

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

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

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

HELD IN DUBLIN CASTLE
ON MONDAY, 10TH FEBRUARY 2020 - DAY 135

135

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 MONDAY, 10TH
2 FEBRUARY 2020:

3
4 MR. MARRINAN: Good morning, Chairman. The first
5 witness this morning is Judge Patrick McMahon. 10:31

6 CHAIRMAN: Thanks very much. Thanks, Judge McMahon,
7 come up here please. Thanks very much.

8
9 JUDGE PATRICK McMAHON, HAVING BEEN SWORN, WAS
10 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS: 10:31

11
12 THE WITNESS: Patrick McMahon.

13 CHAIRMAN: Thanks very much, Judge McMahon. Sit down,
14 please, thank you. You're very welcome, thanks for
15 your assistance. 10:32

16 THE WITNESS: Sorry for some being so illusive, by the
17 way.

18 CHAIRPERSON: Sorry?

19 THE WITNESS: I am sorry for some of the mix-up on
20 dates that I had to change. 10:32

21 CHAIRMAN: No problem. Thank you very much for being
22 here. Thank you.

23 1 Q. MR. MARRINAN: The Judge's statement is at volume 14,
24 at page 4039 of the material. I think, Judge McMahon,
25 you're a retired judge of the District Court, is that
26 correct? 10:32

27 A. That's correct.

28 2 Q. I think you were appointed as the confidential
29 recipient under the old legislation on 12th March 2014?

1 A. That's correct.

2 3 Q. By the Minister for Justice; is that right?

3 A. Yeah.

4 4 Q. I think that you replaced Mr. Oliver Connolly, who had
5 been the confidential recipient but had become 10:32
6 embroiled in some controversy, isn't that right?

7 A. It was well publicised at the time I'm afraid.

8 5 Q. Now, you say you were given a designated office in
9 Harcourt Street in Dublin?

10 A. Correct. 10:32

11 6 Q. Is that right?

12 A. Yeah.

13 7 Q. Was that an office that you actually went to or was it
14 merely an office that --

15 CHAIRMAN: A pied-à-terre, so to speak. 10:33

16 A. Exactly. In fact, what I actually did was, there were
17 some files there but very few, so actually rather than
18 driving into Harcourt Street regularly, I'd only go in
19 to collect post. I actually worked from home. But I
20 had an office if I needed to interview somebody, for 10:33
21 example, or something like that.

22 CHAIRMAN: Yes.

23 8 Q. MR. MARRINAN: Did you receive any training in your
24 role as confidential recipient?

25 A. Very similar to the training I got as a District Court 10:33
26 judge: None. So a bit more then, yeah.

27 9 Q. How did you perceive your role to be?

28 A. My role as confidential recipient was purely a conduit
29 pipe. In other words, if I was approached by a member

1 of An Garda Síochána, I would take down their details
2 and when I had that done, in accordance with the
3 legislation, I would forward that to the Commissioner,
4 with their consent, also to be sent to the Garda
5 inspectorate. But as regards -- what I did was purely 10:34
6 interview. For example, the present case that we're
7 talking about now, I purely interviewed the member of
8 An Garda Síochána, took their details and forwarded it
9 on.

10 10 Q. We're concerned here with Garda Nicholas Keogh. 10:34
11 A. Yeah.

12 11 Q. When did he first make contact with you?
13 A. He made contact with me by telephone. I just want
14 to refresh --

15 12 Q. Was that on the 8th May? 10:34
16 CHAIRMAN: No, it would have been before the 8th. He
17 would have arranged to meet you.

18 A. I met him on the 8th May.

19 13 Q. CHAIRMAN: You met him, I think in Kinnegad?
20 A. In Kinnegad, in my car. 10:34

21 14 Q. CHAIRMAN: But Mr. Marrinan is wondering, he made
22 contact with you sometime before that?
23 A. He made contact with me a couple of days before that.

24 15 Q. CHAIRMAN: Yes.
25 A. I had a designated telephone number, which I arranged 10:34
26 would be sent to every member of An Garda Síochána in
27 the country.

28 16 Q. MR. MARRINAN: Yes.
29 A. So I got some phone calls, not a lot. But Garda Keogh

1 contacted me. He didn't want to meet me in my office
2 in Harcourt Street. He would prefer some
3 confidential -- so I agreed, he was based in Athlone, I
4 was living in Dublin, but I said I'd meet him in
5 Kinnegad. He didn't want to meet in Athlone either. 10:35
6 So that's what happened.

7 17 Q. CHAIRMAN: So that was a convenient point?
8 A. Exactly, yeah.

9 18 Q. MR. MARRINAN: So you drove to Kinnegad?
10 A. Yeah. 10:35

11 19 Q. And you met him in your car, is that right?
12 A. Yes, yeah.

13 20 Q. You detail in your statement, at page 4039, about the
14 conversation that you had with him and the complaints
15 that he was making in relation to a superintendent and 10:35
16 also Garda A?
17 A. Yes.

18 21 Q. Now, we needn't go into that. But do you recall did he
19 give you a copy of an affidavit at that time?
20 A. He did, which is dated as well, I think is it 8th May? 10:35

21 22 Q. That's also dated 8th May?
22 A. No, the 7th May, sorry.

23 23 Q. Sorry, you're right?
24 A. The 7th May. He gave me that affidavit, which I
25 forwarded a copy of on to the Commissioner. 10:36

26 24 Q. He thought, when he was giving evidence, that he may
27 have given you a copy of a DVD as well, but he wasn't
28 certain in relation to that?
29 A. What happened was, he told me -- Garda Keogh told me he

1 had a DVD, he didn't have it with him but he arranged
2 to meet me subsequently. I don't have a note but I am
3 pretty sure I am right, that I met him in what is now
4 known as the Talbot Hotel in Stillorgan, and he gave me
5 the DVD there. 10:36

6 25 Q. CHAIRMAN: Sometime later.
7 A. Yeah, well between that and June and then I sent it on,
8 I have a date when I sent it, I sent it on again to the
9 Commissioner.

10 26 Q. MR. MARRINAN: we just might look at that when we come 10:36
11 to it?
12 A. Yes.

13 27 Q. In any event, Garda Keogh has given evidence in
14 relation to two matters. He says that you told him
15 that an assistant commissioner -- 10:37
16 A. Yes.

17 28 Q. -- would be appointed to look into his complaints. Do
18 you recall saying that to him?
19 A. I don't recall, but at the time -- if Garda Keogh says
20 it, I would accept it because I would have had some 10:37
21 information because in my role I was anxious to learn
22 something about it.

23 29 Q. Yes.
24 A. So I actually met with the Commissioner and with the
25 Garda inspectorate to just try and find out what my 10:37
26 role was and where it was going. In fact, I had a
27 joint meeting with the inspectorate and with the
28 Commissioner as well. So I may have learned that it
29 would be an assistant commissioner. Which it was in

1 any event, yeah.

2 30 Q. He also says that you gave him advice that he shouldn't
3 talk to anybody else about it?

4 A. Yeah. In my reply to the Tribunal I said that I didn't
5 recall fully, but if Garda Keogh said that, I accepted 10:38
6 that I would have said it, it would be something I
7 would have said to him, yes.

8 31 Q. And also that he should take copious notes?

9 A. Yes.

10 32 Q. And not to use a Garda notebook. Do you recall that? 10:38
11 A. No, I don't recall that, no.

12 33 Q. Okay. I am not sure if anything turns on it?

13 A. Yeah. No.

14 34 Q. How long did the meeting last for, do you recall?

15 A. I'd say we were about an hour. Yeah. 10:38

16 35 Q. I think then you left. If we could look at page 13471,
17 it comes up on the screen. This is merely an extract
18 from confidential reports. It's a log. Is this
19 something that you keep? You see there -- it's not up
20 on the screen as of yet. 10:39
21 A. That's not mine though.

22 36 Q. That's not your handwriting?

23 A. No.

24 37 Q. This seems to be a log, it could have been kept in the
25 office? 10:39
26 A. Extract -- I had a look at that, I was given this
27 volume recently. I don't know why I think that could
28 be done by a member of An Garda Síochána.

29 38 Q. Yes, I think it may have been Superintendent Frank

1 walsh who did it?

2 A. Yeah.

3 39 Q. In any event, you send a letter to the Commissioner on
4 the 8th May, the same day, and it's at 3970 of the
5 material. And then you point out:

10:39

6
7 "I now enclose a copy affidavit that I received from
8 Garda Nicholas Keogh today. He has given me other
9 details also. I can send you a covering letter
10 tomorrow. Alternatively, maybe you can follow this up 10:39
11 yourself. This has been read into the Dáil record
12 today by Mr. Luke Ming Flanagan TD. He has also
13 authorised me under section 11(1) of the regulations to
14 inform you that you can notify the chief inspector of
15 the Garda Síochána inspectorate of report contained in 10:40
16 the affidavit. Kindest regards."

17

18 Did you know that the matter was being raised in the
19 Dáil as you spoke to Garda Keogh, did he mention that
20 to you?

10:40

21 A. To put it mildly, when I arrived home I was told, and
22 to put it mildly, I was shocked. Because we had
23 arranged to meet in a car in Kinnegad, not in my
24 office, for the reasons of confidentiality. But when I
25 heard, when I arrived home and it was announced on the 10:40
26 news at lunchtime, and Luke Ming Flanagan's voice I
27 think was on, to say that Garda Keogh was meeting me.

28 40 Q. CHAIRMAN: Sorry, what time was your meeting, in the
29 daytime, Judge?

1 A. It was in the morning.

2 41 Q. CHAIRMAN: Sometime in the morning.

3 A. I'd say about it was half eleven.

4 42 Q. CHAIRMAN: Okay. Before lunch?

5 A. It was. 10:41

6 43 Q. CHAIRMAN: So you get home at lunchtime and you
7 discover it's on the radio?

8 A. Yeah.

9 44 Q. MR. MARRINAN: I think the following day you got a
10 response from the Garda Commissioner, it's page 4049 of 10:41
11 the material. It acknowledges --

12 A. Acknowledges receipt, yes.

13 45 Q. -- the correspondence. Have you got it there on the
14 screen. You can see it?

15 A. I have, yeah. 10:41

16 46 Q. It points out that:

17

18 "Assistant Commissioner Donal Ó Cualáin, Western
19 Region, has been appointed to carry out an
20 investigation in relation to the issues raised. 10:41
21

22 As requested, I have notified the chief inspector of
23 the Garda Síochána Inspectorate of his complaint."
24

25 Then she proceeds: 10:42
26

27 "I note that the reporter has given you further details
28 and if appropriate I can arrange for these to be
29 forwarded to Assistant Commissioner Ó Cualáin for

1 inclusion in his investigation."

2
3 Now, I think that on the 9th May the Commissioner in
4 fact wrote to GSOC and also to the Garda Inspectorate,
5 we needn't have those on the screen, but the letter to 10:42
6 GSOC is at page 10787 and the letter in almost
7 identical terms is sent to the Garda Inspectorate, that
8 is at page 10789 of the material.

9
10 If we can just then move on. On the 13th May Garda 10:42
11 Keogh has an entry in his diary in which he indicates
12 that he contacted you and he expressed concerns re the
13 appointment of the assistant commissioner to
14 investigate the matter. He said, when he was giving
15 evidence on Day 115, it's at page 18, we don't need it 10:43
16 on the screen, it's a brief reference, he says that you
17 said to him:

18
19 "Look, when you get to that level they all know each
20 other." 10:43

21
22 would that be something that you might recall saying to
23 him? First of all, did he express a concern that
24 Assistant Commissioner Ó Cualáin may have known other
25 people involved in the matter? 10:43

26 A. He may have, but Garda Keogh expressed a lot of anxiety
27 about everything at the time. And I think it would
28 have been his choice that matters were investigated by
29 somebody outside of An Garda Síochána. This that was

1 my impression at the time. But I mean as regards
2 everybody knowing each other in the Guards, of course
3 they do, it's a small country, particularly at that
4 level.

5 47 Q. If we have page, we will have a look at it, at 13256, 10:44
6 up on the screen. This is in actual fact the Garda
7 Keogh entry, if we look at it there, for the 13th May.
8 13256, please. If we look at the entry on the 13th
9 May:

10
11 "Informed judge I'm not happy with AC appointed
12 friendship with chief." 10:44

13 A. Yeah.

14 48 Q. "Due to friendship with chief."

15
16 But that's the entry that he had, but it mightn't have
17 been unusual for you to say that people at that level
18 in An Garda Síochána would naturally know -- 10:45

19 A. It wouldn't be unusual at all.

20 49 Q. Yes. If we could then move on to the 10th June and 10:45
21 your meeting with -- this was a letter from you that
22 was sent to the Garda Commissioner and it's dated 10th
23 June, if we could have that up on the screen, 10795,
24 please.

25 A. Oh that's the DVD, yes. 10:46

26 50 Q. Yes. "I now enclose DVD which was given to me by Garda
27 Keogh. He met with the assistant commissioner last
28 Saturday. You might kindly pass this on to the
29 assistant commissioner."

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That might suggest that this is in fact prior to your meeting with Garda Keogh, which didn't take place until July, that you met him in the Stillorgan Park Hotel.

A. No, no, no. 10:46

51 Q. The Talbot Hotel?

A. No. I got the DVD from Garda Keogh in the Stillorgan Park Hotel.

52 Q. Yes.

A. So that would have been either that day or the day before. Probably the same day, the 10th June. 10:46

53 Q. Right. Are you certain about that?

A. Absolutely.

54 Q. Okay. Well there's no note of a meeting between the two of you prior to that. 10:46

A. Yes.

55 Q. Then if we can look at the 19th June, at page 4051 of the material, this is a letter from Superintendent Frank Walsh to you?

A. Yeah. 10:47

56 Q. Updating you in relation to the investigation. It says:

"Dear, Judge McMahon.

I am directed by the Commissioner to refer to your correspondence of 8th May 2014 in connection with the above captioned matter.

1 By way of update, Assistant Commissioner Ó Cualáin met
2 with the confidential reporter on the 7th June for
3 three and a half hours.

4
5 Investigators again met with him on the 10th June and 10:47
6 began taking his statement. This went on for four and
7 a half hours and was followed by a five hour meeting on
8 the 13th June. A further interview is scheduled for
9 today's date. An incident room has been set up to
10 support the investigation. 10:47

11
12 The confidential reporter has been advised of the
13 services of the employment assistance officer.

14
15 Once the investigation is progressed, a further report 10:48
16 will issue keeping you updated on the matter. When the
17 matter is advanced significantly, the Garda Síochána
18 Ombudsman Commission will be updated and if there are
19 systemic issues arising, subject to the confidential
20 reporter's consent, the Garda Inspectorate will also be 10:48
21 informed."

22
23 Did you discuss that letter with Garda Keogh at any
24 stage or did you just advise him generally that the
25 matter seemed to be being progressed? 10:48

26 A. I would have had a number of telephone conversations
27 with Garda Keogh and whether I specifically referred to
28 that letter or not, I don't know. It was purely
29 updating me on something Garda Keogh would have known

1 himself anyway.

2 57 Q. I think one of the matters that arose on the 26th June,
3 Garda Keogh has a diary entry, we don't need to look at
4 it, but he indicates that he informed the judge and the
5 detective superintendent, that must be Mulcahy, that a 10:49
6 notebook had gone missing. Do you recall that?

7 A. I do remember him mentioning a notebook going missing,
8 yes.

9 58 Q. Yes. Then if we move on to the 30th June. If we could
10 have this up on the screen please. It's at 13263 of 10:49
11 the materials. If you look up there on the top left
12 you will see that Garda Keogh has an entry:
13

14 "Informed judge re concerns over a particular member of
15 An Garda Síochána being on the case." 10:49
16

17 And then he has a note at 15:55, he texted detective
18 superintendent:
19

20 "Can I get names of the investigation team?" 10:50
21

22 Was this another occasion on which Garda Keogh during
23 the course of a telephone conversation expressed
24 concerns about the names of the investigators or that a
25 particular person was on the investigation team? 10:50

26 A. Oh he would have, yes.

27 59 Q. It might appear that you, in fact, raised that matter
28 then with the Garda Commissioner. If we could just go
29 to a log that has been provided of diary entries by

1 Superintendent Frank Walsh, who is the superintendent
2 to the Commissioner?

3 A. He was the secretary to the Commissioner at the time.

4 60 Q. Secretary to the Commissioner. If we have 15882 up on
5 the screen, please. Yes. And if we can just scroll 10:50
6 halfway down there, you will see an entry for 30th June
7 2014:

8

9 "Call from Judge McMahon seeking names of the
10 investigation team in Athlone." 10:51

11 A. Yes.

12 61 Q. Do you see that?

13 A. Yeah, I do.

14 62 Q. Do you recall making a call --

15 A. Oh yeah. 10:51

16 63 Q. -- to the Commissioner's office?

17 A. Oh I did. I was on to the Commissioner's office on,
18 well, I can't say a huge amount of occasions, but I was
19 on -- I did speak -- I was on terms with the
20 Commissioner, Commissioner Nóirín O'Sullivan at the 10:51
21 time, and I had discussed with her a lot of issues.
22 You may recall, Chairman, at the time there was a huge
23 amount of issues in An Garda Síochána, if you recall,
24 and a lot of other matters were discussed as well with
25 her and with me and with the Inspectorate at the time. 10:51
26 But yes, I would have asked for the names, yes.

27 64 Q. And that was directly with the Commissioner, is that
28 right?

29 A. Yes.

1 65 Q. And we will see then, if we go to page 10801, which is
2 an e-mail sent from Superintendent Frank Walsh on 22nd
3 July 2014 at 15:26.

4
5 "Dear, Judge McMahon. 10:52

6
7 Further to recent telephone request, the following
8 members have been appointed by Assistant Commissioner Ó
9 Cualáin to assist in the investigation into all issues
10 raised by the confidential reporter." 10:52

11
12 Then it lists the people who are heading up the
13 investigation, being Detective Superintendent Declan
14 Mulcahy and Detective Inspector Michael Coppinger. And
15 then it lists the number of people who have been 10:52
16 requested to carry out investigations and enquiries,
17 and they are set out there. So did you then inform
18 Garda Keogh of that list?

19 A. I would have told Garda Keogh of that list, yes.

20 66 Q. If we could then just move on. Just before we do, if 10:53
21 we could have Garda Keogh's diary entry at 13264. This
22 is the 8th July and it concerns a conversation that
23 Garda Keogh had with Superintendent McBrien. And it
24 relates to an Olivia O'Neill and a Liam McHugh enquiry.
25 And he told her that he was meeting you the following 10:54
26 Monday. Do you recall him mentioning those two names
27 prior to the meeting that you had with him on the 14th
28 July in Stillorgan?

29 A. Oh those names were mentioned to me from the very

1 beginning.

2 67 Q. In what context were they mentioned to you?

3 A. It was in the context of drug dealing in Athlone.

4 Yeah.

5 68 Q. Well, it may well be that both of them weren't 10:54

6 mentioned to you in that context. But was Garda Keogh

7 complaining to you that there was a suggestion that he

8 had been coaching these two persons?

9 A. Coaching them?

10 69 Q. Coaching them, yes. 10:54

11 A. No.

12 70 Q. Did he complain to you that the superintendent or chief

13 superintendent was requesting him to give an account of

14 his interactions with Olivia O'Neill and also with Liam

15 McHugh? 10:55

16 CHAIRMAN: Could I interrupt for one second?

17 MR. MARRINAN: Yes.

18 71 Q. CHAIRMAN: Judge McMahon, am I understanding correctly,

19 please correct me if I am wrong, that you remember

20 those two names being mentioned? 10:55

21 A. I do.

22 72 Q. CHAIRMAN: From an early stage.

23 A. Yes.

24 73 Q. CHAIRMAN: From our situation, it would appear they

25 emerged as issues later, sometime after the 10:55

26 confidential --

27 A. The office was abolished.

28 74 Q. CHAIRMAN: The protected disclosure was made?

29 A. Yeah.

1 75 Q. CHAIRMAN: They form part of our investigation, because
2 Garda Keogh says, look, these things, the way they were
3 followed up constituted targeting or discrediting.
4 That is really what he says.
5 A. Yeah. 10:56
6 76 Q. CHAIRMAN: And they came up, I think, at the end of
7 May/beginning of June?
8 A. June.
9 77 Q. CHAIRMAN: Isn't that correct?
10 MR. MARRINAN: Yes. 10:56
11 CHAIRMAN: I am sure I have it here somewhere in my
12 chronology.
13 A. Yeah.
14 78 Q. CHAIRMAN: So the 8th May he gives you the thing, this
15 would have come up at a later stage I think. But the 10:56
16 names are familiar to you, you remember the names?
17 A. Oh the names are familiar, but have you to bear in mind
18 that the 8th May, I was gone in July, so it was fairly
19 soon after that.
20 79 Q. CHAIRMAN: Sure. 10:56
21 A. You know, I had no -- well, I won't go further on.
22 Anyway, yes. Sorry, Mr. Marrinan.
23 CHAIRMAN: No, thanks very much. Is that the answer
24 really to your question, Mr. Marrinan? I'm sorry, I
25 hope I didn't disturb your train of thought. 10:56
26 80 Q. MR. MARRINAN: No, no, that does deal with it. If we
27 could just then move on to a meeting, if we can look at
28 Garda Keogh's diary entry over the next page, at 13265.
29 Just the next page I think. Yes. There is an entry

1 there at 3:00pm:

2

3 "Meet judge in Stillorgan."

4

5 And then:

10:57

6

7 "Gave him a copy of statement and intel."

8 A. what's "intel"?

9 81 Q. This may well be a report that you have sent in to the
10 Tribunal, including a short statement by Garda Keogh

10:57

11 where he interviewed another person that we are not
12 identifying. But in any event, if we could move on to

13 the 16th July for the moment because there seems to be
14 a little bit of confusion in relation to exactly what

15 was discussed as between the 14th and the 16th July.

10:58

16 If we go over to the entries, the 17th July, you will
17 see:

18

19 "15:29: Call with judge, told him that I informed

20 detective superintendent that I wasn't happy with

10:58

21 investigation. That how can Gardaí cooperate fully

22 when they are still working with him."

23

24 was that a concern that he expressed to you at the
25 time?

10:58

26 A. Regularly. That was a concern he expressed more or
27 less all the time.

28 82 Q. And then we move on:

29

1 "And chief in mull --"
2
3 Mullingar.
4
5 "-- is trying to mount two investigations. (1) the 10:59
6 intelligence and then (2) complaints, at the same
7 time."
8
9 Do you see that entry? This is really three issues
10 that Garda Keogh had at the time. First of all that he 10:59
11 had made an intelligence entry on Pulse. Do you recall
12 him mentioning that to you? He said that you commented
13 that it mightn't be the right thing to do
14 A. I am just actually trying to read this at the moment.
15 83 Q. All right, okay. We will just -- 10:59
16 CHAIRMAN: would you like to read it again,
17 Mr. Murrinan. I think you're more familiar with the
18 writing and probably better able to --
19 A. Thank you very much.
20 CHAIRMAN: It's not the easiest. But once you get into 11:00
21 it, actually it becomes clearer. I hope Garda Keogh
22 won't regard that as being hurtful, it takes a bit of
23 understanding. But it's actually clear enough when you
24 follow it.
25 84 Q. MR. MARRINAN: "15:29: Call with judge. Told him that 11:00
26 I informed detective superintendent that I wasn't happy
27 with investigation, that how can Garda cooperate fully
28 when they're still working with him and then no sus."
29

1 That is suspension. In other words Garda A hadn't been
2 suspended.
3
4 "And chief in Mullingar is trying to mount two x
5 investigations, (1) intelligence (2) intelligence, 11:00
6 can't run two complaints at the same time. It's like
7 what they did in Donegal. He would contact the
8 commi ssi oner. "
9
10 okay? 11:01
11 A. Yeah.
12 85 Q. So Garda Keogh has given evidence in relation to this.
13 There seemed to be some confusion as to whether this
14 was conveyed to him at the meeting on the 14th July or
15 during the course of this telephone call on the 17th 11:01
16 July. But we are more concerned about the content of
17 that. First of all, do you recall him raising the
18 issue of the intelligence entry?
19 A. I do.
20 86 Q. And do you recall saying to him words to the effect, 11:01
21 you shouldn't have done that, or, you shouldn't have
22 made that entry?
23 A. I don't think I ever said that, no.
24 87 Q. Well that's his recollection?
25 A. Yeah. 11:01
26 88 Q. Do you recall him complaining that there were two
27 investigations, the Olivia O'Neill investigation and
28 the Liam McHugh investigation that he was concerned
29 about?

1 A. I do.

2 89 Q. You do.

3 A. Yeah.

4 90 Q. Did you raise the issue and say to him that they can't
5 do that or that they shouldn't do that because of 11:02
6 something that may have been said in the report
7 Mr. Justice Morris?

8 A. I don't think, no. I mean, I was more, as I say to
9 you, taking information from Garda Keogh. I was
10 trying -- I wasn't an investigator. So I was, as you 11:02
11 know, the main recipient. But if I thought something
12 was blatantly wrong I would have said it to him, yes.
13 Yeah.

14 91 Q. I am just wondering, you know, I mean Garda Keogh has
15 an entry in his diary of this conversation with you, 11:02
16 which he made shortly afterwards. Also, there seems to
17 have been some sort of follow up on it, he says that
18 you would contact the Commissioner. Could it be that
19 he did mention to you -- or you did mention to him that
20 it wasn't satisfactory that they were conducting two 11:03
21 investigations?

22 A. Oh wait now, sorry. Yes, I did say that to him. I
23 recall that now. I did. I said there's no need to
24 have two investigations going on at the same time.
25 Because I was actually involved in another matter at 11:03
26 the same time and I know that the guards in that one
27 were trying to carry out a separate investigation at
28 the time, or at least that's what I was told.

29 92 Q. Could you have also mentioned the Morris Report, was

1 that something that you were familiar with?

2 A. The Morris Tribunal I knew well, but I mean I -- you
3 see, Garda Keogh wasn't in Donegal -- but he a
4 colleague that was in Donegal, who your predecessor has
5 dealt with. 11:04

6 93 Q. CHAIRMAN: No, but there might possibly have been some
7 reference to the Morris Report, possibly.

8 A. There could have been, because two of the people that I
9 mainly dealt with, both had been based in Athlone.

10 94 Q. CHAIRMAN: Okay. 11:04

11 A. And one was moved to Donegal.

12 95 Q. CHAIRMAN: Yes.

13 A. Yeah.

14 96 Q. MR. MARRINAN: And then if we could just perhaps move
15 on. Do you recall contacting the Commissioner over 11:04
16 that issue?

17 A. I would have contacted the Commissioner, yes.

18 97 Q. It's just, if we could have page 10802, the call
19 doesn't appear to have been logged, but nevertheless
20 there appears to be a reference to it here. This is a 11:04
21 letter from Superintendent Frank Walsh to the deputy
22 commissioner of strategy and change management. You
23 will see there, the second paragraph:

24

25 "On the 8th May the confidential recipient sent a 11:05
26 report..."

27

28 Then it refers in the last sentence:

29

1 "All necessary notifications were addressed and an
2 assistant commissioner was appointed to carry out an
3 investigation, which is on examining."
4

5 Then there is a reference: 11:05

6
7 "The confidential recipient has since contacted this
8 office and has stated that the confidential reporter
9 has complained that his chief superintendent is
10 continuing an investigation against him while his own 11:05
11 complaint is being dealt with."
12

13 That seemed to be a reference to what we have just been
14 addressing.

15 A. Exactly. 11:05

16 98 Q. "The confidential recipient has enquired as to whether
17 we have any protocols in place to address such
18 situations. Perhaps Assistant Commissioner Human
19 Resources should advise."
20

21 CHAIRMAN: Mr. Marrinan, just give me the reference to
22 that, the number? 11:05

23 MR. MARRINAN: 10802.

24 CHAIRMAN: Thanks very much.

25 99 Q. MR. MARRINAN: So it would appear that you did raise 11:05
26 the issue --

27 A. Oh yes.

28 100 Q. -- directly with the Commissioner?

29 A. I did.

1 101 Q. And this concerned a number of investigations taking
2 place in relation to Garda Keogh, is that right?
3 A. Absolutely.
4 102 Q. And Garda Keogh's concerns?
5 A. Mm-hmm. 11:06
6 103 Q. He then, in his final paragraph, says:
7
8 "With the introduction of the Protected Disclosures Act
9 2014, this particular query may be moot."
10 11:06
11 And that's how it turned out, because in fact that was
12 your last dealings with a Garda Keogh, is that right?
13 A. Well, what happened then was, the office was abolished
14 and I wasn't sure whether, being retrospective or not,
15 that Garda Keogh continue with me. Which I think he 11:06
16 could actually.
17 104 Q. CHAIRMAN: Yes.
18 A. But Garda Keogh telephoned me to thank me for what I
19 was dealing with, that he was now going to go under the
20 new Act with that route. 11:06
21 105 Q. CHAIRMAN: So he seems to be assuming that your
22 relationship in this respect was at an end, is that
23 right?
24 A. Absolutely, yeah.
25 106 Q. CHAIRMAN: Okay. 11:07
26 MR. MARRINAN: Thank you very much.
27 THE WITNESS: Thanks.
28
29 END OF EXAMINATION

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MR. MARRINAN: would you answer any questions.

CHAIRMAN: Now, Mr. Kelly, yes.

JUDGE PATRICK MCMAHON WAS THEN CROSS-EXAMINED BY

11:07

MR. KELLY, AS FOLLOWS:

107 Q. MR. KELLY: Thank you, Chairman. Good morning. My name is Matthias Kelly, I will be asking some questions on behalf of Garda Keogh.

11:07

If I have understood your evidence correctly, you had just been appointed, as you told us, you came in and you tried as best you could to find a way to do the job properly?

11:07

A. Find my feet.

108 Q. Exactly, yes. Then Nick Keogh arrives, you correctly see yourself as the person who listens, the conduit pipe who feeds it on. That was the essence of the job as you saw it at that time, is that right?

11:08

A. Absolutely.

109 Q. And throughout this period, if I have understood you correctly, what you found with Nick Keogh, was that this was a man who had made disclosures?

A. Yeah.

11:08

110 Q. Was very anxious, very worried, suspicious about what the authorities might or might not do to him, is that right?

A. I think you have put it very accurately. He was a very

1 distressed young man in my opinion at the time.

2 111 Q. Yes.

3 A. Very distressed.

4 112 Q. He was really worried at the thought of what might
5 happen to him? 11:08

6 A. Absolutely. He was very concerned and he felt that he
7 was a good policeman, but he was worried -- and there
8 is a context -- at this particular time, sorry for
9 repeating myself, but you know there was a bigger
10 issue, I'm afraid to mention names, Chairman, but there 11:08
11 was a sergeant, as you know, a very high profile --

12 113 Q. CHAIRMAN: Do you mean Sergeant McCabe.

13 A. Yes.

14 114 Q. CHAIRMAN: Oh yes.

15 A. And there was a huge issue around An Garda Síochána at 11:09
16 the time.

17 115 Q. MR. KELLY: Yes.

18 A. Hence the reason why I went and had meetings with the
19 Commissioner when I was in this position. But you have
20 put it so accurately, he was very -- he was anxious, he 11:09
21 was distressed and a very bothered young policeman.

22 116 Q. Yes. From your perspective, you had been appointed, I
23 was going to use the word difficult, but at an
24 interesting time?

25 A. Yeah. 11:09

26 117 Q. Effectively all you could do was to respond to him,
27 meet with him, try and reassure him, is that right?

28 A. That would be my intention, yeah.

29 118 Q. Yes. It may not matter very much, but you met him

1 certainly at the beginning in Kinnegad and then it
2 rather looks on the basis of it, correct me if I am
3 wrong, that you may well have met in Stillorgan twice?
4 A. Oh we did meet in Stillorgan, yes.
5 119 Q. And that may well have been twice, once when he gave 11:10
6 you a DVD?
7 A. Mm-hmm.
8 120 Q. And once when he gave you a statement or the
9 intelligence, which I think is --
10 A. Yeah, the intel is mentioned on the diary there, yeah. 11:10
11 121 Q. You received those and you passed it on?
12 A. Mm-hmm.
13 122 Q. As part of what we just spoke about a moment ago, he
14 was also concerned, because the diary entry we looked
15 at, it's not necessary to call it up? 11:10
16 A. Yeah.
17 123 Q. Unless you want to, 17th July, he was concerned that as
18 he saw it, there were investigations, two at that time,
19 going on, spoke to you about it, and effectively you
20 made a reference to Donegal, which I take it to mean 11:11
21 the Morris Tribunal. Whether he used the word Morris
22 Tribunal or not is neither here nor there, but it was
23 in relation to Donegal?
24 A. Yeah, but I was dealing with another member of the
25 force who was based in Donegal at the time. 11:11
26 124 Q. Yeah.
27 A. There was an interaction, they both knew each other.
28 125 Q. CHAIRMAN: Yes.
29 A. That particular investigation was done by your

1 predecessor Judge Charleton.

2 126 Q. CHAIRMAN: Yes, indeed. But I think what Mr. Kelly is
3 saying, it wasn't so much the location of the other
4 person but that it was authority for saying don't be
5 conducting multi investigations. 11:11

6 A. Absolutely.

7 127 Q. CHAIRMAN: Is that right?

8 A. Absolutely correct.

9 128 Q. CHAIRMAN: What Garda Keogh says is, that there was
10 reference to the Morris Tribunal report. If you don't 11:11
11 recall, you don't recall?

12 A. I can't recall.

13 129 Q. CHAIRMAN: If you don't recall, you don't recall, but
14 you were concerned and passed on that - I'm sorry,
15 Mr. Kelly, for interrupting. You passed on that 11:11
16 concern to the Commissioner, as Superintendent Walsh --

17 A. Anything I got, any reference I got from Garda Keogh I
18 telephoned the Commissioner.

19 130 Q. CHAIRMAN: Thanks very much. Sorry for interrupting.

20 131 Q. MR. KELLY: The substance of it was, you were an 11:12
21 experienced lawyer, a judge, you deal with a wide --
22 you said to him, look, they shouldn't really be doing
23 multiple investigations?

24 A. I felt it was very wrong at the time, when it was
25 subject to the matters that I was dealing with, that 11:12
26 that investigation should have gone on its own.

27 132 Q. Yes. Thank you. Is it right to say that throughout
28 your dealings with Nick Keogh you always found him
29 cooperative?

- 1 A. Oh he was a very, very personable young guard. I mean,
2 from day one that I met him he was totally cooperative.
3 But I mean, I was only receiving information, but never
4 had an issue with Garda Keogh. He was a total
5 gentleman. I felt very sorry for him because he was a 11:13
6 very anxious, distressed gentleman, that's what I felt.
- 7 133 Q. And he was trying to do the right thing as he saw it?
- 8 A. As he saw it, he was, yes.
- 9 134 Q. Okay.
- 10 A. Not that I knew anything else, you know. I mean purely 11:13
11 my impression was that he was trying to do it as he saw
12 fit.
- 13 135 Q. As you yourself have said, you clearly understood your
14 role, properly if I may say so, you were the conduit,
15 you weren't there to investigate? 11:13
- 16 A. No.
- 17 136 Q. These were serious allegations being made by a young
18 guard, who was making them because he thought it was
19 his duty to expose it, is that right?
- 20 A. That's absolutely correct. And, as you know, we had 11:13
21 the horrible name of whistleblower at the time, which I
22 can't abide.
- 23 137 Q. Thank you very much. That's all the questions I have
24 to ask of you.
- 25 A. Thank you very much. 11:14
26

27 END OF EXAMINATION

28
29 CHAIRMAN: Thanks very much. Mr. Murphy, any

1 questions?
2 MR. MURPHY: Mr. Dignam, Chairman.
3 CHAIRMAN: Sorry, Mr. Dignam, yes.
4 MR. DIGNAM: If I figure out the technology.
5 CHAIRMAN: Get your microphone working first of all, 11:14
6 Mr. Dignam, and then we will all be able to hear you.
7
8 JUDGE PATRICK McMAHON WAS THEN CROSS-EXAMINED BY MR.
9 DIGNAM, AS FOLLOWS:
10 11:14
11 138 Q. MR. DIGNAM: Judge McMahon, my name is Conor Dignam and
12 I as on behalf of An Garda Síochána essentially. I
13 just have a few questions for you?
14 A. Yeah.
15 139 Q. The first is in relation to the DVD and the date that 11:14
16 Garda Keogh handed you the DVD. Nothing hugely turns
17 on it, but I just want to clarify the factual situation
18 in relation to that. Garda Keogh in his evidence has
19 said that he handed that over to you with the
20 affidavit, which would have been on 8th May 2014? 11:14
21 A. No. No.
22 140 Q. You're quite clear on that?
23 A. Oh I'm 150% clear on that.
24 141 Q. Garda Keogh's evidence was that he handed you the
25 affidavit and the DVD, asked you to forward on the 11:14
26 affidavit but to hold onto the DVD for the time being?
27 A. No, I got the DVD separately.
28 142 Q. Thank you. Just in relation to the question of
29 separate investigations, I am not sure whether you have

1 been following the evidence in the Tribunal over the
2 last number of months, the McHugh and O'Neill
3 investigations, the position that the investigation
4 team, the Ó Cualáin team, which was set up to
5 investigate the complaints, brought by Garda Keogh to 11:15
6 you and passed on then to the Garda Keogh, was being
7 conducted by Assistant Commissioner Ó Cualáin and his
8 team. When the McHugh and O'Neill matters arose, they
9 took the view that it would be inappropriate for them
10 to be on the one hand investigating complaints made by 11:15
11 Garda Keogh and on the other hand investigating
12 complaints made against Garda Keogh. I'm not sure if
13 you heard that evidence or whether you're aware of
14 that?

15 A. I'm not actually. But I would go along with that. 11:15

16 143 Q. Thank you.

17

18 END OF EXAMINATION

19

20 CHAIRMAN: Very good. Anybody else want to ask any 11:16
21 questions of Judge McMahon? Very good. Now,
22 Mr. Murrinan, anything arising?

23 MR. MARRINAN: No, nothing arising, Chairman.

24

25 JUDGE PATRICK McMAHON WAS THEN QUESTIONED BY THE 11:16
26 CHAIRMAN, AS FOLLOWS:

27

28 144 Q. CHAIRMAN: Judge McMahon, can you just help me on this?

29 A. Yes.

1 145 Q. CHAIRMAN: I was just noticing your descriptions of the
2 distress when Garda Keogh came to you. Obviously if I
3 am understanding, one concern he had was Gardaí
4 investigating themselves. He would have much preferred
5 that there was an outside investigation. So he made 11:16
6 that clear to you.

7 A. Yeah.

8 146 Q. CHAIRMAN: And we know that from his evidence. Okay.

9 A. Yeah.

10 147 Q. CHAIRMAN: His distress, could you help me on that? 11:16
11 was that over and above -- I mean that's, if you like,
12 a concern that a person might express, but over and
13 above that he was distressed and anxious, that
14 impressed you?

15 A. Well, he was in a very serious state of anxiety. And I 11:17
16 know he had health problems as well and he had
17 addiction problems as well.

18 148 Q. Yes.

19 A. I think that has come out.

20 149 Q. CHAIRMAN: Yes, indeed. 11:17
21 A. In fact, he made that very clear to me from the time he
22 met me. But he was a very, very distressed man. Now,
23 can I say, I mean I didn't look into whether it was his
24 own actions that distressed him or whether it was the
25 actions of An Garda Síochána. I took the details but 11:17
26 that was it.

27 150 Q. CHAIRMAN: You just had a situation he was very
28 distressed.

29 A. Yeah. But he was not a happy man, no.

1 151 Q. CHAIRMAN: When you later met him, was his condition
2 the same or had it changed?
3 A. Oh I think it was the same, yes. Oh no, it was -- you
4 would have a lot of sympathy. But I think that in
5 circumstances like this, Chairman, like other members I 11:18
6 met, they all had this anxiety actually.
7 152 Q. CHAIRMAN: Okay.
8 A. I suppose we all would in many ways, you know.
9
10 END OF QUESTIONING 11:18
11
12 CHAIRMAN: Anybody want to ask anything arising out of
13 what I just been talking to the judge about? Judge
14 McMahon, thank you very much indeed for making yourself
15 available and for coming this morning. Thank you very 11:18
16 much. You're free to go.
17 THE WITNESS: Thank you very much.
18 CHAIRMAN: You are free to go. Thanks very much.
19
20 THE WITNESS THEN WITHDREW 11:18
21
22 MR. KELLY: Chairman, there is a matter which has
23 arisen which I have been very grateful if I could be
24 afforded a little time to deal with it.
25 CHAIRMAN: Certainly, yes, Mr. Kelly, how long do you 11:18
26 think you need? It's now 11:20, is there much -- would
27 I say after lunch? would that be convenient?
28 MR. KELLY: I think that would be convenient.
29 CHAIRMAN: If you need less, I will tell you, but

1 equally, if it is something that is going to take some
2 time to explore, and feel free to consult counsel or,
3 indeed, to seek the Tribunal's assistance if necessary.

4 MR. KELLY: Yes.

5 CHAIRMAN: So is that a sensible thing to do? 11:19

6 MR. KELLY: It is and I am very grateful to you,
7 Chairman.

8 CHAIRMAN: Okay, that's not a problem. Very good. I
9 am sorry, I hope I am not discommoding too much. I
10 think Chief Superintendent Walsh is the next witness.
11 Is he the only witness today?

12 MR. McGUI NNESS: No, Chairman, we have some other
13 witnesses that we had hoped we might progress,
14 Detective Inspector Coppinger and then perhaps --

15 CHAIRPERSON: Yes, Detective Inspector Coppinger and
16 Detective Superintendent Mulcahy, they are going to be
17 sort of significant witnesses over a time. So, I am
18 sorry for disrupting other people but I think it's
19 important that Mr. Kelly be afforded appropriate
20 facility to consider his situation, okay, and whatever
21 arises. Thanks very much. So, two o'clock.

22

23 THE HEARING THEN ADJOURNED UNTIL 2:00PM

24

25 11:20

26

27

28

29

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 CHAIRMAN: Now.

4 MS. McGRATH: Thank you Chairman. The next witness is
5 Detective Superintendent Frank Walsh. 14:07

6 CHAIRMAN: Thanks very much.
7

8 DETECTIVE SUPERINTENDENT FRANK WALSH, HAVING BEEN
9 SWORN, WAS DIRECTLY-EXAMINED BY MS. McGRATH, AS
10 FOLLOWS: 14:08

11
12 THE WITNESS: Frank Walsh.

13 CHAIRMAN: Thank you very much.

14 153 Q. MS. McGRATH: Thank you, detective superintendent.
15 Chairman, the statements are at page 6192 and 15877 of 14:08
16 the book. I think, detective superintendent, the first
17 one is a short statement and I think you gave a more
18 detailed statement at the beginning of this year and
19 that is the second statement, isn't that right?

20 A. That's correct. 14:08

21 CHAIRMAN: Thanks very much, yes.

22 154 Q. MS. McGRATH: Now I think, detective superintendent, at
23 the moment you're attached to the liaison and
24 protection section of An Garda Síochána, is that right?

25 A. That's correct. 14:08

26 155 Q. And I think you have been attached to that unit --
27 that's at Garda Headquarters, is that right?

28 A. That's correct, yes.

29 156 Q. Since July 2016?

1 A. That's correct.

2 157 Q. Okay. Now, I think the period we are concerned with is
3 the period before that. You were attached to the
4 office of the Garda Commissioner between February 2012
5 and July 2016, is that right? 14:09

6 A. That's correct, yes.

7 158 Q. You were attached to that office in the capacity of
8 private secretary to the Garda Commissioner, is that
9 correct?

10 A. Correct, Chairman, yes. 14:09

11 159 Q. Okay. Now you outline in your statement, you outline
12 the duties in that capacity I think just as follows,
13 you say you provided administrative support to the
14 Commissioner, is that right?

15 A. That's correct. 14:09

16 160 Q. You were the point of contact for various stakeholders
17 and you include in that government departments, the
18 legal profession, Garda associations and other police
19 services, is that right?

20 A. That's correct. 14:09

21 161 Q. You also did the diary management and parliamentary
22 questions for the Garda Commissioner, is that right?

23 A. Yes.

24 162 Q. Now, just specifically in relation to today, you say
25 one of your duties was administering all files 14:09
26 involving confidential reporting which later became
27 protected disclosures, is that right?

28 A. That's correct, yes.

29 163 Q. Now, we will be concentrating on that to a certain

1 extent. I think your second statement deals in
2 particular with Garda Keogh's protected disclosure?

3 A. Correct, Chairman.

4 164 Q. Okay. Now, can I just ask you before we go into that
5 statement in detail, I just want to ask you a couple of 14:10
6 things and this is looking at your statement on page
7 15877, where you talk about receiving the protected
8 disclosure on or around 9th May 2014 from Judge Patrick
9 McMahon, isn't that right?

10 A. That's right, yes. 14:10

11 165 Q. Now you describe Judge Patrick McMahon there as
12 attached to the office of the Garda confidential
13 recipient. Can you just explain to the Chairman what
14 that office was? We just haven't seen that before in
15 the evidence. 14:10

16 A. Perhaps my terminology mightn't be correct. My
17 understanding is that Judge McMahon, when he took over
18 the role, he was there just to receive all confidential
19 reports, therefore I called him the confidential
20 recipient. I thought that was from the statutory 14:11
21 instrument at the time. I may be incorrect but that's
22 my understanding of his role at that time.

23 166 Q. You go on to say that you received the affidavit of
24 Garda Keogh, and we will come to all that in a moment,
25 and you assign the correspondence a file reference 14:11
26 CR 114, isn't that right?

27 A. That's correct yes.

28 167 Q. Your language there, you say:
29

1 "In the usual course of events I would discuss this
2 matter with the Commissioner, Commissioner Nóirín
3 O'Sullivan."
4
5 Now, can I just stop there. You say "in the usual 14:11
6 course of events", were these frequent occurrences in
7 around that time; receiving confidential reports? I
8 don't believe there were many in 2014.
9 A. No, there weren't that many.
10 CHAIRMAN: That was number 1 of 14, so we may assume 14:11
11 that was the first.
12 A. Correct, but there were some reports from previous
13 years.
14 168 Q. CHAIRMAN: From previous years.
15 A. Yes. 14:12
16 169 Q. MS. McGRATH: You say in the usual course of events you
17 would discuss the matter with the Commissioner, can you
18 just tell the Chairman about your discussions around
19 this particular point on that date?
20 A. Yes, Judge. Again I say in the usual course of events 14:12
21 I would discuss because I don't remember the actual
22 conversation. But typically I would bring the entire
23 file that received from the Judge and I would explain
24 to the Commissioner what exactly was involved from my
25 reading of it and just would remind the Commissioner -- 14:12
26 170 Q. CHAIRMAN: You'd read it first of all?
27 A. Yes.
28 171 Q. CHAIRMAN: You'd read it first.
29 A. Yes, Chairman, yes.

1 172 Q. CHAIRMAN: Then you go to the Commissioner and say, we
2 have a protected disclosure here under the CR scheme?
3 A. Correct, yes.

4 173 Q. CHAIRMAN: Okay.
5 A. And I would explain what was in it, just a high level 14:12
6 synopsis of what was in it and just remind the
7 Commissioner that we would normally -- administratively
8 she would then appoint somebody at assistant
9 commissioner rank to conduct an investigation. And
10 once that was done, I would prepare the necessary 14:12
11 paperwork, the necessary appointment, and I would also
12 prepare notifications for GSOC and the Garda
13 Inspectorate and various acknowledgments back to the
14 judge.

15 174 Q. MS. McGRATH: Okay. We will come to the specifics of 14:13
16 that in a moment, but is it your evidence to the
17 Chairman that you had that type of a discussion with
18 the Commissioner on that date about this file?
19 A. Yes.

20 175 Q. Okay. Now, what I want to do just before we go into 14:13
21 the chronology of the files and throughout 2014 and up
22 until you left in July 2016, what I want to do is just
23 veer off for a moment and just talk about the framework
24 that was in place in the Garda Commissioner's office
25 for these reports. In particular, this came in in 14:13
26 2014, in May, and at the time there was a particular
27 legislative structure in place for these disclosures,
28 isn't that right?
29 A. That's correct.

1 176 Q. Now, in particular it would have come in, and we have
2 seen it on a lot of the documentation, it came in under
3 the Garda Síochána confidential reporting of corruption
4 or malpractice regulations 2007, is that correct?
5 A. That's correct. 14:14

6 177 Q. Now, those regulations, for the Chairman, they are at
7 page 7858 of the book, Chairman. I think, detective
8 superintendent, these are all coming up on the screen
9 in front of you, but you if you want any hard copies
10 you can just request them, okay? 14:14

11 A. Thank you.

12 178 Q. So I think that was the statutory framework at the
13 time, as of May 2014, isn't that right?
14 CHAIRMAN: Sorry, that's the Policing Authority.
15 MS. McGRATH: 7858, sorry. Do I have the right 14:14
16 document? There we go.
17 CHAIRMAN: Yes.

18 179 Q. MS. McGRATH: And I think that's the regulation
19 framework you were working under on that date, is that
20 right? 14:14

21 A. I believe that's correct, yes.

22 180 Q. So if we go to 7861, which is just two or three pages
23 in, 7861, at section 8 there, just go down the page
24 please, Mr. Kavanagh. Under section 8(1) it says:
25 14:15
26 "On receipt of a confidential report, the Commissioner
27 shall (a) examine the report and unless he/she has
28 reason to believe that the allegation contained in it
29 was not made in good faith or is false, frivolous or

1 vexatious, investigate the allegation or cause it to be
2 investigated and (b) take any other action that is
3 necessary as a result of the investigation."
4

5 So, I take it following your discussion with the 14:15
6 Commissioner this was the consideration that was taking
7 place at that time, is that right?

8 A. That's correct, yes.

9 181 Q. It says:

10 14:15
11 "Unless the Commissioner has reason to believe the
12 allegation is not in good faith, false frivolous or
13 vexatious an investigation would ensue."
14

15 So is that the decision the Commissioner was satisfied 14:15
16 to make that day; that an investigation was
17 necessitated under that provision?

18 A. I believe so. The Commissioner made that decision, so
19 I can't say, I would just have advised the Commissioner
20 of what was contained, what allegations were contained 14:16
21 within the report that we got. But the Commissioner
22 would make the actual decision and obviously did make
23 that decision when she appointed the assistant
24 commissioner to investigate it.

25 182 Q. Okay. Can we just look at a couple of the provisions 14:16
26 before I leave the regulations. I think if you go down
27 through these, section 9 on the next page talks about
28 protection of the confidential reporter's identity.
29 Now, you're dealing with this on the 9th May, isn't

1 that right?

2 A. That's correct, yes.

3 183 Q. And we know from the evidence so far that there were
4 disclosures in the Dáil on the 8th May, isn't that
5 right? 14:16

6 A. I understand there were, yes.

7 184 Q. So these provisions, the protection of the confidential
8 reporter's identity, these were a little bit a flux, if
9 you want to put it that way, because the identity was
10 already published? 14:17

11 A. Notwithstanding that, we would still keep the identity
12 confidential, we wouldn't disclose it.

13 185 Q. In all your material and correspondence?

14 A. That's correct.

15 186 Q. Okay. Now, if you go onto the next page, I think you 14:17
16 say there, quite rightly you said earlier on in your
17 evidence, under Section 10 of the next page, I'm on
18 6(3) there, Mr. Kavanagh, there's the notification of
19 the confidential reports to the Ombudsman Commission,
20 that's GSOC, is that right? 14:17

21 A. That's correct, yes.

22 187 Q. Section 11, if we keep on there, it's the notification
23 to the Garda Inspectorate?

24 A. Correct.

25 188 Q. You mentioned that earlier. At section 12 it talks 14:17
26 about the charter. Now we will come to the charter in
27 a moment, which is put in place on the basis of the
28 regulations, isn't that right?

29 A. That's correct.

1 189 Q. Okay. It says:

2

3

4

5

6

7

8

9

"The charter shall provide for mechanisms by which information regarding actions taken on the basis of a confidential report may be made available to the confidential recipient for communication to the confidential reporter."

14:18

Do you see that there, detective?

10 A. I'm sorry?

14:18

11

CHAIRMAN: which one is that?

12

MS. McGRATH: This is section 12 there, under

13

"feedback". Sorry, the print is actually quite small on this. It talks about feedback to the confidential recipient.

14:18

16

190 Q. CHAIRMAN: Can you see that?

17

A. Yes.

18

191 Q. CHAIRMAN: It's a little hard, it's actually quite small.

19

20

192 Q. MS. McGRATH: Can I just ask, from your office and in your role, now I am talking generally and we will come to Garda Keogh separately in a moment, but under the regulations, with regard to feedback, going back through the confidential recipient and the confidential reporter, how do you see that working in the framework?

14:18

21

22

23

24

25

26

A. By way of a report to the confidential recipient. By way of a report to the judge, just to keep him abreast of how the investigation was progressing.

27

28

29

193 Q. Okay. Then it talks about there, if Mr. Kavanagh just

1 goes down to the end of the page, under section 14
2 there is provision for disciplinary action where these
3 reports are made. So it says:

4
5 "A person who makes them in good faith shall not be
6 subject to disciplinary action for so doing." 14:19

7
8 It also goes on to say at 14(2):

9
10 "Any harassment or intimidation of such a person shall be 14:19
11 dealt with in accordance with the law and the relevant
12 disciplinary regulations or disciplinary code."

13
14 Isn't that right?

15 A. That's correct, yes. 14:19

16 194 Q. The last provision on the next page, it goes on to
17 provide:

18
19 "Making a false allegation of corruption or malpractice
20 otherwise than in good faith shall be dealt with in 14:19
21 accordance with the law and such regulations or code."

22
23 okay.

24 A. Correct.

25 195 Q. Now I think then what is the process is that there's a 14:19
26 charter that was put in place and was in place during
27 that month or that time when this disclosure was made.
28 This is at page 7844 of the books please, Mr. Kavanagh.
29 7844. This is the confidential reporting charter for

1 An Garda Síochána, is that right?

2 A. That's correct.

3 196 Q. Now, it says on the next page, this is at the time, on
4 26th June 2008, the Commissioner there, Commissioner
5 Fachtna Murphy, talked about -- if you look at the
6 first paragraph, he says:

14:20

7
8 "The charter has been developed in line with the Garda
9 policy of encouraging ethical behaviour within An Garda
10 Síochána in compliance with the Garda Síochána
11 (confidential reporting of corruption or malpractice)
12 regulations 2007."

14:20

13
14 Isn't that right?

15 A. That's correct.

14:20

16 197 Q. It says at the end:

17
18 "The aim of this charter is to create an environment in
19 which sworn members and civilian employees are
20 encouraged to report incidents of corruption or
21 malpractice."

14:20

22
23 Now again, I think the charter effectively implements
24 the regulations. We won't go through it in too much
25 detail, the Chairman is familiar with it. At 7848, for
26 example, we will just maybe look at the headings of
27 what's in the charter. 7848. If you go down there,
28 sorry, Mr. Kavanagh. It sets out the duties of the
29 confidential reporters. That involves the provision of

14:20

1 the detail and identifying themselves clearly and
2 making a report to a designated confidential recipient,
3 on the next page there. And there's an obligation, I
4 think there on the third bullet point:

5
6 "...to disclose all information, documents or records
7 relevant to the alleged corruption or malpractice and
8 to comply with all requirements of the confidential
9 recipient as to the form in which such information is
10 disclosed."

14:21

14:21

11
12 I think the duties of the confidential recipients are
13 there on paragraph 3. On that page is also the duties
14 of the Commissioner. Just in the light of your role in
15 the office, if we can just look at that:

14:21

16
17 "The duties of the Garda Commissioner and any person
18 acting on his behalf include taking all practical steps
19 to ensure that the identity of the confidential
20 reporter is not disclosed other than in strict
21 accordance with the criteria under regulation 9(2)."

14:22

22
23 That's the regulations we talked about, is that right?

24 A. That's correct.

25 198 Q. "...examining each report transmitted by the
26 confidential recipient, investigating or causing to be
27 investigated all allegations other than those found
28 upon examination to be false, frivolous, vexatious or
29 to have been made in bad faith, notifying the Garda

14:22

1 Síochána Ombudsman Commission of each confidential
2 report received and in appropriate cases notifying the
3 Garda Inspectorate."

4
5 Isn't that right?

14:22

6 A. That's correct, yes.

7 199 Q. The charter goes on to deal with the duties of the
8 Minister, which isn't applicable in this case, at
9 number 5. Number 6 talks about employee safety and it
10 says:

14:22

11
12 "The Commissioner is committed to ensuring that any
13 member or civilian employee in An Garda Síochána who
14 raises genuine concerns or allegations of corruption or
15 malpractice under this charter will not be at risk of
16 losing their employment or suffering any form of
17 retribution as a result.

14:22

18
19 Harassment or victimisation of confidential reporters
20 who have raised genuine concerns or allegations of
21 corruption or malpractice is contrary to the
22 regulations we have mentioned and the civil service
23 disciplinary code and criminal law."

14:23

24
25 Is that right?

14:23

26 A. That's correct.

27 200 Q. I think in relation to Garda Keogh, and I know we are
28 jumping from the generals to the specifics, but in the
29 case of Garda Keogh there was never any issue on the

1 8th May or thereafter that there was anything false,
2 frivolous or vexatious in the report that he made; is
3 that right?

4 A. No, the report was merely new at that point in time and
5 required to be fully investigated. 14:23

6 201 Q. Okay. Now, this is the document then I think which
7 provides the internal confidential recipients, if you
8 look at 7854. And this is where you have the list of
9 the internal confidential recipients and the external
10 confidential recipients appointed by the Minister, 14:23
11 isn't that right?

12 A. That's correct.

13 202 Q. Now again, if you just move onto the next page,
14 Mr. Kavanagh. It talks about, at the bottom, at number
15 11, the examination and investigation of the report. 14:24
16 It's effectively repeating the regulations, because if
17 you go on to the next page, at 12 and 13 it talks about
18 the GSOC notification, the Inspectorate notification
19 and at 15, at the bottom, it also talks about the
20 feedback information. So is it envisaged then that in 14:24
21 the framework, the Commissioner envisages that the
22 person who makes the protected disclosure is kept
23 up-to-date with regard to the investigation and is kept
24 informed during the process, is that what is envisaged
25 there in that, by the Commissioner's office in those 14:24
26 paragraphs?

27 A. Yes, I think it would be. As I say, I think that was
28 covered in the updates to Judge McMahon and to GSOC and
29 to the Inspectorate, later in the file you will see

1 where there were updates sent to each as the
2 investigation progressed.

3 203 Q. Okay. But at all times I think your office envisages
4 that the channel is back through the confidential
5 recipient? 14:25

6 A. Yes. It was never envisaged that we would have direct
7 dealings with the actual reporter themselves, unless
8 they wished that to happen.

9 204 Q. Okay. Now, as we know this, Garda Keogh's protected
10 disclosure was made in May of 2014, but shortly 14:25
11 afterwards, on 15th July 2014 I think the new act
12 commenced, the Protected Disclosures Act 2014, isn't
13 that right?

14 A. That's correct, yes.

15 205 Q. I think we have seen from in particular Assistant 14:25
16 Commissioner Ó Cualáin's statements there was
17 continuity in the process vis-à-vis any protected
18 disclosure. Can you just explain to the Chairman how
19 it was envisaged that that would work?

20 A. From memory, Chairman, I believe an enquiry was made. 14:26
21 I didn't find a note of it in my diaries, I'm not sure
22 whether there is a note of it, but I think enquiries
23 were made to see whether an investigation should start
24 from fresh again under the new legislation. And as far
25 as I am aware the advice was, and I am not sure was the 14:26
26 advice from our own legal section or was it from the
27 attorney's office, but the advice that we would
28 continue, that one would run seamlessly into the other.

29 206 Q. I think Assistant Commissioner Ó Cualáin, we will come

1 to him, the appointed investigator, in a moment, but he
2 says in his statement that Garda Keogh was advised that
3 section 5 of the Act -- continuity to complaints made
4 under the now repealed confidential recipient
5 legislation and that he was informed of this. So is 14:26
6 that your understanding of how the process worked at
7 that time?

8 A. Yes, it would be, yes.

9 207 Q. Okay. Now in that regard, the Garda Síochána put in
10 place a very comprehensive document in the aftermath of 14:27
11 the new Act. If I could ask Mr. Kavanagh to put 2003
12 on the screen. Now, I know it says that this was
13 updated, this is the February 2017 version, but it's
14 very similar to the version that was in place just
15 after the Act. In our brief, this is a full set of the 14:27
16 policy. It's a very comprehensive document, detective
17 superintendent, I think you would agree?

18 A. Yes, Chairman, it is.

19 208 Q. And I think it is possibly more comprehensive than the
20 charter that was in place prior to this date, is that 14:27
21 right?

22 A. It was built on the charter. It was built on the
23 original charter and updated as the legislation, as the
24 new legislation dictated.

25 209 Q. Now I think the outset of the document goes into a lot 14:28
26 of detail as to explaining the Act and the provisions
27 of the act and what constituted a protected disclosure.
28 But if I could just ask you to look at -- again, we
29 will try and stay to the headings rather than going

1 into a lot of the detail. 2020, please, Mr. Kavanagh.
2 Now, there is a duty of the protected disclosures
3 manager, who we know went on to Chief Superintendent
4 Tony McLoughlin --
5 A. That's correct. 14:28
6 210 Q. -- in that following -- in June of -- actually, I think
7 he wasn't put in place until 2016, but I can
8 double-check that. But in any event, here are the
9 duties of the protected disclosures manager, which are
10 outlined. I think they are outlined in considerable 14:28
11 detail as to the functions that the manager must
12 perform, isn't that right?
13 A. That's correct, yes.
14 211 Q. Now, I think in particular if we look at the next page,
15 this envisages effectively the confidential complaint 14:29
16 now coming in through the protected disclosures
17 manager, isn't that right?
18 A. That's correct.
19 212 Q. At 7.8 it says:
20 14:29
21 "As soon as practicable the manager shall assess the
22 disclosure and transmit a confidential and anonymised
23 report to the member not below the rank of chief
24 superintendent or a principle officer who will conduct
25 or cause to be conducted an examination or 14:29
26 investigation. "
27
28 Isn't that right?
29 A. That's correct, yes.

1 213 Q. Then he has an obligation under the next provision:
2
3 "To notify the Commissioner that a protected disclosure
4 has been made and that the course of action which has
5 been taken without disclosing the identity of the 14:29
6 worker."
7
8 So it's a little bit different. I think previously we
9 saw it come straight in to you, you talk to the
10 Commissioner and the Commissioner appoints the 14:29
11 investigator, is that right
12 A. That's correct.
13 214 Q. Here it's a little bit one step removed at the initial
14 stage; is that right?
15 A. That's right. 14:30
16 215 Q. Okay. It goes on to say at 7.11, for example:
17
18 "Ensuring that the disclosure is kept informed of the
19 progress of any enquiries/investigation undertaken
20 under this policy as a result of their disclosures." 14:30
21
22 That is effectively a similar situation, where the
23 feedback provisions continued; is that right?
24 A. Yeah, it seems to be, yes.
25 216 Q. Okay. At 7.12: 14:30
26
27 "The protected disclosures manager shall be aware of
28 any risks associated with the disclosure and document
29 any risks identified by the worker making the

1 disclosure. "

2
3 Now this is something we will come to in more detail in
4 respect of Garda Keogh, because it is certainly one of
5 his positions that he has put before the Chairman in 14:30
6 relation to his workplace and his ability to continue
7 working having made the protected disclosure. Here,
8 you have a provision that the manager will identify any
9 risks associated with the disclosure. Can I ask you,
10 at the time that Garda Keogh was making his disclosure, 14:30
11 which was a couple of months prior to these provisions,
12 was a similar risk type assessment done in the
13 Commissioner's office at any stage?

14 A. Not in the Commissioner's office, no.

15 217 Q. Okay. You see there, if you go down to the bottom of 14:31
16 the page, at 7.17 it's in considerable detail, setting
17 out the issue of a risk assessment which is carried
18 out. As I say, this seems to be a new provision. Now,
19 you were in place as private secretary at the time
20 these came in, but does this seem to be a new provision 14:31
21 that is coming in with regard to risk assessment for
22 the protected disclosures manager?

23 A. I'm sorry, if we can just go back one step, Chairman,
24 where you asked me about the risk assessment in the
25 Commissioner's office. 14:31

26 218 Q. Okay?

27 A. The Commissioner did direct with any disclosures that
28 came in that everybody who makes a disclosure would be
29 treated with respect and given, I think respect and

1 dignity in the workplace was the wording that was used,
2 and that they would be given access to varying supports
3 within the job. So I think that probably counts as a
4 type of risk assessment. Just to clarify the last
5 question.

14:32

6 219 Q. I think when we go into your correspondence, detective
7 superintendent, I think will you see that language in
8 the communications back?

9 A. Yes.

10 220 Q. So, is it your evidence to the Chairman that that's the
11 risk assessment aspect of it back in May 2014 at least?

14:32

12 A. I think it wasn't labelled as such, but from my point
13 of view, I would say, yes, that certainly would conform
14 to a type of risk assessment, yes.

15 221 Q. I think as we go on through this document again, it is
16 probably in a lot more detail but it is building on the
17 provision that is were in the original charter. For
18 example, at page 2025, in the section 10, it talks
19 about the examination process there and the
20 investigation of protected disclosure. It talks about
21 at paragraph 10.15:

14:32

14:33

22
23 "Other duties of a person undertaking an examination or
24 an investigation of a protected disclosure include..."

14:33

25
26 Now, as we know, there was continuity, as we saw there,
27 when I mentioned earlier by Assistant Commissioner --

28 CHAIRMAN: I'm sorry, we don't have a 10.15.

29 MS. McGRATH: Sorry, 10.5.

1 CHAIRMAN: Yes.

2 MS. McGRATH: It says:

3

4 "Duties of a person undertaking an examination or
5 investigation of a protected disclosure." 14:33

6

7 I think these duties would have applied to Assistant
8 Commissioner Ó Cualáin because he was now continuing
9 his investigation under these provisions, is that
10 right? 14:33

11 A. That's correct. I know this document was done sometime
12 after the legislation came out. I am not quite sure
13 whether it was done at the time that the assistant
14 commissioner would have got the document.

15 222 Q. Okay. 14:33

16 A. I just wonder whether this one is dated or not. I am
17 not sure of the actual date.

18 223 Q. Well this one is a revised version of February 2017,
19 but it's very similar to the first one, if we call it
20 that, which is at page 11617 of the books, but I'm 14:34
21 afraid we didn't put a complete copy into the books.

22 CHAIRMAN: Do we have a date for the original one,
23 Ms. McGrath?

24 MS. McGRATH: I don't have the date but I will
25 certainly get it. 14:34

26 CHAIRMAN: Maybe 11617 will tell us, will it?

27 224 Q. MS. McGRATH: It doesn't I'm afraid. I don't think it
28 was dated. But we can certainly check it.

29 A. It's just that I wouldn't be happy to say --

1 CHAIRMAN: I understand. One thing we seem clear
2 about, Ms. McGrath is saying the form of the original
3 is very similar to this one. It's convenient to be
4 using this one, because there is no significant
5 difference. 14:34

6 A. I accept that.

7 225 Q. CHAIRMAN: Your hesitation is to say that you don't
8 know when this one came in, so therefore you don't know
9 what Assistant Commissioner Ó Cualáin should have been
10 doing or not doing according to the document? 14:35

11 A. Well, I don't know whether he would have been aware,
12 whether the document was in existence then.

13 CHAIRMAN: That's okay, that's what I understand you
14 are saying, yes.

15 226 Q. MS. McGRATH: well, I think maybe the document goes on 14:35
16 to talk about welfare and circumstances, local
17 circumstances in the case of the disclosures, and I
18 think you mentioned there earlier in your evidence that
19 the Commissioner takes this into account and was quite
20 specific, in black and white, about this being an issue 14:35
21 that needed to be at the forefront of people's minds.
22 Is it the case then that this issue of welfare and
23 employee conditions was something the Commissioner saw
24 as the investigator taking charge of or having overall
25 responsibility for? 14:35

26 A. Yes, but not solely, because in correspondence to
27 managers, you know, on other issues, that terminology
28 would also be used, if there were issues around members
29 having any difficulties in the workplace.

1 227 Q. okay. what we will do is we will clarify the date of
2 the first document. I think effectively I have asked
3 you what I would like to ask you, detective
4 superintendent, but we will come back to it at the end
5 when we have the date of it. Now, what I want to ask 14:36
6 you next then is, that's the framework that was in
7 place throughout, moving from May 2014 and onwards
8 under the new Act, and as you noted, when you were in
9 your position as private secretary you got this
10 material on the 9th May from Judge McMahon, and I think 14:36
11 what you did was, you keep a logbook, is that right, or
12 you kept a logbook, sorry, at the Commissioner's
13 office, is that right?
14 A. That's correct, yes.
15 228 Q. Okay. I think this was opened this morning and Judge 14:36
16 McMahon was asked about it and he thought this was a
17 document kept by the Gardaí. It's at 15885. I think
18 this might be your handwriting. 15885.
19 A. Yes, Chairman, that's my handwriting.
20 229 Q. Okay. It's an extract from the confidential reports 14:37
21 logbook. Can you tell the Chairman a little bit about
22 this? Is this the only entry on the logbook relating
23 to Garda Keogh or do you keep a commentary in it or is
24 it simply just the fact of a PD being made?
25 A. It is just the fact of -- it's just the receipt. On a 14:37
26 yearly basis, on an annual basis we would maybe get
27 requests from the Department of Justice to tell them
28 how many protected disclosures or confidential reports
29 we had had for maybe one year or for the previous three

1 years. So this was a ready reckoner that we would go
2 to immediately and take just the briefest detail from
3 it if they were required. A file existed obviously of
4 all correspondence separate to this, but this is merely
5 just a notation on the page telling me that that 14:38
6 exists, that that is the file number attached to it and
7 they are briefly the facts of the case.

8 230 Q. Okay. So when we see CR 1/14 in the correspondence,
9 it's the Garda Nicholas Keogh protected disclosure,
10 isn't that right, detective superintendent? 14:38

11 A. Sorry, just repeat the question.

12 231 Q. When we see references to CR 1/14, that's Garda Keogh's
13 protected disclosure?

14 A. That's right.

15 232 Q. It reads there, it's a: 14:38

16
17 "Summary affidavit of Garda Nicholas P Keogh, Athlone
18 Garda Station, complaint in relation to undercover
19 drugs operation in Athlone in 2009, subsequent theft of
20 an investigation file, threats to accused persons, 14:38
21 incorrect storage of drugs, motivation for drug
22 operations (improper), noncompliance with a court
23 order, exclusion of well known drug dealer from the
24 operation. "

25 14:38

26 I think is that your summary then of what the protected
27 disclosure concerns?

28 A. That's my summary, yes.

29 233 Q. You say:

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"File received from the confidential recipient by hand on 8th May 2014.

Assistant Commissioner Ó Cualáin appointed to investigate. GSOC and Inspectorate notified (with full file) acknowledgment sent to Judge McMahon. "

14:39

So, in accordance with the framework we have set out and your obligations to notify, that's where you note that you have done those various bits and pieces?

14:39

A. That's correct, there are copies of everything kept on the actual hard file also.

234 Q. Okay. Now, I think we know that at -- if you bear with me for a moment. So you have a note in your diary there for the 8th May, acknowledging that material coming in. I don't think we need to open it, 15881. But I think then what happens is, I think then there's the appointment of Assistant Commissioner Ó Cualáin on the following day, on the 9th May, and that's at 3969. So:

14:39

14:40

"The attached correspondence from retired Judge Patrick McMahon, an Garda Síochána confidential recipient is forwarded for your information and attention.

14:40

Please carry out a thorough investigation into all issues raised by the confidential recipient and let me have a comprehensive report on the matter.

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Your report should reach this office no later than 9th June 2014. Where delays are encountered an interim report should be submitted setting out progress to date and reasons for delays encountered."

14:40

That is signed by the Commissioner there. Is there a reason why 9th June 2014 was chosen or is there a manner in which that is decided, the framework for the investigation or the timeline?

14:41

A. I suppose we are just trying to ensure that files came back in a timely manner and what would happen is we would pick a four-week timeframe. I would just put it into the electronic diary maybe for four weeks further on to see that a reminder would need to be sent at that point in time. It's just office administration reasons.

235 Q. Now, I think on the 9th May, can I ask you just to look at a diary entry you made on the same day at 15892. You say you're going to liaise with the head of legal affairs there. And you go on to say, "query", I wonder can you just read that?

14:41

A. "Query re whether we sent response to Garda Síochána Ombudsman Commission arising from CR (confidential report) answered by Commissioner to justice in January 2012."

14:42

236 Q. Do you know what that concerned? It may not relate to this, I know you had two reports?

A. Sorry.

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

2 A. I can't see the date on the page, Judge, just to see
3 when it was.

4 MS. McGRATH: I think I was able to date it of the 9th,
5 which is 9th May 2014. 14:42

6 CHAIRMAN: Can we scroll down and then scroll up.
7 Thanks very much. No.

8 237 Q. MS. McGRATH: As I say, in fairness to you, detective
9 superintendent, if I ask you to look at the typed
10 version of this entry, which is at 15881, it's down at 14:43
11 the bottom of that, 15881, very bottom, it says:
12
13 "Li aise wi th HOLA (Head of Legal Affai rs)."
14

15 The rest of it is redacted. So I suppose in fairness, 14:43
16 that's why I am saying to you, maybe the rest of the
17 handwritten entry may not relate to this.

18 CHAIRMAN: It doesn't look like it, because it looks
19 like something relating to 2012.

20 A. It does, Judge. 14:43

21 238 Q. CHAIRMAN: which we know is not the case with Garda
22 Keogh?

23 A. I now believe I know what that is.

24 239 Q. CHAIRMAN: It's something else?

25 A. It is a confidential report but it has nothing 14:43
26 whatsoever got to do with the current proceedings.

27 CHAIRMAN: Okay, thank you very much, thanks for
28 clearing that up.

29 240 Q. MS. McGRATH: Thank you, detective. On the next page

1 there, you can see the next entry that you make in
2 relation to this issue, on the 12th May.

3
4 "Details of all confidential recipients. Did we inform
5 GSOC? Did we supply reports? Do out a chronological 14:44
6 report."

7
8 I think you did do out a chronological report, I think
9 you've supplied it to us, isn't that right?

10 A. That's correct, yes. 14:44

11 241 Q. "Spoke to Judge McMahon re CR 1/14."

12
13 And that was on the 12th?

14 A. 12th May 2014, yes.

15 242 Q. Do you remember that conversation in that regard on the 14:44
16 12th May?

17 A. I don't, I'm afraid, no.

18 243 Q. Now, I know your entries there go on to the 29th May in
19 the written entries, but if I can just stay with the
20 movement of correspondence that you were dealing with 14:44

21 in around this time. If you can open up, the next
22 letter is the 14th May, and we will come back to the
23 typed entries in a moment, but on 14th May 2014, at
24 10792. That's effectively to now the assistant
25 commissioner and he is being requested to submit 14:45
26 regular updates on the investigation so that you can
27 keep GSOC and the Inspectorate updated. I think that
28 is the best practice you exercised in relation to this,
29 isn't that right, in relation to regular updates?

1 A. Yes.

2 244 Q. Now, he comes back to you on the 15th May, at 10793.
3 This is a letter to yourself. It's acknowledging that
4 letter on the 9th and he is telling you he has
5 established an investigation team, and he says: 14:45
6
7 "I note that Judge (retired) Patrick McMahon has made
8 reference to other details, can you please arrange to
9 have all the necessary material available to me.
10 14:46
11 On today's date I have also forwarded correspondence
12 directly to the confidential reporter and informed him
13 of my appointment to investigate the issues raised by
14 him. I have also provided him with my contact
15 details." 14:46
16
17 He said he noted the timelines and he would keep you
18 updated; is that right?
19 A. That's correct.

20 245 Q. I think what happens after that is, Judge McMahon was 14:46
21 asked about this this morning, you get the DVD in that
22 came via Garda Keogh, isn't that right?
23 A. That's correct.

24 246 Q. On the 10th June. That's at 10795. The DVD is
25 enclosed. On the next page, if Mr. Kavanagh just keeps 14:46
26 going down, you forward that on to the assistant
27 commissioner on the 11th June, isn't that right?
28 A. That's correct, yeah.

29 247 Q. Now, on the 16th June, at 10797, this is effectively

1 the first substantial update that comes in. I think
2 this is the Commissioner's office being told that
3 contact has been made with Garda Keogh and interviews
4 have taken place, isn't that right?

5 A. That's correct, yes.

14:47

6 248 Q. On the 7th June and at the next paragraph, the 10th
7 June, isn't that right? And they scheduled another
8 interview for the 18th June. Can I ask you to look at
9 the next page? You are being told that jobs had been
10 created, a State phone has been seized and that it is
11 going to be examined. But you are also told:

14:47

12

13 "During the course of interview the confidential
14 reporter was advised of the services available from the
15 employment assistance officer."

14:47

16

17 So, is this the assurances you look for in relation to
18 welfare and employee wellbeing, is that right

19 A. Yes, it would go some way towards assuring the

20 Commissioner that the person's wellbeing was being
21 considered during the investigation process.

14:47

22 249 Q. Now, I think you reply to that, there's no need to open
23 it, later on the 19th June, and you noted the
24 information and you again advise that you want regular
25 updates to supply to Judge McMahon. That's on the 19th
26 June, at 10799. On the 19th June, this was a letter we
27 saw this morning, at 4051. So this is typical I think
28 of one of your updates to the Judge, where you tell the
29 Judge that Garda Keogh has been interviewed. And you

14:48

1 tell him that the confidential reporter has been
2 advised of the services of the employee assistance
3 officer, is that right?

4 A. That's correct, yes.

5 250 Q. You say at the very end there:

14:49

6

7 "If there are systemic issues arising, subject to the
8 confidential reporter's consent, the Garda Inspectorate
9 will be informed."

10

14:49

11 If you could just tell the Chairman what you mean by
12 that?

13 A. Well, the Inspectorate looks after -- if there were
14 issues that were permeating throughout the job that
15 needed to be examined, we'll say, by the Inspectorate
16 and maybe they would make recommendations to try and
17 solve any problems that might arise in that regard.

14:49

18 That's what I was trying to say there, that if there
19 was anything like that appearing during the
20 investigation that the Inspectorate would quite rightly
21 be told about that.

14:49

22 251 Q. Okay. I think Assistant Commissioner Ó Cualáin was
23 aware of that obligations, is that right? I think you
24 had set that out in correspondence to him also?

25 A. The assistant commissioner would be aware, yes.

14:49

26 252 Q. Okay. Now, can I ask you to move then, we're staying
27 in June, 30th June 2014, and at page 15896 of your
28 diary. We came upon this issue this morning with Judge
29 McMahon. This is where you record at the end there:

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"Call from Judge McMahon, seeking names of investigation team (Athlone)."

And you e-mail him back at 10801. Do you remember that request? 14:50

A. I do.

253 Q. Did you discuss that with anybody in the Commissioner's office or with the Commissioner?

A. I can't say a hundred percent. I would most likely have told the Commissioner I had got the request. And I would then make contact with Assistant Commissioner Ó Cualáin, who supplied me with the names of the investigation team, which I subsequently sent on to the judge. 14:50

254 Q. Were you told by Judge McMahon why he wanted this or whether it was for the confidential reporter. Did you know anything about the context of the request?

A. No, I don't believe so. I don't think he said the reason he needed it but I felt he would be quite entitled to get the names of the investigation team. 14:50

255 Q. Can I ask you, would this be a normal procedure or an unusual request? would it be usual or unusual, to put it simply?

A. That would be unusual, I would say, yes. 14:51

256 Q. Okay. Did you see any difficulty with providing the names of the investigation team?

A. No. As I say, I believe I discussed it with the Commissioner and I certainly would have rung Assistant

1 Commissioner Ó Cualáin for the details. But I can't
2 remember whether -- certainly there wasn't an
3 objection, because I wouldn't have sent them if there
4 was. We would have had to speak to the judge further
5 if somebody had raised an objection in relation to it. 14:51

6 257 Q. Can I ask you, there on the 2nd July you provide the
7 names of the team, and if I can ask you to move into
8 late July, 24th July 2014, again a letter that was
9 opened this morning, 10802. This is your letter. If I
10 can just ask you a couple of questions about this 14:52
11 letter. Just to give you the context, I don't know if
12 you were here this morning for Judge McMahon's
13 evidence, detective superintendent?

14 A. I was present, yes.

15 258 Q. Okay. I think page 13265 of the documents, 14:52
16 Mr. Kavanagh doesn't need to put it up, but it was
17 Nicholas Keogh's diary, where he talks about contacting
18 Judge McMahon and he is talking about having to work
19 with him, which is the person who is the subject of the
20 PD, and he talks about other investigations that were 14:52
21 being launched. That's in his diary entry. It would
22 appear from Judge McMahon's evidence that this
23 information made its way from Garda Keogh through Judge
24 McMahon and then up to you, because in this letter you
25 are referring to that particular issue. If we can just 14:52
26 look at that letter. You're writing to the deputy
27 commissioner of strategy and change management. Can
28 you tell the Chairman first of all who they are, what
29 that unit is?

1 A. I'm sorry, who the person is or what the office is?
2 259 Q. No, what the office is and why you are writing to this
3 office?
4 A. Yes. The hierarchy of the Garda services, the
5 Commissioner at the top, at this point in time there 14:53
6 would have been two deputy commissioners.
7 260 Q. CHAIRMAN: Yes.
8 A. The deputy commissioner of operations, who was in
9 charge of all live ongoing operations, and strategy and
10 change management was -- 14:53
11 261 Q. CHAIRMAN: Everything else?
12 A. For want of a better word, administration, legal --
13 everything else, yes.
14 262 Q. CHAIRMAN: Everything else?
15 A. Yes. 14:53
16 263 Q. CHAIRMAN: So operations, Garda police work, one deputy
17 commissioner?
18 A. Correct.
19 264 Q. CHAIRMAN: And sort of everything else, another?
20 A. More or less, yes. More or less. 14:53
21 265 Q. CHAIRMAN: Okay. And this was the everything else
22 deputy commissioner?
23 A. That's correct. He or she would have responsibility
24 for the whole Human Resources.
25 266 Q. CHAIRMAN: I understand. Administration, confidential 14:53
26 reporting, all that would come in to the deputy?
27 A. Actually a previous designation for the role was admin.
28 267 Q. CHAIRMAN: I understand.
29 A. Admin.

1 268 Q. MS. McGRATH: Now, I think it's headed "confidential
2 reporting protocols" and this refers to -- effectively
3 the second substantive paragraph there says:

4
5 "The confidential recipient has since contacted this 14:54
6 office and stated that the confidential reporter has
7 complained that his chief superintendent is continuing
8 an investigation against him while his own complaint is
9 being dealt with. The confidential recipient has
10 enquired as to whether we have any protocols in place 14:54
11 to address such situations. Perhaps the assistant
12 commissioner HRM should advise."

13
14 You go on to say:

15 14:54
16 "With the introduction of the Protected Disclosures Act
17 2014, this particular query may be moot, however the
18 issue could well arise again once GSOC becomes a
19 prescribed body under section 7 of the Act.

20 14:54
21 The Commissioner would appreciate your views and
22 recommendations in early course."

23
24 First of all, can I ask you about the substantive
25 paragraph. You had received a call from Judge McMahon, 14:54
26 it appears on the basis of that letter?

27 A. It would seem so, yes.

28 269 Q. Do you remember that conversation?

29 A. I don't.

1 270 Q. Okay. Do you remember him expressing any view or
2 giving you information in relation to a chief
3 superintendent continuing an investigation against him?
4 A. I have something in my head but I can't say it was from
5 the judge. I know I had a conversation with somebody 14:55
6 in relation to two investigations ongoing. I don't
7 have a note of it unfortunately and I can't say for
8 definite that it was with the judge.

9 271 Q. Well, when Mr. Marrinan asked Judge McMahon had Garda
10 Keogh expressed these concerns to him, he said 14:55
11 regularly and he used the words "all the time". Do you
12 recall whether this translated through to you in that
13 phone call or communication?

14 A. No, I don't recall. I don't recall that no.

15 272 Q. In any event, you note the fact that it is happening 14:55
16 and you look to see whether there are any protocols in
17 place to address the situation. Can you tell the
18 Chairman what you mean by that and what you are looking
19 for or querying?

20 A. We're looking to see is there any guidance, I suppose, 14:56
21 from an IR or legal perspective that might say that if
22 such a situation arises this is best practice, this is
23 what you should do. So we were looking for the this,
24 we were looking for the answer to see what best
25 practice was there that we could comply with. 14:56

26 273 Q. We saw from your confidential logbook that it would
27 appear there were only two PDs in 2014, so these were
28 relatively unusual situations. And here this was a
29 request for protocols to address this situation. How

1 seriously was this taken in the Commissioner's office,
2 that this issue had arisen?

3 A. I think given that I have written this, I obviously
4 wrote this under direction from the Commissioner, it's
5 not something I would decide myself, that I will do a 14:57
6 free run at this on my own accord, so I think it's most
7 likely something I would have discussed with the
8 Commissioner before I wrote that. So obviously it was
9 of concern to the Commissioner.

10 274 Q. Did you get a response from strategy and change 14:57
11 management or HRM on the issue?

12 A. I don't recall getting a written response and I don't
13 recall from my details that I sent back to the
14 Tribunal, I don't recall coming across something.

15 275 Q. In fairness to you, detective superintendent, I think 14:57
16 in your statement and on your list of chronologies, a
17 response isn't recorded?

18 A. That's correct.

19 276 Q. But there may have been one, it may just not have been 14:57
20 disclosed or we just may not have come across it,
21 there's thousands of documents. But do you remember --

22 A. No, I don't remember.

23 277 Q. You don't remember getting a response?

24 A. No.

25 278 Q. Okay. 14:58

26 A. I'm sorry, can I just say in relation to CR 1 and 2 of
27 14, they were the two that were on that page and they
28 were disclosed because of the fact that the first one
29 was in relation to Garda Keogh. I am not sure were

1 there others from 2014. I just wanted to clarify that,
2 rather than agreeing that there were only two. I'm not
3 certain.

4 279 Q. CHAIRMAN: Because we have 1/2014 and 2/2014, it
5 doesn't mean that there were only two? 14:58

6 A. That's correct, I don't know.

7 CHAIRMAN: Okay.

8 280 Q. MS. McGRATH: Very well. Now, detective
9 superintendent, that's July and as we know the
10 protected disclosure came in in May and we have just 14:58
11 gone through the period of June and July. If I can
12 just take you in to August, and at page 10806 there is
13 a report in, an update in for you. So 10806. On 10th
14 August 2014 an update comes in from the assistant
15 commissioner and he says: 14:59

16
17 "I wish to inform you the investigation is progressing
18 and approximately 90 jobs have been created by the
19 incident room following a review and analysis of Garda
20 Keogh's statement. 14:59

21
22 An issue has most recently arose where the confidential
23 reporter alleged the planting of evidence by Gardaí
24 (half a kilo of heroin value €75,000) in a car that
25 resulted in the subsequent arrest of two persons. A 14:59
26 file currently stands with the DPP in respect of this
27 seizure. I have sought legal advice on the appropriate
28 course of action having regard to the confidential
29 nature of the complaint, the disclosure and

1 admissibility of same and the requirement of An Garda
2 Síochána to fully inform the DPP in advance of any
3 direction being given."

4
5 He said he would come back to you on the receipt of
6 legal advice; isn't that right? 14:59

7 A. That's correct.

8 281 Q. Now, you do reply to that on the 18th August and you
9 ask him to keep you informed of significant
10 developments. We will come back to that in a moment. 15:00

11 But can I ask you, that was on the 10th August, you
12 have a diary entry the following day, at 15898, and you
13 have a letter going out to Judge McMahon, you have:

14
15 "HQ on confidential recipients." 15:00

16
17 Is that meeting in headquarters on confidential
18 recipients?

19 A. When I refer to HQ, we have within the Garda services,
20 we have what we call headquarter directives, notifying 15:00
21 people of a change in legislation or something like
22 that. Normally when I would reference something like
23 HQ and confidential recipient, I would be talking a
24 about HQ Directive there.

25 282 Q. Okay. 15:00

26 A. But I can't elaborate any further. I gave it whatever
27 attention it needed but unfortunately I have nothing
28 else to go with that to say what exactly it was. I
29 think you heard the Judge this morning say this was a

1 particularly busy time for the Guards and where I
2 worked at the time was right in the middle of it.
3 Maybe I didn't make as many notes as I should have on
4 some things. My apologies for that.

5 283 Q. Okay. I think during August, as I say, you had that 15:01
6 early report on the 10th August with the additional
7 information coming from Garda Keogh, you reply on the
8 18th saying to keep you informed of significant
9 developments. We just know during August of 2014,
10 issues had started -- we know from the statement of 15:01
11 Assistant Commissioner Ó Cualáin that issues had
12 started to arise around that time regarding the
13 possible suspension of Garda A and the issue of Garda
14 Keogh working with him in the workplace. This was all
15 starting to bubble up around that time. Would you have 15:02
16 become aware of any of that in the Commissioner's
17 office or know that that was happening or going on?

18 A. Unless it came in in the reports, I wouldn't -- I would
19 not concern myself with any part of the investigation.
20 I kept my role strictly to the administration of the 15:02
21 file.

22 284 Q. Okay. Now, moving on to later on then in the year, in
23 particular a report comes in to you from the assistant
24 commissioner. This is dated 26th November 2014. And
25 this is 10826. Sorry, this is 10825. That is the 15:02
26 second page, sorry. Can I ask you this: This is
27 directed to your office and at this stage now we're a
28 number of months after the disclosure has been made and
29 the investigation is well underway. You have an

1 outline there of what is definitely becoming a
2 significant investigation with the number of jobs in
3 the job books and the interviews and statements being
4 taken, isn't that right?

5 A. That's correct.

15:03

6 285 Q. So I think the Commissioner's office is well on notice
7 at this stage that this is a significant investigation
8 and it certainly is not going to be done within the
9 short timeframe that perhaps might have been hoped, is
10 that right?

15:03

11 A. Yes, I would accept that, yes.

12 286 Q. Now in the second substantive paragraph there, the
13 assistant commissioner is referring to a recent case
14 conference held on 11th November 2014. He says:

15 15:03

16 "Investigative strategies were discussed and outlined
17 along with several new lines of enquiry being
18 established that will assist in progressing this the
19 investigation."

20 15:04

21 It says:

22

23 "Arrangements are being made to again speak to the
24 confidential reporter regarding further information he
25 has provided concerning medical records."

15:04

26
27 Did you know -- I mean, the assistant commissioner can
28 deal with this, but the reference to medical records in
29 the correspondence, that seems to be the first time,

1 did you know what that was about?

2 A. No.

3 287 Q. Or did it make any --

4 A. And I still don't.

5 288 Q. Okay. Would you have been aware that at this time 15:04
6 Garda Keogh was starting to take sick leave, in and
7 around these months?

8 A. I'm aware that he was taking sick leave. I really
9 don't know whether I was aware at this particular time.

10 289 Q. Okay. 15:04

11 A. I am aware looking back on the totality of what
12 happened that there was sick leave involved but I
13 couldn't say that I knew at this particular time.

14 290 Q. Okay. Now, I think he says on the last paragraph 15:04
15 there, he talks about it being a very complex
16 investigation and talking about the number of
17 witnesses. Again, as we said earlier, it has become a
18 complex investigation at this stage, isn't that right?

19 A. That's correct, yes.

20 291 Q. Now, on the next page, he says in the last paragraph 15:05
21 there:
22
23 "While it is difficult to identify exact timeframes for
24 the conclusion of this investigation, I can assure you
25 that every effort is being made to have the matter 15:05
26 concluded in an expedient manner. All of the
27 appropriate resources have been made available to
28 progress the investigation to a satisfactory
29 conclusion. "

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So is it the case the Commissioner's office is satisfied at this stage that it is moving along at the pace that it possibly can in the circumstances?

A. Well, certainly again I repeat, my concern was from the administrative end, the Commissioner would have been briefed obviously when this arrived and this would have been used to keep GSOC and the Inspectorate and perhaps Judge McMahon informed. I think maybe there was an update sent at this point in time also. 15:05

292 Q. Can I ask you then, that is a report that is coming in to you on 26th November 2014. You have a diary entry for the following day, 27/11/2014. It's at 15900. Can you see it there? If you go down, Mr. Kavanagh, please. It says: 15:06

"Protected disclosure report Daily Mirror article AC Ó Cual áin CR 1/14."

A. Yes.

293 Q. Do you remember making that entry? 15:06

A. It's certainly my entry. I don't remember making it, no, but I am happy that's my entry, yes.

294 Q. I think in fairness, to assist you, you write a letter to the assistant commissioner in respect of this, at 10827 and you say: 15:07

"I am directed by the Commissioner to forward the attached newspaper article from the Daily Mirror of 27th November 2014 for your information and necessary

1 attenti on.

2

3 I understand that an interim report on the
4 investigation has been submitted for the Commissioner's
5 information. "

15:07

6

7 Are they the reports that have been coming -- that we
8 have looked at?

9 A. It would be, yes.

10 295 Q. "In light of the contents of this publication, the
11 Commissioner directs that immediate contact is made
12 with Garda Keogh to establish the problems he is
13 experiencing. He should be reassured that he will not
14 be subject to any form of harassment and will be
15 treated with dignity and respect in the workplace. "

15:07

16

17 Now, obviously this is a very important letter raising
18 a very important issue. I think this was an article
19 which was effectively by Mick Wallace in that newspaper
20 talking about Garda Keogh in the aftermath of the
21 disclosure and you are asking that he is assured he
22 will be not the subject of any form of harassment and
23 will be treated with dignity and respect in the
24 workplace. Can you tell the Chairman a little bit
25 about that time and that letter?

15:07

25

26 A. Yes, sorry, just to go back, Chairman, to the diary
27 entry. Sometimes on my diary I will do a list of jobs
28 for myself that I need to do and tick them off as they
29 are done.

15:08

1 296 Q. CHAIRMAN: A to-do list.

2 A. That was actually one of them. So obviously I had had
3 a discussion with the Commissioner and I was to do up
4 this reply and this is obviously the reply here that we
5 are looking at. Yeah, the article in the Daily Mirror, 15:08
6 from memory, it caused some consternation, as in the
7 Press Office were asking us for comments on it. I
8 think at that point in time we didn't realise that
9 there was anything untoward or any allegations being
10 made. So the Commissioner was anxious to have it 15:08
11 addressed immediately. So possibly dictated this or
12 perhaps I wrote it myself and the Commissioner may have
13 made some changes. I can't honestly remember. But
14 certainly it was done between us both and I signed it
15 and sent it looking for the response. 15:09

16 297 Q. MS. McGRATH: Do you remember a discussion with the
17 Commissioner on this particular issue?

18 A. Again, I know I would have discussed it because these
19 particular files, any confidential reporting files or
20 anything like that were hugely news worthy and 15:09
21 immediately or at the first available opportunity if
22 the Commissioner wasn't there, before I would do
23 anything, I would give her a complete briefing on
24 whatever was happening at that point in time. There
25 were times when the Commissioner might get a call and 15:09
26 she would ask me did I hear anything about this and
27 between us we would do some further research on it.

28 298 Q. You go on to say:
29

1 "It is noted from previous update supplied 16th June
2 2014 that Garda Keogh was advised of the services of
3 the employment assistance officers.
4

5 Please address these issues and report furtherer in 15:09
6 early course to facilitate updates to the GSOC and the
7 Inspectorate."
8

9 Isn't that right?

10 A. That's correct, yes. 15:10

11 299 Q. I think you say in your statement that after you wrote
12 that letter to the assistant commissioner, I think you
13 wrote to Deputy Wallace, or your office certainly did
14 write to Deputy Wallace in relation to this, isn't that
15 right? 15:10

16 A. Yes, I think I wrote to Deputy Wallace myself, yes.

17 300 Q. That was on the 16th January?

18 A. Sorry, if that is the date in the statement, yes,
19 that's correct.

20 301 Q. 15879, at the top paragraph of your statement. I am 15:10
21 jumping ahead a little bit in time because I do want to
22 go back to December, but just in the January you say in
23 your statement at 15879:

24
25 "On 16th January 2015, on behalf of the Commissioner I 15:10
26 wrote to Deputy Wallace seeking further details for a
27 full and appropriate investigation. This was copied to
28 deputy commissioner SCM and to the Chairman of GSOC."
29

1 Isn't that right?

2 A. That's correct, yes.

3 302 Q. You record:

4

5 "On 26th January 2015 I received a reply from Deputy 15:10
6 Wallace indicating his satisfaction that the matters
7 had been reported and were being investigated. This
8 response was copied to GSOC on 29th January 2015."

9 A. That's correct.

10 303 Q. Did you consider at that stage in the Commissioner's 15:11
11 office that that issue had been dealt with?

12 A. No, I think the letter to Deputy Wallace was to see
13 whether he had any additional information or whether he
14 wanted to make a statement or whether he was making a
15 formal complaint or whether he wanted GSOC -- we were 15:11
16 really trying to establish what he wanted to do with
17 it. I suppose we were trying to guard against him
18 saying that he had no contact from the Guards, that we
19 did nothing about the allegations that he made. So we
20 were trying to tease out -- when I wrote the letter to 15:11
21 the deputy, I was trying to tease out is there anything
22 more that he wanted done, we would investigate it
23 fully, but were there any other avenues he wanted us to
24 cover and he indicated that there were not. But that
25 doesn't mean that we felt that that was drawing a line 15:11
26 under it, the matter was still being investigated.

27 304 Q. As I say, I skipped forward there were the date of that
28 article to the contact with Deputy Wallace and his
29 response. But in the middle of that, on 23rd December

1 2014, you got a report in your office from Assistant
2 Commissioner Ó Cualáin raising similar type issues.
3 Well, I shouldn't say that, raising some issues in
4 respect of Garda Keogh. This is 23rd December 2014, at
5 8397, if you could just look at that please, detective 15:12
6 superintendent. Now, as you say, this is coming from
7 the assistant commissioner and he is telling you, he
8 says:

9
10 "I wish to confirm that Detective Superintendent D 15:12
11 Mulcahy accompanied by Detective Inspector M Coppinger
12 met the confidential reporter as directed by the
13 Commissioner. The confidential reporter stated that he
14 had no issues with this investigation and was satisfied
15 with the progress. He further indicated that he felt 15:12
16 he was harassed by senior management at Mullingar for
17 the three reasons: A Pulse check he previously did on
18 the Pulse system; intelligence he had placed on the
19 Pulse system; two alleged complaints by Ms. Olivia
20 O'Neill and Mr. Liam McHugh. 15:13

21
22 The confidential reporter stated that he lodged a
23 complaint with GSOC in respect of that alleged
24 harassment. "

25 15:13
26 It continues on there he is understanding that GSOC
27 that will investigate it, but in the last line of that
28 paragraph:
29

1 "He was also informed that if he felt he was being
2 harassed to report the matter immediately."

3
4 So there you have references now to the confidential
5 reporter raising local issues in relation to 15:13
6 management. What was the response internally in the
7 office or what was your response in relation to this
8 letter that was directed to you? What did you do with
9 it?

10 A. Sorry, again, I would have immediately brought it to 15:13
11 the Commissioner's attention. I am quite sure,
12 if I can find in my statement what the next piece of
13 correspondence was, it will probably say what was done
14 with it.

15 305 Q. I don't think your statement deals with it. It doesn't 15:13
16 refer to that letter, I'm afraid, Detective
17 Superintendent. If we keep going through the
18 correspondence that I have here. Well, can I ask you,
19 would something like this, would a letter like this
20 have been a red flag or a trigger for you in the office 15:14
21 at this point?

22 A. No, not for me personally, because again I reiterate,
23 the administration of the file was my major concern. I
24 would not involve myself in the investigation process
25 of a file such as this. So immediately I would have 15:14
26 brought it to the attention of the Commissioner. If I
27 could see the date on this, sorry, I can't see it here.

28 306 Q. It is 23rd December 2014. It's on the second page
29 there.

1 A. That is certainly familiar to me but I can't remember
2 having dealt with it.

3 307 Q. Can you remember any discussions in the office at that
4 time?

5 A. The 23rd December. I'm not sure whether that was 15:15
6 received before Christmas or maybe it was after
7 Christmas. So I am just wondering was there something
8 done in January in relation to it.

9 308 Q. Okay. But --

10 A. Sorry, to answer your question, I suppose I can't 15:16
11 honestly remember the discussion that took place around
12 it.

13 309 Q. Okay. Sequentially just moving on after that, you have
14 a diary entry of 12th January 2015, so now we're into
15 2015, and it's at 15901. But actually, Mr. Kavanagh, 15:16
16 if you can open the typed version, please, at 15882, it
17 is probably easier to read. 15882. That is 12/1.
18 This is your entry in your diary:
19

20 "Mick Wallace article re drug dealing in AGS. Get 15:16
21 article and write to Deputy Wallace seeking details or
22 a meeting - look at wording in Garda Act - take wording
23 from that. Is this related to Nicky Keogh - ensure all
24 welfare supports are being given to the member and get
25 update on the file (per CR 8/1/15)." 15:17
26

27 Can you just tell the Chairman about that entry there?

28 A. Okay. Again, this is like the jobs list, this is
29 something that -- this would have been a direction.

1 Per CR is per the Commissioner, so that's an
2 instruction from the Commissioner on the 8/1. I wrote
3 it into the diary on the 12/1, it may have been
4 transcribed maybe from a small notebook or a Post-It
5 even, but it's transcribed into the diary at that
6 stage. And it's just again a job that I had to do,
7 subsequently did. 15:17

8 310 Q. Can I ask you at this at this juncture, detective
9 superintendent, I think we have seen from the
10 correspondence, in fairness there is a significant 15:17
11 emphasis placed on welfare and making sure that he has
12 access to EAS, to what extent does the Commissioner's
13 office know whether this has or has not translated into
14 practice for the member? Who do you rely on to know
15 that? 15:18

16 A. Well the Commissioner would, I presume, discuss it at
17 her management meetings with the assistant
18 commissioners. I presume she may discuss it with
19 Assistant Commissioner Ó Cualáin, I don't know that for
20 definite. 15:18

21 311 Q. Okay.

22 A. But certainly from day one that the Commissioner was
23 appointed, with any of these reports that came in,
24 welfare was always the number one issue and
25 Commissioner O'Sullivan always insisted that I would 15:18
26 put something in that members were to be treated with
27 respect and dignity in the workplace and that they were
28 to be afforded all welfare supports. I can remember
29 the actual wording because it was repeated so often.

1 312 Q. Can I ask you then, we're now in January 2015, this
2 issue has arisen, you have your correspondence from
3 Deputy Wallace, he comes back to you, he says he is
4 satisfied with the investigation. You have a further
5 reported update from the assistant commissioner on 30th 15:19
6 January 2015. This is at page 10839. This is to you,
7 this is another update. He is referring to the
8 previous report of 23rd December 2014, which made
9 reference to the issue of harassment but he doesn't go
10 into it any detail in this report. He says at the end 15:19
11 there, he's talking about the multiple applications for
12 electronic evidence and he says:

13

14 "A draft final report has commenced."

15

15:19

16 There at the end, the last paragraph on that page.

17 A. Yes.

18 313 Q. On the next page he talks about the investigation team
19 completing enquiries. Then he talks about the
20 timeline. He says: 15:20

21

22 "I appreciate that this investigation is taking a
23 considerable period of time and is involving
24 considerable resources. However, the time and
25 resources are required to definitively complete the 15:20
26 investigation to the highest professional standard and
27 to ensure all of the allegations are being properly and
28 thoroughly investigated.

29

1 I will keep you apprised of significant developments. "

2
3 Now, at that stage he had been appointed back on 9th
4 May 2014. In the Commissioner's office was there any
5 concern with the timeline or was the Commissioner 15:20
6 satisfied that she was being given an adequate
7 explanation for the timeframe?

8 A. I can't really answer for the Commissioner but from my
9 knowledge of it, yes, we were getting pretty
10 comprehensive updates on what was happening and it 15:21
11 seemed to be an evolving investigation, as one avenue
12 was being explored there were several others would
13 arise. So it was certainly complex and, as I say, we
14 were getting comprehensive updates. So I don't believe
15 there was a huge concern raised at that point in time 15:21
16 about the timeliness of the investigation, it would be
17 expected to take that long.

18 314 Q. Now, I think in February then an issue arose which came
19 to your attention and I think you subsequently brought
20 it to Assistant Commissioner Ó Cualáin's attention. At 15:21
21 page 8421. So this is reference -- I am not going to
22 open the letter, but just look at the title, this is
23 30th January 2015 and it's from Chief Superintendent
24 Anthony McLoughlin, who at that time was Internal
25 Affairs. He talks about: 15:22

26
27 "Intelligence reports suggesting criminal activity by
28 members of An Garda Síochána. "
29

1 And it talks about attaching a number of reports
2 received at Internal Affairs on that issue. I think
3 you forwarded that correspondence to the assistant
4 commissioner on the 10th February, which is at 8420.
5 This is you on the 10th February, you write to him, you 15:22
6 attach the correspondence from Chief Superintendent
7 McLoughlin, you say:

8
9 "The matters set out in the attached reports bear some
10 similarities to the matters you are currently 15:22
11 investigating under the confidential reporting
12 mechanism. The Commissioner has asked that you examine
13 this file and submit a report to include your views and
14 any recommendations on the issues raised."

15 15:23
16 So effectively were you asking did these reports have
17 any similarities to the matters that he was
18 investigating following Garda Keogh's disclosures?

19 A. Yes. It seems the first document was addressed to a
20 superintendent in Crime and Security and copied to the 15:23
21 Commissioner's office. So my recollection is that I
22 read that and when I read it I said to myself, this
23 seems to be the same as the allegations or similar in
24 nature to the allegations being made by Garda Keogh.
25 Again, I would discuss that with the Commissioner and, 15:23
26 as you can see then, was directed by the Commissioner
27 to send it on to Assistant Commissioner Ó Cualáin for
28 his views on it and to see whether he agreed that they
29 were related.

1 315 Q. I think he comes back to your office on 18th March
2 2015, that's at page 10847. He says he has discussed
3 the matter with his lead investigator, Detective
4 Superintendent Mulcahy. He attaches his views. He
5 agrees there that:

15:24

6
7 "The alleged criminal allegations contained in the
8 intelligence report Pulse ID 4085409 has certain
9 similarities to a section of a statement made by the
10 confidential reporter and are being investigated as
11 part of the overall investigation under the Garda
12 (confidential reporting of corruption or malpractice)
13 regulation 6."

15:24

14
15 Can I ask you there, the Chairman is investigating this
16 intelligence report under that Pulse ID and it is one
17 of the issues before the Tribunal. We have heard quite
18 a lot of book of evidence it. Would this have been the
19 first time that that Pulse ID issue made its way to
20 your office, even the existence of this intelligence
21 report on the Pulse?

15:24

15:24

22 A. I believe it was, yes. There were other issues, the
23 report that went to Crime and Security that was cc'd to
24 us, there were several matters in that. So even that
25 one issue didn't stand out for me as being, oh, got to
26 do something with this. It was the totality of the
27 report is what I was sending to the assistant
28 commissioner for his views on it. I hadn't identified
29 that as being a particularly important or vital piece

15:25

1 that needed to be addressed. It was the whole report.
2 316 Q. Okay. would you have known at that time, this is in
3 March 2015, whether this was or was not a significant
4 issue for Garda Keogh? We know from the evidence to
5 this Tribunal that it has required a lot of
6 interrogation, but that Pulse ID 409, you are saying
7 that this is the first time that this was isolated for
8 your attention in any letter?

15:25

9 A. To the best of my knowledge, yes.

10 317 Q. Okay. I think the paragraph there at the end -- sorry,
11 I should finish that:

15:26

12
13 "Detective Superintendent Mulcahy also reports that
14 while the investigation is being conducted in respect
15 of certain matters contained in intelligence PID
16 4085409, the investigation is not focusing on the
17 inputting of this data on to the Pulse system."

15:26

18
19 He also tells you:

20
21 "It is also reported that the investigation team was
22 unaware that other intelligence was supplied by a CHIS
23 source in a series of reports."

15:26

24
25 You are told that:

15:26

26
27 "Detective Superintendent Mulcahy has examined the
28 intelligence report dated 18th December 2014 from NCIU
29 and confirms the investigation team is investigating

1 this intelligence insofar as it related to number 1."

2
3 And that was that part of the allegation of the
4 confidential reporter that controlled drugs were placed
5 in a vehicle driven by the partner of X. Now, we know, 15:26
6 we have seen previously, that was additional material
7 that you had been notified of that Garda Keogh had
8 given at one stage to Assistant Commissioner Ó Cualáin.
9 Isn't that right? We have opened that letter.

10 A. Yes. 15:27

11 318 Q. He confirms that the investigation had no knowledge of
12 the other two strands of intelligence at 2 and 3 and
13 that no reference was made in respect of these
14 allegations by the confidential reporter. He goes on
15 in the next page to confirm that these matters are 15:27
16 believed to be with Chief Superintendent John Scanlan.
17 So that was his answer to you in relation to those
18 reports?

19 A. That's correct, yes.

20 319 Q. Okay. Now, then what happens next and, as I say, that 15:27
21 was happening in February/March, and in April you now
22 have another update. At this stage there has been a
23 change of the divisional officer locally in westmeath
24 and this is -- I am going to move into April and I'm
25 asking you to open up page 10851. I think we will see 15:27
26 a reference here to a Superintendent Murray. This was
27 a change in superintendent down in Athlone and there
28 was also a change of divisional officer around this
29 time to Chief Superintendent wheatley. would you have

1 been aware of this personnel change vis-à-vis Garda
2 Keogh or his local management team in the
3 Commissioner's office?

4 A. I would generally be aware of any changes in personnel
5 throughout the State because they would, most of the
6 time, emanate from the Commissioner's office. 15:28

7 320 Q. Here it's referring to there, you see the heading, it's
8 talking about welfare issues of confidential reporter
9 and comments made in the Dáil by Mr. Michael Wallace
10 TD. There in the second paragraph it says: 15:28

11
12 "By way of additional information, I wish to inform you
13 that Detective Superintendent Mulcahy has been in
14 regular contact with the confidential reporter both in
15 person and on the phone. During all these meetings and 15:29
16 conversation D/Superintendent Mulcahy has enquired
17 about the confidential reporter's welfare and made him
18 aware of all the services available to him if required.
19 The confidential reporter has consistently indicated
20 that he does not want to engage with any welfare 15:29
21 services offered by An Garda Síochána."

22
23 He talks about the most recent communication between
24 Detective Superintendent Mulcahy and the confidential
25 reporter on 1st April 2015. Just before I go on there, 15:29
26 you're getting the welfare reports effectively, it
27 would seem at this stage, at all times you're getting
28 welfare reports from the investigation team?

29 A. Yes.

1 321 Q. Okay, and they're your source of confirmation as to
2 whether all is well or not?

3 A. That's correct.

4 322 Q. Okay. It goes on, it says:

5

15:29

6 "Following this communication D/Superintendent Mulcahy
7 is of the belief that the comments made by Mr. Michael
8 Wallace TD in the Dáil on 31st March 2015 regarding the
9 bullying and harassment of whistleblowers may have
10 emanated from the above mentioned confidential
11 reporter."

15:30

12

13 I think we are talking there about Garda Keogh, is that
14 right?

15 A. This is the assistant commissioner's report now, so
16 I --

15:30

17 CHAIRMAN: We are.

18 A. I presume he is, yes.

19 323 Q. MS. McGRATH: "In his conversation with Detective
20 Superintendent Mulcahy, the confidential reporter
21 intimated that he had no choice given recent
22 interventions by Superintendent Murray in raising
23 issues over his car tax and also the question of having
24 him referred to CMO for stress related illness."

15:30

25

15:30

26 Now again, is this the first time these issues had been
27 isolated to the Commissioner's office, any issues about
28 car tax or stress illness?

29 A. It was the first time I was certainly made aware of

1 them, yes.

2 324 Q. And it goes on to say:

3

4 "Following this conversation D/Superintendent Mulcahy
5 has contacted Superintendent Murray and outlined the
6 issues as raised by the confidential reporter."

15:30

7

8 So is the Commissioner's office satisfied that these
9 are being addressed and dealt with at that stage?

10 A. Sorry, I am just reading the rest of it.

15:31

11 325 Q. Just there, sorry, at the top of that first -- so
12 you're being told by the assistant commissioner, that
13 D/Superintendent Mulcahy has contacted Superintendent
14 Murray and outlined the issues as raised by the
15 confidential reporter. Had you any cause at this stage
16 to think maybe these issues are not being addressed or
17 not being adequately addressed?

15:31

18 A. No.

19 326 Q.

20 "At the end of today's communication the confidential
21 reporter thanked D/Superintendent Mulcahy for
22 contacting him and expressed his satisfaction with the
23 investigation to date."

15:31

24

25 Did you find some assurance or comfort in that
26 information?

15:31

27 A. From the reports I knew that the Commissioner's
28 directions were being complied with, in that the member
29 was being spoken to in relation to his welfare and

1 access to welfare services within the job.

2 327 Q. It continues:

3

4 "With the investigation ongoing and further
5 communications expected between D/Superintendent 15:32
6 Mulcahy and the confidential reporter, I have
7 instructed D/Superintendent Mulcahy to ensure that any
8 welfare issues highlighted will be communicated to
9 local management for attention as appropriate."

10

15:32

11 So again, did the Commissioner's office take this as an
12 assurance when you got this report in that these
13 matters were in hand both by the investigation team and
14 by local management?

15 A. I don't recall us having a discussion and saying we are 15:32
16 happy, but I think in the generality of the
17 correspondence we were receiving, it would be an
18 assurance that what was being asked to be done was
19 actually being done.

20 328 Q. Can I ask you, at 10859 you acknowledged this report. 15:32
21 Well, in fact, you're acknowledging an earlier one on
22 the 18th March, which we opened. And you say:

23

24 "It is noted that Detective Superintendent Mulcahy has
25 been in regular contact with the confidential reporter, 15:33
26 who has indicated that he does not wish to engage with
27 any of the welfare services offered by An Garda
28 Síochána. An updated report has been sent out to GSOC
29 and copies attached for your information.

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29

The progress of this investigation has also been noted by the Commissioner."

Okay. So you're acknowledging Detective Superintendent Mulcahy is in contact with him from a welfare perspective. Can I just look at that letter that you attach which was written to GSOC there? It's on the next page, 10860. Can I ask you to look at particularly the third paragraph, you say to the Chairman of GSOC:

"You may be aware that Deputy Wallace TD has recently made statements in the Dáil (31st March 2015) concerning this member. The confidential reporter has indicated that he had no choice in this matter following his superintendent approaching him regarding his car tax and a referral to the CMO for stress related illness."

The next page says:

"The confidential reporter has indicated his satisfaction with the investigation to date."

And you say:

"The detective superintendent in charge of the investigation has been in regular contact with the

1 confidential reporter both in person and on the phone
2 in relation to his welfare and the Garda welfare
3 services available to him. The confidential reporter
4 has consistently indicated that he does not want to
5 engage with any of the welfare services in An Garda
6 Síochána. "

15:34

7
8 Can I just, just at this stage, now we're in April,
9 this is a year after he has made his PD, at this stage
10 it would seem that there's very live issues here within
11 the knowledge of the Commissioner's office in relation
12 to welfare issues he is saying he is having with local
13 management. So it's there in effectively red lights.
14 There's now references to the CMO and stress related
15 illness. Would you accept that, detective
16 superintendent?

15:34

15:35

17 A. Yes.

18 329 Q. That at this stage this is an issue --

19 A. Yes.

20 330 Q. -- in relation to this particular confidential

15:35

21 reporter. Okay. Again, I think is it your evidence
22 that you're satisfied that you were assured by the
23 assistant commissioner that D/Superintendent Mulcahy
24 was aware of it, on top of it, communicating with local
25 management, is that the case?

15:35

26 A. Yes. These letters that I am writing are not my
27 interpretation, they're actually based on the reports
28 that I am getting through the assistant commissioner
29 from D/Super Mulcahy, from the investigation teams. So

1 I am reporting verbatim what has been said to us.

2 331 Q. Okay. Now, I think it is the case that we know, we
3 have heard from Garda Keogh's welfare officer, Garda
4 Michael Quinn, these letters are written on 21st April
5 2015, we know that Garda Quinn came on board as his 15:36
6 welfare officer on that date. I will come back to that
7 in a moment. But it is on that particular time he gave
8 evidence of in around that time coming on board with
9 Garda Keogh. But in the Commissioner's office things
10 effectively went up a gear the following month, on the 15:36
11 8th May, where you have a letter in from Assistant
12 Commissioner Ó Cualáin and it's at 10881. And in the
13 second paragraph it says:
14

15 "To date the investigation team has generated 200 lines 15:36
16 of enquiry and interviewed 92 persons who have provided
17 statements to the investigation. On 24th April 2015
18 Garda A was provided with a summary of the allegations
19 made against him to afford him an opportunity to
20 respond. On 5th May 2015 the investigation team was 15:36
21 provided with the analysis of phone records by the
22 telephone liaison officer. Based on this analysis and
23 allegations by the confidential reporter, there now
24 exists a reasonable suspicion that Garda A may have
25 committed a criminal act." 15:37
26

27 He says: "I am now seeking your direction as to
28 whether I proceed with this investigation to a
29 conclusion and the necessity for formal appointments

1 for both the criminal and disciplinary aspects. Advice
2 was previously sought from assistant commissioner Human
3 Resource Management regarding the suspension from duty
4 of Garda A and given the recent developments this
5 matter will now be revisited. "

15:37

6
7 Can I just ask you a couple of things about that? When
8 we saw the initial appointment letter from the
9 Commissioner, Assistant Commissioner Ó Cualáin was
10 asked to carry out a thorough investigation. He puts
11 in place an incident room, interview suspects, looks
12 for telephone data. Here it seems to be the case that
13 he is asking you, or asking the Commissioner's office
14 to confirm, if necessary, a formal appointment for both
15 the criminal and disciplinary aspects. What does that
16 mean? What has the investigation been to date if not a
17 criminal investigation?

15:37

18 A. This is in relation to a member who Garda Keogh has
19 made allegations against.

20 332 Q. Okay.

15:38

21 A. Okay. So in a disciplinary investigation, if I am
22 appointed to conduct a discipline investigation and a
23 criminal matter comes up during that, it's our practice
24 and procedure, and I think it's possibly underpinned
25 legally, that we would seek a separate appointment, one
26 to deal with the discipline and one to deal with the
27 criminal aspects, that both are not dealt with
28 together. That's what's happening here. This is my
29 interpretation, what I am being asked here is for the

15:38

1 Commissioner to appoint somebody separately to look
2 into the criminal side as to the disciplinary side.

3 333 Q. But the investigation that has been happening up to
4 this point, how is that viewed or described? what is
5 it effectively? Is it a criminal investigation up to 15:39
6 this point?

7 A. It depends on what's uncovered during the
8 investigation. A set of allegations were made by the
9 garda and Assistant Commissioner Ó Cualáin set up a
10 team to investigate all aspects of that, to see what 15:39
11 would come from that. There may be only discipline
12 aspects to it, there may be discipline and criminal
13 aspects to it. But with this, as that investigation
14 progressed, another guard who may or may not have been
15 involved in wrongdoing was identified. And to my 15:39
16 knowledge here, this is asking for a separate
17 appointment in relation to the other garda, as to who
18 would investigate the criminal and/or disciplinary
19 aspects of what was being alleged against that member.

20 334 Q. It's at this juncture, a year later, where advice is 15:40
21 being requested from HRM regarding the suspension from
22 duty of Garda A given the recent developments. So is
23 this the first time that the issue of suspension of
24 Garda A has come on your desk?

25 A. I believe so, yes. 15:40

26 335 Q. It's in the context now of what has been found and the
27 reasonable suspicion outlined by Assistant Commissioner
28 Ó Cualáin?

29 A. Yes.

1 336 Q. But the issue, can I clarify that the issue of
2 suspension of Garda A's suspension or transfer or locus
3 of work, never arose up to this point on your desk in
4 relation to Garda A?

5 A. I don't believe so.

15:40

6 337 Q. Okay. The Commissioner then gives a direction on the
7 13th May. So that is the 8th May and on the 13th May,
8 at 10882, the Commissioner directs that you continue
9 with your investigation into the criminal element of
10 this matter and that you make the necessary
11 arrangements for an appointment under the disciplinary
12 regulations through the member's divisional officer.

15:41

13
14 "Please keep this office advised of developments in
15 relation to the criminal aspects and any decisions as
16 regards suspension."

15:41

17
18 So that's the position taken by the Commissioner's
19 office in relation to that. We see that the
20 disciplinary issue doesn't come live again for some
21 time until Assistant Commissioner Ó Cualáin writes to
22 the Commissioner subsequently, is that right? So at
23 this stage he is just being directed to continue with
24 the -- sorry, I am reading that incorrectly. So he is
25 directed to continue with the criminal element and he
26 is to make the necessary arrangements for the
27 disciplinary side?

15:41

15:41

28 A. That's correct, yes.

29 338 Q. Okay. That's where on the 13th May -- now we know that

1 he didn't finalise his report until the following
2 November 2015, and we will come to that in a moment,
3 but on the 13th May that'S where matters stood. During
4 the course of this month, your office receives
5 correspondence from the Minister for Justice in 15:42
6 relation to this issue. I don't know if you remember
7 that. If I just open 10877. This seems to come from
8 -- "Dear, Commissioner" it comes from Frank McDermott.
9 Oh sorry. Yeah, it comes from Frank McDermott, Garda
10 division, 6th May 2015. The Minister is looking for a 15:42
11 report from your office in relation to the Garda Keogh
12 file, isn't that right?

13 A. That's correct, yes.

14 339 Q. And the disclosures in the Dáil. You reply on the 13th
15 May and that's at 10883. 10883. Do we have the right 15:43
16 one there? 10883. Yes, sorry. So this is to the
17 Secretary General from yourself. You're referring to
18 the e-mail of the 6th May and you give him a summary of
19 the investigation at that particular juncture. How
20 Garda Keogh was interviewed, how statements were taken, 15:43
21 how an incident room was set up. Can I just look at
22 the next page please, Mr. Kavanagh. You outline the
23 extensive enquiries carried out and the phone records
24 that were seized. You note again that you are aware
25 that there were statements made by Deputy Wallace in 15:44
26 respect of the superintendent issue, the car tax and
27 the CMO referral for stress related illness. And you
28 say:
29

1 "He has indicated his satisfaction with the
2 investigation to date."

3
4 You assure the Minister that the detective
5 superintendent in charge of the investigation has been 15:44
6 in regular contact with the confidential reporter. You
7 say there that:

8
9 "The confidential reporter has consistently indicated
10 that he does not want to engage with any of the welfare 15:44
11 services in An Garda Síochána."

12
13 would you accept, this is why I mentioned it earlier in
14 April, he was engaging with Garda Quinn, his welfare
15 officer, at that stage? You may not have been aware of 15:44
16 that?

17 A. Well, I wouldn't have been aware, it's a confidential
18 service.

19 340 Q. Okay.

20 A. So I wouldn't have been aware. 15:44

21 341 Q. Okay. So then the Minister comes back again, well, in
22 fact, it's Noel Waters, the Secretary General at
23 Department of Justice, on 29th May 2015 he comes back,
24 at 10894. There it says:

25 15:45
26 "I refer to a matter raised by Deputy Wallace
27 concerning Garda whistleblowers during parliamentary
28 questions on the 26th May.

29

1 The deputy made a number of allegations about how the
2 Gardaí handled the allegations being made. The matter
3 was returned to in a subsequent parliamentary question
4 about the appointment of a Chairperson to GSOC. I
5 enclose extracts from the Dáil debates relevant to
6 these parliamentary questions.

15:45

7
8 The Minister has asked me to seek observation on the
9 claims made by Deputy Wallace as to how the two cases
10 of the two whistleblowers are being handled."

15:46

11
12 Now, in the brief you might have seen we enclose copies
13 of those Dáil debates and the parliamentary questions
14 and they raised issues effectively. I suppose if you
15 don't mind me summarising them, Deputy Wallace was
16 saying that the investigation had not been concluded,
17 notwithstanding the fact it was over a year, he also
18 raised what he said was shameful treatment of the
19 whistleblowers. Do you accept that that's a very brief
20 summary of what was in those Dáil debates?

15:46

21 A. Yes, I accept what you're saying, yes.

22 342 Q. Now you go back and you reply to the Secretary General,
23 at 10906. This is on the 4th June, and you say:

24
25 "CR 1/14 is being investigated by Assistant
26 Commissioner Donal Ó Cualáin and is a comprehensive and
27 time consuming investigation. An updated report will
28 be submitted with timelines for completion as soon as
29 possible."

15:46

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I think that is your response to the Secretary General on that, is that right?

A. That's correct, yes. Can I just check that I acknowledge receipt of yours on the 29th May, was the previous letter the 29th May letter? 15:47

343 Q. The 29th, 10894. If we just go down there, Mr. Kavanagh, please. Do you remember that letter?

A. Yes, yeah. I just wanted to make sure that it was the same, that it was the reply to that particular letter. 15:47

344 Q. So I think at this stage with regard to the Commissioner's office, matters have significantly escalated at this stage in relation to two things really, the timeline that the report is taking and number two, in relation to what Garda Keogh was saying is harassment or adverse treatment locally? 15:47

A. Yes.

345 Q. So I think they have escalated to that level and they're at the Department of Justice, they're now at the Commissioner's office and effectively in the media, is that right? 15:48

A. That's correct.

346 Q. Okay. Now, can I ask you this: There's a letter of 10904 from yourself, it's the same date you reply to the Secretary General. This is a letter, 10904, and at this stage you're writing to the deputy commissioner strategy and change management? 15:48

A. Yes.

347 Q. You forward the Secretary General's material or

1 assistant commissioner Western Region, but subject
2 to -- I will still refer to him as that for the sake of
3 confusion, to avoid confusion. It's saying that you
4 are being told that Garda A is being interviewed and
5 that on the conclusion of the interview he will update 15:50
6 you. So Garda A -- you became aware then at that stage
7 that it was June 2015 when the interviews with Garda
8 Keogh were commencing or starting. He hadn't been
9 interviewed prior to that date.

10 A. Yeah. I would only become aware of these when I would 15:50
11 receive a report on them. I wouldn't be privy to the
12 planning process of the various investigative stages.
13 So it would only be after they had taken place, I'd get
14 a retrospective report on them.

15 353 Q. You're getting your updates, but you also get another 15:50
16 one on 11th August 2015, at 10937. Here, on the 11th
17 August, the date is difficult to read, but I have
18 cross-checked it, I think it's 11th August 2015, and
19 it's referencing the interview with Garda A under
20 caution at that stage. It talks about: 15:51

21
22 "On Thursday, 30th July 2015, the confidential reporter
23 indicated his displeasure in respect of certain aspects
24 of this investigation. He also indicated that he
25 forwarded a letter in this regard to the DPP and the 15:51
26 Department of Justice. I convened a meeting with the
27 investigation team in Oranmore Garda station on 5th
28 August 2015. It is my intention to be in a position to
29 forward a completed investigation file to the DPP

1 withi n one month.

2
3 Devel opments will be reported."

4
5 Can I ask you, he has expressed displeasure in respect 15:51
6 of certain aspects of the investigation, did you ask
7 what was meant by that? Did the Commissioner's office
8 decide at this stage, right, we're going to get to the
9 bottom of this, what is actually going on, we now know
10 this is being flagged repeatedly? So he says 15:52
11 displeasure. When you saw this letter, can you tell
12 the Chairman what happened in the Commissioner's office
13 or what enquiries were carried out?

14 A. Just from memory, I think I used this, because I
15 remember using the actual -- indicating his 15:52
16 displeasure, using that wording verbatim in various
17 reports that were done afterwards, I think possibly to
18 the Inspectorate and GSOC. Again, I wouldn't get
19 involved in the investigative aspects of it and the
20 assistant commissioner at that point in time pointed 15:52
21 out that that it was his intention to have the file
22 with the DPP within a month. Certainly from my point
23 of view, the investigation file would contain all the
24 statements and all utterances made and any parts that
25 were -- his displeasure I presume would be also in 15:53
26 that. So I would be happy on a personal basis that
27 that was something that was going to be adjudicated on
28 by an independent authority, i.e. the DPP. I don't
29 recall having a discussion with the Commissioner and

1 saying, Commissioner, what do you think of that. So I
2 can't answer in relation to what the Commissioner might
3 have thought. But certainly my own thought process is
4 that the assistant commissioner has made it abundantly
5 clear here that the file is almost ready to go to the 15:53
6 DPP, who will adjudicate on it. I would have been
7 satisfied with that, as I say, because I am only
8 responsible for the administration of the system as
9 opposed to the contents of the actual file and how the
10 investigation is progressed. 15:53

11 354 Q. Well, I think that letter is dated 11th August 2015,
12 detective superintendent, and you have a diary entry of
13 19/8/2015. The typed version is at page 15882. So a
14 couple of days later it seems that you met the
15 assistant commissioner yourself re files? 15:54

16 A. Yes.

17 355 Q. Did you discuss what was happening, this
18 correspondence, complaint? He seems to be complaining
19 to the DPP, to the Minister, he was expressing
20 displeasure. Did you discuss that? 15:54

21 A. No.

22 356 Q. Perhaps you didn't see it as your control to discuss
23 that?

24 A. It wouldn't have been my role to discuss it but can I
25 say just in relation to the diary entry, that diary 15:54
26 entry is in relation to being asked directly by the
27 Tribunal to comment or give an indication of any
28 meetings I had with Assistant Commissioner Ó Cualáin.
29 To be quite honest, while the dates are sufficiently

1 close to suggest this may have been about a
2 confidential report, I don't honestly know whether it
3 was or not. At that point in time I would have met
4 Assistant Commissioner Ó Cualáin on a very, very
5 regular basis in relation to a number, a large number 15:55
6 of files. So I can't honestly say what that's about.
7 Having said that, it is close in proximity datewise to
8 what's going on here, so it possibly was in relation to
9 it but I can't say for definite.

10 357 Q. Well, can I ask you, you reply to this letter of the 15:55
11 11th August on the 21st August, and that's at 10938.
12 At 10938 you say:
13 "I refer to your letter of 11th August 2015, the
14 content of which has been noted by the Commissioner."
15 A. Yes. 15:55

16 358 Q. "Updates have issued to the Department of Justice and
17 Equality, the Garda Inspectorate and GSOC.
18
19 Please keep this office informed of developments."
20 15:55
21 If I was to say to you, detective superintendent,
22 simply just ask for your view, there's no substantive
23 query there in relation to what is being said on the
24 11th August, would you accept that?
25 A. I do. 15:56

26 359 Q. Do you know why was that, if you can assist the
27 Chairman?
28 A. Well, I can only assist insofar as what I already said.
29 My view of it is, that a file is imminent to go to the

1 DPP, who will make an independent judgment on all of
2 the issues on the file. Again, I can't recall whether
3 the Commissioner -- I don't believe the Commissioner
4 did make an issue out of any of the things that you
5 have highlighted, because if she had, I would have
6 covered them in this minute of the 21st August. 15:56
7 They're not covered, so I can only assume that they
8 weren't an issue. Certainly I can only say what my
9 thought process was in relation to the file going to
10 the DPP. 15:56

11 360 Q. Now, just moving on, I will just try and move through
12 the remainder of the correspondence quickly. At page
13 10945, just if I can move you into September 2015. Now
14 we know the report was November, so just we're on the
15 3rd September 2015, and this is from the assistant 15:57
16 commissioner to yourself attaching a report from
17 Detective Superintendent Mulcahy. Now this is probably
18 a more detailed report coming to you than we have
19 previous seen, would you accept that, that's coming in
20 at that stage? 15:57

21 A. Yes, given that there was an attachment and it had
22 other reports on it, yes.

23 361 Q. And it says:

24
25 "From the outset Detective Superintendent Mulcahy has 15:57
26 at all times remained cognisant of the confidential
27 reporter's general wellbeing and welfare issues and has
28 proffered the appropriate support where required."
29

1 This report at 10946, we will be looking at in in more
2 detail with the detective superintendent, but it
3 outlines issues in relation to intoxication, in
4 relation to Garda A or working with Garda A and in
5 relation to welfare and his welfare officer etcetera, 15:58
6 would you accept that?

7 A. Yes.

8 362 Q. Okay. Now I think what happens is that -- just to move
9 along a little bit snappier, I am just conscious of the
10 time, the report comes in on 24/11/2015. That report 15:58
11 again, that's at page 11979, that is a report to the
12 Commissioner, to the Garda Commissioner from Assistant
13 Commissioner Ó Cualáin, it's 24th November 2015. And
14 again the assistant commissioner himself, now the
15 former Commissioner, he will be dealing with it in more 15:58
16 detail. But effectively this is the report that came
17 in to you and I think it informed your office that a
18 file had been sent to the Director of Public
19 Prosecutions, is that right?

20 A. That's correct, yes. 15:59

21 363 Q. I think you can see there in the report it outlines the
22 substance to a number of the allegations, etcetera.
23 And I think it talks about a number of issues arising
24 out of the investigation. He highlights disciplinary
25 matters, isn't that right? 15:59

26 A. Sorry, I just don't see the --

27 364 Q. Now in fairness to you, detective superintendent, I
28 think other witnesses will deal with it in some detail.
29 I suppose if I just deal with you with the fact that

1 the report came in at that time in November?

2 A. Yes.

3 365 Q. Okay. Now, can I ask you there, you remain in place
4 after this until the following July 2016, isn't that
5 right?

15:59

6 A. That's correct, yes.

7 366 Q. Now, we know from the evidence that we have heard -- I
8 suppose staying with the report, we know that the
9 Director of Public Prosecutions directed no
10 prosecutions, isn't that right?

15:59

11 A. Yes.

12 367 Q. So that was what was happening on the level of the
13 report. But we also know from the evidence that we
14 have heard that there were case conferences happening
15 in respect of Garda Keogh in relation to the
16 difficulties he was having locally and at work. We
17 know he went on long-term illness, sick leave in
18 December 2015. Can I ask you, did any of these issues,
19 such as going on long-term sick leave, such as there
20 was a case conference on 9th December 2015, there were
21 sick certificates coming in referencing work related
22 stress, did any of these make their way up the channel
23 to the Commissioner's office, to your recollection,
24 during those months after the report?

16:00

16:00

25 A. Not to my recollection. And anything on the file -- I
26 examined the file when I was preparing my statement, so
27 unless I have referenced them in my file, they are not
28 there. Whether they came in otherwise than through the
29 private secretary at that point in time, it may have

16:00

1 been that they were discussed at Commissioner's
2 conferences, I doubt it, but it could be that maybe the
3 Commissioner discussed them with the assistant
4 commissioner. Again, I wasn't privy to it, so I can't
5 say for that definite. But other than what I have in
6 my statement, there is nothing on the file to indicate
7 that anything else came in and I am not personally
8 aware of anything coming in.

16:01

9 368 Q. I think that when we heard from Chief Superintendent
10 Lorraine wheatley, moving it forward a couple of
11 months, on 18th May 2016 you e-mail her, at page 2508.
12 If we can just perhaps open that. The Chairman will
13 have seen this e-mail, this is an e-mail coming down
14 from you.

16:01

15
16 "I have been asked by the Commissioner to do some
17 enquiries into Garda Keogh and his current status."

16:01

18
19 Do you know why at that particular time what triggered
20 that, to your recollection, can you remember?

16:01

21 A. No. And I think there may be a corresponding diary
22 entry in relation to this. But again, sorry, I don't
23 mean to sound smart here, but as it says there, I was
24 asked by the Commissioner to do it. I don't recall the
25 conversation. It may be something that she heard or
26 something that was reported to her and she asked me to
27 get some further details and asked me literally to do
28 as I have set out there on the e-mail to Chief
29 Superintendent wheatley.

16:02

1 369 Q. You say:
2
3 "In terms of his current position and welfare, the
4 Commissioner asked me to touch base with you to get an
5 up-to-date report. This should cover inter alia 16:02
6 current status, contacts with Garda management, work
7 position, discipline issues, complaints, welfare
8 supports offered/received, any other issues relevant."
9 A. That's correct, yes.

10 370 Q. Okay. You send that down to her. In fact, do you 16:02
11 remember the report that came back in, it was 24th May
12 2016? It's at 6176.
13 A. Yes, I seen it recently when I accessed the file to try
14 and make a chronology for my statement.

15 371 Q. It's a report talking about welfare, the level of sick 16:03
16 leave, confinement to indoor duties, etcetera. Did you
17 have any role in relation to that report or did you
18 simply just pass it on?
19 A. I simply passed it on, yes.

20 372 Q. Okay. Now, it would seem, if I can go back to two 16:03
21 diary entries around this time, 15883, please,
22 Mr. Kavanagh. If you see there, if you go down just a
23 little bit to the next entry, the 20th May. So this is
24 two days after you have requested the reported but
25 before you have received it. You have a diary entry 16:03
26 here, you say:
27
28 "Put together files on Keogh and most recent lady (if
29 appropriate."

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But it says:

"Appointed Superintendent Margaret Nugent to keep track of all welfare issues for PDs."

16:04

Do you remember that?

A. Yes. Again that would be most likely a direction from the Commissioner to put something together on all of the people who had made reports and superintendent Nugent, who is now a chief superintendent, obviously she had asked that I would send them to Margaret to look after them.

16:04

373 Q. And was she appointed and did that happen?

A. I believe it did, yes.

16:04

374 Q. Okay. Now, on the 23rd, the next diary entry, Martin Power, he's from the Department of Justice, isn't that right?

A. That's correct.

375 Q. He requires reports on two CRs 1 and 2 re pay situations. So here we have now a reference to pay.

16:04

"HR and PD to supply. Required for Minister's meeting this afternoon. NR Tony McLoughlin."

16:04

No reply, I'd say that is, is it?

A. That's correct, yes.

376 Q. "Will Gardner arranging same."

1 And this is the reply when you make contact with Chief
2 Superintendent McLoughlin. It says:

3
4 "1. Fit for work but won't...."

5
6 So I think the second one is the one relevant to Garda
7 Keogh:

8
9 "Unfit for work. CMO tried to get him back to work.
10 Case conference this week? After three months he went
11 on halfway. Further three months no pay. Classed as
12 ordinary illness equals off payroll (not critical or
13 injury on duty)."

14
15 Okay. So this seems to be the first record we see that
16 this issue of pay is now escalated up as far as the
17 Commissioner's office?

18 A. That's correct.

19 377 Q. Again, can you assist the Chairman about this? Did
20 this trigger any response, trigger any discussions,
21 were you involved in trying to address this or looking
22 into it?

23 A. No, can I refer to my statement.

24 378 Q. CHAIRMAN: Of course, yes.

25 A. To see if I have something on that date.

26 379 Q. MS. McGRATH: I am not sure it deals with it there,
27 detective superintendent?

28 A. No, I can't find anything there to deal with it.
29 Again, I would have just reported back on the situation

1 as regards what I had received from Chief
2 Superintendent McLoughlin. This was coming to the end
3 of my period of employment as private secretary and I
4 think I possibly availed of some leave. I have the
5 original diaries with me and I possibly availed of some 16:06
6 leave around that particular time. So I'm not sure, I
7 didn't have an awful lot of involvement after that
8 particular date.

9 CHAIRMAN: Yes.

10 380 Q. MS. McGRATH: well, I think you left in July 2016, 16:06
11 isn't that right?

12 A. That's correct, yes.

13 381 Q. Now, I don't know if you have had an opportunity, the
14 brief is extensive, so you may not have had an
15 opportunity to look at this material in detail, but in 16:06
16 the last sitting that we had a week ago, we heard a lot
17 of evidence regarding pay and we particularly heard
18 from Ms. Monica Carr at HRM. Superintendent Margaret
19 Nugent was also involved with Chief Superintendent
20 McLoughlin and what is happening is that there is 16:07
21 e-mails around this time, late May into June, about
22 this issue of pay for Garda Keogh and how it can be
23 addressed and in effect he was taken off the system and
24 he was put effectively on administrative leave or put
25 on full pay. To what level did that escalate up? Did 16:07
26 this have anything to do with the Commissioner's
27 office? Did the Commissioner know this was happening?
28 Did the Commissioner -- Garda Keogh makes an allegation
29 of pay penalisation following his PD. what level of

1 knowledge was there in the Commissioner's office that
2 any of this was happening?

3 A. I would say this diary entry that I have of the 23/5
4 was certainly I think my is first knowledge that there
5 was an issue around pay. I am not -- obviously I can't 16:08
6 answer for Commissioner O'Sullivan.

7 382 Q. CHAIRMAN: That's in response to Mr. Power of the
8 department raising a query?

9 A. That's correct, Chairman.

10 383 Q. MS. McGRATH: I don't think the Commissioner had any 16:08
11 role. I think from the material that we have seen, I
12 don't think the Commissioner had a role in moving Garda
13 Keogh on to administrative pay or putting him on to
14 full pay and backdating that?

15 A. No, she wouldn't have. 16:08

16 384 Q. I think also we heard from an Inspector Brian Downey,
17 who talked about a working group that was looking at
18 whether or not there would be a recategorisation or an
19 amendment to the injury on duty or occupational injury
20 provisions to address work related stress issues. 16:09
21 Again, what level of awareness would there have been in
22 the Commissioner's office, it's all happening in around
23 this time, of those issues that are bubbling around in
24 respect of Garda Keogh? would you have known that that
25 was happening or that this was under discussion? 16:09

26 A. No, I don't think I did know about -- I know now, I
27 have a familiarity with it now from having read the
28 files, as I say, doing research for my statement. But
29 at that point in time I don't believe that I had any

1 knowledge and I would nearly say the office didn't have
2 knowledge, I can't say that for definite, but certainly
3 I didn't have any knowledge until such time as I got a
4 response to the query, the information that I could
5 reply back to Martin Power from the department with. 16:09

6 385 Q. As I say, you left your position in July 2016, shortly
7 after this, is that right?

8 A. That's correct, yes.

9 386 Q. Okay. Chairman I have been ten more minutes to finish,
10 and I can finish in the morning if you wish? 16:10

11 CHAIRMAN: No, I think if we can finish this afternoon.
12 Unless anybody has a long session. Have you many
13 questions, Mr. Kelly, or have your side many questions
14 for this witness.

15 MR. KELLY: Yeah, I have a few. 16:10

16 CHAIRMAN: Detective, is it terribly awkward if I ask
17 you to come back in the morning?

18 THE WITNESS: That's no problem.

19 CHAIRMAN: well then we will leave it until the morning
20 if that's the case, because otherwise it's putting 16:10
21 unreasonable pressure on people.

22 MS. McGRATH: I think I have ten minutes.

23 CHAIRMAN: That's fine. Okay, thanks very much. So it
24 will be a brief session in the morning. We will take
25 it up at 10:30. Okay. Thank you very much. Very 16:10
26 good.

27

28 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 11TH FEBRUARY
29 2020 AT 10:30AM

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