15:45

11 was --

12 708 Q. And do you recall, was the discussion limited to the

13 CMO?

14 A. Oh, yeah, yeah, definitely.

15 709 Q. Okay. Then on 18/12 you say: 15:45

16

17 "Dr. Oghuvbu rang me to discuss, clarify and get my

18 opinion about some of the difficulties that the member

19 was encounter with his superintendent."

20 15:46

21 Do you remember that?

22 A. Yes, absolutely.

23 710 Q. We can ask Dr. Oghuvbu about that himself, but can you

24 assist the Chairman there, was there any more detail

25 given or do you have an awareness of the issues? 15:46

26 A. I suppose Dr. Oghuvbu in his role was trying to tease

27 out what was really happening, what could be done, how

28 he was, could anything be done by management. Kind of

29 general. There were probably questions that could have

1 been or may have been asked at a case conference, but
2 normally I wouldn't have a very big role in the case
3 conference. I wouldn't often be asked. If I am asked
4 I give an opinion. Whereas there were probably some of
5 those questions like that, I feel, that Dr. Oghuvbu 15:46
6 asked me.

7 711 Q. And you said to get your opinion on some of the
8 difficulties, did you provide an opinion?

9 A. Yeah, yeah.

10 712 Q. Can you tell the Chairman what specifically you were 15:47
11 talking about?

12 A. Well, that I always believed that people should be
13 treated fairly, people should be -- I suppose two very
14 important attributes that don't often appear in job
15 descriptions in the Employee Assistance Service, are 15:47
16 empathy and non-judgmental. So I think everybody
17 should have them. I think even if you don't know
18 somebody and you hear that he or she is this or that, I
19 think you really should -- everybody in every role
20 should be forming their own opinion. 15:47

21 713 Q. Did you give your opinion?

22 A. Yeah.

23 714 Q. And what was that?

24 A. That assigning people to permanent PO is not
25 necessarily the solution to a problem where there's a 15:47
26 difficulty. You know, some stuff like that.

27 715 Q. You contacted Garda Keogh, you note there, around that
28 time, and you suggested that he document fully any
29 incident where he felt he was being treated unfairly or

1 inappropriately by his superintendent?

2 A. Yeah, well I would to anybody. Anybody, you know. And
3 I did to Garda Keogh on this occasion as well.

4 716 Q. Now, from the 18th onwards, we know that that was the
5 day he attended the CMO on the 18th, and after that, we 15:48
6 also know that he went on long-term sick leave?

7 A. Yeah. There were a lot of calls around the 26th, you
8 know, Christmas. I think I've said nearly every year
9 that Garda Keogh has said that he doesn't like
10 Christmas and he doesn't like what it brings. But I 15:48
11 suppose I tried hard to encourage him to keep him at
12 work. I thought he was doing reasonably well
13 considering and I just felt that 26/12/2015, him going
14 sick then, I just felt this felt like a different kind
15 of sick, as it transpired. 15:49

16 717 Q. Was it your view as his welfare officer that he was
17 struggling at this period?

18 A. Yeah.

19 718 Q. Did you understand why or did you know?

20 A. Well, I would say frustration at work. I don't know, I 15:49
21 wouldn't be one to diagnose the -- you know, I am not
22 qualified to diagnose work related stress. But
23 frustration with the system and how he perceived he was
24 being treated and those elements.

25 719 Q. The references there in December are to the 15:49
26 superintendent and is that Superintendent Murray?

27 A. Yeah. Definitely.

28 720 Q. He went there, you record on 27/12 that he rang to say
29 that he had now decided to stay on long-term sick leave

1 until he can deal with and rectify his alcohol
2 addiction. Is that why he told you he was going on
3 long-term sick?
4 A. Em, I don't think that's why he was going on long-term
5 sick. I know I have it recorded there, but I would -- 15:50
6 I think he was going sick because of the frustrations
7 at work and I would interlink some of his alcohol
8 problem with his frustrations at work.
9 721 Q. We note there that during that period and if you go on
10 to the next page, of January 2016, the issue of alcohol 15:50
11 continues and his drinking, isn't that right?
12 A. Yeah.
13 722 Q. And on the 4/1:
14
15 "We spoke for a long time about his drinking. He spoke 15:50
16 about how difficult it was not to have been believed
17 initially when he made his allegations and how awkward
18 and difficult and unprofessional it was to be asked to
19 continue to work alongside the person that he had made
20 the allegations against." 15:50
21 A. Yeah, he talked a lot about that. That, you know, it
22 was years before the authorities acted on what he had
23 said and in the intervening time, you know, became
24 difficult. He was still working.
25 723 Q. And we have been referring in evidence to a Garda 15:51
26 called Garda A, and if you can refer to --
27 A. Okay.
28 724 Q. -- that Garda by Garda A. Was Garda A mentioned in
29 this context to you by Garda Keogh?

1 A. He never talked that much about Garda A. He talked a
2 lot about management not acting on what he said about
3 Garda A.

4 725 Q. Okay.

5 A. That would be a fairly constant theme. 15:51

6 726 Q. Okay. And then moving just three days later:
7
8 "He says he was pleased that the detective
9 superintendent had checked on him."
10 15:51

11 Is that Detective Superintendent Mulcahy?

12 A. Yeah.

13 727 Q. Okay.

14 A. Again, it would be kind of unusual, especially not your
15 own superintendent. I think again they had a good 15:52
16 rapport, you know.

17 728 Q. Okay. And I think then there's again references to
18 drinking and not drinking. And when we go into
19 February, you're telling him on the 9th February that
20 you would contact St. Paul's Garda Medical Aid, is that 15:52
21 right?

22 A. Yeah, that's right.

23 729 Q. Moving on to the next page and again if you need to
24 refer to any particular note just let me know.

25 A. Okay, thank you. 15:52

26 730 Q. On the next page then we're moving into February and
27 March and April and again, we have the drinking and
28 sobriety issue going on, isn't that right --

29 A. Yeah.

1 731 Q. -- during those months?
2 A. On the 26th April 2016 we see the notes:
3
4 "Chief Superintendent Wheatley rang and discussed about
5 the possibility of her meeting or visiting the member." 15:52
6
7 She rang you, is that right?
8 A. Yes, that's right. I remember it very distinctly.
9 732 Q. Okay. Can you tell the Chairman about that?
10 A. Yeah. I would know Chief Superintendent wheatley over 15:52
11 the years, not very well, might meet her at a concert,
12 we would have a few words. I remember lots of things,
13 but I just remember where I happened to be that day
14 when she rang me and we just talked about Garda Keogh
15 and addictions and what we knew about it and what could 15:53
16 be done to help.
17 733 Q. Okay. In that regard, on the 18th May, we see there at
18 the bottom of the page, you're talking to the member
19 about the visit of Chief Superintendent wheatley --
20 A. Yeah. 15:53
21 734 Q. -- and the divisional clerk to him?
22 A. Mm-hmm.
23 735 Q. And that she was enquiring about his rate of pay --
24 A. Yes.
25 736 Q. -- and where he was originally from and if he was in 15:53
26 contact with you, is that right?
27 A. Yeah.
28 737 Q. Now, in May 2016, this is an issue then again if
29 anybody would like -- my colleagues may open up certain

1 entries, but again it is reflecting a pattern of
2 alcohol. But in the middle of the page there, there is
3 then this issue arising about the reclassification of
4 his sick leave to mental health, that's on the 23rd
5 May, is that right? 15:54

6 A. Yeah.

7 738 Q. This is a discussion you're having with Chief
8 Superintendent McLoughlin, is that right?

9 A. Yeah, Chief Superintendent McLoughlin had asked me to
10 see what he could do. 15:54

11 739 Q. Okay.

12 A. And he asked me to ask Garda Keogh. I asked him and I
13 came back with these one, two, three different
14 suggestions about how these issues could be addressed.

15 740 Q. Okay. And then at the bottom of the page, again on 15:54
16 your rest day, the 28th May, Chief Superintendent
17 wheatley rang you and asked if there was anything that
18 could be done to help the member get sober.

19

20 "We discussed what this may take in time." 15:54

21

22 So you would have had a number of contacts with Chief
23 Superintendent wheatley, is that right?

24 A. Yes, mm-hmm. Yeah.

25 741 Q. I think she is expressing concern for the member 15:54
26 there --

27 A. Yeah.

28 742 Q. -- and the issue of sobriety, is that right?

29 A. That's right, yeah.

1 743 Q. Now moving on then throughout 2016, June 2016, this is
2 before the case conference you attended. You have a
3 record there of the 3rd June of you meeting the member
4 with Chief Superintendent McLoughlin, is that right?
5 A. That's right. In Tullamore. 15:55

6 744 Q. And then moving into July and on to the next page, you
7 make a reference to the case conference on the 12th
8 July and the issue of the treatment programme, isn't
9 that right?
10 A. Yeah. That's right. 15:55

11 745 Q. And I think we see a pattern developing here of
12 contact, you were in contact with the CMO from time to
13 time, you were in contact with Chief Superintendent
14 McLoughlin and you were in contact with Chief
15 Superintendent Wheatley from time to time? 15:55
16 A. That's right.

17 746 Q. Would that be fair enough for around this period?
18 A. That's fair enough, yeah, yeah. That Inspector Murray
19 there, that's my -- rather than Superintendent Pat
20 Murray, that's my inspector, Della Murray, who is now a 15:55
21 superintendent. Just in case you're...

22 747 Q. Okay. So then, I think what we see then at this
23 particular point in your notes is Garda Keogh is
24 attending the rehabilitation programme and matters of
25 his pay are being addressed by management. And that is 15:56
26 reflected in your notes, isn't that right?
27 A. Yeah, that's right.

28 748 Q. And at the top of the next page, by August 2016, on the
29 8th August you met with the member and his counsellor

1 in the treatment centre and both are very happy with
2 how the programme has gone --

3 A. Yes.

4 749 Q. -- is that right?

5 A. Yes. 15:56

6 750 Q. And you're keeping people updated in this respect?

7 A. Yeah.

8 751 Q. And it's at this point then we see a long period of
9 sobriety for a number of months, is that right, after
10 the treatment programme, would that be fair to say? 15:56

11 A. Yeah, yeah.

12 752 Q. And in particular on, if you go through, after that,
13 August, September, into October, there's a reference in
14 October on the next page, he is talking to you about
15 his back pay. You become aware that he has been put 15:56
16 back on full pay and received back pay, is that right?

17 A. That's right.

18 753 Q. And I think that theme continues then throughout
19 October and what is happening then, that November 2016,
20 the issue of this bullying and harassment investigation 15:57
21 arises and I think you are recording some discussions
22 with Garda Keogh in respect of that.

23 A. That's right.

24 754 Q. I think that eventually became the Assistant
25 Commissioner Finn investigation, is that right? 15:57

26 A. Eventually, yeah.

27 755 Q. Okay. And at the top of the page ending 27, on the
28 15th November 2015 you say:
29

1 "The member rang. We discussed the upcoming O'Neill
2 report. He told me that he, Mr. Barrett, had written
3 advising him that he needed to make a complaint to the
4 chief superintendent in Mullingar if he wanted to
5 pursue his bullying allegations." 15:57

6
7 And it is around this time that matters commence in
8 relation to that.

9 A. That's right, yeah.

10 756 Q. Okay. So again, during November/December 2016 the 15:57
11 period of sobriety seems to continue into early 2017,
12 would you agree with that?

13 A. Yeah.

14 757 Q. And if I can ask Mr. Kavanagh to move forward and you 15:58
15 can stop me if things are changing, but I think what we
16 see during 2017 is that period of sobriety and
17 discussions in respect of the bullying and harassment
18 investigation?

19 A. That's right.

20 758 Q. If you can go to page ending 30, Mr. Kavanagh, and the 15:58
21 entries at the top of the page is the 26th April 2017.
22 There we go.

23
24 "I rang. We discussed the developing situation. Chief
25 Superintendent McLoughlin rang and asked me to clarify 15:58
26 if the client is interested in returning to work in
27 Athlone or some other station. The member declined the
28 offer to return to work."
29

1 So that was his position as of April 2017, is that
2 right?

3 A. That kind of came out of nowhere. You know, the chief
4 rang me, I asked him, he said he wasn't interested.
5 But I didn't hear any talk, any anything. There was 15:58
6 nothing too much going on at that stage. It's like
7 somebody said did anybody ask him will he come back,
8 you know. It didn't link to anything.

9 759 Q. And Garda Keogh declined?

10 A. Yeah. 15:59

11 760 Q. Did you discuss that with Garda Keogh, his reason for
12 declining it?

13 A. Not really. Well nothing had changed, like, you know,
14 so... You know, in Athlone. I would have perceived.

15 761 Q. Can I ask you to go to, move to 2018 now, and the page 15:59
16 ending in 33, and the entry at the top of the page is
17 15th January 2018. We're not much longer, Garda Quinn.
18 I am sorry this is taking so long.

19 A. All right. Okay.

20 762 Q. Can I just ask you, it says there: 15:59
21
22 "I spoke with Superintendent Murray re the allegation
23 of bullying made by the member."

24 A. That is my own superintendent.

25 763 Q. Okay. I just wanted to clarify that. Okay. That is 15:59
26 Superintendent Della Murray, is that right?

27 A. Yeah.

28 764 Q. And then the period of sobriety appears to have
29 continued, from the notes in any event, and on the 30th

1 January 2018, you see a reference there:
2
3 "I rang. He spoke of Superintendent Pat Murray's
4 promotion and talked about it being a very surprising
5 development." 16:00
6
7 Is that right?
8 A. That's right.
9 765 Q. And then we see a period of drinking for January,
10 February and possibly into March, is that right? 16:00
11 A. That's right.
12 766 Q. And at the top of page 34, on the March entry at 2018,
13 was this one of the incidents you were talking about
14 earlier, the two incidents you say that you were
15 concerned about in relation to alcohol? 16:00
16 A. Yeah. It's unusual for anybody to ring me out of
17 hours. I mean, we always say if somebody is ringing
18 you at ten at night or four in the morning there's a
19 big problem. Okay, there were only three calls within
20 11 minutes. Just the fact that I couldn't get him back 16:00
21 and whatever he would have said in a voicemail I was
22 more concerned than normal.
23 767 Q. And I think you record there on the 23rd April 2018:
24
25 "I rang and spoke of Detective Superintendent Mulcahy 16:01
26 retiring. The member spoke about how fair and
27 competent he had always found him to be."
28
29 I think you noted that a number of times.

1 A. Yeah.

2 768 Q. Then he goes on, he is again talking about some media
3 articles, which I think wouldn't have been unusual. He
4 would have talked to you about some media articles?

5 A. Yeah. Sometimes he would say there's something coming 16:01
6 up or is not coming up, or he might say I may have been
7 the feature of the article but I didn't give the
8 information.

9 769 Q. I think throughout 2018 again there were spots of
10 drinking and spots of sobriety as well during 2018? 16:01

11 A. Yeah.

12 770 Q. Would that be fair to say?

13 A. Yeah.

14 771 Q. Now again my colleagues are free to open up any
15 other -- I am trying to open up a very balanced view of 16:01
16 the notes Garda Quinn.

17 A. Okay.

18 772 Q. So my colleagues may open up some more. If I can ask,
19 Mr. Kavanagh should have a separate key with the most
20 recent notes at 15941 there, that have just been 16:01
21 disclosed this morning. These are the notes throughout
22 2019 and again I think they mark sobriety and
23 alcoholism in equal measure. But can I ask you about
24 an entry which is on page 44, ending in 44. 15945. It
25 is the dated 8th May 2019. It says: 16:02
26

27 "The member rang. He was keen to talk to a female
28 member when he rang. He spoke with my sergeant. I
29 told him that a second member from his intake in

1 Templemore had died the same week as his classmate had
2 died. Both members were known to have difficulties
3 with alcohol. I rang Dr. Oghuvbu and told him of my
4 concerns regarding the member's current changed and
5 prolonged drinking pattern. He suggested that the
6 member would engage in a rehabilitation aftercare
7 programme. I discussed this suggestion with Sergeant
8 Malone."

16:03

9
10 The next entry says:

16:03

11
12 "While speaking with Superintendent Della Murray, I
13 expressed my surprise with Dr. Oghuvbu's reaction when
14 I discussed the member's current drinking pattern. I
15 received numerous calls from the member who continues
16 to drink heavily."

16:03

17
18 Can you just clarify, when you are talking about there
19 Dr. Oghuvbu's and your surprise, what are you talking
20 about there?

16:03

21 A. Well, I don't bring him too often. I don't. I would
22 ring him from time to time. I just thought that
23 Nick's -- in all my time, that was the time I was most
24 concerned about his drinking pattern. And having
25 spoken to my sergeant and my superintendent it just
26 seemed like he wasn't stopping, it seemed like we
27 couldn't get him to stop. Anybody who was trying. You
28 know, it seemed to be engrained for whatever reason. I
29 just thought as the CMO as --

16:03

1 773 Q. CHAIRMAN: what was the feature of that one that made
2 you most alarmed, can you recall?
3 A. I think possibly the fact that he wasn't even talking
4 about stopping. Normally when he is drinking he is
5 talking about stopping. Myself and John Wilson would 16:04
6 have been talking a bit recently in 2019 about Nick and
7 his drinking and trying to get him to stop. He lives a
8 bit closer than I do. And he was also concerned. But
9 I suppose what also concerns me is that there are quite
10 a number of people who like Nick, who work with Nick, 16:04
11 who still contact him from around Bray where he worked
12 and some of those were also ringing, saying Nick is
13 very bad at the moment.
14 774 Q. CHAIRMAN: They were ringing you?
15 A. Pardon? 16:04
16 775 Q. CHAIRMAN: They were ringing you?
17 A. Ringing me, yeah. So I think it was the culmination of
18 just -- and this business of ringing Garda stations you
19 know when -- I suppose the only point we differ on is,
20 you know, when, if Nick rings a Garda station, if he 16:05
21 happens to be drinking it is just problematic. I don't
22 mind him ringing me, John Wilson doesn't mind me
23 ringing him, but if other guards who don't know him,
24 and there was a bit of that, as you can see, from 10th
25 May, you know he rang Portlaoise. It just complicates 16:05
26 the...
27 776 Q. MS. McGRATH: Okay. I think the remainder of your
28 notes bring us up to, as I said, just recently and I
29 think that, as you outlined at the start of your

1 evidence, you -- you can take that down actually. You
2 can confirm to the Chairman that the organisation still
3 has you in place as his welfare officer?
4 A. Yes, that's right.
5 777 Q. And I think you are still in regular contact with Garda 16:06
6 Keogh?
7 A. Yeah, very.
8 MS. McGRATH: I am going to ask you to answer any
9 questions Garda Quinn, but I just wonder, Chairman, if
10 you want to get an idea of how long everybody is going 16:06
11 to be?
12 CHAIRMAN: Is it convenient to proceed so that we can
13 let Garda Quinn go?
14 MR. O'BRIEN: I am in a position to proceed. I will be
15 very short, Chairman. 16:06
16 CHAIRMAN: Is that right? well, there is no pressure
17 on you, if you need to be longer --
18 MS. O'BRIEN: No, Chairman.
19 CHAIRMAN: -- you can be longer. Same with you,
20 Mr. Murphy. 16:06
21 MS. McGRATH: I think Mr. O'Higgins --
22 MR. MÍCHEÁL O' HIGGINS: I will be short, Chairman.
23 CHAIRMAN: Okay. Are you happy with that?
24 THE WITNESS: Fine.
25 CHAIRMAN: I think it would be nice to complete your 16:06
26 evidence if we can.
27 THE WITNESS: Yeah.
28 CHAIRMAN: You are welcome to back and stay.
29 THE WITNESS: No, no --- -

1 CHAIRMAN: But you don't have to. I am sure you have
2 other things to do. Now, Mr. O'Brien, yeah.

3
4 GARDA QUINN WAS CROSS-EXAMINED BY MR. O'BRIEN AS
5 FOLLOWS:

16:06

6
7 778 Q. MR. O'BRIEN: Garda Quinn, thank you. Can I ask you,
8 please, just to look at your statement again? It's
9 volume 12 at page 3642, Mr. Kavanagh. I just want to
10 go back if I can to revisit that --

16:07

11 A. Yeah.

12 779 Q. -- the meeting of the 9th December 2015 and your
13 recollection of that meeting and just to clarify with
14 you something that is recorded in your statement here,
15 if I can please. Towards the end of the statement,
16 Garda Quinn, if you can look to the page please?

16:07

17 A. Yeah.

18 780 Q. You will see, you say as follows:

19
20 "I took the main theme to come from the meeting to be
21 the possible consequences for Garda Keogh's career if
22 he didn't stop drinking and address his addiction
23 issues by undergoing a suitable programme. Later that
24 day I contacted Garda Keogh and outlined to him the
25 consensus of the meeting which were the possible
26 consequences for his career and possibly his physical
27 health and mental wellbeing if he didn't stop drinking
28 and undergo and receive the appropriate health."
29

16:07

16:07

1 That seems also to be borne out in your notes which are
2 at page 37 and it's volume 37, page 10619. But can I
3 just ask you, please, Garda Quinn, this issue of
4 consequences for Garda Keogh, what do you recall about
5 a discussion of consequences from that meeting? 16:08

6 A. Well, people who continually are on long-term sick,
7 people who have an alcohol problem, you know at some
8 stage a disciplinary process will kick in.

9 781 Q. And was this a feature of the meeting on the 9th
10 December, do you know? 16:08

11 A. Well, yeah, it wouldn't be specific to the 9th. You
12 know. It did happen on that day very clearly.

13 782 Q. And in relation to that, do you recall who specifically
14 in attendance at the meeting brought up this issue or
15 raised the issue? 16:08

16 A. No. But I suppose everybody there, myself, the
17 detective superintendent, the superintendent, everybody
18 there -- you know, Nick's pattern wasn't good enough to
19 not be possibly disciplined in time for being missing
20 and being sick or being medically retired or some kind 16:09
21 of action like that.

22 783 Q. I see. But in terms of perhaps the direction of those
23 in attendance that that issue was coming from, was it
24 coming from -- I mean, for example, was it coming from
25 the superintendent? 16:09

26 A. No. I would agree with it myself. I think there may
27 not have been consensus on how we all found Nick, Garda
28 Keogh, but there was definitely consensus on what would
29 happen --

1 784 Q. I see.

2 A. -- if he didn't, if he wasn't able to change his --

3 785 Q. Did I understand you a moment ago to say that that was
4 potential disciplinary --

5 A. Possibly. You know, people who go missing -- not go 16:09
6 missing, don't attend work. You know, it's not just
7 specific to Garda Keogh. You know, if there's a
8 pattern like that, people can be medically retired,
9 people can be...

10 786 Q. I see. Just to move forward then a little bit and in 16:10
11 relation to the conversation that you had with
12 Dr. Oghuvbu on the 18th, we see a note of that again at
13 volume 37, page 10619 and I think Ms. McGrath asked you
14 a few moments ago, you see there that Dr. Oghuvbu rang
15 you to discuss, clarify and get your opinion about some 16:10
16 of the difficulties that the member was encountering
17 with his superintendent. I mean, just the use of the
18 word "some" there, that suggests that there was more
19 than one, would that be a fair reflection of your note?

20 A. Okay, if I was to rewrite the notes I would probably 16:10
21 take out "some", you know.

22 787 Q. Okay. But there were difficulties I think?

23 A. Ah yeah, there were difficulties.

24 788 Q. And I think when you answered Ms. McGrath's question a
25 few moments ago I think you said that, for example, the 16:10
26 permanent public office is not necessarily a solution,
27 that that was your opinion?

28 A. Yeah. It still would be.

29 789 Q. Was that the extent of your opinion to Dr. Oghuvbu or

1 in fact was there more, if you can recollect?

2 A. I think there would have been more. You know, whatever
3 I felt was relevant at the time, you know.

4 790 Q. If I could just ask you to try your best to recollect
5 on the date and just to try and recall exactly? 16:11

6 A. Okay. I would guess that I spoke about the tax issue,
7 that Nick was dealt with one way and that others are
8 perceived to be dealt with another way. I just like
9 when people are treated fairly.

10 791 Q. Again that is another issue, so perhaps as you say you 16:11
11 have the tax issue, you have the permanent public
12 office placement. Do you recall was there anything
13 further?

14 A. I think it's just a bit like when I spoke to the
15 Chairman, that he forms his own opinion of Garda Keogh, 16:11
16 you know. I don't know I have never --

17 792 Q. I certainly accept that, that the Chairman will do that
18 in due course,

19 A. No, not the Chairman, that Superintendent Murray would
20 form his own opinion. No, no, not the Chairman. 16:12

21 793 Q. I see. But Dr. Oghuvbu in fact was asking you about
22 your opinion --

23 A. Yeah.

24 794 Q. -- about the difficulties. So what did you -- you have
25 given us an example of two, is that the extent of it or 16:12
26 would there be more?

27 A. You know, that maybe, I don't know if Dr. Oghuvbu was
28 going to be talking to Superintendent Murray, I just
29 thought that he would factor in that -- you know, to me

1 it just seemed a bit off the way he was being treated.
2 To me.

3 795 Q. Oh, I see. It was off the way Garda Keogh was being
4 treated by Superintendent Murray?

5 A. Yeah. 16:12

6 796 Q. Maybe you could help us a little bit more. How was
7 that in your view?

8 A. You know, I just think --

9 MR. MÍCHEÁL O' HIGGINS: Chairman, I just wonder, the
10 witness is being asked to offer an opinion, I am not 16:13
11 sure it is of assistance to you in terms of identifying
12 the facts as opposed to opinion matter.

13 CHAIRMAN: well, let's try to see this, Mr. O'Higgins.
14 The Chief Medical Officer after a conference is ringing
15 Garda Quinn and they are having a conversation about 16:13
16 Garda Keogh's difficulties. You have to trust that I
17 know what the issues are from a legal and evidential
18 point, but where we are going from a welfare point of
19 view is Dr. Oghuvbu is saying what do you think of
20 this, what is your view. And obviously as we know from 16:13
21 Garda Quinn he said he met Superintendent Murray very
22 briefly on only two occasions. He was not offering --
23 is that right.

24 A. well, one. I can't even remember if there was a
25 second. 16:14

26 797 Q. CHAIRMAN: One. Okay. He's not offering a judgment on
27 the matter. He is giving an impression as to what he
28 thought. I think a certain looseness -- I think
29 Mr. O'Brien's question is legitimate, especially since

1 Garda Quinn volunteered that he thought Garda Keogh,
2 the treatment was a bit off. That's what he said.
3 Mr. O'Brien is entitled to -- you're entitled to say
4 perfectly well, Garda Quinn is relating at least
5 secondhand if not thirdhand, because he's talking about 16:14
6 Dr. Oghuvbu's concerns about Garda Keogh. I mean, it's
7 an inquiry, Mr. O'Higgins, you will have to trust me to
8 use my skill and judgment in assessing evidence. But
9 what he, what the welfare officer actually said was,
10 look, I have been dealing with this man for a long 16:15
11 time, I made all my notes about him being drunk, and
12 here's my impression, I thought he was being treated a
13 bit off and that was his impression, on the basis of
14 what he understood from (a) Garda Keogh and (b)
15 Dr. Oghuvbu. And Dr. Oghuvbu was saying, what do you 16:15
16 think? And he said -- for what it is worth.
17 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.
18 CHAIRMAN: At this point I take your point. I know
19 that technically what you are saying is correct, but I
20 don't think that Mr. O'Brien is asking anything 16:15
21 improper or unreasonable in an inquiry. Mr. O'Brien,
22 you know the reality and I am sure that Garda Quinn
23 knows the reality. But he is offering an opinion. He
24 is offering an opinion. There it is.
25
26 So you said it seemed a bit off. You thought he was
27 getting treated a bit harshly.
28 A. Mm-hmm.
29 798 Q. CHAIRMAN: That was your impression?

1 A. Yeah.

2 799 Q. CHAIRMAN: And you weren't making a judgment having
3 heard and given reasonable notice and following fair
4 procedures, gone and interviewing Superintendent Murray
5 and ultimately coming to -- you were just giving an 16:16
6 impression that you had from talking to Garda Keogh
7 over the years and talking to Dr. Oghuvbu, is that
8 about the situation?

9 A. That is exactly it, yes.

10 800 Q. MR. O'BRIEN: Just finally, does that remain your view? 16:16
11 CHAIRMAN: Say again.

12 801 Q. MR. O'BRIEN: Does that remain your view today, Garda
13 Quinn?

14 A. It does.

15 MR. O'BRIEN: Thank you. I have no further questions. 16:16
16 CHAIRMAN: Thank you. Now, Mr. O'Higgins, you can
17 explore that if you feel like it but I think Garda
18 Quinn has made it very clear what the basis of his
19 opinion was or at least between himself and myself I
20 think we have made it very clear. 16:16
21

22 GARDA QUINN WAS CROSS-EXAMINED BY MR. MÍCHEÁL O'HIGGINS
23 AS FOLLOWS:
24

25 802 Q. MR. MÍCHEÁL O'HIGGINS: Good afternoon, Garda Quinn. 16:16
26 A. Good afternoon.

27 803 Q. I can be reasonably brief.

28 A. Yes.

29 804 Q. Can I bring you first of all towards the end of 2015,

1 if we can look at the notes which we can deal with very
2 briefly because they have been gone over in some
3 detail. On page 10619 the first entry is the 9th
4 December '15. And if we could go down the page
5 towards, about two-thirds of the way down there is a 16:17
6 reference to 27/12/15. Do you see that there?
7 A. Yeah.
8 805 Q. Thanks, Mr. Kavanagh. So it reads:
9
10 "The member rang to say --" 16:17
11
12 This is December '15.
13
14 "The member rang to say he had now decided to stay on
15 long-term sick leave until he can deal with and rectify 16:17
16 his alcohol addiction. We again spoke about work,
17 money and his life."
18
19 The gist of what you were being told at that point,
20 Garda Quinn, is that Garda Keogh had decided to stay on 16:17
21 long-term sick leave until he can sort out his alcohol
22 problem.
23 CHAIRMAN: The 26th was his last day as I recall it.
24 A. Yes. Yeah. But I suppose might stop drinking and I
25 suppose I could have put in at the time deal with his 16:18
26 work issues.
27 806 Q. CHAIRMAN: Get his life together?
28 A. Yeah.
29 807 Q. MR. MÍCHEÁL O' HIGGINS: And then if we look two boxes

1 down for the entry for the 29/12/15 you refer to the
2 member sending you a text. And then you say:

3
4 "He said he wasn't sure if he would return to work as a
5 garda. He mentioned that his liver felt sore and 16:18
6 admitted to having drunk two bottles of wine since
7 10:30."

8
9 So, he was relaying to you there he wasn't sure if he
10 would return to work and this again was December '15? 16:18

11 A. Yeah.

12 808 Q. Then if we can go over the page then to, I want to ask
13 you about Chief Superintendent Wheatley, on page 10621,
14 a few pages on, two-thirds of the way done there's an
15 entry for the 26th April '16, you see that there. It 16:18
16 says:

17
18 "Chief Superintendent Wheatley rang and discussed about
19 the possibility of her meeting or visiting the member."
20 16:19

21 That is something you recall, is it?

22 A. Very much. Very clearly.

23 809 Q. And then two entries down, there's another reference to
24 the chief, 18/5/16. You rang different numbers I think
25 for Garda Keogh and he called you back. 16:19
26

27 "We spoke of the visit of his chief --"

28
29 So this was after she had visited the house

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-- and the divisional clerk. The chief enquired about his rate of pay, where he was originally from and if he was in contact with me. He was given a travel voucher."

16:19

I think that is a means of getting a member who is --
CHAIRMAN: That's right. In case he didn't have the money.

A. Yeah.

16:19

810 Q. MR. MÍCHEÁL O' HIGGINS: Fine. And then if we could again just go over the page, the last entry, there's again 28/5/16, there's a reference to:

"Chief Superintendent Wheatley rang and asked if anything could be done to help the member get sober. We discussed what this may take in time."

16:19

Do you recall that conversation?

A. Yes, very much.

16:20

811 Q. All right. And then if we could ask you to go to page 10624, this is a few pages on, there one entry I would ask you to treat of, it's the second entry down, 12/7/16, you are referring now to the case conference at headquarters. I simply want to ask you, you have noted there of this case conference in July 2016:

16:20

"All in attendance were pleased to hear the member was going for treatment."

1 A. Yeah.

2 812 Q. That's your own note --

3 A. Yeah.

4 813 Q. -- of that case conference. All right.

5 A. Well it speaks to, you know, for anybody to go. 16:20

6 814 Q. Yes.

7 815 Q. CHAIRMAN: Everybody wanted to see him getting sober?

8 A. Yeah.

9 816 Q. MR. MÍCHEÁL O' HIGGINS: Yes. And then if you turn over
10 to page 10626, three pages on, the top entry, this has 16:20
11 been mentioned already but I just want to ask you about
12 it, 10626, it's the entry for the 29/9/16, top one
13 there, and this now is at a point in time I think when
14 it has been indicated to Garda Keogh that he is to be
15 restored to full pay, isn't that right? 16:21

16 A. That's right.

17 817 Q. And there is an offer to return to work and you relayed
18 that to the member, did you?

19 A. Not on that day, is it? No?

20 818 Q. Just to assist you, page 10630, the top entry for 16:21
21 24/6/17?

22 A. Oh sorry. Okay. Yes, it was on the wrong page.

23 819 Q. Do you have it there?

24 A. Yes, that's the one where I spoke about --

25 820 Q. "Chief Superintendent McLoughlin rang and asked me to 16:22
26 clarify if the client is interested in returning to
27 work in Athlone. The member declined the offer to
28 return to work."

29 A. It seemed to kind of come out of nowhere. There was no

1 talk before or after.

2 821 Q. And you are clear in your mind, are you, you relayed
3 that to Garda Keogh?

4 A. Oh absolutely, yes.

5 822 Q. CHAIRMAN: I mean, it may have occurred to Chief 16:22
6 Superintendent McLoughlin --

7 A. Pardon?

8 823 Q. CHAIRMAN: It may have occurred to Chief Superintendent
9 McLoughlin, gosh --

10 A. Nobody has asked him for a while. 16:22

11 824 Q. CHAIRMAN: -- maybe nobody has asked him would he like
12 to go back?

13 A. Yeah, maybe somebody had heard that, you know.

14 825 Q. CHAIRMAN: whether or which --

15 A. Yeah. 16:22

16 826 Q. CHAIRMAN: -- as far as you were concerned it came out
17 of the blue?

18 A. Yes.

19 827 Q. CHAIRMAN: But you were happy to pass it on --

20 A. Yeah. 16:22

21 828 Q. CHAIRMAN: -- and say what do you think about it?

22 A. Yeah.

23 829 Q. MR. MÍCHEÁL O' HIGGINS: On page 15941, Garda Quinn, the
24 second entry down is the 5/1/19, so 15941. So these
25 are the later ones that were distributed this morning. 16:23

26 A. Yeah.

27 830 Q. And the second entry down, you spoke earlier of Garda
28 Keogh's honesty that he demonstrated to you in relation
29 to his alcohol condition and stuff?

1 A. Yeah.

2 831 Q. There is a reference here again in his honesty of
3 describing an unpleasant streak that he notices he has
4 when he has drink taken?

5 A. Yeah. 16:23

6 832 Q. what form did that take?

7 A. well I don't think I noticed it, but he was telling me
8 that, you know, he would be more likely to be reactive
9 or touchy or he just didn't like how he -- well, he
10 does never like when he is drinking. But he had it 16:23
11 categorised as feeling different about himself, being
12 agitated or aggravated or that kind of...

13 833 Q. All right. Just a more general question, you made
14 reference to your earlier acquaintance with, your
15 earlier acquaintance with -- 16:24

16 CHAIRMAN: Take a moment, Mr. O'Higgins, your
17 colleagues are trying to point out something to you,
18 take a second if you want to, so you don't miss it.

19 MR. MÍCHEÁL O' HIGGINS: Thank you.

20 CHAIRMAN: otherwise you will be in trouble with them. 16:24

21 834 Q. MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman, I will
22 endeavour to do that. Just while my colleagues are
23 trying to distract me, if I can finish my question.
24 Your previous acquaintance with him, that was in the
25 context of you seeing him again for an earlier, for the 16:24
26 earlier alcohol addiction, is that right?

27 A. Yeah. when my colleague used to deal with him, when
28 she was off I would, if he had a difficulty he'd ring
29 me and it was work or alcohol related.

1 835 Q. Yes.

2 836 Q. CHAIRMAN: And alcohol was a problem then.

3 A. Yes.

4 837 Q. CHAIRMAN: well, we know alcohol was a problem --

5 A. Yeah. 16:25

6 838 Q. CHAIRMAN: -- for considerable years, we know that

7 going right back to 2012 we know.

8 A. Mm-hmm.

9 CHAIRMAN: Sorry, Mr. O'Higgins, take your moment to

10 consult. 16:25

11 MR. MÍCHEÁL O' HIGGINS: Sorry, Chairman, I will just

12 get the page.

13 CHAIRMAN: Thanks all right. Mr. O'Higgins, be at

14 ease.

15 839 Q. MR. MÍCHEÁL O' HIGGINS: Yes, there was one question I 16:25

16 want to ask you, page 15946, Garda Quinn.

17 CHAIRMAN: Yes.

18 840 Q. MR. MÍCHEÁL O' HIGGINS: And about halfway down there is

19 an entry for the 27th August '19. You rang Garda Keogh

20 I think: 16:25

21

22 "The member told me that his disciplinary issues had

23 been dealt with by AC Fanning who had since retired.

24 He said that he was pleased to have this aspect dealt

25 with and finalised." 16:26

26

27 So you have noted that. Is that a recollection you

28 have, that Garda Keogh said his disciplinary issues had

29 been dealt with Assistant Commissioner Fanning?

1 A. Yeah, yeah.

2 841 Q. And did he elaborate upon that at all?

3 842 Q. CHAIRMAN: Do you know what that was, his disciplinary
4 issues?

5 A. In relation to the three 9 calls that he made. 16:26

6 CHAIRMAN: Oh right.

7 A. The three 9 calls. The 999 calls that he made.

8 843 Q. MR. MÍCHEÁL O' HIGGINS: 999 calls. I see. And just,
9 if we go back two pages to 15944, the second entry down
10 from the bottom, there is an entry for 14th May '19, 16:26
11 which says:

12

13 "I spoke with the member at 10:25. He said that an
14 inspector and a sergeant had called to him to discuss
15 the report that he had made regarding [blank] and 16:27
16 [blank]."

17

18 They probably shouldn't be on the screen.

19

20 "He hasn't been able to stop drinking to date." 16:27

21

22 Again you have noted that, was there a particular
23 importance attaching to that, that you have noted it?

24 A. Well, I suppose I thought considering who he was
25 talking about it. I hadn't heard it before. I hadn't 16:27
26 ever heard him mention the people that he mentioned
27 there.

28 CHAIRMAN: Yes.

29 A. So I thought -- normally we just talk about, you know,

1 Garda stuff.

2 CHAIRMAN: I understand.

3 844 Q. MR. MÍCHEÁL O' HIGGINS: And without --

4 845 Q. CHAIRMAN: But this was gardaí telling him about a
5 report that had been completed. 16:27

6 A. Yeah.

7 846 Q. CHAIRMAN: Notifying him in other words, is that right?

8 A. Not --

9 847 Q. CHAIRMAN: I don't want to go into too much detail
10 obviously. 16:27

11 A. Yeah.

12 848 Q. CHAIRMAN: But somebody was telling him here is the
13 result.

14 A. Yeah, somebody told him something and he made a report
15 about it and these two guards came to -- 16:27

16 849 Q. CHAIRMAN: Tell him the result of the investigation?

17 A. Or...

18 CHAIRMAN: Okay. Or something.

19 850 Q. MR. MÍCHEÁL O' HIGGINS: And were these gentlemen alive?
20 CHAIRMAN: were who alive? 16:28

21 MR. MÍCHEÁL O' HIGGINS: The gentlemen the subject of
22 the report. We needn't go back up. It has been
23 redacted since

24 MR. KELLY: Chairman, I am far from convinced this is
25 actually even on the inquiry never mind within the 16:28
26 remit but as it happens, we all know that both those
27 people at that date were dead and had been dead for
28 sometime.

29 CHAIRMAN: Okay.

1 MR. MÍCHEÁL O' HIGGINS: What I am getting at --
2 CHAIRMAN: So we're not really concerned --
3 MR. KELLY: It's way off the inquiry.
4 CHAIRMAN: -- but whatever they did, somebody came to
5 him and told him the result of an investigation. Is 16:28
6 that right? As to which, we are not really concerned.
7 That is my understanding. Now if I am wrong about
8 that, Mr. O'Higgins, tell me.
9 851 Q. MR. MÍCHEÁL O' HIGGINS: Was it your understanding of
10 matters, Garda Quinn -- 16:28
11 A. I never heard him talk about the statement or the
12 report or the incident before.
13 852 Q. Right. It was a report that he had made, was it?
14 A. He had made or somebody, as far as I know somebody had
15 told him something about these two people and he had 16:28
16 reported --
17 CHAIRMAN: But is it of any materiality, Mr. O'Higgins?
18 Mr. Murphy thinks it is of some materiality.
19 MR. MÍCHEÁL O' HIGGINS: I suppose it just goes to the
20 question of -- well, in fairness it is 2019 we're 16:29
21 dealing with. But it perhaps goes to issues of
22 paranoia and so forth, but it is a matter that can be
23 dealt with in submissions.
24 CHAIRMAN: If it is there in Garda Quinn's notes then
25 it seems to me that subject to any objection or any 16:29
26 submission that is made it may be referred to in the
27 course of a submission or an argument. But I don't
28 think there's much point in pursuing it in questions,
29 Mr. O'Higgins.

1 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.
2 That concludes my questions.
3 CHAIRMAN: Thank you very much.
4 MS. O' ROURKE: I don't have any questions.
5 CHAIRMAN: Thanks very much. Ms. McGrath, are you 16:29
6 happy? I mean, would you like to ask any more
7 questions, Ms. McGrath?
8 MS. McGRATH: Can I just say one matter arising?
9 CHAIRMAN: Yes.
10 16:30
11 GARDA QUINN WAS THEN RE-EXAMINED BY MS. McGRATH:
12 853 Q. MS. McGRATH: I think at the outset, Garda Quinn, I
13 asked you about the confidentiality of your role and
14 the level of reporting up of specifics or incidents or
15 detail, and you said it was very unusual, is that 16:30
16 right?
17 A. Yeah.
18 854 Q. But there were exceptions?
19 A. Yeah. well, we call it within the service, which is my
20 service and superintendent, we don't call that 16:30
21 breaching confidentiality.
22 855 Q. But I think here on your evidence we see you speaking
23 with Chief Superintendent wheatley --
24 A. No, I answered her, you know.
25 856 Q. So there was contact made with you effectively -- 16:30
26 A. Oh yes.
27 857 Q. -- by senior management?
28 A. Yeah. Yeah, but I mean to say, I would --
29 CHAIRMAN: You're not discussing with them.

1 A. No.

2 CHAIRMAN: Your --

3 A. Because Chief Superintendent wheatley didn't have any
4 contact, she would say I haven't heard from Nick or
5 about Nick, how is he and I would say he's fine or he's 16:30
6 whatever. I mean to say, I don't have, I don't have
7 confidentiality and not telling people how somebody is
8 if they ask me. I wouldn't have that as confidential.

9 858 Q. CHAIRMAN: There wouldn't be a bar to somebody, if
10 somebody, the chief superintendent rang up and said how 16:31
11 is he, it would be okay to say he's fine.

12 A. Like Chief McLoughlin asked me on numerous occasions,
13 John Barrett met me in the canteen one day and he said
14 how is my friend or whatever he called him. Most
15 people just say, how is he? Not too many people have 16:31
16 asked. But I would always tell, kind of a general
17 thing, okay, or whatever. But I wouldn't be telling
18 them too much apart from how he is.

19 CHAIRMAN: Okay.

20 MS. McGRATH: Okay. Thank you, Garda Quinn. 16:31

21 THE WITNESS: Okay.

22 CHAIRMAN: Thanks very much and you are free to go do
23 you now. Thank you very much.

24 THE WITNESS: Thank you, Chairman.

25 16:31

26 THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 29TH
27 JANUARY 2020 AT 10:30AM
28
29

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